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July 22, 2005

DRAFT RECORD OF DECISION

PROJECT NAME: Lenox Gateway
PROJECT MUNICIPALITY: Lenox
PROJECT WATERSHED: Housatonic
EOEA NUMBER: 13540
PROJECT PROPONENT: Lenox Gateway, LLC.
DATE NOTICED IN MONITOR: May 25, 2005

Pursuant to the Massachusetts Environmental Policy Act (M.G.L. c. 30, ss. 61-62H) and Section 11.11 of the MEPA Regulations (301 CMR 11.00), I have reviewed this project and hereby **propose to grant a waiver** from the categorical requirement to prepare an Environmental Impact Report (EIR). In a separate Certificate also issued today, I have set forth the outstanding issues related to the project that can be addressed by the permitting agencies.

Project Description

The project site encompasses 64 acres on the west side of Route 7 in Lenox, MA. The site was substantially developed as a retail complex (Planned Unit Commercial Development) in the early 1980s. The property also contains an abandoned 250-seat restaurant. The property was the subject of a full Environmental Impact Report (EIR) for an expansion project in the early 1990s by a previous proponent. That project, as proposed in EOEA # 8079, was never fully permitted on a local level and was not constructed. The current project as outlined in the Environmental Notification Form (ENF) proposes the addition of retail space and renovation of existing commercial buildings, along with the addition of 39 Townhouse style condominiums and 12 live/work apartments. The site contains significant areas of Wetland Resources and also contains Priority Habitat and Estimated Habitat areas as identified by the Natural Heritage and Endangered Species Program (NHESP). A contamination portion of the site is currently being managed in accordance with the Massachusetts Contingency Plan (MCP).



Jurisdiction

The project is subject to a mandatory Environmental Impact Report (EIR) pursuant to Section 11.03 (6)(a)(6) of the MEPA regulations because it will result in more than 3,000 new daily vehicle trips. The project also meets MEPA review thresholds related to parking and rare species habitat. The project will require a NPDES Construction General Permit; a Sewer Extension Permit from the Department of Environmental Protection (DEP); an Access Permit from the Massachusetts Highway Department (MHD); a Special Permit from the Lenox Zoning Board of Appeals; Site Plan Approval from the Lenox Planning Board; and an Order of Conditions from the Lenox Conservation Commission. The project may also require a Conservation and Management Permit from NHESP.

The proponent is not seeking financial assistance from the Commonwealth. Therefore, MEPA jurisdiction applies to those aspects of the project within the subject matter of required or potentially required permits with the potential to cause Damage to the Environment. In this case, MEPA jurisdiction extends to rare species, wetlands, transportation and wastewater.

Waiver Request

On June 22, 2005, the proponent requested a waiver from the mandatory EIR requirement.

Criteria for Waiver

Section 11.11 of the MEPA Regulations provide that I may grant a waiver upon a finding that strict compliance with the regulations will result in undue hardship and will not serve to minimize or avoid damage to the environment. I must base these findings on one or more of the following circumstances: 1) the project is likely to cause no Damage to the Environment; and 2) ample and unconstrained infrastructure facilities and services exist to support the project.

Findings

Based upon the information submitted by the proponent and after consultation with the relevant state agencies, I find that:

1. The project is likely to cause no Damage to the Environment for the following reasons:
 - The proponent is currently working closely with NHESP and the Town of Lenox Conservation Commission with regard to state-listed rare species on the project. The ENF outlined measures that the proponent will take to avoid, minimize and mitigate for impacts to rare species habitat including the installation of a salamander barrier and the granting of a deed restriction on 6.6 acres of the site. NHESP has indicated in its comments on the ENF that it anticipates proceeding with the Massachusetts Endangered Species Act permitting process for the project.

- The proponent has committed to adhering to the requirements of the Activity and Use Limitation Plan (AUL) being placed on a portion of the property pursuant to the Massachusetts Contingency Plan (MCP).
2. Ample and unconstrained infrastructure facilities and services exist to support the project:
- There were significant improvements recently performed on the Route 7/20 corridor. MHD performed these improvements, which include a traffic signal, left-turn lane and extended shoulders, in conjunction with the Section 61 Finding for a previously proposed project (EOEA # 8079) on the site of the Lenox Gateway Development. As a result of these improvements, MHD has indicated that the Route 7/20 corridor can sufficiently accommodate the increased traffic from the project. MHD has recommended that no further MEPA review be required based on traffic issues.
 - The proponent has initiated conversations with MHD regarding outstanding mitigation commitments outlined in the Section 61 Findings for EOEA #8079, including an \$88,000 reimbursement to MHD for mitigation at the Route 7/20 and site driveway intersection. In lieu of payment, the proponent has agreed to provide direct mitigation in the form of signalization improvements and the replacement of the controllers and cabinets at three intersections on Route 7/20. MHD has indicated that this arrangement is satisfactory, and plans to finalize the details of the improvements with the proponent.
 - The proponent has committed to other minor improvements consisting of traffic signal calibration at the site driveway to accommodate turning movements and the installation of sidewalks throughout the development.
 - The proponent will be required to reconcile all other outstanding traffic mitigation requirements detailed in the Section 61 Finding for EOEA #8079 and associated with the currently proposed project in a letter of commitment to MHD in advance of that Department issuing the Highway Access permit required for the project.
 - The proponent has indicated that it proposes to upgrade the existing pump station and forcemain at the site, and will therefore require a new Sewer Connection Permit from DEP. The proponent has committed to sewer mitigation and surcharge fees on the sewer connection fee as stipulated by the Town of Lenox.

In addition, the Berkshire Regional Planning Commission (BRPC) has provided extensive comments on the project but states that given the level of information provided on the project in the ENF, that an EIR filing is not necessary.

Based on these findings, it is my judgment that the waiver request has merit, meets the tests established in 301 CMR 11.11, and will serve to advance the interests of the Massachusetts Environmental Policy Act. The ENF has provided enough information to understand project impacts and mitigation, and the proponent can resolve the remaining details during the permitting process. Therefore, I propose to grant the waiver subject to the aforementioned

findings and conditions. I shall publish this Draft Record of Decision in the next issue of the *Environmental Monitor* for a fourteen-day comment period, after which I shall reconsider, modify or confirm the waiver.

July 22, 2005

Date

Stephen R. Pritchard, Secretary

Comments received:

6/13/2005	Town of Lenox, Office of the Town Manager
6/13/2005	Berkshire Regional Planning Commission
6/14/2005	Division of Fisheries and Wildlife
6/14/2005	Department of Environmental Protection, Western Regional Office
6/22/2005	Robert G. Fournier, Project Manager, SK Design Group
7/5/2005	George C. Jordan, III.

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