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April 21, 2009

Ian A. Bowles, Secretary
Executive Office of Energy and Environmental Affairs
MEPA Office
100 Cambridge Street, Suite 900
Boston, MA 02114

Re: Stoneham Executive Center/Langwood Commons, EOEEA No. 12372;
Request for Advisory Opinion

Dear Secretary Bowles:

This is a request for an Advisory Opinion pursuant to 301 CMR 11.01(6) that the above-referenced project, defined below as the "Third Redevelopment," by Fellsway Development, LLC ("Fellsway") and Simpson Housing Limited Liability Partnership (individually and collectively, together with their respective successors and assigns, the "Developer"), is not subject to jurisdiction under the Massachusetts Environmental Policy Act, M.G.L. c. 30, §§61 et seq. and regulations thereunder ("MEPA") and that the July 3, 2008 letter from the Secretary of Energy and Environmental Affairs (the "Secretary") to Mr. Arthur Gutierrez, Jr. and the July 1, 2008 letter from Richard Bourre, Acting MEPA Director, to the attorney representing the Developer, have been superseded by new information. This request is made subject to a reservation of all rights in the pending Land Court proceeding brought by the Developer against the Secretary, described below, and all other rights of the Developer under applicable law.

The Developer believes it is worthwhile to review the considerable amount of process that the redevelopment proposals have undergone to date, and the significant effort the Developer has made to meet all reasonable requests to avoid, minimize and/or mitigate impacts to the environment. These include but are not limited to the further, voluntarily proposed undertakings described in this request for an Advisory Opinion.

The Site

The Developer is the owner of an approximately 36 acre parcel of land located east of Spot Pond on Woodland Road in Stoneham, Massachusetts (the "Site"), which is bounded to the north, east, and south by the Middlesex Fells Reservation and which constitutes a so-called "in-holding" within the Reservation. The Site is located well within Route 128. The Site is the remaining portion of a more than 40-acre area originally developed as a resort hotel in the second half of the 1800s, and then redeveloped and operated throughout the 1900s as the Boston Region Medical Center ("BRMC"), which included a 374,000 square foot hospital and clinic facility, 14,000 square feet in accessory buildings, a church, a school, maintenance buildings and multiple single-family homes and apartments, a 110,000 square foot medical office complex (the ground leased land for which was purchased in fee simple by its condominium association in December, 2007), and an assisted living facility on a parcel sold by the Boston Region Medical Center for that purpose in the 1990s. The Developer proposes to redevelop the Site into a mixed use development through demolishing the vacant, usable 374,000 square foot hospital facility and replacing it with a new 225,000 square feet first class office building, continuing the use of 14,000 square feet in accessory buildings, developing 49 townhouses, 261 apartments and 95 garden-style condominiums, for a total of 405 residential units of which 25% or approximately 101 units will be



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dedicated as affordable units and a ancillary convenience store (collectively, the "Third Redevelopment"). The conceptual plan for the Third Redevelopment is attached as Exhibit A to the proposed form of a Memorandum of Understanding, itself attached as Appendix 1 to this request letter (the "Proposed MOU").

The Site abuts Woodland Road, a four-lane parkway controlled and maintained by the Department of Conservation and Recreation ("DCR") and has two existing driveways that access Woodland Road. The Site is served by regular MBTA bus service connecting to the Orange Line and to MBTA commuter rail.

The First Redevelopment

Initially, some nine years ago, the Developer proposed redeveloping the Site as a 914,000 square foot first-class office, medical, and research and development facility (the "First Redevelopment"). Fellsway and the Metropolitan District Commission ("MDC"), the predecessor to DCR, entered into a memorandum of understanding dated as of March 16, 2002 pertaining to the First Redevelopment (the "2002 MOU"). All concerned have acknowledged that the 2002 MOU is moot, of no further force and effect and terminated.

After Fellsway and the MDC executed the 2002 MOU, Fellsway submitted it to the Secretary as part of a supplemental draft environmental impact report dated July 1, 2002 (the "SDEIR"). Fellsway filed the SDEIR in connection with the First Redevelopment.

The Secretary issued a certificate on the SDEIR on August 16, 2002 (the "August 2002 Certificate"). Although the Secretary was not a party to the 2002 MOU, in his August 2002 Certificate, he stated that "the proposed mitigation described in the MOU with MDC must be treated as preliminary and subject to revision, based upon the directives of this certificate" and additional material to be developed during the preparation of the final environmental impact report for the First Redevelopment.

After receiving the August 2002 Certificate, Fellsway began negotiating with MDC (and later DCR) over an amended MOU. Those negotiations resulted in an October 2003 draft of an amended and restated MOU (the "Draft Amended MOU"). Fellsway submitted a copy of the Draft Amended MOU as Appendix A to the Final Environmental Impact Report that Fellsway delivered to the Secretary in October 2003, in connection with the First Redevelopment.

DCR refused to sign the Draft Amended MOU. Instead, on December 8, 2003, the Commissioner of DCR sent the Secretary a letter stating that the Draft Amended MOU must be further modified.

The Second Redevelopment

In November, 2005, the Developer filed with the Secretary a Notice of Project Change pursuant to MEPA, which proposed a major reduction of Site redevelopment, to a mixed-use project with 250,000 square feet of office space and 450 residential units (the "Second Redevelopment").

On January 6, 2006, in response to comments from DCR and the Massachusetts Historical Commission ("MHC"), the Secretary issued a Certificate (the "2006 Certificate") requiring the Developer, among other things, to engage in consultations with DCR and MHC, followed by the negotiation of a draft Memorandum of Agreement with DCR and public review and comment on such draft, with respect to any changes proposed to be made by the Developer to DCR parkways.



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The Developer took seriously the charge of the Secretary's 2006 Certificate and consulted with DCR and the community on a "Vision Plan" for the Middlesex Fells parkways. The Vision Plan's focus was on Woodland Road, as "the central spine of the Fells Reservation." In a far-reaching, public exercise led by DCR and its design consultant Glatting Jackson, with assistance from DCR's traffic and engineering staff and DCR's traffic and engineering consultant, Rizzo Associates, existing traffic and safety concerns were identified, at the Developer's cost, resulting in a published Vision Plan that the participants then hoped that the Developer could implement. The Vision Plan recommended numerous "traffic calming" measures for Woodland Road. These measures were intended to remedy existing deficiencies on Woodland Road and nearby roads, independent of redevelopment of the Site.

On June 29, 2007, the MHC issued a letter in which it concluded that implementation of the Vision Plan would cause an "adverse effect" on a historical resource, namely, the existing design of Woodland Road. MHC called for an entirely new consultation process for any work on Woodland Road.

The Third Redevelopment

Thus, in January 2008, the Developer put forth the Third Redevelopment (described under Site, above), which, consistent with MHC's adverse effect determination, proposed no alterations to any roads or facilities outside of the Site, including Woodland Road, and a further, 10% reduction of the mixed-use project to 225,000 square feet of office space redevelopment of the existing hospital facility, 405 residential units, of which 25% will be affordable, continued use of existing accessory buildings and structures and the ancillary convenience store. The Developer proposed to use the Site's existing Woodland Road driveways "as is," and without construction of numerous traffic calming measures recommended in the Vision Plan, but rejected by MHC. The Developer notified the Secretary that as the Third Redevelopment did not call for the issuance of state permits, it therefore, did not require review under MEPA. In February 2008, the director of the Secretary's MEPA office responded to the Developer's January 2008 notice and stated that, if the Third Redevelopment was not the subject of any "agency action," there would be no basis for MEPA jurisdiction or MEPA review.

On June 16, 2008, DCR wrote the Secretary and informed him that, in DCR's view, the Third Redevelopment required "agency action" by DCR to address potential safety issues with Woodland Road. On July 3, 2008, in reliance on the DCR letter, the Secretary informed the Developer that "DCR's construction of, or approval of, the reasonably necessary traffic improvements" involved "agency action" by DCR, and thus triggered review of the Third Redevelopment under MEPA.

The Developer disagreed with the Secretary's decision and commenced an action in the Permitting Session of the Land Court Department of the Trial Court (Case No. 382461). In the course of the Land Court action the Secretary has argued, based solely on DCR's June 16, 2008 letter, that measures must be implemented to address public safety risks on Woodland Road and that if the Developer does not seek a permit to perform such work voluntarily, then DCR will need to take "agency action" to implement such safety improvements. In substance, the Secretary asserted MEPA jurisdiction over the Third Redevelopment in the July 3, 2008 letter based on the bare assertion of DCR that DCR would expend public funds on safety improvements at Woodland Road, and that DCR's assertion amounted to a "request for financial assistance" from the Commonwealth by the Developer. The Developer has asked the Land Court to rule that MEPA does not support the Secretary's conclusion.



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The 2009 Transportation Safety Improvements Plan and Proposed MOU

In an effort to continue the productive engagement with DCR that had preceded the veto of the Vision Plan by MHC, the Developer expressed to DCR its continued willingness to discuss providing funds for improvements along Woodland Road, if DCR wished to pursue permitting and construction of such improvements as a DCR project and, in the interim, to provide funding for potential traffic details at one of the existing driveways to the Third Redevelopment if objectively warranted. The Developer and DCR have since agreed upon a Transportation Safety Improvements Plan (the "TSI Plan") for Woodland Road, including new pedestrian crossings connecting portions of the Reservation now functionally separated by speeding traffic on the four-lane roadway.

At DCR's request, the TSI Plan gives priority to enhancing the recreational use of the Reservation by pedestrians and bicyclists and calming vehicular traffic for increased safety. At the request of DCR, the Developer caused its traffic engineers, VHB, to prepare a Study (the "2009 VHB Study") regarding the impact of the TSI Plan on traffic operations, assuming the Third Redevelopment is also built.¹ The 2009 VHB Study confirmed that the TSI Plan will calm traffic, better accommodate recreational use, and accommodate future traffic volumes. The 2009 VHB Study found that most turning movements will see improved levels of service from the TSI Plan and, while a few turning movements may still not see improved levels of service, virtually all of these currently experience similar or worse operating levels. VHB concluded that this de minimis tradeoff is necessary to meet the priority placed by DCR on recreational use enhancements and traffic safety. DCR has reviewed and accepted the 2009 VHB Study.

The TSI Plan and the 2009 VHB Study, which were prepared at the Developer's expense, have been incorporated in a proposed form of Memorandum of Understanding ("Proposed MOU"), which is mutually acceptable to DCR and the Developer. A copy of the Proposed MOU and its attachments are provided as Appendix 1 to this request for an Advisory Opinion.²

Among other things, the Proposed MOU calls for the Developer to fund into escrow the aggregate amount of \$1.8 million (with a soft costs sub-limit of \$300,000) to fund the permitting, construction design, construction, construction management and traffic detail work described in the Proposed MOU. As noted in the Proposed MOU, DCR agrees that the Third Redevelopment does not require a DCR permit or financial assistance from DCR; that the Proposed MOU and the undertakings of the Developer thereunder mitigate all traffic and safety issues identified by DCR in its June 16, 2008 letter to the Secretary; that the traffic improvements to be funded by the Developer and further designed, permitted and constructed by DCR under the Proposed MOU ensure safe and efficient traffic operations on DCR roadways; and that DCR has no objection to the Third Redevelopment proceeding.

We understand that DCR will shortly deliver to you a comment letter concurring with this request, confirming that DCR wishes to enter into the Proposed MOU in the attached form and stating that, in light

¹ Although the Developer does not concede the claim that traffic formerly generated by BRMC operations should be disregarded in accurately assessing the impact of Third Redevelopment traffic on roadways, the VHB Study does not subtract traffic previously generated by BRMC operations at the Site, but rather adds Third Redevelopment traffic to current background traffic plus traffic increases expected from other projects.

² To reiterate: the Developer is submitting the Proposed MOU and its attachments, and this request for an Advisory Opinion, subject to a full reservation of its rights in the pending Land Court proceeding and under all other applicable law.



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of the Developer's undertakings in the Proposed MOU, DCR is withdrawing its June 16, 2008 letter to the Secretary. The Proposed MOU, together with the incorporated TSI Plan and 2009 VHB Study, constitute material, new information not available to the Secretary when the July 1, 2008 and July 3, 2008 letters were issued.

The MEPA regulations, at 301 CMR 11.01(6)(c) gives the Secretary discretion to publish notice of a request for an Advisory Opinion. The Developer is comfortable with the Secretary publishing notice of this request and publishing notice of the Secretary's opinion

We appreciate your review of this request for an Advisory Opinion and respectfully request that you concur with our conclusion that the project is not subject to MEPA jurisdiction, and that in light of this material, new information the July 1, 2008 and July 3, 2008 letters from Mr. Bourre and the Secretary, respectively, are withdrawn.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Greg D. Peterson', with a long horizontal flourish extending to the right.

Greg D. Peterson

Cc: Richard Sullivan, Commissioner of DCR
Arthur Gutierrez, Jr.
Bill Caulder
Spencer Welton

Enclosures



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Appendix 1

Form of Proposed MOU and Attachments

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