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March 28, 2008

CERTIFICATE OF THE SECRETARY OF ENERGY & ENVIRONMENTAL AFFAIRS
ON THE
EXPANDED ENVIRONMENTAL NOTIFICATION FORM

PROJECT NAME: 43/63 South Avenue Redevelopment
PROJECT MUNICIPALITY: Burlington
PROJECT WATERSHED: Shawsheen River
EEA NUMBER: 14173
PROJECT PROPONENT: The Gutierrez Company
DATE NOTICED IN MONITOR: February 6, 2008

Pursuant to the Massachusetts Environmental Policy Act (G.L. c. 30, ss. 61-62H) and Section 11.06 of the MEPA regulations (301 CMR 11.00), I hereby determine that this project **requires** the preparation of an Environmental Impact Report (EIR).

Project Description

As described in the Expanded Environmental Notification Form (EENF), the project involves the redevelopment of a 16-acre site in Burlington. The Proponent proposes to demolish the three existing buildings in order to construct office, research and development, retail, and restaurant space totaling 610,000 square feet in three new buildings. The proponent has estimated that the project will generate approximately 7,020 average weekday vehicle trips (an increase of 4,530 vehicle trips per day). The proponent has estimated that the project will require 2,180 parking spaces in structures and surface lots (1,700 spaces will be within a parking garage). The proposed project will be connected to existing municipal water and sewer service. It will consume approximately 154,000 gallons per day (gpd) of water and will generate approximately 140,000 gpd of wastewater flow.

Jurisdiction

The project is undergoing environmental review and requires the preparation of an Environmental Impact Report pursuant to Section 11.03(6)(a)(6) of the MEPA regulations because it requires state permits and because the project will generate more than 3,000 new average daily trips on roadways providing access to a single location. The project requires a State Highway Access Permit from the Massachusetts Highway Department (MassHighway) and a Sewer Connection/Extension permit from the Department of Environmental Protection (MassDEP). The project will also require a National Pollutant Discharge Elimination System (NPDES) General Construction Permit from the U.S. Environmental Protection Agency (EPA) and an Order of Conditions (OOC) from the Burlington Conservation Commission (and therefore a Superceding Order of Conditions from MassDEP if the local Order is appealed). The project may need to obtain an Industrial Wastewater Sewer Connection Permit from the Massachusetts Water Resources Authority (MWRA). The project is subject to EEA's Greenhouse Gas (GHG) Emissions Policy and Protocol.

Because the Proponent is not seeking financial assistance from the Commonwealth for the project, MEPA jurisdiction is limited to those aspects of the project that may cause significant Damage to the Environment and that are within the subject matter of required or potentially required state permits. In this case, jurisdiction extends to transportation, wastewater, wetlands and stormwater.

Request for a Single EIR

In accordance with Section 11.05(7) of the MEPA regulations, the Proponent has submitted an Expanded ENF (EENF) with a request that I allow the Proponent to fulfill its EIR obligations under MEPA with a Single EIR, rather than the usual process of a Draft and Final EIR. The EENF was subject to an extended review period pursuant to 301 CMR 11.05(7). The Proponent's request for a Single EIR was discussed at the MEPA site visit held for the project on February 28, 2008. Based on a review of the EENF, I hereby find that the document meets the regulatory requirements and I am permitting the Proponent to file a Single EIR in fulfillment of Section 11.03 of the MEPA regulations. The Proponent should prepare the Single EIR in response to the Scope outlined below.

SCOPE

General

The Single EIR should follow Section 11.07 of the MEPA regulations for outline and content, as modified by this Scope. The Single EIR should include a copy of this Certificate and the comments submitted on the EENF. The Single EIR should include a thorough description of the project, including a detailed description of construction methods and phasing and any changes to the project since the filing of the EENF.

The Single EIR should include a brief description of each state permit or agency action required or potentially required, and should demonstrate that the project will meet applicable performance standards. The Proponent should also provide an update on the local permitting processes for the project. The Single EIR should discuss in more detail how this project is compatible with Executive Order 385 – Planning for Growth, and discuss its consistency with local zoning, and the Metropolitan Area Planning Council’s (MAPC) Metro Plan 2000.

Alternatives

In addition to the project presented in the EENF, the Preferred Alternative, the Proponent evaluated alternative site plan configurations during the project planning process including the No-Build alternative, a Retail Alternative and the Preferred Alternative with a Revised Building Configuration. The No-Build alternative would leave the site in its present condition, and would not meet the Proponent’s development objectives or contribute to economic development in the Town of Burlington. The preliminary No-Build alternative consists of re-occupying the existing building. While this alternative may result in less traffic impacts, it would not result in any significant improvements to existing infrastructure and would result in greater water and wastewater impacts. In addition, the Proponent states that this alternative is not supported by market conditions. The Retail Alternative would have required a rezoning by the Town of Burlington. The EENF states that during discussions with the Town of Burlington, it became evident that retail uses were not preferred by the Town.

The Proponent concludes in the EENF that the preferred alternative works best to meet the needs of the project while keeping resource area impacts minimal, providing significant improvements to on-site stormwater, wastewater and water supply infrastructure, and providing mitigation for project-related traffic. The Proponent has also committed to evaluating the Preferred Alternative with a Revised Building Configuration throughout the MEPA review process to evaluate maximized daylighting and solar gain opportunities as well as to take advantage of the natural lighting of a longer south-facing building evaluation. The Preferred Alternative (including with a Revised Building Configuration) may be carried forward to the Single EIR, subject to further modification as outlined in this Certificate below.

Traffic

The project is expected to generate approximately 4,530 net new average daily trips (adt). The Proponent has prepared a Traffic Impact and Access Study (TIAS) in accordance with Executive Office of Energy & Environmental Affairs (EEA)/Executive Office of Transportation and Public Works (EOTPW) guidelines. The TIAS was submitted as part of the EENF.

The Proponent conducted an evaluation of traffic flows and roadway capacity within the TIAS study area for existing, No-Build and Build conditions at signalized and unsignalized intersections to determine the impact of the project on the area roadway system. The study included as background development growth several projects that are expected to impact traffic operations within the study area. In particular, Northwest Park (EEA# 14000), an approximately 3.6 million-square foot mixed-use development that recently completed the Final EIR, is

expected to significantly impact traffic operations at the I-95/Route 128/Middlesex Turnpike interchange and along the Middlesex Turnpike corridor. The proposed infrastructure improvements identified as mitigation for the Northwest Park project during the MEPA process are expected to be closely coordinated with the mitigation measures identified in the EENF for this currently proposed project. The improvements consist of geometric improvements and traffic signal modifications and upgrades at both ramp intersections with Middlesex Turnpike, roadway widening between these intersections, and geometric improvements at the I-95 southbound frontage road. The analysis revealed that the currently proposed project is not expected to result in an overall change in Level of Service (LOS) at signalized intersections.

MassHighway requested during the review of the EENF details on the mitigation commitments and implementation which include mitigation for this currently proposed project with the implementation of the Northwest Park project and without the Northwest Park project. In a memorandum dated March 11, 2008, the Proponent submitted analysis that included these two scenarios for implementation with mitigation. MassHighway has reviewed the two mitigation scenarios and has stated in its comment letter that any remaining concerns regarding the impacts of this project can adequately be addressed in the Single EIR. The Single EIR should provide the detailed commitments and implementation which include mitigation for this currently proposed project with the implementation of the Northwest Park project and without the Northwest Park project.

The Proponent has outlined and committed to a transportation mitigation program in the EENF to address potential project-related traffic impacts and to help address existing operational and safety deficiencies.

The Single EIR should include a commitment to implement the above referenced traffic mitigation measures and should describe the timing and cost of their implementation based on project phasing. The Single EIR should include conceptual plans for the proposed mitigation that are of sufficient detail to verify the feasibility of constructing such improvements, including lane widths and offsets, layout lines and jurisdictions and adjacent land uses.

Transportation Demand Management

The EENF included a commitment to implement a Transportation Demand Management (TDM) program aimed at reducing site trip generation. Proposed TDM measures include:

- designation of an on-site transportation coordinator;
- creation and promotion of an on-site rideshare program, including ride-matching, accommodating work shifts, incentives and preferential parking;
- provision of transit service to the site;
- installation bicycle storage racks near the front doors of the retail site to facilitate bicycle access to the site.

In the Single EIR, the Proponent should provide a clear commitment to implement and continuously fund any TDM measures. The Proponent should also provide more information about potential bus service for site users.

Air Quality

The projected vehicle trips from the project triggered MassDEP's requirement that the Proponent conduct an air quality mesoscale analysis to determine if the proposed project will increase the amount of volatile organic compounds (VOCs) and nitrogen oxides (NOx) in the project area and to assess the project's consistency with the Massachusetts State Implementation Plan (SIP). The Proponent included the results of the mesoscale air quality analysis in the EENF.

The mesoscale air quality analysis evaluated existing and future levels of VOC and NOx emissions for the study area using the traffic volumes, delay and speed data presented in the project's TIAS. Consistent with MassDEP guidelines, the Proponent will incorporate mitigation measures to reduce VOC and NOx emissions resulting from the project. These mitigation measures include construction of roadway and traffic signal improvements and a program of TDM measures.

Greenhouse Gas Emissions

In addition to the mesoscale air quality analysis, the proposed project is also subject to EEA's Greenhouse Gas (GHG) Policy that requires Proponents to quantify project-related GHG emissions and propose and quantify the impact of mitigation measures to reduce GHG emissions. The Proponent submitted the results of the GHG analysis with the EENF. In the study, the Proponent calculated GHG emissions from both mobile and stationary sources. The GHG emissions analysis evaluated the change in carbon dioxide (CO₂) emissions from project-related traffic and proposed building sources.

Based on a limited number of GHG analyses reviewed thus far, MassDEP has stated in its comment letter that the policy requirement is not being met consistently for the analysis of the project alternative, which provides greater GHG related mitigation as described in the EENF than the preferred alternative. The Single EIR must demonstrate the project meets the policy requirements consistently. The GHG Policy states that when comparing the preferred alternative to other alternatives with greater GHG reduction, the Proponent should explain which alternatives were rejected, and the reasons for rejecting them. The Proponent should fully explain any trade-offs inherent in the evaluation of GHG reduction measures, such as increased impacts on some resources to avoid impacts to other resources.

The EENF outlines a list of LEED (Leadership in Energy and Environmental Design) measures and a list of sustainable design elements that will be incorporated into the project. The Proponent should clarify in the Single EIR what specific measures will be implemented by the Proponent and should evaluate these measures as part of the updated response to the GHG policy.

The results of the energy modeling are presented in the EENF. In the Single EIR, the Proponent should provide this information in an updated format. The Proponent should clearly present the results of calculations used to quantify Existing Conditions, the Build Condition, and the impact of proposed emissions-reduction mitigation. If the Proponent uses bar graphs, graphs

should be produced in color so that the reader can understand the results. In response to the GHG Policy, the Single EIR should also present the data that were used to model energy use in the proposed building. A typical set of modeling inputs might include the following: project size and configuration; type of heating, ventilation and cooling systems; amount of glazing; and potential types of usage and hours of operation.

The Proponent should commit in the Single EIR to additional GHG reduction mitigation. I understand that the nature of the project means that the majority of GHG emissions come from mobile sources. The GHG Policy requires mitigation for net project-related emissions; the Proponent should therefore evaluate transportation and non-transportation related mitigation to reduce overall GHG impacts. Effective on-site measures include daylighting, and the use of solar photovoltaics on the building's roof or for parking lot lighting. The Proponent should also consider committing to purchasing power generated by renewable energy for electrical use. I encourage the Proponent to consult with the MEPA office to evaluate potential off-site mitigation measures or offset strategies.

Stormwater

Development associated with the proposed project will be located primarily on previously paved and/or otherwise disturbed land. The majority of the site is covered by the existing building and parking field. The project will result in a decrease in impervious surface of approximately 0.44 acres.

Stormwater runoff impacts during construction and post-construction should be evaluated in the Single EIR, and it should be demonstrated that source controls, pollution prevention measures, erosion and sediment controls, and the post-development drainage system will be designed in compliance with the MassDEP Stormwater Management Policy (SMP) regulations. The Single EIR should explain how water quality and quantity impacts would be controlled in compliance with the SMP standards for water quality and quantity impacts, with the Town of Burlington's NPDES Storm Water General Permit and the NPDES General Permit for discharges from large and small construction activities. Calculations, stormwater system design plans at a readable scale, best management practice (BMP) designs, and supporting information should demonstrate that the stormwater system design provides adequate protection for wetland resources in conformance with the stormwater regulations and NPDES permit. I note that the MassDEP Stormwater Management Policy was revised and incorporated into the Wetlands Protection and 401 Water Quality Certification regulations on January 2, 2008.

The stormwater regulations require that consideration be given to low impact development (LID) and the use of integrated management practices (IMP) for control of stormwater, either alone or in combination with conventional drainage control measures. The Proponent should address LID and the use of IMP in the Single EIR.

Groundwater & Massachusetts Contingency Plan

The EENF indicates that several contaminated areas on-site are under the Massachusetts Contingency Plan (MCP). Groundwater at the site has been impacted with trichloroethylene

(TCE) and tetrachloroethene (PCE) as a result of historical manufacturing operations. A groundwater extraction and treatment system is located at Building 25 and has been in operation since 1986, including five extraction wells. The groundwater extraction and treatment system is designed to maintain hydraulic control of the overburden and shallow bedrock plume on the northern side of the property. The project site is within portions of the Zone II and the Zone III upland recharge area for the Town of Burlington's seven municipal wells in the Vine Brook Aquifer. MassDEP has stated in its comment letter that the overburden and bedrock monitoring wells used for the groundwater sampling program must be maintained or replaced in order to characterize all areas of the plume.

The EENF does not propose implementation of a groundwater sampling program that would evaluate aquifer behavior and contaminant transport during redevelopment activities. The site has a semi-annual monitoring program currently in place that includes 25 monitoring wells, five extraction wells, and three water surface locations. There may be a need to increase the sampling frequency in order to identify contamination during construction and evaluate measures that must be taken to adequately manage the plume. The Single EIR must provide this information.

Blasting of bedrock is not proposed for this project. The proponent has also determined that it is not appropriate to incorporate storm water infiltration in the project design, to avoid the potential for mobilizing contamination in the groundwater. It is not clear, however, whether irrigation wells are proposed for the project. If so, then the impact of potential irrigation wells should be evaluated in the Single EIR. A conceptual site model of groundwater flow should be developed, to predict potential aquifer behavior and contaminant transport.

Wetlands

According to the EENF, the project will alter about 1,795 square feet of a basin, which is determined to be land subject to flooding and inundation, a resource covered by the Town of Burlington's wetland bylaws. Therefore, the project requires an Order of Conditions from the Town of Burlington Conservation Commission. The Burlington Conservation Commission issued an Order of Resource Area Delineation on June 15, 2007.

The Proponent intends to file a Notice of Intent with the Burlington Conservation Commission for the project's impacts to resource areas. The Single EIR should outline any changes to anticipated wetlands impacts that may result from consultation with the Burlington Conservation Commission.

A detailed wetlands replication plan should be provided in the Single EIR which, at a minimum, should include: replication location(s); elevations; typical cross-sections; test pits or soil boring logs; groundwater elevations; the hydrology of areas to be altered and replicated; list of wetlands plant species of areas to be altered and the proposed wetland replication species; planned construction sequence; and a discussion of the required performance standards and long term monitoring.

Water and Wastewater

The project is expected to require approximately 154,000 gallons per day (gpd) of water and to generate approximately 140,000 gpd of wastewater. I note that the Town of Burlington is under a MassDEP Administrative Consent Order (ACO), which requires a 4:1 removal for each new gallon to be connected, which will apply to the proposed project. The Town of Burlington increases the infiltration and inflow (I/I) removal by a gallon, for a total requirement for I/I removal of 5:1. Given the amount of flow "credit" currently available in the Burlington sewer bank, it may be challenging to identify and remove the I/I to allow a wastewater connection of this entire project. The Proponent has consulted the town and developed a plan to address this issue. I strongly encourage the Proponent to meet with the Town and MassDEP to discuss approaches to meet the requirements of the Burlington sewer bank and the MassDEP ACO. Additional sewer flows from the project area, absent proper mitigation, would exacerbate sanitary sewer overflows from the Horn Pond Interceptor, where overflow events continue to occur. Because the project will generate 140,000 gpd of wastewater, the proponent will need to eliminate 700,000 gpd of I/I from the municipal sewer system.

Construction Period Impacts

The Single EIR should include a discussion of construction phasing, evaluate potential impacts associated with construction activities, and propose feasible measures to avoid or eliminate these impacts. The Proponent must comply with MassDEP's Solid Waste and Air Quality Control regulations and should respond in the Single EIR to comments from MassDEP regarding demolition issues. The Proponent should implement measures to alleviate dust, noise and odor nuisance conditions which may occur during the construction activities. I encourage the proponent to work with MassDEP to implement construction-period diesel emission mitigation through its Diesel Retrofit Program.

Mitigation

The Single EIR should contain a separate chapter on mitigation measures. The chapter on mitigation should include draft Section 61 Findings for use by MassHighway, MassDEP and the MWRA. If applicable, the Section 61 Finding should contain a clear commitment to implement mitigation, an estimate of the individual costs of the proposed mitigation, the identification of the parties responsible for implementing of the mitigation, and a schedule for the implementation of the mitigation.

Comments

The Single EIR should include copies of all comments submitted on the EENF. In order to ensure that the issues raised by commenters are addressed, the Single EIR should include a response to comments. This directive is not intended to, and shall not be construed to, enlarge the scope of the Single EIR beyond what has been expressly identified in this Certificate.

Circulation

The Single EIR should be circulated in compliance with Section 11.16 of the MEPA regulations and copies should be sent to commenters as listed below and to Town of Burlington's officials. A copy of the Single EIR should be made available for review at the Burlington Public Library.

March 28, 2008

Date



Ian A. Bowles

Comments received:

03/07/08	Metropolitan Area Planning Council
03/07/08	Department of Environmental Protection, Northeast Regional Office
03/10/08	Stephen H. Kaiser, PhD
03/21/08	Massachusetts Water Resources Authority
03/21/08	Town of Burlington, Town Administrator's Office
03/24/08	Executive Office of Transportation, MassHighway

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