



The Commonwealth of Massachusetts
Executive Office of Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Deval L. Patrick
GOVERNOR

Timothy P. Murray
LIEUTENANT GOVERNOR

Ian A. Bowles
SECRETARY

Tel: (617) 626-1000
Fax: (617) 626-1181
<http://www.mass.gov/envir>

March 29, 2007

DRAFT RECORD OF DECISION

PROJECT NAME : Hillside at 495 Center
PROJECT MUNICIPALITY : Northborough
PROJECT WATERSHED : Assabet
EOEA NUMBER : 12916
PROJECT PROPONENT : Northborough Land Realty Trust /The
Gutierrez Company
DATE NOTICED IN MONITOR : February 6, 2007

Pursuant to the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-62H) and Section 11.10 of the MEPA regulations (301 CMR 11.00), I hereby propose to **grant** a Phase I Waiver with conditions allowing the construction of a 91,500 sf portion of Phase 2 of the Hillside @ 495 project to proceed pending the preparation of a Final Environmental Impact Report (FEIR) for the project.

Project Description

In November 2002, the proponent submitted an Environmental Notification Form (ENF) to MEPA proposing the phased (Phase 1, 2) development of approximately 2,000,000 square feet (sf) of office space in four buildings (Phase 2), and a separate 260,000 sf of warehouse building (Phase 1I), 6,700 parking spaces, and associated infrastructure on a 175 acre-site south of Bartlett Street and east of Lyman Street in Northborough. As described in the ENF, the Hillside @ 495 Center project will consume approximately 172,040 gallons per day (gpd) of water and will generate approximately 156,400 gpd of wastewater flow. The proponent proposes to discharge the wastewater generated from the Phase I portion of the project (6,400 gpd) to an on-site Title V septic system. The proponent proposes to discharge the wastewater generated from Phase 2 (150,000 gpd) to the Town of Northborough's municipal sewer collection system for treatment at the City of Marlborough's Westerly Wastewater Treatment Facility.

The project is undergoing review and requires preparation of an EIR pursuant to sections 11.03 (1)(a)(1) and (1)(a)(2) of the MEPA regulations because the project requires state permits and will involve the direct alteration of 50 or more (111.7 acres total) acres of land and the creation of more than 10 acres (91.6 acres total) of new impervious surfaces. The project as currently designed also requires a Groundwater Discharge Permit from MassDEP, and an Order of Conditions from the Northborough Conservation Commission (and hence a Superseding Order from MassDEP if the local Order were appealed). I note that although the proposed project will generate more than 3,000 new vehicle trips per day (22,720 total), and provide more than 1,000 new surface parking spaces (6,700 total), it does not appear to require a Highway Access Permit from the Massachusetts Highway Department (MassHighway), and therefore, does not require the preparation of an EIR pursuant to Sections 11.03 (6)(a)(6), and (6)(a)(7) of the MEPA regulations. The project also requires a Construction Dewatering Permit, a Fossil Fuel Emission Permit and a Groundwater Discharge Permit from the Department of Environmental Protection (DEP). The project must comply with the National Pollutant Discharge Elimination System (NPDES) General Permit for stormwater discharges from a construction site of over five acres and for a Construction Site Dewatering Discharge Permit from the U.S. Environmental Protection Agency. Using the Institute of Traffic Engineers Trip Generation land use codes 750 for Office Park and 150 for Warehouse/Distribution, the project is estimated to generate a combined total of approximately 22,720 vehicle trips on the average weekday. An air quality mesoscale analysis for ozone may be needed for this project to assess the total volatile organic compounds (VOC) and nitrogen oxides (NOx) emissions associated with all project-related vehicle trips.

Notice of Project Change and Phase I Waiver Request

As part of the November 2002 ENF submittal, the proponent requested a Phase I Waiver (1st Phase I Waiver) to allow the construction of the proposed 260,000 sf warehouse facility with 326 surface parking spaces and 26 loading docks on a 25-acre portion of the project site abutting Lyman Street (Phase 1 - Lyman Street Warehouse), in advance of the preparation of an EIR for the full build-out of the site. The Certificate on the Phase I Waiver required the proponent to include in the EIR an Area Traffic Planning Study, prepared in conformance with the EOEAEOTC Guidelines, for the full-build scenario, along with the Area Traffic Planning Study for the Hillside-at-495 project that, according to the ENF, the proponent had voluntarily agreed to complete. The Phase 1 development was completed in early 2005.

In June 2006, the proponent submitted a Notice of Project Change (NPC) to the MEPA Office proposing a reduction in the amount of proposed Phase 2 office development plan from 2,000,000 sf to 1,525,000 sf, and to incorporate approximately 116,600 sf of additional warehouse/distribution space to be located in three separate office buildings, and a separately located warehouse/distribution center building with approximately 4,960 surface parking spaces, and related utilities and stormwater management infrastructure, and associated traffic mitigation roadway improvements. The project change resulted in an increase to land alteration (approximately 12,600 sf), and minor decreases to impervious surface area, potable water demand, wastewater flows, parking, and traffic generation.

The June 2006 NPC submittal also included a second Phase I Waiver (2nd Phase I Waiver) request to construct 91,500 sf (78 percent) of the 116,600 sf warehouse/distribution facility (A. Duie Pyle Warehouse facility) currently proposed as part of the Phase 2 development program, thereby allowing its construction to proceed in advance of the preparation of an Environmental Impact Report (EIR) for the Hillside @ 495 Center project and the Full-Build scenario. The Certificate on the NPC/2nd Phase I Waiver (August 2006) denied the proponent's Phase I Waiver.

The DEIR submitted for this project (February 2007) included the proponent's Phase I Waiver request (3rd Phase I Waiver) to construct 91,500 sf (78 percent) of the 116,600 sf Duie Pyle warehouse/distribution facility currently proposed as part of the Phase 2 development program, thereby allowing its construction to proceed in advance of the preparation of the Final Environmental Impact Report (FEIR) for the Hillside @ 495 Center project.

Phase I Waiver Review

Section 11.11 of the MEPA regulations provides that the Secretary may waive any provision or requirement of 301 CMR 11.00 not specifically required by MEPA, and may impose appropriate and relevant conditions or restrictions, provided that the Secretary finds that strict compliance with the provision or requirement would: (a) result in an undue hardship for the proponent, unless based on delay in compliance by the proponent; and (b) not serve to avoid or minimize Damage to the Environment.

In the case of a partial waiver of a mandatory EIR review threshold that will allow the proponent to proceed with phase one of the project prior to preparing an EIR, the Secretary, at a minimum, must base this finding on a determination that:

- (a) the potential impacts of phase one of the project, taken alone, are insignificant;
- (b) ample and unconstrained infrastructure facilities and services exist to support phase one of the project;
- (c) the project is severable, such that phase one does not require the implementation of any other future phase of the project or restrict the means by which potential environmental impacts from any other phase of the project may be avoided, minimized or mitigated; and
- (d) the agency action on phase one will contain terms such as a condition or restriction in a permit, contract or other relevant document approving or allowing the agency action, or other evidence satisfactory to the Secretary, so as to ensure due compliance with MEPA and 301 CMR 11.00 prior to the commencement of any other phase of the project.

Findings

I have carefully reviewed the proponent's 3rd Phase I Waiver Request and supporting documentation, written comments and comments received at the scoping session.

1. As described in the DEIR submittal, the proposed Duie Pyle warehouse/distribution facility has been designed to avoid direct alteration of bordering vegetated wetlands (BVW).

This 3rd Phase I Waiver request contains sufficient information upon which to make a determination that the potential impacts of the proposed 3rd Phase I Waiver construction activities on wetland resource areas, taken alone, are insignificant.

2. The estimated wastewater flows (2,950 gpd) for the proposed warehouse/distribution facility will be served by the City of Marlborough's Westerly Wastewater Treatment Facility (Westerly WWTF). According to comments received from MassDEP, the Westerly WWTF has sufficient treatment capacity to serve the wastewater flows from the Duie Pyle warehouse project.

I find that the proponent's 3rd Phase I Waiver request contains sufficient information pertaining to the potential post development wastewater impacts to make a determination that the potential impacts of a portion of the proposed Phase II development program taken alone, are insignificant.

Based on these findings, it is my judgment that the phase one 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. Therefore, I propose to grant the 3rd Phase I Waiver subject to the aforementioned findings and conditions. This Draft Record of Decision (DROD) shall be published in the next issue of the *Environmental Monitor* for a fourteen-day comment period, after which I shall reconsider, modify, or confirm the waiver.

March 29, 2007

Date

Ian A. Bowles, Secretary

EOEA #12916 DROD
IAB/NCZ/ncz