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CERTIFICATE OF THE SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS
ON THE
ENVIRONMENTAL NOTIFICATION FORM

PROJECT NAME: Independence Mall Theatery Project
PROJECT MUNICIPALITY: Kingston
PROJECT WATERSHED: South Coastal
EOEA NUMBER: 14024
PROJECT PROPONENT: Independence Center, L.L.C.
DATE NOTICED IN MONITOR: May 9, 2007

Pursuant to the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-62H) and Section 11.03 of the MEPA regulations (301 CMR 11.00), I hereby determine that this project **requires** the preparation of a mandatory Environmental Impact Report (EIR).

Project Description

As described in the Environmental Notification Form (ENF), the project consists of the expansion of the Independence Mall in Kingston. It will include the expansion of the existing cinema complex to add four screens, a restaurant and specialty shops. The project will add 110,935 square feet (sf) of gross leased area (GLA). It will be located along the western side of the existing mall, and connected to it, in an area that currently includes stores and associated parking. It will include the construction of 151 additional parking spaces and relocation and upgrading of roadway and stormwater infrastructure.

The 208-acre site contains the Independence Mall, access roads, parking and other associated infrastructure and 9 acres of cranberry bogs. The Mall contains 819,065 square feet (sf) of GLA consisting of three department stores, a theater complex, two restaurants and specialty shops. It is adjacent to the wetlands associated with Smelt Pond and Smelt Brook to the southwest

and northwest, to the Route 3/Smith Lane Interchange (Exit 8) to the north. According to the Department of Fisheries and Wildlife's (DFW) Natural Heritage and Endangered Species Program (NHESP), the site includes Estimated Habitat and Priority Habitat for the Blandings Turtle (*Emydoidea blandingii*) and the Eastern Box Turtle (*Terrapene carolina*). The area may contain pre-contact period Native American archaeological sites.

The ENF indicates that the Independence Mall was reviewed by MEPA as EOEA #6600. A Certificate on the Fourth Supplemental Final EIR was issued on October 10, 1990 and a Certificate on the Section 61 Finding was issued on January 24, 1992. The final Certificate required that the proponent seek a written opinion from the MEPA office regarding requirements for review of any future "Unpermitted Excess Development" above 820, 000 GLA and identify the project's relationship to EOEA #6600.

Jurisdiction and Permitting

The project is undergoing MEPA review and subject to preparation of a mandatory EIR pursuant to Section 11.03 (6)(a)(6) because it requires a state permit and will generate more than 3,000 average daily vehicle trips (adt) providing access to a single location. The project requires a Revised Groundwater Discharge Permit from the Department of Environmental Protection (MassDEP) and a revised Access Permit from the Massachusetts Highway Department (MassHighway). The project requires review by NHESP and the Massachusetts Historical Commission (MHC). It may require an Order of Conditions from the Kingston Conservation Commission (and hence a Superseding Order of Conditions from MassDEP in the event the local Order is appealed). Also, it will require review by NHESP and the Massachusetts Historical Commission.

Potential environmental impacts are associated with the alteration of 7 acres of land, creation of 4.2 acres of impervious surfaces, generation of 3,759 adt, use of 5,972 gallons per day (gpd) of water and generation of 42,212 gpd of wastewater. The project avoids direct wetland alterations. Measures to avoid, minimize and mitigate environmental impacts include the redesign of the stormwater management system, expansion of the wastewater management system, replication of rare species habitat, and continued contributions to the Greater Attleboro Taunton Regional Transit Authority (GATRA).

Because the proponent is not seeking financial assistance from the Commonwealth for the project, MEPA jurisdiction extends 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, MEPA jurisdiction extends to land alteration, traffic/transportation, wetlands/drainage, rare species, water supply, wastewater and historic resources.

SCOPE

General

The EIR should be prepared in accordance with the general guidelines for outline and content found in Section 11.07 of the MEPA regulations, as modified by this Certificate. The EIR should include a detailed project description including any project phasing. It should identify any plans for additional expansion of the mall. The EIR should include existing and proposed site plans at a readable scale.

The EIR should include a summary of the requirements and mitigation measures established through the original MEPA review of the project. It should identify any significant changes in infrastructure and mitigation measures and summarize previous project changes that were filed with MEPA (and associated increases in environmental impacts including traffic generation, impervious surfaces and parking spaces).

Permitting and Consistency

The 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 EIR should discuss the project's consistency with the Commonwealth's Sustainable Development Principles, Executive Order No. 385, "Planning for Growth" and with local and regional growth management plans. The proponent should provide an update on the local permitting process for the project.

The EIR should investigate all feasible methods of avoiding, reducing or minimizing impacts to land. The section should describe any changes to the project design required by such an alternative. The EIR should fully explain any trade-offs inherent in the alternatives analysis, such as increased impacts on some resources to avoid impacts to other resources.

Traffic and Transportation

A copy of the traffic analysis conducted for this project was submitted during the extended comment period for this project. The ENF indicates that the Independence Mall generates approximately 40,033 adt. The project will add approximately 3,759 adt on a Saturday and 2,690 adt on a weekday. The traffic analysis asserts that project impacts can be mitigated through signal timing adjustments at the Independence Mall Way at William Gould Drive and the Nick's Rock Road/Cherry Street at Commerce Way intersection.

The EIR should include a revised transportation study prepared in conformance with the Executive Office of Energy and Environmental Affairs/Executive Office of Transportation (EOEA/EOT) Guidelines for EIR/EIS Traffic Impact Assessments. The EIR should present a merge and diverge and weaving analysis for each ramp junction at the Route 3/Smith Road interchange. The Traffic Impact and Access Study (TIAS) should present capacity analyses, a

summary of average and 95th percentile vehicle queues, and turning lane storage length for each intersection within the study area for the No-Build, Build and Build with Mitigation conditions. At a minimum, the traffic study should analyze all site driveways and the following state highway and local roadway locations:

- Smith Lane at Route 3 northbound ramps,
- Smith Lane at Route 3 southbound ramps/Independence Mall Way intersection,
- Smith Lane at Independence Mall Way/William Gould Way intersection and
- Independence Mall Way/Cranberry Road intersection
- Independence Mall Way at Gould Drive and GMC Driveway
- Nick's Rock Road/Cherry Street at Commerce Way

In addition, any intersection that will experience an increase attributable to the project of 10% or more over existing traffic volumes and that currently operates at level of service (LOS) D or worse should be included in the analysis.

The EIR should describe the amount of truck traffic associated with the development and discuss proposed truck routes and delivery hours.

If any roadway improvements are proposed, the EIR should include conceptual plans that are of sufficient detail (e.g. 80 scale) to verify the feasibility of constructing such improvements. The conceptual plans should clearly show proposed lane widths and offsets, layout lines and jurisdictions, and the land uses (including access drives) adjacent to areas where improvements are proposed. Any mitigation within the state highway layout must conform to the MassHighway Development and Design Guidebook, including but not limited to, provisions for lane, median and shoulder widths and bicycle lanes and sidewalks.

The EIR should identify existing modes along the corridor such as transit, walking and bicycling, analyze existing and future conditions based on the project's impacts and provide measures to increase these modes of transportation. The EIR should include a comprehensive Transportation Demand Management (TDM) plan that analyzes all feasible measures to reduce site trip generation. The TDM plan should include specific measures that have been successful in reducing trip generation for retail establishments. In particular, the EIR should consider financial incentives to employees to use transit and identify how pedestrian connections can be made to existing and proposed uses in close proximity to the site including the MBTA train station and neighborhoods. The EIR should include a site circulation plan that clearly demonstrates how vehicular, pedestrian and bicycle access will be provided.

The EIR should carefully address comments regarding the traffic analysis. The EIR should assess the consistency of the project with the Commerce Way Corridor Study prepared by the Town of Plymouth. It should identify and address any inconsistencies between the proponent's traffic analysis and traffic analyses prepared for other projects (e.g. Waterhouse Properties). The EIR should evaluate the benefits of the proposed extension of William Gould Way to Nick's Rock Road/Cherry Street (opposite Commerce Way) in Plymouth and assess whether the extension would mitigate project-related impacts. Also, it should identify whether re-striping of intersections, development of a traffic monitoring program or increased contributions to GATRA

will be included as mitigation measures.

The traffic analysis includes impacts from two potential developments (including a 40R zoning district) located in close proximity to the project. The traffic analysis should include potential traffic generation associated with these projects and the geometric improvements associated with the Thorndike project in the No-Build and Build conditions. Comments note that several other projects are planned in close proximity to the project. At a minimum, the traffic analysis should incorporate the potential traffic generation from any project in the vicinity of the site that has filed an ENF/NPC with MEPA (including the proposed expansion of the Plymouth Gateway project). I encourage the proponent to consult with Kingston and Plymouth officials regarding other potential projects that should be included. The proponent should consult with OCPC and MassHighway regarding the appropriate background growth rate to be used.

EOT comments identify significant concern with operation of the Route 3 southbound ramps/Smith Lane intersection during the weekday afternoon peak hour. EOT indicates that the traffic study should analyze this peak in conjunction with the MBTA commuter train arrival and address whether sufficient storage capacity exists to prevent queues from developing and extending beyond available queue storage. If the analysis demonstrates that the projected queues exceed available storage, the EIR should identify additional mitigation to address this impact.

Parking

The proposal to increase parking in association with the proposed expansion generates significant impacts. The expansion of parking requires that a stormwater basin be relocated and this proposed relocation results in impacts to potential rare species habitat. The proponent proposes to replicate turtle habitat, which will require land clearing and tree cutting, on another area of the site. I acknowledge that the proponent is seeking a waiver from the Kingston Zoning Board for a reduced parking supply (from 5 spaces per 1,000 sf to 4.5 spaces per 1,000 sf) and the proposed parking supply is predicated on the granting of this waiver. The need to relocate the stormwater basin could be avoided by further reducing the parking supply or by providing structured parking.

The EIR should include a parking needs analysis that identifies current parking demand and parking supply and identifies the parking ratio and how it was developed. The EIR should include analysis of efforts to further minimize impacts associated with parking supply. The EIR should consider a reduced parking supply and incorporation of structured parking. For each alternative, the EIR should quantify the amount of land altered, the amount of earth work involved in meeting final grades and the amount of impervious surfaces created.

Wetlands/Drainage

All resource area boundaries on the site including riverfront areas, applicable buffer zones and 100-year flood elevations should be clearly delineated on a plan. Bordering vegetated wetlands that have been delineated in the field should be surveyed, mapped and located on the

plans.

The ENF indicates that the project does not include wetlands alterations and will not require the filing of an Order of Conditions. The proponent has indicated that it will submit an Abbreviated Notice of Resource Area Delineation (ANRAD) to the Kingston Conservation Commission to clarify whether an Order of Conditions will be required.

If the project requires an Order of Conditions, the EIR must identify associated impacts and develop measures to avoid, minimize or mitigate impacts. The EIR should quantify any all wetland alterations including grading, overstory clearing in wetlands and construction-related disturbances. Also, it should identify any existing or potential impacts to Smelt Pond and identify measures the proponent could take to minimize impacts.

The EIR should include a Stormwater Management Plan that demonstrates consistency with the MassDEP Stormwater Management Policy. It should include a description and evaluation of the existing system and its performance. It should include a detailed description of the proposed drainage system and should include drainage calculations. The EIR should identify the quantity and quality of flows. The rates of stormwater runoff should be analyzed for the 10, 25 and 100-year storm events. An Operations and Management Plan should be included to ensure its long-term effectiveness. This section should address public comments related to stormwater management, including whether recharge to Smelt Pond could be incorporated into the system.

I encourage the proponent to incorporate Low Impact Development (LID) techniques in site design and stormwater management plans. As the comments from the Jones River Watershed note, this existing site consists of largely unshaded and unvegetated impervious surfaces. LID techniques incorporate stormwater best management practices (BMPs) and can reduce impacts to land and water resources by conserving natural systems and hydrologic functions. The primary tools of LID are landscaping features and naturally vegetated areas, which encourage detention, infiltration and filtration of stormwater on-site. Other tools include water conservation and use of pervious surfaces. For more information on LID, visit <http://www.mass.gov/envir/lid/>. Other LID resources include the national LID manual (Low Impact Development Design Strategies: An Integrated Design Approach), which can be found on the EPA website at: <http://www.epa.gov/owow/nps/lid/>. The EIR should include a discussion of any LID measures that the proponent could incorporate into project design.

Rare Species Habitat

The project proponent has consulted with NHESP regarding mitigation for impacts to rare species habitat. The proponent will create new nesting habitat to replace habitat which may be impacted by the construction of the stormwater basin. NHESP noted that the proposed area will be further from the highway and commercial areas, closer to the pond where the Blanding's Turtle may overwinter, and within an area proposed for permanent protection through the establishment of a Conservation Restriction (CR). NHESP comments note that the creation of this nesting area will require the removal of trees in order to provide ample sunlight and warmth for the development of turtle nestlings, and should be created and maintained in accordance with the Nest

Site Creation Guidelines. In addition to the nest site creation, the proponent has agreed to increase the amount of land to be protected at this site in order to provide long-term habitat protection for both the Blanding's Turtle and the Eastern Box Turtle.

Plans submitted with the EIR should clearly identify areas of impacted habitat, replication areas and permanently protected open space. It should provide details regarding the replication of the habitat and identify the holder of the CR. Also, any impacts to open space or existing recreational access should be identified.

Water Supply

The ENF indicates that the project will require approximately 5,972 gpd of water and the project will be served by the municipal water system. Comments from the Kingston Board of Water Commissioners indicate that estimated water use appears low compared to wastewater generation (42,212 gpd) and that the Town is approaching its permitted Water Management Act (WMA) capacity. The EIR should include documentation from the Town that sufficient resources are available to service this project and it should address any infrastructure requirements. The EIR should include specific information on conservation measures that will be employed to reduce water demand.

The project is partially located within the Zone II of a public water supply (the Grassy Pond Well and Well Site 1-86) and within the Town's Water Resource District. Plans submitted with the EIR should clearly delineate the Zone II boundary. The EIR should identify activities that will occur within the Zone II and should demonstrate the project's consistency with the Kingston Aquifer Protection District Bylaw and, in particular, limits on the creation of new, impervious surfaces.

Wastewater

According to the ENF, the project will generate 42,212 gpd of wastewater. A revised Groundwater Discharge Permit will be required for capacity upgrades and operational changes to support increased wastewater flow. The EIR should describe proposed changes, identify the project's consistency with regulatory standards and provide supporting analysis and data, including a groundwater mounding analysis and the results of hydrogeologic investigations.

Historic and Archaeological Resources

The ENF indicates that an intensive survey was completed on the site and indicates that it does not contain any significant archaeological resources. The technical archaeological report and survey results should be included in the EIR.

Construction Period Impacts

The EIR should include a discussion of potential construction period impacts (including, but not limited to, noise, vibration, dust, and traffic maintenance) and analyze feasible measures, to avoid, minimize and mitigate impacts.

Mitigation

The EIR should contain a separate chapter on mitigation measures. It should include a Draft Section 61 Finding for all state permits and a Letter of Commitment for use by MassHighway that includes a clear commitment to mitigation, an estimate of the individual costs of the proposed mitigation, and the identification of the parties responsible for implementing the mitigation. The EIR should provide a schedule for the implementation of the mitigation, based on the construction phases of the project.

Response to Comments

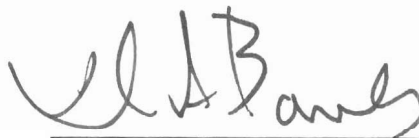
The EIR should contain a copy of this Certificate and a copy of each comment received. The EIR should respond to the comments received, to the extent that the comments are within MEPA subject matter jurisdiction. The EIR should present additional narrative and/or technical analysis as necessary to respond to the concerns raised.

Circulation

The EIR should be circulated in compliance with Section 11.16 of the MEPA regulations and copies should be sent to any state agencies from which the proponent will seek permits or approvals, to the list of "comments received" below, and to Kingston and Plymouth officials. A copy of the EIR should be made available for review at the public library in Kingston and Plymouth.

June 22, 2007

Date



Ian A. Bowles

Comments received:

- 6/12/07 Division of Fisheries and Wildlife/Natural Heritage and Endangered Species Program (NHESP)
- 5/18/07 Massachusetts Historical Commission
- 6/14/07 Old Colony Planning Council
- 6/12/07 Coler and Colantonio for the Kingston Board of Water Commissioners
- 5/29/07 Greenman-Pederson for Waterhouse Properties, LLC
- 5/29/07 Kingston Conservation Commission
- 5/17/07 Town of Plymouth
- 6/12/07 Jones River Watershed Association
- 6/8/07 Stephen H. Kaiser

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