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August 16, 2006

CERTIFICATE OF THE SECRETARY OF ENVIRONMENTAL AFFAIRS ON THE DRAFT ENVIRONMENTAL IMPACT REPORT

PROJECT NAME : Borgatti Property
PROJECT MUNICIPALITY : Northborough
PROJECT WATERSHED : Assabet River
EOEA NUMBER : 13708
PROJECT PROPONENT : **Brendon Properties Two, LLC**
DATE NOTICED IN MONITOR : July 10, 2006

As Secretary of Environmental Affairs, I hereby determine that the Draft Environmental Impact Report (DEIR) submitted on this project **does not adequately and properly comply** with the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-62H) and with its implementing regulations (301 CMR 11.00). Therefore, I am requiring that the proponent submit a Supplemental Draft Environmental Impact Report (SDEIR) to respond to the issues identified in this Certificate.

Project Description

As described in the Environmental Notification Form (ENF) and updated in the DEIR, the proposed project entails construction of 575,000 square feet (sf) of retail/restaurant space and a 350-unit apartment complex on a 157-acre site in Northborough, MA. The project includes construction of two 2,200-foot access drives from Route 20 and 3,700 parking spaces (3,000 for retail and 700 for residential). Utilities, including water and sewer, will be located within the layout of the access driveway. Water and sewer will be extended off-site to connect with existing municipal services.

The site consists of wooded areas, wetlands, a temporary roadway and a cart path. The site is currently classified as recreational land and included in the Commonwealth's Chapter 61B Program. It is bounded to the west by a residential area in Shrewsbury, to the north by land owned by the Water Resources Commission and Bigelow Nurseries, and to the east and south by the

Southwest Cutoff (Route 20), Route 9 and residential, commercial and vacant land located on these roadways. In addition, the site abuts Hop Brook (to the north and east) and Little Bummet Brook (to the south and east), both of which are tributaries to the Assabet River.

Potential environmental impacts are associated with the alteration of 115 acres of land, creation of 75 acres of impervious surfaces, alteration of 1,000 sf of bordering vegetated wetland (BVW),¹ generation of 23,198 average daily trips (adt) on a weekday and 30,018 adt on a Saturday, use of 182,190 gallons per day (gpd) of water and generation of 151,810 gpd of wastewater. Efforts to avoid, minimize and mitigate impacts include roadway improvements and construction of a stormwater management system.

Procedural History

On March 24, 2006, I issued a Certificate indicating that the project requires the preparation of an Environmental Impact Report (EIR). In addition, I denied the Phase I Waiver Request that was presented within the ENF and as an NPC to the Assabet River Consortium Comprehensive Wastewater Management Plan/Environmental Impact Report (CWMP/EIR) (EOEA# 12348). The Town of Northborough, together with the Towns of Hudson, Maynard, Shrewsbury, and Westborough, and the City of Marlborough, have joined to form the Assabet River Consortium to prepare the CWMP to address short-term and long-term regional issues relating to the wastewater treatment and disposal and nutrient loading in the Assabet River on a basin-wide basis. This process requires that an NPC/Phase I Waiver Request be filed to allow proposed projects to proceed pending the completion of the EIR. The Phase I waiver request was denied pending the provision of a wastewater alternatives analysis. A Draft Record of Decision (DROD) will be issued on the Phase I Waiver Request upon determining that the FEIR is adequate.

Permits and Jurisdiction

The project is undergoing MEPA review and subject to preparation of a mandatory EIR pursuant to Section 11.03 (1)(a)(1), (1)(a)(2), (6)(a)(6) and (6)(a)(7) because it requires a state permit and will alter more than 50 acres of land, create more than 10 acres of impervious surfaces, generate more than 3,000 adt and create more than 1,000 parking spaces. The project will require a Distribution System Modification Permit and either a Sewer Connection Permit or a Groundwater Discharge Permit from the Department of Environmental Protection (DEP). It requires a Highway Access Permit from the Massachusetts Highway Department (MHD). Also, it requires an Order of Conditions from the Northborough Conservation Commission (and a Superseding Order of Conditions from DEP in the event that the local Order is appealed) and a Comprehensive Permit Approval from the Northborough Zoning Board of Appeals (ZBA). (The Comprehensive Permit was issued on May 23, 2006.) The proponent is not seeking financial assistance from the Commonwealth for the project, therefore 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. These include traffic, wetlands, drainage, water quality and wastewater.

¹ This figure does not include wetland impacts caused by construction of the temporary roadway.

Review of the DEIR

The DEIR includes a thorough description of the project and project elements and addresses many of the items included in the Scope for the DEIR. It provides a detailed traffic and air quality analysis and proposes measures to mitigate associated impacts. Comments from the Executive Office of Transportation (EOT) indicate that the analysis is consistent with the Executive Office of Environmental Affairs (EOEA)/EOT Guidelines for EIR/EIS Traffic Impact Assessments. The DEIR includes an analysis of wetlands impacts and associated mitigation, including a wetlands replication plan and a stormwater management plan and drainage report. Since the filing of the ENF, the proponent has taken steps to further minimize direct wetlands impacts by shifting the wetland crossing associated with the southern access road. In addition, the DEIR identifies wetland impacts associated with the construction of a temporary access road prior to MEPA review and includes a restoration plan for this area.

At the heart of the MEPA process stands the requirement to evaluate feasible alternatives to a proposed project, to ensure that all state agencies can find, pursuant to Section 61 of the statute, that all feasible means to avoid, reduce, or mitigate environmental damage have been considered and incorporated into the project design. In the case of this large retail development that will create 75 acres of impervious surfaces (on a site that is largely undisturbed and contains several wetland areas), I am concerned that this amount of impervious surface will result in otherwise avoidable impacts.

The Scope for the DEIR required that the proponent analyze a narrowly tailored reduced build alternative to explore how impervious surfaces and wetlands impacts could be avoided and minimized. It did not require that the proponent reduce the amount of square footage available for development. While the DEIR includes a reduction in direct wetlands impacts from the proposed design and provides a stormwater management plan to mitigate the large volume of stormwater that will be generated by the site, it does not include an exploration of alternative designs to avoid and minimize these impacts by reducing the amount of impervious surfaces. The DEIR briefly addresses the requirement for a reduced build alternative by suggesting that a reduction of the building program cannot be supported given the substantial site development costs associated with the project (including off-site sewer and water infrastructure). In addition, the DEIR indicates that the current design reduces impervious surfaces by five acres but does not demonstrate how this reduction is achieved. At the same time, the DEIR indicates that the amount of parking required for the project was incorrectly identified in the ENF as 3,000 and that the actual number of spaces provided will be 3,700 spaces.

The DEIR Scope required that the proponent disclose any development plans for the adjacent 164 acres of land that is also owned by the Borgattis (the property owners of this parcel). The Scope indicated that, in the absence of any specific development plans, a buildout analysis based on current zoning and regulatory constraints be performed to assess development potential. This information was required consistent with the anti-segmentation provisions of the MEPA regulations intended to ensure that projects, including any future expansion, are reviewed in their entirety. Proponents cannot evade, defer or curtail MEPA review by segmenting one project into smaller ones that, individually, do not meet or exceed MEPA thresholds. In determining whether work or activities constitute one project, the Secretary must consider whether the work or activities comprise a common plan or independent undertakings, regardless of whether there is

more than one proponent, the timing of work and activities, and whether the environmental impacts caused by the work or activities are separable or cumulative.

The DEIR indicates that no development is proposed for the Borgatti parcels and provides general information on the parcels; however, the DEIR does not include a build-out analysis or identify the parcels on land use plans. This information must be provided in the SDEIR.

As noted previously, Northborough is part of the Assabet River Consortium developed to address regional issues relating to the wastewater treatment and disposal and nutrient loading in the Assabet River on a basin-wide basis. Because the CWMP has not been completed, any development proposals must demonstrate that they meet the waiver criteria set forth in the MEPA Regulations (301 CMR Section 11.11) including an evaluation of alternatives to sewers (e.g. on-site disposal) and a commitment to adequate mitigation. Required mitigation includes participation in the Infiltration and Inflow (I/I) program to remove extraneous clean water from the sewer system and water conservation measures.

The DEIR provides a summary of data from test pits and borings performed at the site. It does not provide data to support its conclusions or a plan illustrating the location of the testing. It does not appear that the proponent consulted with DEP regarding the protocol for the groundwater discharge analysis as required by the Scope. The DEIR includes commitments to water conservation but does not include a commitment to I/I mitigation. Comments from DEP indicate that the DEIR does not provide sufficient information to demonstrate that on-site groundwater discharge is infeasible or that proposed mitigation is adequate to address impacts.

I have fully examined the record before me, including but not limited to the Scope issued on March 24, 2006; the DEIR filed in response; and the comments entered into the record. Based on this record, I find that the DEIR is not sufficiently responsive to the requirements of the MEPA regulations and the Scope to meet the regulatory standard for adequacy. Therefore I am requiring the filing of a narrowly focused SDEIR to address these issues. In addition, I have summarized the issues that should be addressed when the project proceeds to the FEIR stage. The Scope for the FEIR will be updated and revised upon review of the SDEIR.

Scope for the SDEIR

Alternatives Analysis

The SDEIR must include analysis of a reduced build alternative to ensure the state permitting agencies can make their Section 61 Findings that all feasible means to avoid, reduce, or mitigate environmental damage have been considered and incorporated into the project design. In addition to the Preferred Alternative and No Build Alternative, the SDEIR should include a reduced build alternative that decreases the amount of impervious surfaces and impacts to wetlands by minimizing alterations to wetland and providing a larger buffer between the project and resource areas. For each alternative, the SDEIR should quantify the amount of land altered, the amount of earth work involved in meeting final grades and the amount of impervious surfaces created. The SDEIR should investigate all feasible methods of avoiding, reducing, or minimizing impacts to land.

This analysis does not necessarily require a reduction in the development's building program to be considered adequate but it does require an analysis of alternative designs and techniques for minimizing the impacts associated with the project. I note that alternative approaches could have positive impacts on site development costs by reducing the amount of areas that need grading and paving and/or reducing the size of stormwater infrastructure. The analysis should consider an increase in the floor area ratio (FAR), use of narrower roadways and reductions in impervious surfaces associated with parking (e.g including parking under buildings, inclusion of structured parking, reduction in the amount of parking, and/or phased construction of parking as warranted by demand), and use of permeable pavement. Also, the Town of Northborough has indicated that the proponent should consider incorporation of a green roof.

As noted previously, additional information is required on abutting undeveloped land to avoid segmentation issues. The SDEIR should include a build-out analysis for this land based on existing zoning and regulatory constraints. The SDEIR should indicate whether the project proponent has an option to purchase these parcels. In addition, these parcels and associated resource areas should be depicted on project plans.

Wastewater

The proponent has indicated that the project will generate approximately 151,810 gpd of wastewater. The DEIR indicates that, based on test pits and borings completed to date, the site is not suitable for groundwater discharge. It also indicates that the Town of Northborough rejected the site for groundwater discharge during the CWMP process based on subsurface geologic studies and soil maps.

As noted previously, the DEIR did not include an adequate alternatives analysis for wastewater as required by the Scope on the ENF and as necessary to satisfy the criteria for the granting of a Phase I Waiver. The SDEIR must include a thorough analysis of the site for groundwater discharge. The proponent must consult with DEP regarding the protocol for the groundwater study prior to the filing of the SDEIR and the filing should be prepared consistent with the protocol. It should demonstrate that representative sampling of the site has been conducted, include a map of test pit and boring locations and include soil logs. It should summarize and reference relevant portions of the Northborough CWMP and identify locations on the project parcel as well as abutting parcels where the potential for groundwater discharge was identified and evaluated by the Town.

If development of an on-site system is not feasible, wastewater needs will be met through connection to the Northborough municipal sewer system for treatment and discharge at the Marlborough Westerly Wastewater Treatment Facility. The DEIR indicates that Northborough has adequate permitted capacity to support the project; however, DEP has noted that, during wet weather conditions, the Town is approaching permitted flows and additional flow from this project could result in an exceedance. Participation in DEP's flow control program to remove extraneous clean water (infiltration and inflow (I/I)) from the sewer system will be required. DEP has indicated that I/I removal (at a minimum rate of two gallons removed for every one gallon of new flow) is appropriate to ensure the availability of sufficient wastewater treatment capacity to serve this project. The DEIR indicates that the proponent will negotiate I/I mitigation with the Town. The SDEIR must identify the proponent's commitment to I/I in the event on-site wastewater is not feasible.

DEP has also expressed concern about long-term maintenance and funding for the proposed pump station. The SDEIR should address these concerns in detail.

I note that the project plans (existing and proposed conditions) submitted with the DEIR were at a very large scale and did not facilitate review of this project. The SDEIR should include a complete set of full size project plans at a reasonable scale (no greater than 50 scale). These should include an existing conditions plan illustrating resources and abutting land uses for the entire project area (including the adjacent Borgatti parcels) and a proposed conditions plan (or plans) illustrating proposed elevations, structures, access roads, stormwater management systems, sewage connections and their location relative to resource areas.

Circulation

The SDEIR 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 Northborough and Shrewsbury officials. A copy of the Supplemental EIR should be made available for review at the Northborough and Shrewsbury public libraries.

Scope for the FEIR

Traffic and Transportation

The project will generate approximately 17,962 new vehicle trips on an average weekday for a total of 23,198 trips and 23,126 new vehicle trips on an average Saturday for a total of 30,018 trips. Access will be provided via two site drives from Route 20. The main site drive will be located in the southern portion of the property near Route 9. Another site drive, providing access primarily to the retail area of the site, will be located to the north just south of Tomblin Hill Road.

The DEIR includes a traffic study prepared in conformance with the EOEA/EOTC Guidelines for EIR/EIS Traffic Impact Assessments. The study assesses existing and proposed conditions at state highway and local intersections. The DEIR included analysis of design alternatives for the Route 20/Route 9 interchange and, based on the results of the traffic analysis, indicates that signalization will address traffic generation and safety issues more effectively. EOT has not requested further analysis of the roundabout alternative. Mitigation for other state highway locations includes Route 20/North Site Drive/Hitching Post Lane; Route 20/Tomblin Hill Road; and West Main Street/ Davis Street. In addition, the proponent will contribute \$35,000 to the installation of a traffic signal at the Route 20/Lincoln Street intersection. The DEIR describes mitigation for local intersections in the form of roadway improvements and/or financial contributions to design and construction of roadway improvements. In addition, the DEIR identifies mitigation associated with approved projects that will be implemented by others.

Commentors have expressed concern with generation of traffic on local roadways, traffic circulation and access issues. EOT and John and Barbara O'Mara (abutters to the south of the

project site whose property includes an existing driveway on the northwest corner of the interchange) have identified a conflict with the roadway improvements for the Route 20/Route 9 interchange. EOT has indicated that proposed mitigation must maintain access to existing parcels. The proponent should work with MHD and the abuttor to identify access issues and propose alternatives to ensure adequate access is maintained prior to filing the FEIR. The FEIR should include responses to the thoughtful comments regarding traffic generation and mitigation from the Town and residents. As necessary, the FEIR should include updated traffic analysis and revised mitigation.

Given the high volume of traffic and associated air quality impacts (see below), efforts to reduce trip generation and to mitigate traffic congestion are particularly important. While the DEIR presents a comprehensive traffic mitigation plan, greater emphasis should be placed on site design and the development of a Transportation Demand Management (TDM) Program to minimize trip generation. The DEIR indicates that the following measures are included in the TDM plan: identification of an On-Site Transportation Coordinator, coordination with the Worcester Regional Transit Authority (WRTA) regarding the extension of existing bus lines, coordination with MassRIDES, assistance to employees to develop a commuter choice program and development of bicycle and pedestrian facilities.

EOT and the Town of Northborough have emphasized the desirability of providing transit service to the site and identified potential opportunities. EOT has indicated that the proponent should consult with the Massachusetts Bay Transportation Authority (MBTA), in addition to the WRTA, regarding the feasibility of providing transit service and that these consultations should occur prior to the filing of the FEIR so that relevant information can be incorporated into it.

As noted in the DEIR, the location of residential units in close proximity to retail provides one of the best opportunities for this project to reduce vehicular trip generation. The design for this project should provide effective and safe connections between the residential and the retail portions of the project. The DEIR indicates that sidewalks and crosswalks will be included for the full length of the access drive. This commitment should be reflected in a site circulation plan (no greater than 80 scale) submitted with the FEIR demonstrating how vehicles, pedestrians and cyclists will be accommodated on the site.

The project includes construction of 3,700 surface parking spaces. The DEIR identifies the parking ratio for the retail project as 5.2 spaces per 1,000 sf and provides an overview of parking industry guidelines. The DEIR indicates that the parking supply is consistent with industry guidelines although this ratio is at the higher end of the scale and a smaller parking supply could be provided consistent with these guidelines. Consistent with the required reduced build alternatives analysis and to discourage single occupancy vehicle (sov) trips to the site, the FEIR should include a thorough analysis of measures to reduce the amount of parking on-site and/or its associated impacts.

Air Quality

In accordance with the State Implementation Plan (SIP) for ozone attainment, the DEIR includes a mesoscale air quality analysis. Because this analysis demonstrates that hydrocarbon emissions for the project are greater than the 2011 No Build scenario, the proponent has developed

a mitigation program based on roadway improvements and development of a TDM program to minimize associated trip generation. As noted above, the TDM program should be strengthened to ensure all feasible measures are being taken to minimize air quality impacts.

Wetlands and Drainage

The proponent has filed a Notice of Intent (NOI) with the Northborough Conservation Commission. The project and its stormwater management plan will be reviewed by the Conservation Commission for consistency with the Wetlands Protection Act and the DEP Stormwater Management Policy. DEP has noted that it might be useful for the Conservation Commission to use the consultant fee statute to hire outside review for this project. Technical assistance may be useful given the extensive infrastructure proposed for the site, the steep grades and potential changes in hydrology. The FEIR should include an update on the NOI process.

The DEIR indicates that wetlands impacts have been reduced from approximately 3,000 sf of BVW to 1,000 sf of BVW by moving the southern access road farther to the south and redesigning the road to minimize direct wetlands impacts. The DEIR also notes that the temporary roadway already constructed on the site resulted in direct wetlands impacts, although these impacts are not included in the calculation of wetlands impacts for the project. The FEIR should provide an updated estimate of wetlands impacts to include those associated with the temporary roadway.

The DEIR proposes wetlands replication, wetlands restoration and development of a stormwater management system to avoid, minimize and mitigate direct and indirect impacts to wetlands. The DEIR describes a commitment to 1,830 sf of wetlands replication. This represents a wetlands to replication ratio of approximately 1.8:1. DEP previously indicated that replication should be provided at a ratio of replication to alteration of approximately 2:1. If impacts from the temporary roadway are factored in, the ratio of replication to alteration will be even lower. The FEIR should provide details on any additional replication areas that are proposed.

The DEIR includes a stormwater management plan that describes how source controls, pollution prevention measures, erosion and sediment controls and the drainage system will comply with the DEP Stormwater Management Policy and standards for water quality and quantity both during construction and post-development. The DEIR includes an operations and management plan to ensure the long-term effectiveness of the stormwater management system. Stormwater runoff will be collected in a system of deep sump, hooded catch basins and treatment will be provided through Vortech treatment units, infiltration basins/trenches and/or detention basins prior to discharge. Rooftop runoff will be conveyed directly to infiltration areas or detention basins.

The DEIR indicates that the site includes several potential vernal pools and that the lateral extent of the vernal pool is contained within existing wetland resource areas. In addition, DEP has reiterated that impacts to the intermittent stream located onsite, and identified in the approved Order of Resource Area Delineation as a resource area, should be identified. The FEIR should assess the project's consistency with applicable performance standards for these resources and project plans should identify the intermittent stream and potential vernal pools and their boundaries.

Water Use

The ENF indicates that the project will use approximately 182,190 gpd of drinking water that will be provided by the Town of Northborough water distribution system and it will include irrigation wells for maintenance of landscaping. The DEIR indicates that the project will incorporate the following water conservation measures: flow restrictors for plumbing fixtures, aerators for faucets, low-flow toilets and use of drought tolerant and native species in landscaping. The proponent should consult with DEP to ensure that the final project design meets the Commonwealth's water conservation standards (including those for lawns and landscaping).

Construction Period Impacts

The DEIR identifies trucking, noise, dust and stormwater management as potential construction period issues. It indicates that construction impacts associated with trucking will be minimized by using sand and gravel from the adjacent sand and gravel operation facility. The DEIR indicates that the buffer between the site and adjacent residences is adequate to avoid impacts; however, construction of the residential units will take place within 200 feet of existing homes. Construction noise and blasting is likely to create nuisance conditions. The FEIR should include commitments, developed with input from the Town, to mitigate these impacts. In addition, the FEIR should provide additional detailed information on the phasing of the earthwork to address the concerns identified by the Town regarding site stabilization.

Mitigation

The FEIR should include an updated chapter on mitigation measures and an updated Draft Section 61 Findings for all state permits that include a clear commitment to implement mitigation measures, an estimate of the individual costs of the proposed mitigation, and the identification of the parties responsible for implementing the mitigation. A schedule for the implementation of mitigation, based on the construction phases of the project, should also be included.

Responses to Comments

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

Circulation

The Final 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 Northborough and Shrewsbury officials. A copy should be made available for review at the Northborough and Shrewsbury public libraries.

August 16, 2006

Date



Robert W. Golledge, Jr.

Comments Received:

- 7/9/06 Department of Environmental Protection Central Regional Office (DEP CERO)
- 8/8/06 Executive Office of Transportation (EOT)
- 8/9/06 Town of Northborough
- 8/9/06 Jeanne Cahill
- 8/2/06 John C. and Barbara H. O'Mara
- 8/8/06 Traffic Solutions on behalf of John O'Mara

SRP/CDB/cdb