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September 21, 2007

DRAFT RECORD OF DECISION

PROJECT NAME : Proposed Commercial Building  
PROJECT MUNICIPALITY : North Andover  
PROJECT WATERSHED : Merrimack River  
EOEA NUMBER : 14066  
PROJECT PROPONENT : GFM General Contracting Corporation  
DATE NOTICED IN MONITOR : July 25, 2007

Pursuant to the Massachusetts Environmental Policy Act (MEPA)(G. L. c. 30, ss. 61-62H) and Section 11.11 of the MEPA regulations (301 CMR 11.00), I have reviewed this project and propose to grant a waiver from the requirement to prepare a mandatory Environmental Impact Report (EIR).

Project Description

As described in the Environmental Notification Form (ENF), the proponent proposes to construct a two-story 21,031 square foot (sf) commercial office and retail building on a 2.03-acre development parcel located on Turnpike Street (Rt. 114) in North Andover. The project includes approximately 5,550 sf of retail space and 4,100 sf of convenience market space on the 1<sup>st</sup> floor, approximately 11,400 sf of medical office space to be located on the second floor, 23 below-ground parking spaces and 96 surface parking spaces. The main site access will be located on Route 114. Two additional secondary site drives will be located on Berry Street. Using the Institute of Traffic Engineers Trip Generation land use code (LUC) 814 for Specialty Retail, LUC 710 for Medical Office, and LUC 851 for convenience market, the proposed project is estimated to generate approximately 3,544 vehicle trips per day (vtd) on the average weekday. As described in the ENF, the project's potable water supply needs (2,300 gallons per day, (gpd) and wastewater flows (2,300 gpd) will be served by the Town of North Attleborough.

### MEPA Jurisdiction

The project is subject to MEPA review and exceeds the mandatory EIR threshold at Section 11.03 (6)(a)(6) of the MEPA regulations, because the project will generate 3000 or more (3,544 vtd) new vehicle trips per day. The project will require a Curb Cut Permit from the Massachusetts Highway Department (MHD). The project must comply with the National Pollutant Discharge Elimination System (NPDES) General Permit for stormwater discharges from a construction site of over one acre. The proposed project was issued an Order of Conditions from the North Andover Conservation Commission on July 3, 2007 for impacts to wetland resource areas and buffer zones. MEPA jurisdiction is limited to the subject matter of the state permit required, including: traffic, land alteration, wetlands and rare species.

### Waiver Request

During the August 2, 2007 MEPA Site Visit held for this project the proponent requested a waiver from the requirement for the preparation of an EIR. A supplemental letter providing more information regarding the waiver request was sent to the ENF distribution list on August 16, 2007.

### Criteria for Waiver

Section 11.11 of the MEPA regulations provides that a waiver may be granted upon a finding that strict compliance with the regulations will result in undue hardship and will not serve to minimize or avoid damage to the environment. In the case of categorically included projects, this finding shall be based on the following circumstances: 1) the project is likely to cause no damage to the environment; and 2) ample and unconstrained infrastructure exists to support the project. The terms agreed to as a condition of the waiver will bring about benefits in excess of those that could be achieved in the absence of a waiver.

### Standards for All Waivers

The MEPA regulations at 301 CMR 11.11(1) state that I may waive any provision or requirement in 301 CMR 11.00 not specifically required by MEPA and may impose appropriate and relevant conditions or restrictions, provided that I find 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.

Determinations for an EIR Waiver

The MEPA regulations at 301 CMR 11.11(3) state that, in the case of a waiver of a mandatory EIR review threshold, I shall at a minimum base the finding required in accordance with 301 CMR 11.11(1)(b) stated above on a determination that:

- (a) the project is likely to cause no Damage to the Environment; and,
- (b) ample and unconstrained infrastructure facilities and services exist to support the project, when subject matter jurisdiction is broad in scope, or those aspects of the project within subject matter jurisdiction, when jurisdiction is limited to the subject matter of state agency permits.

Findings

Based upon the information submitted by the proponent and after consultation with the state permitting agencies, I find that the Waiver Request has merit and that the proponent has demonstrated that the proposed project meets the standards for all waivers at 301 CMR 11.11(1). I find that strict compliance with the requirement to submit a mandatory EIR would result in an undue hardship for the Proponent and would not serve to avoid or minimize Damage to the Environment. In accordance with 301 CMR 11.11(3), the latter finding is based on my determination that:

- **MassHighway has concurred with the proponent's traffic analysis indicating that the majority of vehicles trips generated by the project will be a result of pass-by traffic, and that the project's traffic impacts to the state highway system within the project area will be minimal;**
- The proponent has proposed a wetland buffer zone enhancement plan to mitigate and enhance the project's alterations to the buffer zone involving the planting of high wildlife value shrub and tree species. The proponent has also committed to install permanent markers to identify the 25 ft. 'No Disturb' wetland buffer boundary throughout the project site; and,
- The proponent has committed to comply with MassDEP's Stormwater Management Policy (SMP). As a condition of my granting the proponent's Waiver request, I will require that the proponent consult with MassDEP regarding the use of particular Stormceptor water quality units and infiltration systems for fill soils.

Conclusion

Based on these findings, it is my judgment that the waiver request has merit and meets the tests established in Section 11.11. MassDEP has sufficient permitting authority to ensure that the proponent complies with the findings of this Certificate. I hereby propose to grant the waiver requested for this project from the requirement to prepare a mandatory Environmental Impact Report (EIR), subject to the above findings and conditions, This Draft Record of Decision (DROD) will be published in the next edition of the *Environmental Monitor* in accordance with 301 CMR 11.15(2), which begins the public comment period. The public comment period lasts for 14 days. Based on written comments received concerning the DROD, I shall issue a Final Record of Decision or a Scope within seven days after the close of the public comment period, in accordance with 301 CMR 11.15(6).

September 21, 2007

Date

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Ian A. Bowles, Secretary

## Comments received:

08/15/07      Natural Heritage and Endangered Species Program (NHESP)  
09/11/07      Massachusetts Highway Department (MassHighway)

EEA #14066 DROD  
IAB/NCZ/ncz