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September 22, 2006

DRAFT RECORD OF DECISION

PROJECT NAME : Northgate Meadows
PROJECT MUNICIPALITY : Sterling and Leominster
PROJECT WATERSHED: : Nashua River
EOEA NUMBER : 13650
PROJECT PROPONENT : J. Whitney Development, Inc.
DATE NOTICED IN MONITOR : August 23, 2006

Pursuant to the Massachusetts Environmental Policy Act (M.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 hereby **propose to grant a waiver** to allow Phase I of the project, as defined in the Notice of Project Change (NPC) to proceed to the state permitting agencies prior to completion of an Environmental Impact Report (EIR) for the project as a whole. In a separate Certificate issued today, I have provided the scope for the EIR.

Project Description

The original project included: subdivision of a 13.5-acre parcel in Leominster into three lots for industrial use (manufacturing, research and development, and warehousing) and construction of a 158-unit residential complex consisting of 86 townhouses and 72 apartments on a 31.5-acre parcel in Sterling. The project change, as described in the NPC, consists of the expansion of the industrial subdivision (by addition of 18 lots) on an abutting 41.7-acre parcel. The industrial subdivision is being expanded to the northwest. The entire project site is now 73.25 acres. The project includes associated stormwater, utility and roadway infrastructure. Access to the site from Route 12 will be provided via Research Drive. Access will also be provided to Willard Street via an extension of Research Drive through the site (Technology Drive). The project site is located on the west side of Leominster Road on the Sterling/Leominster border. The site is comprised of relatively flat to gently-sloping topography and contains forested upland and wetland areas. Currently, a cleared portion of the site is used to store construction materials.

The NPC will increase the potential impacts of the project significantly. Land alteration will increase from 23.5 acres to 33.9 acres; creation of new impervious area will increase from 9.8 acres to 19 acres; alteration to bordering vegetated wetlands (BVW) will increase from 1,800 sf to 5,000 sf;¹ wastewater generation will increase from 39,000 gallons per day (gpd) to 53,000 gpd; water use will increase from 45,000 gpd to 61,000 gpd; traffic generation will increase from 1,716 new average daily trips (adt) to 5,196 adt; and parking will increase from 493 spaces to 1,493 spaces.

Project mitigation includes removal of wastewater inflow and infiltration (I/I), efforts to minimize impervious surfaces, construction and maintenance of a stormwater management system consistent with the MassDEP Stormwater Management Policy and wetlands replication on a 2:1 basis.

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 ten or more acres of new impervious area, generate 3,000 or more new adt and construct 1,000 or more parking spaces. The project requires a Sewer Connection and a Sewer Extension Permit from the Department of Environmental Protection (MassDEP) and an Access Permit from the Massachusetts Highway Department (MassHighway). Also, it requires a Comprehensive Permit from the Town of Sterling Zoning Board of Appeals and an Order of Conditions from the Sterling Conservation Commission (and hence a Superseding Order of Conditions from MassDEP if the local Order is appealed).

The proponent may seek financial assistance from the Commonwealth. Therefore, MEPA has broad scope jurisdiction which extends to all significant environmental impacts potentially resulting from the project. These include land, wetlands, drainage, water quality, traffic and wastewater.

Phase I Waiver Request

The proponent has requested a Phase I Waiver with the NPC to allow Phase I of the project, as described in the NPC, to proceed in advance of the completion of the EIR.

Criteria for a Phase I Waiver

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

¹ Although impacts to BVW are increased overall, impacts associated with Phase I of the project have been reduced from 1,800 sf to 355 sf.

appropriate and relevant conditions or restrictions, provided that the Secretary finds that strict compliance with the provision or requirement would: a) result in undue hardship to the proponent, unless based on delay in compliance by the proponent; and b) not serve to minimize or avoid damage to the environment.

In the case of a partial waiver of a mandatory EIR review threshold that would allow the proponent to proceed to Phase I of the project prior to preparing an EIR, this finding shall be based on one or more of the following circumstances: 1) the potential environmental impacts of Phase I are insignificant; 2) ample and unconstrained infrastructure and services exist to support Phase I; 3) the project is severable, such that Phase I does not require the implementation of any other future phases; and 4) the agency action on Phase I will contain conditions that ensure due compliance with MEPA.

Findings:

Based upon the record before me, including the NPC and comment letters and after consultation with state agencies, I find that:

- 1) Delay in implementing Phase I would not serve to avoid or minimize Damage to the Environment.
- 2) The analysis of potential impacts for Phase I is adequate and demonstrate that the environmental impacts of Phase 1, taken alone, are insignificant. These impacts were previously reviewed during the ENF review. The proponent has demonstrated that impacts will be addressed through proper mitigation including wetlands replication on a 2:1 basis and construction of a stormwater management system consistent with MassDEP Stormwater Management Policy.
- 3) Phase I will is consistent with state policies to support affordable housing and will create a significant amount of new, affordable housing on a relatively small land area, thereby minimizing impacts to land compared to a traditional subdivision.
- 4) Ample and unconstrained infrastructure, facilities and services exist to support Phase I. MHD has indicated that the traffic impacts of Phase I are insignificant.
- 5) Phase I is severable from the rest of the project. Phase I activities do not require, presume, or unduly restrict any action relative to the remainder of the project.
- 6) Agency action on Phase I will ensure compliance with MEPA and 301 CMR 11.00 prior to commencement of any other phase of the project. Design and construction of the sewer system require a Sewer Connection and a Sewer Extension Permit. MassDEP has expressed concern about long-term ownership and maintenance of the private pump

station associated with Phase I. As a condition of the Phase I Waiver, the proponent must provide legal documentation (i.e. condominium association documents) to MassDEP demonstrating consistency with its single entity ownership rule. MassDEP will not issue a Sewer Extension Permit for Phase I until this information is submitted.

Based on these findings, it is my judgment that the waiver request has merit, meets the tests established in Section 11.11 of the MEPA Regulations, and will serve to advance the interests of the Massachusetts Environmental Policy Act. Therefore, I propose to grant the waiver for Phase I of the project as defined in this Record of Decision. This Draft Record of Decision 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.

September 22, 2006

Date

Robert W. Golledge, Jr.

RWG/CDB/cdb