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September 28, 2007

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

PROJECT NAME : Commercial and Indoor Sports Facility
PROJECT MUNICIPALITY : Peabody
PROJECT WATERSHED : Proctor Brook
EEA NUMBER : 14090
PROJECT PROPONENT : 194 Turnpike LLC
DATE NOTICED IN MONITOR : August 22, 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 Expanded Environmental Notification Form (EENF), the project includes the construction of a multi-use development in two buildings, totaling 138,000 square feet, that will include retail and office space, a fitness center, restaurant, three basketball courts, and two indoor soccer fields on a 13.3 acre site in Peabody. Parking for 224 vehicles is proposed. In addition, there is a 3.73-acre lot behind the proposed development where about 40 residential units with 111 parking spaces are planned in the future.

At the MEPA site visit the proponent also discussed the 40 unit multi generational residence and accessory use facility that was not included in overall impact except for the

parking numbers in the ENF. The anti-segmentation provisions of the MEPA Regulations (Section 11.01(2)(c)) require the review of the entire proposed residential development as a "common plan or undertaking". Pursuant to the anti-segmentation provision of the MEPA regulations, I must consider the environmental impacts associated with the multi generational residence and accessory use facility as a common undertaking by the project proponent.

MEPA Jurisdiction and Required Permits

The project is undergoing review and requires the preparation of a mandatory EIR pursuant to Section 11.03 (6)(a)(6) of the MEPA regulations, because during the course of the ENF review it has been determined that the project will generate more than 3,000 new vehicle trips per day and requires state permits. The project requires an Access Permit from the Massachusetts Highway Department (MHD) and a 401 Water Quality Certification which was not identified in the EENF from the Massachusetts Department of Environmental Protection (MassDEP). An alternatives analysis is required as part of the 401 Water Quality Certification process, and information in the EIR on alternatives that consider measures to avoid, minimize, and mitigation wetlands impacts will be considered by MassDEP in permitting.

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. An Order of Conditions will be required from the Peabody Conservation Commission, or in the case of appeal, a Superseding Order of Conditions from MassDEP.

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 have significant environmental impacts and that are within the subject matter of required or potentially required state permits. In this case, MEPA jurisdiction exists over land alteration, traffic, wetlands and stormwater.

Request for a Single EIR

In accordance with Section 11.05(7) of the MEPA regulations, the proponent has submitted an Expanded ENF with a request that I allow the proponent to fulfill its EIR obligations under MEPA with a Single EIR, rather than require the usual two-step Draft and Final EIR process. The Expanded ENF (EENF) received an extended public comment period pursuant to Section 11.06(1) of the MEPA regulations. I have reviewed the proponent's request for a Single EIR in accordance with Section 11.06(8) of the MEPA regulations, and I find that the EENF does not meet the criteria for the preparation of a Single EIR in lieu of separate Draft and Final EIRs. While the EENF contained a detailed traffic impact and access study, the EENF did not contain sufficient information regarding project alternatives, land alteration, wetlands and stormwater management measures in order to determine that all feasible means to avoid potential impacts to the environment have been undertaken. Therefore, the proponent must prepare a Draft and a Final EIR in fulfillment of the requirements of Section 11.03 of the MEPA regulations.

This Certificate lays out a Scope for the Draft EIR (DEIR) that requests more information about certain aspects of the project. Should the DEIR resolve the substantive issues outlined

below, I will consider the procedural options available to me at 301 CMR 11.08 (8)(b)(2), as they may relate to the Scope for the Final EIR.

SCOPE

General

The Draft Environmental Impact Report (DEIR) should follow the general guidance for outline and content contained in section 11.07 of the MEPA regulations, as modified by this Certificate.

Project Description and Permitting

The DEIR should include a detailed description of the proposed project and characterization of the existing environment in compliance with 301 CMR 11.07(e) and (g). The DEIR should describe the type and nature of proposed activities on-site, including maintenance activities and frequency of events. The DEIR should characterize adjacent uses and their relationship to the proposed project. The DEIR should briefly describe each state permit required for the project, and should demonstrate that the project meets any applicable performance standards.

Alternatives

The DEIR should analyze the no-build alternative to establish baseline conditions. The DEIR should also evaluate alternative site layouts of the proponent's preferred alternative in order to arrive at a site layout that minimizes overall impacts. In addition to the No-Build Alternative and the Preferred Alternative for the proposed mixed-use project, the EIR should discuss alternative building configurations on the site that might result in fewer impacts, particularly to traffic, parking, stormwater and wetlands. The DEIR must also identify the outside envelope of potential impacts, (particularly upon infrastructure capacity) from the Full-Build scenario.

The DEIR should summarize the alternatives already developed for the project site. The analysis should clearly present the alternative curb cuts and entrance/exit configurations at the site, and identify the advantages and disadvantages of the Preferred Alternative. Any project phasing should be identified in the DEIR and what the construction and completion dates for the various phases will be should be identified. Information regarding project phasing (narrative and plans) should be provided in the DEIR. The DEIR should provide a comparative analysis that clearly shows the differences between the environmental impacts associated with each of the alternatives.

The DEIR should identify and explain any project phasing, including a discussion of the creation of public access mitigation measures in relation to the project construction timeline. It should discuss how this project is compatible with Executive Order 385 – Planning for Growth,

by discussing its consistency with local land use plans and applicable regional plans. If local or regional plans do not exist, the DEIR should state as such.

Land

The proposed project uses does not specify the acres of land altered and does not clearly specify the total site acreage, i.e. at the MEPA site visit the proponent indicated that the site will contain a 40 unit multi generational residence and accessory use facility that was not described or included in overall impact in the ENF. The DEIR must clearly indicate the total site acreage and the new acres altered for the entire project. The DEIR should investigate all feasible methods of avoiding, reducing, or minimizing impacts to land. The DEIR should evaluate alternatives that minimize the amount of impervious surfaces associated with the project. The DEIR should indicate exactly what part of the total project site that will remain as undisturbed or landscaped area.

Wetlands

The project site includes 4.6 acres of bordering vegetated wetlands (BVW), and the proposal includes alteration of 4,680 sf of bordering vegetated wetlands. However, the plans show that the proposed BVW alteration is for the two buildings only. Alteration of BVW and possibly other wetland resource area for the multi generational residence and accessory use facility component of the project needs to be included in the DEIR. The DEIR should also explain what wetland alteration is covered under the Order of Conditions, DEP File # 055-0660.

The DEIR should provide plans of appropriate scale to accurately discern the location of each wetland area regulated under the Wetlands Protection Act (WPA) located on the project site. Each wetland resource area should be characterized according to 310 CMR 10.00. Plans should clarify, if necessary, which on-site wetland resource areas are regulated by the State regulations, versus only local regulations under the Palmer Wetland Bylaw. The DEIR should address the significance of the wetland resources on site, including public and private water supply; riverfront areas; flood control; storm damage prevention; fisheries; shellfish; and wildlife habitat. The text should explain whether the local conservation commission has accepted the resource area boundaries, and any disputed boundary should be identified. Furthermore, the DEIR should discuss the influence of local wetland bylaw requirements on project design. The DEIR should provide an accurate measurement of each wetland resource area that will be affected by the project.

The DEIR should demonstrate that all wetland impacts have been avoided, and where unavoidable impacts occur, impacts are minimized and mitigated. The DEIR should demonstrate that the project will be accomplished in a manner that is consistent with the Performance Standards of the Wetlands Regulations (310 CMR 10.00). Consistency of the proposed stream crossing with the MassDEP Stream Crossing Standards should be discussed in the DEIR.

Proposed activities, including construction mitigation, erosion and sedimentation control, phased construction, and drainage discharges or overland flow into wetland areas, should be evaluated. The DEIR should specifically address the impact, if any, to the placement of

stormwater outfalls within resource areas. The DEIR should clarify what portions of the project may result in the permanent alteration of wetland resource areas versus temporary impacts to facilitate construction. The DEIR must also address the current and expected post-construction water quality of the predicted final receiving water bodies and demonstrate compliance with applicable water quality regulations or guidelines.

Stormwater

The DEIR should include drainage calculations, stormwater system design plans at a readable scale, best management practice (BMP) designs and models for proprietary BMPs, and a clear description of the stormwater management plan to affirm that the stormwater system design is in conformance with the MassDEP Stormwater Management Policy (SMP). It should include a description of the proposed drainage system design, including a discussion of the alternatives considered along with their impacts. The DEIR should discuss the feasibility of maximizing stormwater infiltration and identify the quantity and quality of flows.

The DEIR should demonstrate that source controls, pollution prevention measures, erosion and sediment controls during construction, and the post-development drainage system will be designed to comply with the Massachusetts Stormwater Management Policy (SMP) and standards for water quality and quantity impacts and with the city of Peabody's Storm Water Program. The proponent is advised that revisions to the SMP and incorporation of the policy into the wetlands and 401 Water Quality Certification regulations will take effect on January 2, 2008. Municipalities such as Peabody also are required to prepare and implement Stormwater Management Programs for compliance with the NPDES Phase II Stormwater General Permit.

Calculations of water quality volume, pre and post-development peak rates of runoff, infiltration volumes, and total suspended solids removal estimates for the stormwater management system should be provided with stormwater system design plans at a readable scale, best management practice (BMP) designs, and supporting information should supplement the information provided in the EENF to affirm that the stormwater system design provides adequate protection for wetland resources in conformance with the Policy and the town's NPDES Storm Water General Permit.

Low Impact Development

The DEIR should consider project and design alternatives to reduce imperviousness and earth removal/grading to the extent practicable. The DEIR should discuss opportunities to incorporate low impact development (LID) stormwater runoff controls into the project. If LID techniques are not feasible given the type of proposed use or site characteristics, the DEIR should demonstrate why such techniques will not be applied on-site.

Traffic

The proponent should respond to the comments received from Massachusetts Highway Department (MHD) pertaining to the project's potential traffic impacts. I strongly encourage the

proponent to consult with the MHD's Public/Private Development Office on transportation issues during the preparation of the DEIR.

According to the comments received from MHD, the ENF included a traffic study that appears to conform to the EEA/EOTPW Guidelines for EIR/EIS Traffic Impact Assessment.

The DEIR should evaluate interim mitigation measures that improve both safety and operating conditions at this location. The DEIR should also provide a clear commitment to advance the long-term improvements at this location. The DEIR should discuss the suitability of any proposed improvements. The DEIR should include any conceptual plans for roadway improvements with sufficient detail to verify the feasibility of constructing such improvements. The plans should show proposed lane widths and offsets, layout lines and jurisdictions, and the land uses (including access drives) adjacent to areas where improvements are proposed.

The DEIR should present a Transportation Demand Management (TDM) program, and include appropriate commitments to implement feasible TDM measures and/or commit to a trip reduction performance standard. The DEIR should describe any monitoring necessary to ensure the success of the program.

Parking

Parking at the site is proposed to include approximately 335 on-site surface parking spaces. The DEIR should describe how the number of parking spaces needed was determined. The DEIR should demonstrate that the parking supply is the minimum necessary to accommodate project demand. If the parking supply is greater than the amount required under local zoning, the DEIR should explain why, and discuss the impacts of excess parking upon the proposed Transportation Demand Management (TDM) program, and the feasibility of an alternative with fewer spaces.

Sustainable Design

To the maximum feasible extent, the proponent should incorporate sustainable design elements into the project design. The basic elements of a sustainable design program may include, but not be limited to, the following measures:

- Optimization of natural day lighting, passive solar gain, and natural cooling;
- Use of energy efficient HVAC and lighting systems, appliances and other equipment, and use of solar preheating of makeup air;
- Favoring building supplies and materials that are non-toxic, made from recycled materials, and made with low embodied energy;
- Provision of easily accessible and user-friendly recycling system infrastructure into building design;
- Development of a solid waste reduction plan;
- Development of an annual audit program for energy consumption, waste streams, and use of renewable resources; and
- Water conservation and reuse of wastewater and stormwater.

The DEIR should include a narrative describing policies regarding waste reduction, water use, and other sustainable design initiatives that may be implemented on site.

Construction Period

The DEIR should discuss potential construction period impacts (including but not limited to noise, vibration, dust, and traffic flow disruptions) and analyze and outline feasible measures that can be implemented to eliminate or minimize these impacts. The DEIR must include a detailed erosion and sedimentation control plan, consistent with NPDES CGP requirements, to demonstrate that efforts will be made during the construction process to avoid, minimize or mitigate potentially detrimental stormwater runoff impacts associated with site preparation (i.e. clearing, grading) and construction.

I encourage the proponent to consider participating in MassDEP's Diesel Retrofit Program consisting of an engine retrofit program and/or use of low sulfur fuel to reduce exposure to diesel exhaust fumes and particulate emissions (PM_{2.5}) during construction. A commitment to participate in the Diesel Retrofit Program may be outlined within the DEIR.

Mitigation

The DEIR should include a separate chapter summarizing proposed mitigation measures. This chapter should also include draft Section 61 Findings for each state agency that will issue permits for the project. The draft Section 61 Findings should contain clear commitments to implement mitigation measures, estimate the individual costs of each proposed measure, identify the parties responsible for implementation, and contain a schedule for implementation.

Comments/Circulation

The DEIR should contain a copy of this Certificate and a copy of each comment letter received. The DEIR should respond fully to each substantive comment received to the extent that it is within MEPA jurisdiction. The DEIR should present additional technical analyses and/or narrative as necessary to respond to the concerns raised.

The proponent should circulate the DEIR to those parties who commented on the ENF, to any state agencies from which the proponent will seek permits or approvals, and to any parties specified in section 11.16 of the MEPA regulations. A copy of the DEIR should be made available for review at the Palmer Public Library.

September 28, 2007

Date



Ian A. Bowles

Comments received:

09/05/07 Stewart Lazares
09/07/07 William Toomey
09/09/07 Kevin DeBerardinis
09/10/07 Russell Donovan
09/11/07 Massachusetts Department of Environmental Protection – NERO- 1st Comment
Letter
09/11/07 Executive Office of Transportation, Massachusetts Highway Department
09/11/07 Ron Christensen
09/21/07 Massachusetts Department of Environmental Protection – NERO-2nd Comment
Letter

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