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September 29, 2006

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

PROJECT NAME : Mirimichi Estates
PROJECT MUNICIPALITY : Plainville
PROJECT WATERSHED : Taunton River Basin
EOEA NUMBER : 13648
PROJECT PROPONENT : Shepardville Realty Trust
DATE NOTICED IN MONITOR : August 23, 2006

As Secretary of Environmental Affairs, I hereby determine that the Draft Environmental Impact Report (DEIR) submitted on this project **adequately and properly complies** with the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-62H) and with its implementing regulations (301 CMR 11.00). The proponent may prepare and submit for review a Final Environmental Impact Report (FEIR).

Project Description

As described in the Expanded Environmental Notification Form (ENF) and updated in the DEIR, this project consists of the construction of a 66-lot subdivision on a 78-acre site in Plainville, MA. Access to the site will be provided from Messenger Street (Route 106) and Hillside Road. The project site abuts existing residential areas and a public water supply. It includes forested uplands, wetlands, 100-year floodplain, riverfront area associated with Lake Mirimichi and Turtle Brook (a perennial stream), estimated habitat of rare species and previously disturbed areas associated with the construction of the abutting wellfield.¹

¹ The Lake Mirimichi Wellfield (EOEA #11590) project was reviewed by MEPA in 1998. It included installation of three wells and construction of a pumping station and a water main. The Town took 8.34 acres of land by eminent domain from the project proponent to satisfy Zone I

Potential impacts are associated with alteration of 47 acres of land, including riverfront area, creation of 10.78 acres of new, impervious area, generation of 700 vehicle trips per day (tpd) and generation of 29,040 gallons per day (gpd) of wastewater.

Jurisdiction

The project is subject to review and mandatory preparation of an EIR pursuant to Section 11.03 (1)(a)(2) because it requires a state permit and consists of creation of more than 10 acres of new, impervious area. The project requires a Sewer Connection Permit and a Superseding Order of Conditions from DEP. An Order of Conditions was issued by the Plainville Conservation Commission on November 15, 2005 and appealed to DEP by the project proponent.

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. These include wetlands, water quality, drainage, wastewater and historic and archaeological resources.

SCOPE

Review of the DEIR

The DEIR includes a thorough description of the project, project elements, infrastructure and grading. It describes each state permit required for the project and addresses the consistency of the project with applicable local and regional land use plans. The DEIR describes alternatives that have been considered for the site, including a cluster subdivision, and how the site design has changed over time in response to municipal requirements and the development of a portion of the site as a public water supply. The DEIR indicates that the project has been designed to minimize impervious surfaces, while maintaining consistency with local zoning, but it does not identify specifically how impervious surfaces have been minimized or quantify the amount of reduction.

The DEIR provides plans illustrating wetland resources and associated buffer zones on the site. Wetlands alterations are associated with grading for house lots and a roadway within the riverfront area. The DEIR asserts that the project it is not subject to regulation under the Riverfront Protection Act because the subdivision plan was approved in 1982, prior to the passage of the Act, and the recently approved plan is simply a modification to the original. The modified plan increased the number of lots from 5 to 66 and includes significant changes in stormwater management and roadway layout. In addition, the DEIR asserts that the project, as proposed, could meet the regulatory standards if it were subject to the Act. DEP comments indicate that, although the 1982 plan may be afforded grandfathered status under 310 CMR 10.58(6)g, the modified plan should be developed consistent with changes in state laws and

requirements. The proponent granted an easement to the Town for installation of the water main and access to the wellfield from Messenger Street (Route 106) (along proposed subdivision roads).

regulations. In addition, DEP comments indicate that additional information is needed to determine the project's consistency with regulatory standards.

The DEIR includes a description of the stormwater management system and its consistency with the DEP Stormwater Management Policy. It indicates that the plan does not include infiltration or recharge of stormwater because of its location within the Zone II of a public water supply and it indicates that the system does not meet Standard #2, which requires that post development peak discharge rates be equivalent to pre-development rates.

The DEIR provides adequate analysis of wastewater impacts. It indicates that sufficient supply and infrastructure is available to serve the project and includes documentation from the Town of Plainville consistent with this assertion. The DEIR describes how the sewer design and installation for this development will prevent extraneous water (Infiltration/ Inflow (I/I) from entering the sewage system but it does not include a commitment by the proponent to offset its wastewater generation with a contribution to the Town's effort to reduce I/I.

The DEIR includes a chapter on mitigation measures. It includes mitigation commitments, cost estimates of mitigation measures, a timetable for completion and identification of the parties responsible for implementation. It includes a Draft Section 61 Finding as required.

Based on a review of the DEIR, public comments and consultation with state agencies, I have determined that the proponent may prepare the FEIR and submit it for MEPA review. The issues that need to be addressed in the FEIR, primarily wetlands issues, are summarized in the following Scope.

FEIR Scope

Wetlands/Drainage

The Plainville Conservation Commission reviewed the project for consistency with the Wetlands Protection Act (WPA), the Plainville Wetlands Protection Bylaw and standards for work within riverfront area. Based on this review, it issued an Order of Conditions that disallowed any incursion into the riverfront area, including work associated with Lots 59 and 60. This work includes extensive cutting and filling, including the removal of mature vegetation, associated with roadway construction and preparation of the site for construction of houses. The proponent appealed the decision to DEP.

As noted previously, DEP comments indicate that the modified plan is subject to the Riverfront Protection Act and that additional information is required to determine consistency with regulatory standards. The alternatives analysis did not adequately address the requirements for analysis included in the wetlands regulations for work within the riverfront area. Specifically, the DEIR does not demonstrate that there are no practicable and substantially equivalent economic alternatives to work in the riverfront area. In addition, the DEIR provides conflicting information regarding the amount of riverfront area and proposed alteration and these numbers are also inconsistent with the amount of alteration identified in the Order of Conditions (24,248 sf). The FEIR should address the requirement to analyze practicable alternatives to

alteration of riverfront area, including an alternative that reduces the scale of the activity or the number of lots available for development, consistent with the project purpose and proposed use, for the entire site. The revised analysis should clearly identify (in text and on plans), total riverfront area and proposed alteration for the entire site. Also, it should identify the amount of riverfront area within Lot 59 and Lot 60 and estimate the amount of proposed alteration associated with each lot (including site preparation). The alternatives analysis should address and quantify how the current design minimizes impervious surfaces compared to other alternatives. Finally, the FEIR must provide additional information to substantiate the claim that the proposed alterations do not present significant impact to the riverfront area.

The DEIR indicates that deed restrictions will be placed on Lots 59 and 60 to minimize wetlands alterations by homeowners. The proponent should also consider deed restrictions on lots containing bordering vegetated wetlands (BVW) to further minimize potential alterations.

Rare Species/Wildlife

The DEIR provides additional information regarding the commitment to permanently protect 13 acres of land, including habitat of the Bridle Shiner, along Turtle Brook in the northwest corner of the site. It indicates that, upon completion of the roadways and associated utilities, and within 90 days of acceptance of the streets by the Town, the land will be deeded to the Conservation Commission. The DEIR did not clearly delineate the conservation land on project plans. It should be delineated on plans submitted with the FEIR; no additional information is required on the protection of rare species.

Wastewater

The Plainville Wastewater Facilities Plan Update (EOEA #13757) filed with MEPA identifies the need to minimize I/I in the sewage system and specific projects. The FEIR should indicate whether the proponent will mitigate its wastewater generation through participation in the Plainville Water and Sewer Department's I/I program.

DEP comments indicate that the proponent will be required, during project permitting, to ensure that the project design and installation conform with DEP policies for public water supply protection.

Historic and Archaeological Resources

The DEIR includes the results of an archaeological survey conducted to locate, identify and evaluate any significant historic or archaeological resources that may be affected by the proposed project. The survey indicates that the site does not contain any significant cultural resources, probably due to previous land alteration.

Mitigation

The FEIR should include an updated Mitigation section and Draft Section 61 Findings. The DEIR indicates that the project will include the following measures to avoid, minimize and mitigate project impacts:

- permanent protection of a 13-acre parcel of land adjacent to Turtle Brook River;
- placement of deed restrictions on Lots 59 and 60 to limit future alteration to 5%;
- a reduction in the amount of gravel mining (and grading) proposed for the site from 634,000 cubic yards to 210,000 cy;
- construction and maintenance of an effective stormwater management system;
- extension of sewer collections system (and creation of adequate capacity within the pump station) to facilitate sewerage of Azalea Drive, Mirimichi Street and Treasure Island Road;
- a \$50,000 contribution towards improvements to the Route 106/152 intersection;

Response to Comments

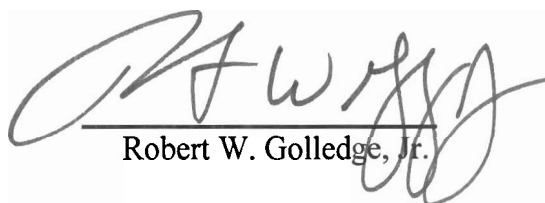
The FEIR should contain a copy of this Certificate and a copy of each comment received. The FEIR should respond to the comments received, to the extent that the comments are within MEPA subject matter jurisdiction. The FEIR should present additional narrative and/or technical analysis as necessary to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

Circulation

The FEIR 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 Plainville officials. A copy of the EIR should be made available for review at the Plainville public library.

September 29, 2006

Date



Robert W. Golledge, Jr.

Comments received:

9/22/06 Department of Environmental Protection/Southeast Regional Office
(MassDEP/SERO)
9/22/06 Plainville Conservation Commission

RWG/CDB/cdb