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October 17, 2007

DRAFT RECORD OF DECISION

PROJECT NAME : The Village at Lincoln Park  
PROJECT MUNICIPALITY : Dartmouth  
PROJECT WATERSHED : Buzzards Bay  
EEA NUMBER : 13862  
PROJECT PROPONENT : Midway Realty, LLC (formerly Lincoln Park Realty, LLC)  
DATE NOTICED IN MONITOR : September 10, 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 the Notice of Project Change (NPC) and hereby **propose to grant** a waiver that will allow the proponent to proceed with Phase I of the project prior to preparing a mandatory Environmental Impact Report (EIR) for the entire project.

Project Description

As described in the NPC, the project does not involve any material change to the overall project versus that reviewed in the August 2006 ENF filing. The Secretary's Certificate on the ENF, issued on September 22, 2006, outlined a scope for a mandatory Environmental Impact Report (EIR). The NPC proposes the construction of a portion of the retail development as a Phase I project, to commence construction in advance of the completion of the MEPA process. Phase I consists of an 1,800 square foot (sf) branch bank, a 7,200 sf (300 seat) restaurant, a 15,500 sf retail building, and supporting infrastructure. Phase II of the project will consist of the construction of a 15,500 sf pharmacy, approximately 10,000 sf of commercial space, an

additional 26,600 sf of retail, and a total of 307 dwelling units consisting of a mix of apartments, townhouses, and condominiums.

### MEPA Jurisdiction

This project is subject to MEPA review pursuant to Section 11.03(6)(a)(6) of the MEPA regulations because it will require a State agency action and generate 3,000 or more new vehicle trips. The project will also create more than five (5) acres of new impervious area and require the construction of a new sewer main ½ or more miles in length. The project requires a Massachusetts Highway Department (MassHighway) State Highway Access Permit for access to Route 6 and a Sewer Extension Permit from the Department of Environmental Protection (MassDEP) for wastewater discharges. Based upon information presented in the ENF, a Section 401 Water Quality Certificate may be required from the MassDEP related to site improvements and overall site water quality. The project will need to comply with the National Pollutant Discharge Elimination System (NPDES) General Permit from the U.S. Environmental Protection Agency (U.S. EPA) for stormwater discharges from a construction site of over one acre. The project will require an Order of Conditions from the Dartmouth Conservation Commission (or a Superseding Order of Conditions from the MassDEP if the local Order is appealed) for work within wetland resource areas.

Because the project will receive financial assistance from the Commonwealth for the project in association with its' 40R designation, MEPA jurisdiction is broad. Therefore, MEPA jurisdiction for this project shall extend to all aspects of the project that are likely, directly or indirectly, to cause Damage to the Environment.

### Summary of Potential Environmental Impacts

Phase I entails the construction of 24,500sf of commercial/retail space in three separate buildings, the construction of two access driveways on Route 6 and associated roadway and intersection improvements, a series of parking lots, utility systems, and stormwater management facilities. As presented in the NPC, Phase I will result in the creation of 1.9 new acres of impervious area and 2.7 acres of land alteration. Additionally, Phase I will require the alteration of approximately 297 sf of Bordering Vegetated Wetland (BVW), generate 2,206 new vehicle trips per day, and result in the construction of 286 new parking spaces. Wastewater generated by Phase I will include approximately 11,410 gallons per day (gpd) to be discharged into the existing municipal sewer system. Phase I will also include the first leg of a proposed water loop connection through the construction of approximately 1,500 linear feet of water main.

### Summary of Proposed Mitigation Measures

1. The proponent has outlined a series of traffic mitigation measures to be put in place prior to the occupancy of the Phase I portion of the project. These mitigation measures include a combination of intersection improvements, signal timing adjustments, striping and

signage improvements, as well as a Transportation Demand Management (TDM) program to reduce trip generation and a traffic monitoring program.

2. The proponent has committed to constructing the stormwater management facilities in accordance with the MassDEP Stormwater Management Policy. The proponent has outlined a treatment stream of BMPs including street sweeping, deep sump catch basins with hoods, and detention basins with sediment traps to achieve 80% total suspended solids (TSS) removal.
3. The proponent will extend the existing 12" water supply line in Route 6 to service the Phase I project area, with the intention that under Phase II this water main will extend to a connection in Reed Road, thereby establishing a loop connection to improve pressure and water flow in the project area.

### Waiver Request

The proponent has requested a waiver that will allow the proponent to proceed with Phase I of the project prior to preparing a mandatory Environmental Impact Report (EIR) for the entire project. An NPC was submitted in conjunction with this request that identifies the environmental impacts of the project and describes measures to be undertaken by the proponents to avoid, minimize and mitigate project impacts.

### 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 a Phase I Waiver

The MEPA regulations at 301 CMR 11.11(4) state that, in the case of a partial waiver of a mandatory EIR review threshold that will allow the proponent to proceed with Phase I of the project prior to preparing an EIR, I shall base the finding required in accordance with 301 CMR 11.11(1)(b) on a determination that:

- (a) the potential environmental impacts of Phase I, taken alone, are insignificant;
- (b) ample and unconstrained infrastructure facilities and services exist to support Phase I;
- (c) the project is severable, such that Phase I does not require the implementation of any other future phase of the project or restrict the means by which potential environmental

impacts from any other phase of the project may be avoided, minimized or mitigated; and (d) the agency action(s) on Phase I will contain terms such as a condition or restriction, so as to ensure due compliance with MEPA and 301 CMR 11.00 prior to commencement of any other phase of the project.

### 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 prior to completion of Phase I of the project would result in an undue hardship for the Proponent because the Expanded ENF proposes measures to avoid and minimize Damage to the Environment, and commits to providing adequate mitigation for Phase I project impacts. In addition, I have conditioned this proposed Phase I Waiver on compliance with Executive Office of Transportation and Public Works (EOTPW) requirements as further detailed below and in the comment letter received. Therefore, the requirement for completion of an EIR prior to Phase I is not necessary 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:

- (a) the potential environmental impacts of Phase I, taken alone, are insignificant;
- Phase I of the project is expected to generate approximately 1,518 new vehicle trips on the average weekday and approximately 1,532 new vehicle trips on the average Saturday. These numbers assume a 25% credit for existing pass-by trips. Without consideration for pass-by trips, the project will generate 2,206 vehicle trips on the average weekday and 2,044 vehicle trips on the average Saturday. The development of Phase I will create 1.9 new acres of impervious area, result in the creation of 286 new parking spaces, generate 11,410 gallons per day (gpd) of wastewater, and require the extension of 0.04 miles of water mains.
  - Phase I of the project alone does not exceed any ENF thresholds under the MEPA regulations.
- (b) ample and unconstrained infrastructure facilities and services exist to support Phase I;
- The Executive Office of Transportation and Public Works (EOTPW) is satisfied that the Phase I development can be accommodated within the state transportation system and supports the proponent's request for a Phase I Waiver.
  - The proponent has committed to numerous on-site and off-site intersection improvements to mitigation potential impacts associated with Phase I development. These improvements include, but are not limited to:

- Construction of a full access west site entry/exit roadway, designed and constructed to accommodate the future installation of a traffic control signal for future development beyond Phase I. This will include the construction of a left-turn lane both east and westbound while maintaining two through travel lanes.
  - Construction of an east site access roadway limited to right-turn only operation (right-turn entering and exiting only). Related improvements to the existing Route 6 median will be made to reduce illegal turning movements at this site driveway.
  - Design and implementation of an optimal traffic and signal timing and phasing plan for the Route 6/Reed Road intersection within one-year of the issuance of the first Certificate of Occupancy (CO) for Phase I of the project, or as required by MassHighway and/or the Town of Dartmouth.
  - Geometric, sign and pavement marking improvements to the Route 177 approach to Route 6, as well as the intersection formed by the two roadways. The proponent will also conduct a detailed Traffic Signal Warrant Analysis (TSWA) for this intersection based on the improvement Alternative 3 identified in the SRPEDD report, prepare a Functional Design Report (FDR) and MassHighway 25 Percent design plans for the traffic signal and associated roadway and intersection geometric improvements. These improvements will be completed prior to the issuance of the first CO for Phase I of the project and are consistent with the improvement plans that have been developed for the planned future improvements to be completed at the Route 6/Route 177, Route 6/Beeden Road and Route 177/Beeden Road intersections.
  - Evaluation and reconstruction of the Route 177/Beeden Road intersection entailing both geometric modifications and the replacement and upgrade of signs and pavement markings within the triangular area bounded by Route 6, Beeden Road and Route 177. These improvements will be implemented by the proponent prior to issuance of the first CO for Phase I of the project or as directed by the Town of Dartmouth and/or MassHighway.
  - Placement of STOP-lines and removal or trimming of vegetation within the public right-of-way at the Reed Road/Beeden Road intersection. These improvements will be implemented by the proponent prior to issuance of the first CO for Phase I of the project or as directed by the Town of Dartmouth.
- Sufficient wastewater treatment capacity is available to accommodate the Phase I project. Additionally, water demand associated with Phase I can be met by the existing infrastructure in place within the Town of Dartmouth. Appropriate connections to each system will be made from the project site to existing mains located within Route 6 along the site frontage.

(c) the project is severable, such that Phase I does not require the implementation of any other future phase of the project or restrict the means by which potential environmental impacts from any other phase of the project may be avoided, minimized or mitigated;

- Construction of Phase I is not dependent on other phases of the project. Stormwater management systems and on-site infrastructure have been designed to operate independently of future development. Mitigation has been designed to fully mitigate the impacts of Phase I alone, with anticipation of additional measures to mitigate traffic and wastewater impacts associated with Phase II.
- Implementation of Phase I does not require the implementation of any future phase of development and will not restrict the means by which other potential environmental impacts may be avoided, minimized and mitigated.

(d) the agency action(s) on Phase I will contain terms such as a condition or restriction, so as to ensure due compliance with MEPA and 301 CMR 11.00 prior to commencement of any other phase of the project.

- Phase I of the project will include agency actions by MassHighway and potentially by MassDEP if the local Order of Conditions were to be appealed.
- The agency actions for Phase I will include an Access Permit from MassHighway and possibly a Superseding Order of Conditions by MassDEP if the local Order of Conditions were to be appealed.
- The permits provide sufficient opportunities to address any outstanding information requests or the development of additional, specific mitigation.
- Phase I will also require the filing of Notice of Intent under the NPDES process with the U.S. EPA.
- As a condition of the Phase I Waiver, the proponent must prepare draft Section 61 findings outlining all the proposed mitigation measures associated with Phase I for consideration during the MassHighway Access Permit process. These Section 61 findings should be consistent with the mitigation measures presented in the NPC.
- The stormwater management system for Phase I must be designed so as to avoid any impacts to the water quality or hydrology of a mapped "Potential Vernal Pool" in the southwestern portion of the project site.
- As a condition of the Phase I Waiver, the proponent should respond to the comments received from EOTPW pertaining to concerns related to potential illegal turning movements at the Route 6/eastern site driveway intersection and the potential for additional mitigation measures, such as closing the median.

- The proponent should address the additional comments made in the EOTPW comment letter on the NPC in the DEIR. The scope of the DEIR, laid out in the Secretary's Certificate on the ENF, issued September 22, 2006, should be supplemented with information in direct response to the EOTPW NPC comment letter, either in analysis methodology or potential mitigation measures.

### Conclusion

I have determined that this waiver request has merit, and am issuing this Draft Record of Decision (DROD), which will be published in the next edition of the Environmental Monitor on October 27, 2007 in accordance with 301 CMR 11.15(2), which begins the public comment period. The public comment period lasts for 14 days and will end on November 9, 2007. Based on written comments received concerning the DROD, I shall issue a Final Record of Decision within seven days after the close of the public comment period, in accordance with 301 CMR 11.15(6). I hereby **propose to grant** the waiver requested for this project, which will allow the proponent to proceed with Phase 1 of the project prior to preparing a mandatory Environmental Impact Report (EIR) for the entire project, subject to the above findings. Should, based on the comments received on the DROD, I determine not to grant the Phase 1 waiver, a revised Certificate on the NPC will be issued to the proponent outlining a supplemental scope for the preparation of an EIR.

October 17, 2007

Date

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Ian A. Bowles

### Comments Received:

10/01/2007	Massachusetts Department of Environmental Protection - SERO
10/05/2007	Division of Fisheries and Wildlife – Natural Heritage and Endangered Species Program
10/10/2007	Executive Office of Transportation and Public Works (EOTPW)

IAB/HSJ/hsj