



The Commonwealth of Massachusetts
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Deval L. Patrick
GOVERNOR

Timothy P. Murray
LIEUTENANT GOVERNOR

Ian A. Bowles
SECRETARY

Tel: (617) 626-1000
Fax: (617) 626-1181
<http://www.mass.gov/envir>

December 19, 2007

DRAFT RECORD OF DECISION

PROJECT NAME: Pittsfield Plaza Renovation
PROJECT MUNICIPALITY: Pittsfield
PROJECT WATERSHED: Housatonic
EEA NUMBER: 14131
PROJECT PROPONENT: Pittsfield Plaza Members, LLC
DATE NOTICED IN MONITOR: November 11, 2007

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** from the categorical requirement to prepare an Environmental Impact Report (EIR). In a separate Certificate also issued today, I have set forth the outstanding issues related to the project that can be addressed by permitting agencies.

Project Description

As outlined in the Expanded Environmental Notification Form (EENF), the project involves the renovation of the Pittsfield Plaza shopping center located at 434-460 West Housatonic Street (Route 20) in Pittsfield, MA. The site is currently occupied by a 105,625 square foot (sf) building with several retail tenants and an expanse of parking area. The building and the parking lot were constructed in the early 1960s. The Plaza is partially occupied at this time but portions of the building are in disrepair. The project site is bound to the north by an active rail line, to the east by residential properties, to the south by West Housatonic Street, and to the west by Maloy Brook. A portion of the existing building and pavement is in the Riverfront Area. The flood zone for Maloy Brook extends throughout the parking lot; the elevation of the existing building is slightly above the 100-year flood zone.

The Proponent proposes to renovate the building and demolish the entire parking area. The Proponent will reduce the number of parking spaces at the site from 600 to 430 and will install planted islands. The Proponent also proposes to construct a small building addition (3,750 sf) and a restaurant (5,600 sf). The site is currently serviced by a wide unsignalized intersection with a center island and a steep one-way in west bound driveway. The Proponent proposes to reconstruct the main entrance and move the intersection easterly away from Maloy Brook to align more closely with the entrance to an existing McDonald's restaurant across from the Plaza. The one-way in westbound entrance to the Plaza will be closed. The Proponent will install a traffic signal at the new intersection.

Jurisdiction

The project is subject to a mandatory Environmental Impact Report (EIR) pursuant to Section 11.03 (6)(a)(6) of the MEPA regulations because it will generate more than 3,000 new daily vehicle trips. The project will require a National Pollutant Discharge Elimination System (NPDES) Construction General Permit from the U.S. Environmental Protection Agency (EPA); an Access Permit from the Massachusetts Highway Department (MassHighway); a permit from the Executive Office of Transportation (EOT) for construction work within the railroad right-of-way; an Order of Conditions from the Pittsfield Conservation Commission; Special Permits from the Pittsfield City Council and Community Development Board; and Site Plan Approval from the Pittsfield Community Development Board.

The proponent is not seeking financial assistance from the Commonwealth. Therefore, MEPA jurisdiction applies to those aspects of the project within the subject matter of required or potentially required permits with the potential to cause Damage to the Environment. The City of Pittsfield Conservation Commission has already issued the Order of Conditions (OOC) for the project (DEP #263-888), which was not appealed. Therefore, MEPA does not have jurisdiction over wetlands or stormwater. In this case, MEPA jurisdiction on this project extends to traffic.

Waiver Request

The Proponent submitted an Expanded Environmental Notification Form (EENF) for the project with a request for a waiver from the requirement for the preparation of an EIR. The EENF included a Traffic Impact and Access Study (TIAS) for the project. The waiver request was discussed at the consultation/scoping session for the project which was held on December 5, 2007.

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 those aspects of the project within subject matter jurisdiction.

Findings

Based upon the information submitted by the Proponent and after consultation with the relevant state 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 prepare a Mandatory EIR for the project would result in undue hardship for the Proponent. I also find that compliance with the requirement to prepare an EIR for the project would not serve to avoid or minimize Damage to the Environment. In accordance with 301 CMR 11.11(3), this finding is based on my determination that:

1. The project is likely to cause no Damage to the Environment:
 - Although the project will result in increased daily vehicle trips, the state highway infrastructure in the project area will not suffer an unreasonable degradation of safety or Level of Service as a result of the project. According to the EENF, the project is estimated to generate approximately 7,542 new vehicle trips per day over current levels, for a total of 8,358. The Proponent has documented the project's traffic impacts in the Traffic Impact and Access Study (TIAS) submitted with the EENF. MassHighway has stated that the TIAS was prepared in compliance with the Executive Office of Energy and Environmental Affairs (EEA)/Executive Office of Transportation (EOT) Guidelines for EIR/EIS Traffic Impact Assessments. The Proponent has consulted extensively with MassHighway District 1 and the Berkshire Regional Planning Commission (BRPC) regarding the project's traffic impacts and mitigation and has provided responses to BRPC's draft comments on the EENF. In its comments on the EENF, EOT/MassHighway states that the increased traffic from the proposed project will be adequately mitigated by proposed improvements to the state highway. The following mitigation measures are proposed:

- The Proponent will install a traffic signal at the intersection of Route 20/Site Driveway/McDonald's. The approach geometry of the traffic signal will be as follows: Eastbound Route 20 – one shared through/right and one exclusive left; westbound Route 20 – one shared through/right lane with a painted median island; northbound McDonald's exit – one exclusive left lane and one exclusive right lane; southbound site drive – one shared through/left and one exclusive right. A minimum 4 foot shoulder shall remain along Route 20. The Proponent should investigate the feasibility of synchronizing the traffic signal at the proposed site drive with the traffic signal that is proposed for construction at the intersection of Route 20/Barker Road.
- The site drive will be relocated so that it aligns with the westernmost McDonald's (entry only) driveway.
- The left turn into the site drive will run as a protected/permitted left with a right turn overlap from the Plaza while the site drive and McDonald's exit drive will run as split phased side streets.
- The Proponent will install a crosswalk across West Housatonic Street. The traffic signal will include an exclusive pedestrian phase.
- To the west of the site, Route 20 will be restriped so that there is a two-way left turn lane between Gale Avenue and the site.
- All changes outlined above will require pavement modifications including limited widening and cold planning/resurfacing in order to get the lane widths and reconfigurations correct.
- The Proponent will replace sidewalks and curbing on the north side of Route 20.
- The Proponent has committed to working with the Berkshire Regional Transit Authority (BRTA) to provide bus service to the site. I strongly encourage the Proponent to provide a bus turnout within the site to accommodate transit users and to post BRTA bus schedules and information at the site.

I note concerns raised by the BRPC regarding the adequacy of proposed traffic mitigation, particularly regarding LOS impacts at the Route 20/Shell Gas Station/Tony's Berkshire Boats intersection and the Route 20/Gale Avenue intersection. *As a condition of this ROD, the Proponent should provide a final site access plan displaying proposed mitigation, including a two-way left turn lane between the site drive and Gale Avenue, which has been proposed to alleviate impacts at the above-noted intersections. The plan should include pedestrian and bicycle accommodations. In addition, the Proponent should prepare a Draft Letter of Commitment for use by MassHighway in the Access Permit. The Draft Letter of Commitment should include a comprehensive list of measures that the Proponent will implement to mitigate traffic impacts from the project.*

- The significant number of projected new daily vehicle trips has triggered MassDEP's requirement that the proponent conduct an air quality mesoscale analysis to determine if the proposed project will increase the amount of volatile organic compounds (VOCs) and nitrogen oxides (NOx) in the project area. The mesoscale analysis will also be used to determine if the project will be consistent with the Massachusetts State Implementation Plan (SIP).

Guidance on conducting the mesoscale analysis can be found in MassDEP's comment letter on the EENF. If the mesoscale analysis indicates an increase in VOC and NOx emissions, the Proponent should commit to implementing Transportation Demand Management (TDM) measures aimed at reducing site trips and offsetting emission increases. The Proponent should note TDM measures outlined in MassDEP's comment letter on the EENF.

As a condition of this ROD, to document the Proponent's assertion that the project will not cause Damage to the Environment, the Proponent must undertake the air quality analysis as required by MassDEP. The Proponent should submit the Air Quality Analysis to MEPA, MassDEP and to any parties that received or commented on the EENF, and should propose mitigation to offset increases in emissions. Issuance of the Final ROD will be contingent upon MassDEP's acknowledgement that the study and proposed air quality mitigation are adequate.

- EEA has recently released the final version of the Greenhouse Gas (GHG) Emissions Policy and Protocol, which requires that certain projects undergoing MEPA review quantify their greenhouse gas emissions and identify measures to avoid, minimize or mitigate these emissions. The EENF for the Pittsfield Plaza project was submitted before the final Policy became effective; however the project would otherwise be subject to the provisions of the Policy. The GHG Emissions Policy was announced in the April 25, 2007 issue of the Environmental Monitor. Since that date, and before the issuance of the final Policy, MEPA has incorporated into new scoping Certificates for projects subject to the Policy the requirement that the Proponent identify and describe sources of, and propose measures to avoid, minimize, or mitigate for, project-related GHG emissions.

As a condition of this ROD, and to document the Proponent's assertion that the project will not cause Damage to the Environment, the Proponent should present a qualitative discussion of the project's compliance with the MEPA GHG Policy. The Proponent should identify and describe all project-related GHG emissions and discuss proposed measures to mitigate for those emissions. The final GHG Policy is available here: <http://www.mass.gov/envir/mepa/pdf/files/misc/GHG%20Policy%20FINAL.pdf>, and contains a list of suggested emissions-reduction mitigation that the Proponent should considering implementing at the site.

- The project will result in a reduction of 1.5 acres of impervious surface at the project site. The project's stormwater management system will be designed in accordance with City of Pittsfield regulations and the Department of Environmental Protection's (MassDEP) Stormwater Management Policy. The reconstruction of the site access intersection will move the site drive away from Maloy Brook. The project will result in improvements to existing environmental impacts at the site, such as flooding, a lack of stormwater treatment and degraded habitat. The Proponent has indicated a willingness to implement additional stormwater management measures as suggested by BRPC. The Proponent should consider employing Low Impact Development (LID) techniques that will help reduce peak flows and facilitate groundwater recharge.
- The Proponent will be required to remediate contamination on the site in accordance with the

requirements of the Massachusetts Contingency Plan (MCP).

2. Ample and unconstrained infrastructure facilities and services exist to support those aspects of the project within subject matter jurisdiction:

- The project will rely on service from the City of Pittsfield for water and wastewater. No new water or wastewater infrastructure is required for the project. The project will result in a decrease in water withdrawal and wastewater consumption over previous uses at the Plaza.
- The project represents revitalization of a previously developed site served by existing infrastructure rather than the development of a new site, consistent with the goals of Executive Order #385 – Planning for Growth. The project is also consistent with the goals and objectives of the Pittsfield Comprehensive Development Plan and the Regional Plan for the Berkshires in that it proposes commercial development in existing commercial space and within existing commercial/industrial zones.
- The Proponent will make improvements to the existing pedestrian, transit and transportation systems in the project area to support the renovated Plaza as outlined above. MassHighway has stated that the state highway infrastructure in the vicinity of the project will not be adversely impacted as a result of the anticipated additional vehicle trips.

Conclusion

Based on these findings, 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 December 24, 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 January 7, 2007. Based on written comments received concerning the DROD, I shall issue a Final Record of Decision (FROD) or a Scope 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 from the requirement to prepare a mandatory Environmental Impact Report (EIR), subject to the above findings and conditions. As outlined above, issuance of a Final Record of Decision will be contingent upon the Proponent submitting additional information to the MEPA office and to the distribution list during the public comment period on the DROD. To allow for an adequate review period for the supplemental information, the Proponent may wish to request an extension of the 14-day comment period on the DROD.

December 19, 2007

Date

Ian A. Bowles

Comments received:

12/3/2007 LADA, P.C., for the Proponent
12/6/2007 Berkshire Regional Planning Commission
12/10/2007 Executive Office of Transportation
12/12/2007 City of Pittsfield, Department of Community Development
12/12/2007 Department of Environmental Protection, Western Regional Office

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