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December 29, 2006

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

PROJECT NAME : Scotland Heights I & II  
PROJECT MUNICIPALITY : Haverhill  
PROJECT WATERSHED : Merrimack River  
EOEA NUMBER : 13822  
PROJECT PROPONENT : **Scotland Heights Realty Trust**  
DATE NOTICED IN MONITOR : November 22, 2006

As Secretary of Environmental Affairs, I hereby determine that the Final Environmental Impact Report (FEIR) 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).

### Project Description

As described in the Environmental Notification Form (ENF), the Draft EIR (DEIR) and the FEIR, the proposed project consists of two subdivisions known as Scotland Heights I and Scotland Heights II. Scotland Heights I is a 42-lot single family home subdivision and Scotland Heights II is a 41-lot single family subdivision. Each subdivision was proposed and permitted locally under separate applications, as the land developed as part of Scotland Heights II was made available through bankruptcy proceedings subsequent to the local approval of Scotland Heights I.

Despite being subject to a mandatory EIR requirement, Scotland Heights I is now fully constructed and occupied, and Scotland Heights II is an active construction site and approximately 60% complete. The MEPA review commenced at the direction of State permitting agencies, which cannot issue permits until a project has completed the MEPA process. The project has been subject to several local enforcement actions under the Wetlands

Protection Act, and is currently subject to a Massachusetts Department of Environmental Protection (MassDEP) Unilateral Administrative Order (“Order”) (UAO-NE-06-9002-13). MassDEP issued this Order on July 6, 2006 to Scotland Heights Realty in association with ongoing discharges of wastewater from the project site without appropriate permits. MassDEP executed an Administrative Consent Order with Penalty (ACOP) for the project on July 28, 2006.

The project includes the construction of several subdivision roadways (Blye Road, Snow Road, Scotland Heights Road and Tersolo Road); installation of water and sewer mains; alteration of 15,070 square feet (sf) of isolated vegetated wetlands (IVWs); alteration of 373 sf of bordering vegetated wetlands (BVWs); and the construction of stormwater management basins. The 87.8-acre property is located in a residential area of Haverhill, near the Methuen Town Line, the Merrimack River, and wooded open space. Potential environmental impacts are associated with the alteration of approximately 48 acres of land, creation of 12 acres of impervious surfaces, use of 34,238 gallons per day (gpd) of water, and generation of 27,390 gpd of wastewater. The project site is characterized by steep grade changes, portions of which have been altered as part of the initial construction of the project. It appears that the project site was previously wooded in nature with some wetland areas interspersed throughout in low-lying areas prior to construction.

#### MEPA Jurisdiction and Permitting Requirements

This project is undergoing MEPA review and is subject to the preparation of a mandatory EIR pursuant to Section 11.03(1)(a)(2) because it requires a State Agency permit and will create more than 10 acres of impervious surfaces. The project is also subject to MEPA review because it will alter more than 5,000 square feet of IVWs (301 CMR 11.03(3)(b)(1)(d)). The project requires a Sewer Connection Permit and a 401 Water Quality Certification (WQC) from MassDEP; a Category II Programmatic General Permit from the U.S. Army Corps of Engineers; a National Pollutant Discharge Elimination System (NPDES) Construction General Permit from U.S. Environmental Protection Agency (U.S. EPA); and an Order of Conditions from the Haverhill Conservation Commission. As the project proponent is not seeking public funding for this development, MEPA jurisdiction is limited to the subject matter of required or potentially required state permits. This includes stormwater, land alteration, wastewater, and wetlands.

#### Project Description and Permitting

The FEIR included a general description of project construction timetables and estimated costs for each phase of development (Scotland Heights I and II). Additionally, the FEIR outlined potential environmental impacts associated with delayed construction activities associated with Scotland Heights II. The proponent has outlined measures that should reduce potential impacts, including limiting the number of lots under construction at any given time to two, ongoing environmental monitoring services, and the development of an operations and maintenance plan.

The FEIR provided an update on the state and local permitting processes, including revisions to the pending 401 WQC from MassDEP and the outstanding Order of Conditions from the Haverhill Conservation Commission due to a modification to the project’s Preferred Alternative. The Haverhill Conservation Commission endorsed the proposed revisions presented

in the FEIR at its October 31, 2006 meeting. The FEIR also indicated that as a result of completed water booster installation activities, the proponent will apply for a Distribution Modifications Permit from MassDEP.

### Alternatives Analysis

The FEIR presented a No-Build Alternative with evaluating impact to land, stormwater, wastewater, water and wetland impacts. The FEIR includes a revised Preferred Alternative from that presented in the DEIR, modifying the layout of stormwater and wetland replication areas associated with Pond I within Scotland Heights II. The Preferred Alternative builds upon modifications in the DEIR to reduce environmental impacts and provide stormwater management and wetland replication in a manner consistent with MassDEP policies. This modified layout generally maintains the limit of clearing indicated within the DEIR, and strives to locate wetland replication areas within areas that have already been altered via construction of Pond 1. Additional disturbed upland areas under this Preferred Alternative are estimated at 1,300 sf. While this increases upland areas disturbed from that presented in the DEIR, it appears necessary to accommodate MassDEP requirements related to stormwater management and wetlands replication.

### Land Alteration

The FEIR states that limits of clearing will be staked subsequent to final Site Plan approval by the City of Haverhill. The proponent should clearly identify the limit of clearing on plans approved by the City and ensure that a surveyor certifies the limit of clearing in addition to the location of each building foundation. The FEIR indicates that the project as designed will require no export or import of materials to meet the proposed cut and fill requirements. The proponent has stated that land alteration will be minimized through the provision that no work can commence on any lots that contribute stormwater runoff to Pond 1 until all lots and roadway that contribute stormwater runoff to Pond 2 have been constructed and stabilized.

### Wetlands/Water Quality

The proponent presented an alternative location for the replication of IVWs, as requested by MassDEP. Under the revised Preferred Alternative presented in the FEIR, the proponent will alter approximately 15,070 sf of IVWs associated with Wetlands Series M, N and O. The proponent has clarified wetland impact value discrepancies in the DEIR identified by MassDEP and EOE. The Preferred Alternative will consist of three (3) areas of IVWs, totaling 19,499 sf as mitigation for altering existing IVWs. Since the Preferred Alternative was revised from that presented in the DEIR, the proponent provided detailed design plans, planting schemes and monitoring plans within the FEIR for these modified (and expanded) wetland replication areas. MassDEP has indicated that the FEIR has adequately addressed its concerns related to wetland replication and water quality.

### Stormwater

The FEIR presented revised wetland replication areas outside the stormwater management basin (Pond 1) to eliminate required maintenance of the stormwater system within wetland replication areas. The FEIR presented an operations and maintenance plan for the stormwater management system, noting that upon approval of the roadway plan and the issuance of a Certificate of Compliance by the City of Haverhill, the stormwater management system will be maintained by the City of Haverhill.

While the FEIR addressed some of MassDEP's stormwater concerns, several issues remain to be addressed. The proponent must provide the following data to MassDEP prior to commencing any future construction:

1. Stormwater modeling data to show the calculations for the pre-development and post-development peak rates of runoff provided in the peak rate summary tables in Section 2.2;
2. Additional peak rate data for the full range of design storms at all discharge points;
3. Clarification of the pre-development peak rates for the 100-year and 10-year storms; and
4. An updated total suspended solids (TSS) calculation sheet to reflect the design changes to Pond 1.

### Wastewater

The proponent provided additional information in the FEIR related to maintenance of the sewer line within the sewer easement, the relationship of drainage structures to the sewer line, and water conservation measures. MassDEP has indicated that the proponent responded adequately in the FEIR to the wastewater related comments presented in its comments on the DEIR.

### Mitigation and Draft Section 61 Findings

As required, the FEIR included updated Draft Section 61 Findings. The proponent has committed to the following mitigation measures:

- Provision of wetland replication at a ratio of 1.3:1 (mitigation : impact) via construction of three independent IVW replication areas. Approximately 19,499 sf of wetlands will be created to offset the anticipated 15,070 sf of impacts associated with the proposed development;
- Monitoring of the IVWs replication areas by a qualified wetland scientist at the beginning and end of each growing season until a Certificate of Compliance is issued by the Haverhill Conservation Commission;
- Construction and installation of a water booster station (completed);
- Installation of sewer lines to accommodate future construction. (Sewer line installation will not continue until all applicable state permits have been formally obtained by Scotland Heights Realty Trust); and

- Implementation of water conservation measures in accordance with state and federal requirements, along with homeowner education to promote water conservation.

Based on a review of the Final EIR, consultation with public agencies, and a review of the comment letters received on the project, I hereby find that the Final EIR adequately and properly complies with MEPA and its implementing regulations. I am satisfied that any outstanding issues can be addressed through the state and local permit and review process. The proposed project requires no further review under MEPA and may proceed to state permitting. I remind State Agencies to forward copies of their final Section 61 Findings to the MEPA Office for the project file.

December 29, 2006  
Date

  
Robert W. Golledge, Jr.

Comments Received:

12/22/2006 Massachusetts Department of Environmental Protection - NERO

RWG/HSJ/hsj