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July 22, 2005

DRAFT RECORD OF DECISION

PROJECT NAME : Foxborough State Hospital
PROJECT MUNICIPALITY : Foxborough
PROJECT WATERSHED : Neponset River
EOEA NUMBER : 13554
PROJECT PROPONENT : VinCo Properties
DATE NOTICED IN MONITOR : June 22, 2005

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 this project and hereby **propose to grant a Phase I Waiver** to allow commencement of the first phase of the project prior to completion of the Environmental Impact Report (EIR) for the entire project. A Certificate on the Environmental Notification Form (ENF) with a Scope for the Draft EIR (DEIR) has been issued separately.

Project Description

As described in the Expanded Environmental Notification Form (ENF), the proposed project is a mixed-use development consisting of office, retail and residential development on a 93-acre site, which is part of the former Foxborough State Hospital property. The project includes new construction as well as reuse and rehabilitation of existing historic buildings. The project also involves demolition of portions of the former hospital facility. The redevelopment plan includes 203 residential units (a combination of single-family, multi-family, condominium and rental units), 30,000 square feet (sf) of retail space, and approximately 80,000 sf of office space.

Jurisdiction

The project is undergoing MEPA review and requires the preparation of a mandatory EIR pursuant to:

- Sections 11.03(1)(a)(2) of the MEPA regulations because it involves creation of

- 10 acres or more of impervious area; and
- Section 11.03(6)(6) because it involves generation of 3,000 or more new vehicle trips per day on roadways providing access to a single location.

The project also exceeds ENF thresholds and is undergoing MEPA review pursuant to:

- Section 11.03(5)(b)(4)c.ii. because it involves discharge to groundwater of 50,000 or more gpd of sewage; and
- Section 11.03(1)(b)(1) because it involves alteration of 25 or more acres of land.

The project is the subject of a Memorandum of Agreement (MOA, July 31, 1995) between the Massachusetts Historical Commission (MHC) and the Division of Capital Assets and Management (DCAM), formerly known as the Division of Capital, Planning and Operations (DCPO). Therefore, as long as the project is consistent with the MOA, it is not subject to review pursuant to Section 11.03(10)(b)(1) of the MEPA regulations (which requires review of certain projects involving demolition of an historic structure that is listed in the State Register of Historic Places).

The project will require a Groundwater Discharge Permit, a Wastewater Treatment Plant Approval, and a Sewer Extension/Connection Permit from the Department of Environmental Protection (DEP). The project may also require an approval for new water mains (for distribution system modifications serving more than 3,300 people) and a 401 Water Quality Certification from DEP. The project requires an Order of Conditions from the Foxborough Conservation Commission (and, on appeal only, a Superseding Order from DEP). The project will also require an Access Permit from MassHighway Department (MHD) for access to Route 140 and a National Pollutant Discharge Elimination System (NPDES) Construction Activities Permit from the US Environmental Protection Agency (EPA).

The project involves a land transfer from an agency of the Commonwealth (the property is under a purchase and sale agreement with DCAM). Therefore, MEPA jurisdiction is broad and extends to all aspects of the project with the potential to cause Damage to the Environment, as defined in the MEPA regulations.

Waiver Request

The proponent is requesting a Phase I waiver for demolition and remediation of existing buildings, and construction of 29 single-family homes with associated infrastructure. In addition, as part of Phase I, the proponent will be constructing a baseball field on adjacent recreation land owned by the Town of Foxborough.

Criteria for a Phase I Waiver

Section 11.11 of the MEPA Regulations provides that the Secretary may waive any

provision or requirement of 301 CMR 11.00 not specifically required by MEPA, and may impose appropriate and relevant conditions or restrictions, provided that the Secretary finds that strict compliance with the provision or requirement would: a) result in undue hardship to the proponent, unless based on delay in compliance by the proponent; and b) not serve to minimize or avoid damage to the environment.

In the case of a partial waiver of a mandatory EIR review threshold that would allow the proponent to proceed to Phase I of the project prior to preparing an EIR, the finding required under Section 11.11(1)(b) shall be based on a determination that: 1) the potential environmental impacts of Phase I are insignificant; 2) ample and unconstrained infrastructure and services exist to support Phase I; 3) the project is severable, such that Phase I does not require the implementation of any other future phases; and 4) the agency action on Phase I will contain conditions that ensure due compliance with MEPA.

Based upon the information submitted by the proponent and after consultation with the relevant state agencies, I find that:

- a) Requiring completion of a mandatory EIR prior to Phase I of the project would result in undue hardship for the proponent. Phase I activities include asbestos remediation of existing buildings. A Phase I delay would prolong the time period for remediation, and could result in further building deterioration.
- b) Requiring completion of a mandatory EIR prior to Phase I of the project would not serve to avoid or minimize Damage to the Environment.
 1. The potential environmental impacts of Phase I, taken alone, are insignificant. Phase I alone does not trigger any MEPA thresholds or require any state permits. The proponent has committed to mitigation including water conservation measures, a Construction Pollution Prevention Plan and a Stormwater Management Plan. The proponent has also committed to recycling of demolition material to the extent feasible and to photographic documentation of all contributing historic buildings prior to demolition. Although I find that the potential impacts of Phase I are insignificant, I do acknowledge the Massachusetts Historical Commission (MHC) concerns regarding the National Register status of the campus. I encourage the proponent to consult with MHC regarding the Cottages E and H, prior to demolition activities, as further detailed in the ENF Certificate.
 2. Ample and unconstrained infrastructure facilities and services exist to support Phase I. The Phase I homes will be served by town water and on-site Title 5 sewage disposal systems. Existing water supply infrastructure will be utilized and the project will not place a burden on the Town's wastewater infrastructure. Traffic impacts are minimal (estimated at 310 vehicle trips per day) and the Massachusetts Highway Department

(MHD) has indicated in its comment letter that it has no objections to a Phase I waiver.

3. The project is severable, such that Phase I does not require the implementation of any future phase of the project or restrict the means by which other potential environmental impacts from any other phase of the project may be avoided, minimized or mitigated. Phase I asbestos abatement and building demolition will facilitate future development but will not require the implementation of future development. The proposed homes to be developed during Phase I do not require the implementation of any future phase. Phase I will result in alteration of approximately 6.7 acres of the 93-acre site and will use existing roadways. An alternatives analysis for the remainder of the project site will be included in the EIR providing opportunities to consider alternative site layouts, open space plans, or other design changes that may serve to avoid and minimize, or mitigate environmental impacts from any other phase of the project.
4. I am satisfied that any Agency Action associated with Phase I will contain terms such as a condition or restriction in a Permit, contract or other relevant document to ensure due compliance with MEPA and 301 CMR 11.00 prior to Commencement of any other phase of the project.

The proponent should ensure that demolition activities are conducted in accordance with DEP air quality and solid waste regulations and notification requirements, including requirements for managing asbestos containing materials, as further detailed in the DEP comment letter. To the extent feasible, the proponent should incorporate sustainable design elements in the project's Phase I. These may include for example, low impact development (LID) techniques, green building, and design of the recreational fields to avoid and minimize irrigation needs and use of pesticides and fertilizers, and other chemical controls. The proponent must submit an EIR in accordance with the Scope in the ENF Certificate.

Based on these findings, I determine that the waiver request has merit and meets the tests established in Section 11.11. Therefore, I propose granting the Phase I waiver requested for this project. This Draft Record of Decision (DROD) shall be published in the August 10, 2005 issue of the *Environmental Monitor* for a fourteen-day comment period, after which I shall reconsider, modify, or confirm the waiver.

July 22, 2005

DATE

Stephen R. Pritchard, Secretary

Comments received

7/11/05 Town of Foxborough Recreation Department
7/12/05 Massachusetts Historical Commission
7/12/05 Department of Environmental Protection, Southeast Regional Office
7/13/05 Department of Environmental Protection, Southeast Regional Office (additional
 comments)
7/13/05 Executive Office of Transportation, Office of Transportation and Planning,
 Public/Private Development Unit
7/14/05 Metropolitan Area Planning Council

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