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January 12, 2007

FINAL RECORD OF DECISION

PROJECT NAME : 4400 Computer Drive Expansion
PROJECT MUNICIPALITY : Westborough
PROJECT WATERSHED : Concord and Sudbury
EOEA NUMBER : 3143
PROJECT PROPONENT : Forty Four Hundred, LLC
DATE NOTICED IN MONITOR : October 25, 2006

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 **grant a waiver** from the requirement to prepare a mandatory Environmental Impact Report (EIR).

Project Description

As described in the Notice of Project Change (NPC), the project change entails the construction of 360,000 square feet (sf) of office/research and development space and 1,460 new structured parking spaces, on a 69.49-acre site located in the northwest quadrant of the interchange of I-495 with Route 9. The project site contains an existing building housing 685,000 sf of office/research and development space and 2,793 surface parking spaces. With the project change, the site will contain a total of 1,045,000 sf of floor area and 4,253 parking spaces.

According to the NPC, the project change will not entail the creation of any additional impervious areas on-site because the additional floor area and parking spaces will be provided in areas that have been altered previously. While I note that the proponent proposes to achieve this by providing all of the new parking spaces in a parking structure, the proposed addition of more than 1,000 parking spaces exceeds the MEPA review threshold at 301 CMR 11.03(6)(a)(7) requiring the mandatory submission of an EIR.

MEPA History and Jurisdiction

The project was the subject of previous review under MEPA. In 1978, the then proponent, Data General Corporation, submitted an Environmental Notification Form (ENF) describing a proposed addition to the existing office/research and development space on the site, resulting in the 685,000 sf of existing floor space and 2,793 existing parking spaces. The Certificate on the ENF issued on August 14, 1978 did not require the preparation of an EIR.

The project change is undergoing MEPA review pursuant to 301 CMR 11.03 11.03(6)(b)(13) and (6)(a)(7) of the MEPA regulations because it will result in the generation of 2,000 or more new average daily trips (adt) and construction of 1,000 or more new parking spaces. The project change will require a revised Sewer Connection Permit from the Department of Environmental Protection (MassDEP) and a revised State Highway Access Permit from the Massachusetts Highway Department (MassHighway).

The proponent is not seeking financial assistance from the Commonwealth. Therefore, MEPA jurisdiction applies to those aspects of the project change within the subject matter of required state permits with the potential to cause Damage to the Environment as defined in the MEPA regulations. In this case, MEPA jurisdiction extends to transportation and wastewater.

Waiver Request

The proponent has requested a waiver from the requirement to prepare an EIR. A NPC was submitted in conjunction with this request that identifies the environmental impacts associated with the project change, including estimates of increased traffic and wastewater generation. It also includes a traffic analysis prepared in conformance with the Executive Office of Environmental Affairs (EOEA)/EOT Guidelines for Traffic Impact Assessments and describes measures to be undertaken by the proponent to avoid, minimize and mitigate project impacts.

Criteria for Waiver

Section 11.11 of the MEPA Regulations provides that a waiver may be granted upon a finding that strict compliance with the regulations will result in undue hardship and will not serve to minimize or avoid damage to the environment. In the case of projects requiring the submission of a mandatory EIR, this finding shall be based on the following circumstances: 1) the project is likely to cause no Damage to the Environment; and 2) ample and unconstrained infrastructure exists to support the project or those aspects of the project within subject matter jurisdiction.

Proposed Mitigation

The traffic and wastewater impacts of the project change will be fully mitigated according to the terms laid out by the state permitting agencies in the State Highway Access Permit and Sewer Connection Permit to be issued for the project. In its comments on the NPC, EOT states

that the proponent should commit to additional mitigation to address unfavorable operating conditions at the intersection of the Route 9 westbound ramps and Computer Drive. Accordingly, additional mitigation at this location will be a requirement of the revised State Highway Access Permit to be issued by MassHighway. Additionally, in its comments, MassDEP indicates that the proponent will be required to upgrade or modify the Route 9 pump station as a condition of its revised Sewer Connection Permit.

Findings

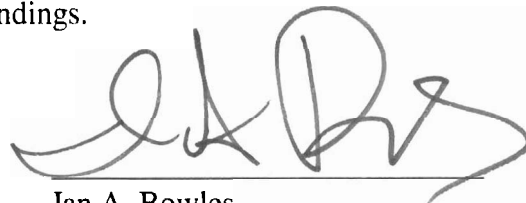
Based upon the information submitted by the proponent and after consultation with the state permitting agencies, I find that the Waiver Request has merit and that the proponent has demonstrated that the proposed project change meets the standards for a Full Waiver from the requirement to submit a mandatory EIR at 301 CMR 11.11(1), (2) and (3). The NPC indicates that the project change would be constructed on portions of the site that are currently used for surface parking and, as a result, no new land alteration and impervious surfaces would occur. Additionally, with mitigation in place, ample and unconstrained infrastructure facilities would exist to support the proposed project change. As a result, the proposed project change is likely to cause no Damage to the Environment. Accordingly, a requirement that the proponent submit an EIR would not serve to avoid or minimize Damage to the Environment and would result in undue hardship.

Conclusion

The state permitting agencies have sufficient permitting authority to ensure that the proponent complies with the findings in this Record of Decision and I am confident that the proponent will work diligently with MassHighway and MassDEP to resolve any outstanding issues. In order for the state permitting agencies to issue Section 61 Findings and revised permits for the project, the proponents must commit to the mitigation requirements specified by the state permitting agencies in their comments on the NPC. Therefore, I hereby grant the waiver requested for this project, subject to the above findings.

January 12, 2007

Date



Ian A. Bowles

Comments Received:

None

IAB/RB/rb