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May 16, 2008

CERTIFICATE OF THE SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS  
ON THE  
DRAFT ENVIRONMENTAL IMPACT REPORT

PROJECT NAME : Beacon @ 495 and Proposed Retail Center  
PROJECT MUNICIPALITY : Marlborough  
PROJECT WATERSHED : Millham Brook to Assabet River  
EOEA NUMBER : 13755  
PROJECT PROPONENT : Northborough/Marlborough Land Realty Trust, an  
affiliated entity of The Gutierrez Company  
DATE NOTICED IN MONITOR : April 9, 2008

As Secretary of Energy and Environmental Affairs, I hereby determine that the Draft Environmental Impact Report (DEIR) submitted on this project **does not adequately and properly comply** with the Massachusetts Environmental Policy Act (M.G.L. c. 30, ss. 61-62H) and with its implementing regulations (301 CMR 11.00). Additional information and analysis of alternatives is required in a Supplemental DEIR.

The proposed project consists of a mixed-use development, including 675,000 square feet (sf) of office and retail space, two restaurants, and associated infrastructure on a 79.9-acre site. A Final Record of Decision was issued August 17, 2006 allowing the Phase I portion to proceed to permitting prior to completion of an EIR for the entire project. Phase I includes 15,000 sf of retail space and a 6,000 sf restaurant on a 6.6-acre portion of the site. The development proposed for the remainder of the site includes 600,000 sf of office space, 60,000 sf of retail space, and a 6,000 sf restaurant. Access to the project site is proposed from Route 20 and Ames Street, and a driveway off Glen Street. An emergency gated access is also proposed along Glen Street. The project site, which is the location of a former apple orchard, is currently undeveloped and predominantly wooded with extensive wetlands areas. Millham Brook, a tributary to a public water supply, traverses the site. The brook and Bordering Vegetated Wetlands (BVW) on the site are considered as Outstanding Resource Waters (ORW).

According to the DEIR, the project will result in creation of 25.4 acres of new impervious area and alteration of approximately 35.5 acres of land, 2,305 square feet of isolated vegetated wetlands, 245 linear feet of Bank, and 190,200 sf of wetlands buffer zone. Water use is estimated at 92,910 gallons per day (gpd) and wastewater generation is estimated at 84,460 gpd. The proposed project involves construction of approximately two miles of new water mains and one mile of new sewer mains. Traffic impacts associated with the project are estimated at 9,765 vehicle trips for a typical weekday and the project includes construction of 2,515 parking spaces.

The project is undergoing MEPA review and is subject to a mandatory EIR pursuant to Section 11.03 (1)(a)(2) of the MEPA regulations because it involves creation of 10 or more acres of impervious area, and pursuant to Section 11.03(6)(b)(a)(6) and (7) because it will result in generation of 3,000 or more new average daily trips (adt) and construction of 1,000 or more new parking spaces. The project is also undergoing MEPA review pursuant to Section 11.03(3)(b)(1) because it involves alteration of 25 or more acres of land, Section 11.03(3)(b)(c) because it may involve alteration of 1,000 sf or more of outstanding resource waters (ORW), and Section 11.0(5)(b)(3)(c) because it involves construction of ½ or more miles of sewer mains.

The project requires an Access Permit from the MassHighway Department (MHD) for access onto Route 20. Other permits required include a Sewer Connection/Extension Permit and a Water Supply Distribution System Modification Permit from the Massachusetts Department of Environmental Protection (MassDEP). The project requires an Order of Conditions from the City of Marlborough (and, on appeal only, a Superseding Order from DEP). The project may require pre-construction permits pursuant to MassDEP Air Quality Control Regulations. The project will require a National Pollutant Discharge Elimination System (NPDES) Construction Activities Permit from the US Environmental Protection Agency (EPA).

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 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, air quality, wastewater, wetlands and water quality, water supply, land, stormwater and drainage.

### Review of the DEIR

Previous MEPA review of the development plan presented in the ENFs<sup>1</sup> determined that the scale of proposed development and nature of the project site, in terms of its topography and wetland resources, and the downgradient public water supply, warrants consideration of alternative site designs and mitigation measures, consistent with the proponent's obligation to demonstrate that its preferred alternative avoids, minimizes and mitigates impacts to the maximum extent feasible. Accordingly, the Certificate on the ENF required the proponent to

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<sup>1</sup> The proponent filed two ENFs (EEA# 13755 and 13756), one for the Beacon at 495 project and another for the proposed retail development (Phase I). The Certificate on the ENF (dated May 17, 2006) determined that the development proposed in ENFs #13755 and 13756 constitutes one project, that an EIR should be prepared that considers the cumulative impacts of the entire project, and that future filings should use the EOE # 13755 reference number.

include analysis of an alternative in the DEIR that meaningfully reduced the scale of impacts through the incorporation of avoidance, minimization and mitigation measures. The Certificate identified Low Impact Development (LID) measures, generically, as a suite of appropriate measures to guide the proponent's alternatives analysis.

In response, the DEIR describes two development alternatives that have been evaluated by the proponent. The preferred alternative, Alternative 1 (office and retail), is essentially the same as the development proposed in the ENF. According to the DEIR, minor modifications in layout were made to eliminate site disturbance within the 50-foot no disturb zone of BVW and the 200-foot Riverfront Area. Alternative 2 (Mixed Use) includes a similar site layout as the preferred alternative with the same retail and restaurant components; the main difference between Alternative 2 and the preferred alternative is that office space in the northeastern part of site is replaced with multi-family residential units. The proposed project design has not changed significantly since the filing of the Environmental Notification Form (ENF).<sup>2</sup>

## SCOPE

### General

The proponent should prepare a Supplemental DEIR in accordance with the general guidance for outline and content found in Section 11.07 of the MEPA regulations as modified by this Scope. The Supplemental DEIR should include an existing conditions plan delineating resources and abutting land uses for the entire project area and proposed conditions plans (for the preferred and other alternatives evaluated) that include all proposed structures. Plans should be provided at a reasonable scale to facilitate review and comment. The Supplemental DEIR should clarify project changes since the DEIR filing.

### Alternatives

The Supplemental DEIR should present an alternative in the DEIR that reduces the scale of impacts through the incorporation of meaningful avoidance, minimization and mitigation measures. The Supplemental DEIR should evaluate Low Impact Development (LID) measures – themselves designed to capture the range of means by which a proponent can achieve project objectives with a lighter environmental touch – to a level of detail appropriate for a Draft EIR and provide a rationale to explain why certain site design and minimization and mitigation measures are selected and others ruled out from further consideration.<sup>3</sup> The Supplemental DEIR should describe and compare the impacts and feasibility of alternatives presented as the basis for a determination that the preferred alternative avoids, minimizes and mitigates impacts to the maximum extent feasible.

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<sup>2</sup> The estimates of land alteration, impervious area, and transportation impacts are reduced in the DEIR compared with the ENF filing. Based on consultations with the proponent, I have confirmed that the reduction in impact estimates is a result of more refined calculations by the proponent.

<sup>3</sup> I note that the project will be required to comply with MassDEP's revised Stormwater Management Standards (January 2008), which themselves require an analysis of applicable LID measures as a precursor to implementation of structural stormwater management measures.

I also note that EOT has indicated in its comment letter that the mitigation proposed in the DEIR for two state highway intersections provides little or no improvement over the build condition. I concur with, and adopt as a component of the scope, EOT's comment that the proponent should investigate other feasible means to mitigate these locations, including the potential phasing of the development, and propose mitigation measures to minimize the impacts of the project. As a component of that analysis, I expect the proponent to first evaluate measures to avoid and minimize project-related traffic generation. The SDEIR should also provide additional information in response to EOT's comment regarding the need to mitigate project-related impacts to the I-495/Simarano Drive interchange. The alternatives analysis described above should incorporate and be responsive to these issues.

### Response to Comments

The Supplemental DEIR should include a copy of this Certificate and the comment letters received. The Supplemental DEIR should respond to comments within the scope of this Certificate. This directive is not intended to, and shall not be construed to, enlarge the scope of the Supplemental DEIR beyond what has been expressly identified in this Certificate.

### Mitigation and Section 61 Findings

The Supplemental DEIR should include a revised mitigation chapter to reflect changes since the DEIR and mitigation commitments. As noted in several comment letters received, many of the mitigation measures identified in the DEIR are presented as possibilities rather than commitments. I expect and require more clear commitments to mitigation in the Supplemental DEIR. The supplemental DEIR should also include revised Section 61 Findings as appropriate to reflect changes in mitigation commitments.

### Circulation

The Supplemental DEIR should be circulated in compliance with Section 11.16 of the MEPA regulations and copies should be sent to the list of "comments received" below, to state agencies from which a permit or approval will be required, and to the City of Marlborough. A copy of the Supplemental DEIR should be made available for public review at the Marlborough Public Library.

May 16, 2008

DATE



Ian A. Bowles, Secretary

### Comments Received:

5/6/08 Mary Black

5/6/08 Aristotelis and Valerie Tzimoulis

5/6/08 Ernest Black

5/7/08 Francis and Marie Bedard

5/8/09 City of Marlborough Conservation Commission  
5/8/09 Councilor Patricia Pope  
5/8/08 Ronald L. Bucchino  
5/8/08 Karen and Jim Gosselin  
5/9/08 City of Marlborough, Department of Public Works  
5/9/08 Metropolitan Area Planning Council  
5/9/08 MetroWest Growth Management Committee  
5/9/08 Councilor Scott D. Schafer  
5/9/08 Scott David Gray  
5/9/08 Jamey and Alyse Giancola  
5/9/08 Donald and Mary Whitten  
5/9/08 Sarah and Steve Atwood  
5/9/08 Anne Krohn  
5/9/08 Jacqueline Locie  
5/9/08 Stephanie Vilensky  
5/9/08 Christopher Wydom  
5/9/08 Carol Mitchell  
5/9/08 Margaret T. McDougall  
5/9/08 Akuete W. Sossavi  
5/9/08 Ritul Patel  
5/9/08 Diane and John Candido  
5/9/08 Elaine Garcia  
5/9/08 Concerned Resident at 8 Conrad Road  
5/9/08 Francis O'Reilly  
5/9/08 J. Reynolds  
5/9/08 Ellen Gallagher  
5/9/08 Edward Mulvey  
5/9/08 John Cinelli  
5/9/08 Karen Cinelli  
5/9/08 Joanie O'Brien  
5/9/08 Denis G. Denommee  
5/13/08 Executive Office of Transportation

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