



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>

May 18, 2007

DRAFT RECORD OF DECISION

PROJECT NAME : True North Commerce Center
PROJECT MUNICIPALITIES : Salisbury
PROJECT WATERSHED : Merrimack River
EOEA NUMBER : 14002
PROJECT PROPONENT : True North, LLC
DATE NOTICED IN MONITOR : April 11, 2007

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 Expanded Environmental Notification Form (ENF) and hereby **propose to grant** a waiver that will allow the proponent to proceed with Phase 1 of the project prior to preparing a mandatory Environmental Impact Report (EIR) for the entire project.

Project Description

As described in the Expanded ENF the proposed project consists of the construction of 600,000 square feet of industrial park space (including light manufacturing, product distribution and office space), and 266 associated parking spaces. Phase I will include the construction of an 18,000 square foot distribution facility; Phase II development will include the remaining 582,000 square feet of industrial space. The project is located on a 51-acre undeveloped parcel, within the I-95/Route 110 northeast quadrant and southeast of the I-495/I-95 interchange. Access to the site is provided via a full-access driveway on Rabbit Road.

MEPA Jurisdiction

The project is undergoing MEPA review and is subject to a mandatory EIR pursuant to Section 11.03 (1)(a)(2) and Section 11.03(6)(a)(6) of the MEPA regulations because it involves creation of 10 or more acres of impervious area and it will result in generation of 3,000 or more new average daily trips (adt). In addition, the project exceeds ENF thresholds for wastewater and wetland alterations. The project requires an Access Permit from the MassHighway Department (MHD). Other permits required include a 401 Water Quality Certificate and a Sewer Connection/Extension Permit from the Department of Environmental Protection (MassDEP).

The project may also require a Water Supply Distribution System Modification Permit from MassDEP. The project requires an Order of Conditions from the Town of Salisbury (and, on appeal only, a Superseding Order from MassDEP). 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, water supply, land, stormwater and drainage.

Summary of Potential Environmental Impacts

Phase I will include the construction of an 18,000 square foot distribution facility and a roadway. As currently designed the proponent proposes to construct a 2,600 linear foot roadway within a 50 foot Wide Right-of-Way. The roadway layout has been configured to avoid direct alteration to on-site jurisdictional wetland resources. The roadway extends eastward to a 90 foot paved cul-de-sac, which will provide vehicle turnaround location. Phase I will result in alteration of approximately 5 acres of the 51-acre site.

Summary of Proposed Mitigation Measures

1. Traffic impacts associated with Phase I will be adequately mitigated. The proponent has committed to transportation improvements. The proponent should continue consultations with MHD to finalize the Phase I mitigation plan.
2. The proponent has committed to construction of a stormwater management system to comply with MassDEP's Stormwater Management Policy. However, the stormwater management report in the EENF indicates that the post development peak rates of runoff are higher than existing peaks. This information shows that the project will not be in compliance with the MA Stormwater Management Policy Standard 2, which requires that peak rates of runoff not exceed pre-existing site conditions. Peak rate reductions can be achieved by eliminating road pavement and/or increasing the detention capacity of the stormwater control system. I advise the proponent to work closely with MassDEP to resolve this issue prior to permitting. The proponent should make every effort to maximize retention and infiltration of storm water runoff on site and avoid connections to the State Highway drainage system if possible. The proponent should consult with MHD to ensure that the proposed stormwater management system meets MHD requirements. As Phase I proceeds, I encourage the proponent to evaluate opportunities to minimize impervious area and incorporate Low Impact Development (LID) techniques and other sustainable design measures such as Leadership in Energy and Environmental Design

(LEED) Certification for new construction.

Waiver Request

The proponent has requested a waiver from the requirement to prepare an EIR. An Expanded ENF was submitted in conjunction with this request that identifies the environmental impacts of the project and describes measures to be undertaken by the proponents to avoid, minimize and mitigate project impacts.

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 a Phase 1 Waiver

The MEPA regulations at 301 CMR 11.11(4) state that, in the case of a partial waiver of a mandatory EIR review threshold that will allow the proponent to proceed with Phase 1 of the project prior to preparing an EIR, I shall base the finding required in accordance with 301 CMR 11.11(1)(b) on a determination that:

- (a) the potential environmental impacts of Phase 1, taken alone, are insignificant;
- (b) ample and unconstrained infrastructure facilities and services exist to support Phase 1;
- (c) the project is severable, such that Phase 1 does not require the implementation of any other future phase of the project or restrict the means by which potential environmental impacts from any other phase of the project may be avoided, minimized or mitigated; and
- (d) the agency action(s) on Phase 1 will contain terms such as a condition or restriction, so as to ensure due compliance with MEPA and 301 CMR 11.00 prior to commencement of any other phase of the project.

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 meets the standards for all waivers at 301 CMR 11.11(1). I find that strict compliance with the requirement to submit a mandatory EIR prior to implementation of Phase 1 of the project would result in an undue hardship for the Proponent because the Expanded ENF proposes measures to avoid and minimize Damage to the Environment, and commits to providing adequate mitigation for Phase I project impacts. In

addition, I have conditioned this proposed Phase I Waiver on compliance with MassDEP requirements as further detailed below and in the comment letter received. Therefore, the requirement for completion of an EIR prior to Phase I is not necessary and would not serve to avoid or minimize Damage to the Environment. In accordance with 301 CMR 11.11(3), the latter finding is based on my determination that:

- (a) The potential environmental impacts of Phase 1, taken alone, are insignificant.
 - Phase 1 does not exceed any of MEPA's review thresholds.

- (b) Ample and unconstrained infrastructure facilities and services exist to support Phase 1.
 - The Town of Salisbury will extend infrastructure facilities along Old Elm Street and Rabbit Road, beyond the site's proposed access point off Rabbit Road prior to completion of Phase 1 activities.
 - The Executive Office of Transportation (EOT) is satisfied that Phase I development can be accommodated within the state transportation system and does not object to the proponent's request for a Phase I Waiver.

- (c) The project is severable, such that Phase 1 does not require the implementation of any other future phase of the project or restrict the means by which potential environmental impacts from any other phase of the project may be avoided, minimized or mitigated.
 - Phase 1 has been developed to avoid direct alteration federal, state and locally jurisdictional wetland resource areas.
 - Construction of Phase 1 is not dependent on other phases of the project.
 - Implementation of Phase 1 does not require the implementation of any future phase of development and will not restrict the means by which other potential environmental impacts may be avoided, minimized and mitigated. Phase I will result in alteration of approximately 5 acres of the 51-acre site. An alternatives analysis for the remainder of the project site will be included in the Draft EIR providing opportunities to consider alternative levels of development and site configurations, and other measures to avoid and minimize, or mitigate environmental impacts from any other phase of the project.

- (c) The agency actions on Phase 1 will contain terms such as a condition or restriction, so as to ensure due compliance with MEPA and 301 CMR 11.00 prior to commencement of any other phase of the project.
 - Phase 1 of the project will include agency actions as indicated by Department of Environmental Protection's (MassDEP) comment letter on the Expanded ENF.
 - The agency actions for Phase 1 will include an Access Permit from the MassHighway Department (MHD) and a Sewer Connection/Extension Permit from the Department of Environmental Protection (MassDEP).
 - However, as a condition of the Phase 1 Waiver MassDEP has requested, and I

concur, that the proponent design a narrower road width alternative within the project site to minimize the amount of imperviousness and reduce stormwater runoff. Therefore, prior to permitting, the proponent should work closely with MassDEP and design a road width no wider than the minimum allowed by municipal regulation.

These permits and approvals provide sufficient opportunities to address any outstanding information requests or the development of additional, specific mitigation.

The proponent must submit a Draft EIR in accordance with the Scope in the Certificate on the Expanded ENF.

Conclusion

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 May 23, 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 June 6, 2007. Based on written comments received concerning the DROD, I shall issue a Final Record of Decision 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, which will allow the proponent to proceed with Phase 1 of the project prior to preparing a mandatory Environmental Impact Report (EIR) for the entire project, subject to the above findings, and conditions, if applicable.

May 18, 2007
Date

Ian A. Bowles

Comments Received:

- 05/11/07 Department of Environmental Protection, NERO
- 05/15/07 Executive Office of Transportation, MassHighway

IAB/ACC/acc