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September 28, 2007

DRAFT RECORD OF DECISION

PROJECT NAME : Route 20 and Cherry Street
PROJECT MUNICIPALITIES : Shrewsbury
PROJECT WATERSHED : Assabet River
EOEA NUMBER : 14093
PROJECT PROPONENT : Polito Development Corporation
DATE NOTICED IN MONITOR : August 22, 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 includes the construction of eight new buildings for commercial office and warehouse use and expansion of the existing commercial building on site. The project entails the expansion of 188,200 square feet of industrial park, which will be constructed in two phases. Phase I entails the construction of four structures, a new site driveway (Drive A) off Cherry Street and a portion of the existing site driveway (Drive B) off Route 20. Phase II entails the completion of Drive B and the remaining structures. Phase I of the project is expected to generate 536 vehicle trips on an average weekday. At full build out the project is expected to generate an additional 1,258 new vehicle trips on an average weekday for a total of 1,694. The development will be served by private utilities including gas and electrical. Upon project completion, there will be 16.1 acres of impervious area within the 26 acre site. A connection to the municipal water system will be made in Cherry Street and will serve all proposed buildings on-site. Additionally, the project is expected to generate 8,200 gallons per day of wastewater when complete.

MEPA Jurisdiction

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. In addition, the project exceeds ENF thresholds for transportation impacts. The project requires an Access Permit from the MassHighway Department (MHD). 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 and land impacts.

Summary of Potential Environmental Impacts

The project entails the expansion of 188,200 square feet of industrial park, which will be constructed in two phases. Phase I entails the construction of four structures, a new site driveway (Drive A) off Cherry Street and a portion of the existing site driveway (Drive B) off Route 20. Phase I of the project is expected to generate 536 vehicle trips on an average weekday. The development of Phase I would result in a total of 7.1 acres of impervious surface area that includes 77,000 square feet of building space in four buildings with 111 parking spaces to serve those buildings.

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. I advise the proponent to work closely with MassDEP to resolve any issues that may arise related to stormwater management 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 for Phase I. 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 I 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 MHD 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 I of the project is expected to generate 536 vehicle trips on an average weekday.

The development of Phase I would result in a total of 7.1 acres of impervious surface area that includes 77,000 square feet of building space in four buildings with 111 parking spaces to serve those buildings.

- Phase I of the development exceeds the MEPA ENF threshold of the creation of 5 or more acres of impervious surface area. No other thresholds are exceeded.

(b) Ample and unconstrained infrastructure facilities and services exist to support Phase I.

- The Executive Office of Transportation (EOT) MHD is satisfied that the Phase I development can be accommodated within the state transportation system and supports 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.

- 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 7.1 acres of the 26-acre site.

(d) The agency actions on Phase I 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 MHD's comment letter on the Expanded ENF.
- The agency actions for Phase I will include an Access Permit from the MassHighway Department (MHD).
- As a condition of the Phase 1 Waiver the proponent should respond to the comments received from Massachusetts Highway Department (MHD) pertaining to MHD's concerns that a number of access management issues remain that must be resolved. Therefore, prior to permitting, the proponent should work closely with MHD's Public/Private Development Office to address these issues.
- The permit provides sufficient opportunities to address any outstanding information requests or the development of additional, specific mitigation.

The proponent must submit a Single 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 October 9, 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 October 23, 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.

September 28, 2007

Date

Ian A. Bowles

Comments Received:

09/05/07	Department of Environmental Protection, NERO
09/19/07	Executive Office of Transportation, MassHighway
09/21/07	Town of Shrewsbury, Eric Denoncourt

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