

**Record of Decision
King Street Properties Acquisitions, LLC.
Preliminary Site Enabling Work
111 Hospital Road
Devens (Harvard), MA (Parcel ID#018.0-0007-0200.0)
Unified Permit
November 17, 2020**

1. Applicant/Owner:

The Applicant is King Street Properties Acquisitions, LLC.. The landowner is MassDevelopment Finance Agency, 99 High Street, Boston, MA 02110 (Deed Reference: Bk 26317 pg. 003).

2. Premises and Proposed Project:

The Applicant is seeking a Level 2 Unified Permit to conduct preliminary site work (clearing, grading, utility removal and installation) for the future development of an 11-acre portion of this +/- 47 acre parcel. Property located at 111 Hospital Road, Devens (Harvard), MA in the Innovation and Technology Business District, as well as the Aquifer and Watershed Water Resources Protection Overlay Districts.

3. Submission:

The following is a list of exhibits included as part of the record for this Application:

1. Cover Letter from Douglas Hartnett to Peter Lowitt, Re: 111 Hospital Road – Level 2 Unified Permit Application Phase 1 Site Enabling and Utility Construction; dated October 8, 2020 (1 page);
2. Unified Permit Application Package entitled: “Application for Level 2 Unified Permit, Manufacturing Building Phase 1 - Site Enabling and Utility Construction; dated October 8, 2020, prepared by Highpoint Engineering, Inc., 45 Dan Road, Suite 140, Canton, MA (67 pages);
3. Site Plans entitled: “111 Hospital Road – Site and Utility, Enabling Construction, Devens, Massachusetts; Level 2 – Unified Permit Submission date: October 8, 2020, prepared by Highpoint Engineering, Inc., 45 Dan Road, Suite 140, Canton, MA; including the following sheets:
 - T100 Title Sheet
 - C100 Site Context
 - C200 Existing Conditions Plan
 - C300 Soil Erosion & Sedimentation Control Plan
 - C400 Grading & Earthwork Plan
 - C500 Site utility Plan
 - C600 Construction Details
4. Determination of Completeness Issued October 13, 2020;
5. Public Hearing Notice Memo to Town Clerks of Ayer, Harvard, Shirley, Lancaster and MassDevelopment, from Peter Lowitt, dated October 27, 2020;
6. Public Hearing Legal Notice e-mail to Nashoba Publications, from Peter Lowitt, dated October 13, 2020 – to be published October 23 and 30, 2020;
7. Copies of Legal notices from October 23 and 30, 2020 Nashoba Valley Voice;
8. Public Hearing Notice emailed to Community Service Cable Committee, from Peter Lowitt/Kate Clisham, dated October 27, 2020, to run Oct. 27 through Nov. 17, 2020;

9. Memo dated October 13, 2020 from Peter Lowitt to Towns of Ayer, Harvard and Shirley Board of Selectman and Planning Board; Re: Level 2 Unified Permit Application – 111 Hospital Road, Phase 1 (notification of Public Hearing on November 17, 2020 at 6:45PM), including return receipts;
10. Memo dated October 19, 2020 from Peter Lowitt to Abutters and Interested Parties; Re: 111 Hospital Road, Phase 1 (notification of Public Hearing on November 17, 2020 at 6:45PM), including return receipts;
11. Public Hearing Notice to Secretary of State, from Peter Lowitt, dated October 27, 2020;
12. 111 Hospital Road Plan Circulation memo dated November 12, 2020 from Neil Angus to MassDevelopment.
13. Staff Report dated November 13,2020 Re: 111 Hospital Road – Commonweathl Fusion Systems Level 2 Unified Permit Site Enabling Work, prepared by Neil Angus (4 pages);
14. Review comments from Mark Cohen, Devens Utilities dated 11-13-20.
15. 111 Hospital – Grant Road Housing Area Land Use implementation Control Plan, dated May 2011, prepared by Army Base Realignment and Closure Division, US Army Garrison Fort Devens (56 pages);
16. 111 Hospital Road Notice of Activity and Use Limitation, dated Dec. 2, 2016 (67 pages);
17. 111 Hospital –Final LUCIP Addendum – Former Oak Maple Housing Area; dated December 19, 2020 (51 pages);
18. 111 Hospital Topsoil Analysis UConn, dated 10/1/20 (22 Pages);
19. Supplemental Submission Cover Letter from Doug Hartnett to Peter Lowitt, dated October 27, 2020 (2 pages);
20. E-mail correspondence as follows:

Date	From	To	Subject
11/13/20	Mark Cohen	Neil Angus	RE CFS Site Enabling Work Level 2 Unified Permit
10/26/20	Peter Lowitt	Doug Hartnett	RE 111 Hospital - Level 2 Enabling Submission - Determination of Completeness
10/13/20	Amanda S	Kate Clisham	Re Public Notice
10/13/20	Kate Clisham	Legals Advertising	Public Notice to NVV 10-13-2020
11/16/20	Neil Angus	Doug Hartnett	RE: 111 Hospital - L2 Enabling Staff report
11/13/20	Doug Hartnett	Neil Angus	FW: CFS-1 Entrance

21. .Draft Record of Decision – CFS 11-17-20 (7 pages).

4. Unified Permit Components and Actions:

The Unified Permit request includes Site Plan Approval to conduct preliminary site work (clearing, grading, utility removal and installation) for the future development of an 11-acre portion of this +/- 47 acre parcel in the Innovation and Technology Business District, as well as the Aquifer and Watershed Water Resources Protection Overlay Districts.

5. Process:

The application was submitted on October 8, 2020 and the Determination of Completeness was issued on October 13, 2020. Copies of the application were received by the surrounding Towns on October 16, 2020. Legal notices were placed in Nashoba Publications on October 23 and 30, 2020. All abutting property owners were duly notified by certified mail. The 30-day Town comment period expired on November 16, 2020. No comments were received from the surrounding towns. The Public Hearing opened on November 17, 2020 and closed at that same meeting.

6. Waivers

The following waiver was requested as part of this Unified Permit Amendment:

974 CMR 3.02: 3 (b) 6 (a) - Existing and proposed landscape features such as street trees, fences, walls, planting areas, wooded areas, and walks. Scattered trees to be preserved shall also be shown as well as all "specimen trees" (trees exceeding a minimum caliper of 12") within 100' of existing or proposed lot lines shall be identified and indicated on the plan. All existing landscape features, especially existing trees and woodland to remain, shall be shown on ALL site plan sheets, such as site preparation and demolition, layout, grading, utilities, and erosion control, as well as planting plans, landscaping plans, planting plans, planting detail sheets, landscape maintenance plans, and planting specifications shall be prepared by a landscape architect registered in the Commonwealth of Massachusetts and shall bear the seal and signature of the registered landscape architect who prepared them.

The Applicant seeks a waiver from the requirement to show all specimen trees exceeding 12” caliper within 100’ of existing and proposed lot lines on the Plans, and from the requirements for a Registered Landscape Architect to prepare the Plans depicting tree preservation and removal locations.

The Commission voted _____ to grant the requested waiver.

7. Findings

The DEC made the following findings:

1. The proposed preliminary construction activity is associated with an allowed use and the existing lot size and frontage are in accordance with the minimum requirements for development within the Innovation and Technology Business District.
2. Regarding the approval criteria listed in 974 CMR 3.03(2):
 - (a) The Site Plan, with conditions, complies with 974 CMR 3.00 and with the applicable provisions of the By-Laws.
 - (b) The development lies on a lot that is recorded at the Registry of Deeds;
 - (c) The application is Complete.
 - (d) All drives, parking lots, loading areas, paths, sidewalks, and streets are designed to provide for safe vehicular and pedestrian travel.
 - (e) Access and site circulation enables prompt fire, police, and emergency response.
 - (f) Adequate capture, treatment, infiltration and discharge of stormwater and surface water runoff and compliance with applicable portions of the "Devens Stormwater Pollution Prevention Plan", has been included in the design.
 - (g) Connections with utility, power and communication systems are available within the site and abutting areas. Conditional modifications to these systems have been approved by Devens Utilities.
 - (h) Facilities required under the Water Resources Protection Bylaw and the related Design Standards have been included.
 - (i) The plans, with conditions, are in compliance with the Landscaping Design Standards 974 CMR 3.04(8).

- (j) A Wetlands Order of Conditions is not required for this project.
- (k) Industrial Performance Standards will be adhered to as part of this project.
- (l) Sufficient parking for current needs will be provided.
- (m) Traffic control measures are not required for this project.
- (n) The proposed future development will be required to participate in the Devens traffic management association.
- (o) Adequate water supply exists in terms of quantity, quality, and water pressure for domestic needs and fire protection.
- (p) Connection and modifications to sanitary sewers has been conditionally authorized by Devens Utilities.
- (q) There are no new buildings proposed as part of this project and therefore no Mass Development design standards to meet for this lot.
- (r) Soil testing and investigations indicate that the soils are capable of supporting future development.
- (s) The preliminary site work has been designed with due consideration for public health.
- (t) Adequate climate change mitigation, adaptation and greenhouse gas emissions mitigation measures have been included as conditions in accordance with 974 CMR 4.11.

8. Conditions:

The DEC voted to impose the following conditions:

1. Wherever “Applicant” is referenced in the Conditions set forth herein, it refers to the Applicant, its successors and assigns. Wherever “DEC” is referenced, it shall refer to the Devens Enterprise Commission, its successors and assigns.
2. In accordance with the Devens By-Laws, Article III, Section K 1. a., no soil, loam, sand, gravel, or other earth materials are permitted to be removed from this lot, except in accordance with the Devens Soil Management Policy and approval from the DEC. All earthwork shall comply with the Land Use Implementation Control Plans for the Oak and Maple Housing Areas and Grant Road Housing Area. The property is also subject to the Activity and Use Limitation (AUL) issued by MassDevelopment, dated December 2, 2016. A Soil Management Plan is required be prepared and submitted by a Licensed Site Professional for the Oak/Maple Activity AUL. A Health and Safety Plan will also be required to be prepared and submitted by a Certified Industrial Hygienist or other qualified individual summarizing appropriate personal protection, engineering controls, and environmental monitoring to prevent worker exposures to contaminated soil associated with the Oak/Maple AUL. Copies of these plans shall be submitted to the DEC prior to commencement of construction.
3. Prior to commencing any intrusive earth work within Devens (due diligence, construction of otherwise) all personnel to be on site shall view an Unexploded Ordinance/Munitions of Explosive Concern (UXO/MEC) video briefing provided by the Devens Fire Department.

4. Once the appeal period has expired, the Applicant shall submit final approved plans to the DEC for endorsement. The Applicant shall file the endorsed plans and the final Record of Decision with the Registry of Deeds and proof of recordation shall be submitted to the DEC prior to the commencement of construction. Plans shall conform to Worcester Registry recording requirements.
5. All applicable federal, state, and local permits necessary for construction must be obtained prior to the start of construction. Copies of permits issued by those other than the DEC must be filed with the DEC prior to commencement of any activity on the site. This includes, but is not limited to a Construction General Permit from the US Environmental Protection Agency (EPA). A Stormwater Pollution Prevention Plan will also be required in accordance with EPA guidelines and the Devens Stormwater Pollution Prevention Plan requirements. These plans shall include all the erosion controls and notes required by the DEC [974 CMR 3.02(3)(e)5.], including details on construction laydown areas, on-site fuel storage and refueling of construction equipment, as well as a spill prevention and control measures plan..
6. The Applicant shall notify the DEC in writing seven or more days prior to the completion of the following construction milestones:
 - a. completion of the site grading and site work;
 - b. completion of all site improvements as shown on the approved site plan;
 - c. final site stabilization.
7. Prior to commencement of construction, the Applicant shall provide a copy of the Right-of-Entry Agreement from the property owner.
8. Prior to commencement of any vegetation removal, limits of disturbance shall be flagged in the field and inspected by DEC Staff. All necessary erosion controls and construction fencing shall also be installed and inspected by DEC Staff prior to any earthwork. Erosion controls and construction fencing shall be maintained at all times, including dust control and temporary stabilization measures to prevent trespassing, offsite migration of materials and nuisance conditions.
9. No dewatering activity is permitted within 50 feet of the top of any Slope Resource Area.
10. Prior to activation, the new proposed easterly construction entrance shall be evaluated by a traffic engineer to ensure there is adequate sight distance for vehicles to safely turn in and out of the site – to the satisfaction of the Devens Public Safety Officer.
11. Prior to commencement of any activity on site, the Applicant shall post a performance guarantee for re-stabilization and re-planting all cleared/disturbed areas. The performance guarantee shall comply with 974 CMR 1.13 and be in an amount acceptable to the DEC to cover the full costs of re-stabilization of all disturbed areas and tree replacement planting in the event work on the site is discontinued and the project ceases to move forward.
12. In the event the Applicant commences preliminary site work and then abandons the project, the Applicant shall:
 - Physically remove all materials and equipment;
 - Restore and fully stabilize the site to the satisfaction of the DEC.Failure to do so may result in the DEC utilizing the Performance Guarantee to complete the required removal and restoration. “Abandon”, in this case, shall mean that any site

approvals have expired and there is no construction activity taking place on the property. This performance guarantee requirement expires when a Level 2 Unified Permit for further construction is issued for the site and that construction commences.

- 13. Prior to DEC endorsement, the final plans shall be revised to include the following:
 - All comments in the 11/13/20 e-mail from Mark Cohen of Devens Utilities.
 - The limits of clearing shall be adjusted in the area along Hospital Road, west of the new easterly access drive as depicted in the November 13, 2020 Staff Report from Neil Angus to the DEC.

9. Decision:

The DEC closed the public hearing on November 17, 2020 and voted to issue findings, including that the application complied with Approval Criteria in 974 CMR 3.03(2), to impose conditions, and to approve the Site Plan Approval to conduct preliminary site work (clearing, grading, utility removal and installation) for the future development of a +/-11 acre portion of the +/- 47 acre parcel located at 111 Hospital Road.

10. Building Permit

The Building Commissioner, along with the Electrical and Plumbing Inspectors, must review drawings and specifications and approve them in writing, prior to issuance of any building permits for any temporary trailers or buildings associated with construction. All requirements in the Massachusetts Building Code, the Massachusetts Sanitary Code, and those of the State Fire Marshalls office and the Devens Fire Chief must be met. When these approvals are obtained, the building permit may then be integrated with this Site Plan Record of Decision. Together they will constitute the Unified Permit, which will in turn, allow construction to commence.

11. Permit Duration

In accordance with 974 CMR 1.10, unified permits shall remain in effect so long as the approved activities are commenced within six months of the date of the DEC’s written decision and completed within two years. It is further noted that a thirty-day “reconsideration period” during which an applicant, a Town, or an aggrieved person may request the DEC reconsider its action (By-Laws, Article IV, Sections C through F). Work performed during this period, which begins on November 18, 2020 and terminates December 19, 2020, is “at risk”. Final plans must be submitted to the Commission for endorsement by May 18, 2020.

Approved by:

Date: _____

Peter C. Lowitt, FAICP, Director
Devens Enterprise Commission

Certification

Middlesex,SS

I certify the above is a true action and record of the Devens Enterprise Commission and that Peter C. Lowitt, Devens Land Use Administrator/Director, is empowered by the Devens Enterprise Commission to sign this Record of Decision on its behalf.

Date

Kathryn Clisham, Notary
My Commission expires _____