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July 17, 2009

CERTIFICATE OF THE SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS
ON THE
ENVIRONMENTAL NOTIFICATION FORM

PROJECT NAME : Reconstruction of Tyringham Road
PROJECT MUNICIPALITY : Lee
PROJECT WATERSHED : Housatonic
EEA NUMBER : 14426
PROJECT PROPONENT : Town of Lee
DATE NOTICED IN MONITOR : June 10, 2009

Pursuant to the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-62I) and Section 11.06 of the MEPA regulations (301 CMR 11.00), I hereby determine that this project **does not require** the preparation of an Environmental Impact Report (EIR).

Project Description

The proposed project as described in the Environmental Notification Form (ENF) involves improvements to a 1.85-mile section of Tyringham Road in the Town of Lee. The project is being designed to address degrading road conditions and related safety issues. The proposed improvements include pavement reclamation along the majority of the road segment and some areas of full-depth reconstruction. The road will be widened in some areas to achieve a uniform width of 22 feet. Gabion retaining walls are proposed for slope stabilization in 18 sections along 5,373 linear feet of the roadway. The project includes reconstruction of the intersection of Tyringham Road and Meadow Street as well as culvert replacement and other improvements to the existing stormwater management system along Tyringham Road.

Permits and Jurisdiction

The proposed project is undergoing environmental review because requires State Agency Action and exceeds the thresholds for review specified in the following sections of the MEPA regulations: Section 11.03(3)(b)(1)(d), because it will result in alteration 5,000 square feet (sf) or more of Bordering Vegetated Wetlands (BVW); Section 11.03(3)(b)(1)(f) because it will result in alteration of one-half acre or more of other wetlands; and 11.03(6)(b)(2)(b) because it will result in cutting of five or more living public shade trees of 14 or more inches in diameter at breast height.

The project requires a 401 Water Quality Certification from the Massachusetts Department of Environmental Protection (MassDEP), an Order of Conditions from the Lee Conservation Commission (and, on appeal only, a Superseding Order from MassDEP), and may require a Chapter 91 License from MassDEP. The project is subject to review by the Division of Fisheries and Wildlife, Natural Heritage and Endangered Species Program (NHESP). The project requires a Programmatic General Permit under Section 404 of the Clean Water Act from the U.S. Army Corps of Engineers.

The project is receiving funding from the MassHighway Department. Therefore, MEPA jurisdiction is broad and extends to all aspects of the project that may cause Damage to the Environment as defined in the MEPA regulations.

Review of the ENF

The ENF includes site plans showing existing and proposed conditions as well as a description of the project site, proposed work, and project-related impacts and mitigation. During the ENF review, the Proponent (the Town of Lee) circulated supplemental information on Riverfront Area impacts and the public comment period was extended to allow review of this material.

In addition to the preferred alternative, the ENF discusses three alternatives that were considered: Alternative A - Widening and Full-depth Reconstruction; Alternative B - Reconstruction without Guard Rail Replacement; and Alternative C - the No-Build alternative. Alternative A was rejected because it would require significant fill and result in greater environmental impacts compared with the preferred alternative. Alternative B would result in reduced environmental impacts but it would not meet applicable safety standards. The no-build alternative was ruled out because it would result in continued degradation of the roadway and related safety problems.

Wetlands and Waterways

The proposed reconstruction of Tyringham Road, which is located along the Housatonic River, will result in alteration of approximately 13,000 sf of BVW and 56,750 sf of Riverfront Area. The BVW impacts are related to construction of the gabion retaining walls (1,195 sf BVV) and the remaining impacts are associated with impacts to existing drainage swales and construction of the proposed drainage system. The Town proposes wetlands replication for BVW

impacts at a 1:1 ratio for the gabion wall impacts, and will provide in-situ replacement for disturbance to other BVW areas.

As noted in the MassDEP comment letter, the project is subject to the Wetlands Protection Act and its associated regulations. The Limited Project provisions may be applicable to the project and the Town's Notice of Intent (NOI) application to the Conservation Commission should provide details related to these provisions. I refer the Town to MassDEP's comment letter for additional information on guidance on performance standards and delineation of jurisdictional areas. The site plans for the project should be modified to show the boundaries of the Lower Floodplain and the Town should ensure that compensatory flood storage is adequately provided.

In its 401 Water Quality Certification application to MassDEP, the Town will be required to provide additional information sufficient to adequately describe cumulative impacts to Waters of the United States within the Commonwealth (BVW, Isolated Vegetated Wetlands, and Land Under Water) and to describe how impacts will be avoided, minimized and mitigated.

The Town should consult with MassDEP regarding the Chapter 91 permit process, which may be applicable because the project involves construction below the High Water Mark of a "Non-tidal, Navigable River or Stream". The Massachusetts Public Waterfront Act may also apply. The proponent should submit a Request for Determination of Applicability to the Boston Office of MassDEP or submit a Waterways License Application, for a General License, to the MassDEP Western Regional Office.

The Berkshire Regional Planning Commission (BRPC) has submitted detailed comments and recommendations, which I expect the Town and state agencies will consider during design review and project permitting. As recommended by BRPC, the Town should minimize alteration in Riverfront Area, including the extent of gabion walls, to the extent feasible.

Floodplain

The project involves activities with the 100-year floodplain and floodway of the Housatonic River. I refer the proponent to the comment letter from the Department of Conservation and Recreation (DCR) Flood Hazard Management Program (FHMP) for guidance on applicable federal, state and local regulations and other requirements pertaining to development within the 100-year floodplain. As noted by FHMP, if the project involves any federal action, it must comply with the federal Executive Order 11988, Floodplain Management.

Endangered Species

The NHESP has determined that a portion of the project is located within or near Priority and Estimated Habitat of the following state-listed species, which are Endangered or of Special Concern: Stygian shadowdragon (*Neurocordulia yamaskanensis*); Longnose sucker (*Catostomus catostomus*); Fen sedge (*Carex tetanica*); and American bittern (*Botaurus lentiginosus*). The NOI submitted to the Conservation Commission should also be submitted to NHESP for review in compliance with the Massachusetts Wetlands Protection Act Regulations (310 CMR 10.58(4)(b))

and 10.59). The proponent should also provide supporting documentation to NHESP pursuant to the Massachusetts Endangered Species Act (MESA) (MGL c131A) and its implementing regulations (321 CMR 10.00). The NHESP anticipates that impacts to Longnose Sucker, Stygian Shadowdragon, and American Bittern and their habitats can be avoided through adequate siltation control measures, independent construction oversight, and minor construction conditioning. To avoid impacts to Fen Sedge, the NHESP may require the proponent to conduct surveys for the plant within and adjacent to the proposed impact areas. The NHESP is currently consulting with MassHighway's Environmental Division to determine whether and when surveys for Fen Sedge should occur. The Town should be aware that timing restrictions may apply to the survey window for this species and if the project is likely to advance in 2010, the surveys should be conducted in 2009. The Town should consult with NHESP to discuss measures to protect state-listed species and ensure that appropriate measures are incorporated in project design and implementation as required by NHESP.

Public Shade Trees

Reconstruction of the roadway will require removal of 28 public shade trees. Tree removal is needed in order to widen sections of the road and to address sight distance and other safety concerns. I encourage the Town to minimize vegetation removal to the extent feasible and, where feasible, to replace trees on-site. Where mitigation on-site is not feasible, the Town should consult with its Conservation Commission and BRPC to identify other areas where tree planting may be beneficial, and identify appropriate mitigation for vegetation removal in the Riverfront Area.

Consistency with Local and Regional Plans and Policies

The BRPC has expressed some concern about the post-construction width and appearance of the road, and notes that protection of water resources and travel corridors that exhibit scenic and natural qualities are clearly stated policies within the *Regional Plan for the Berkshires*. BRPC acknowledges that Tyringham Road is in need of repair, and that its outstanding concerns can be addressed through the upcoming public participation and permitting process. I ask that the Town consult with BRPC to discuss its comments and to identify opportunities to modify project design where feasible to reduce vegetation clearance and other Riverfront Area impacts, and to demonstrate consistency with the regional plan.

Stormwater Management

The Town proposes to improve the stormwater system along Tyringham Road by replacing deteriorating culverts and maintaining or improving vegetated swales. Deep-sump catch basins are proposed for sediment capture as well as measures to reduce erosion at discharge outlets.

The project should be designed and implemented to meet MassDEP Stormwater Regulations. MassDEP indicates in its comment letter that the project appears to qualify for consideration as a redevelopment project because it involves work in previously degraded Riverfront Area. The Town should ensure an Operations and Maintenance (O&M) Plan is

implemented to ensure proper functioning of the stormwater management structures and vegetated swales.

Construction Period Impacts

The Town has committed to implement erosion and sedimentation controls and a stormwater pollution prevention plan during construction. The Town should also implement measures as necessary to minimize dust, noise and odor nuisance as required by MassDEP regulations (310 CMR 7.01, 7.09, and 7.10) and to manage and dispose of solid waste pursuant to 301 CMR 16.00 and 19.00. I strongly encourage the Town to use Ultra Low Sulfur Diesel (ULSD) in construction equipment and to participate in MassDEP’s Diesel Retrofit Program to mitigate construction-related diesel emissions. I refer the Town to MassDEP’s comment letter for additional guidance on applicable regulatory requirements and best management practices. As noted by MassDEP, there are two areas with known releases of contaminants in the vicinity of the project site: Release Tracking Number (RTN) 1-17378 and RTN 1-11103. The Town should refer to MassDEP’s comment letter for information on procedures pursuant to the Massachusetts Contingency Plan (MCP – 310 CMR 40.0000) to manage any soil and/or groundwater contamination that may be encountered during excavation for the proposed project.

Conclusion

The ENF has sufficiently defined the nature and general elements of the project, and has proposed measures to avoid and minimize, or mitigate environmental impacts. I am satisfied that any outstanding issues can be addressed through the state and local permitting process. Based on review of the ENF and comments received, and in consultation with state agencies, I have determined that no further MEPA review is required. The project may proceed to state permitting.

July 17, 2009
DATE


for Ian A. Bowles, Secretary

Comments Received:

- 6/24/09 Division of Fisheries and Wildlife, Natural Heritage and Endangered Species Program
- 7/01/09 Department of Conservation and Recreation
- 7/02/09 Berkshire Regional Planning Commission
- 7/09/09 Department of Environmental Protection, Western Regional Office

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