



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>

July 31, 2009

CERTIFICATE OF THE SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS
ON THE
SECOND SUPPLEMENTAL FINAL ENVIRONMENTAL IMPACT REPORT

PROJECT NAME : Brice Lemon Estates Residential Subdivision
PROJECT MUNICIPALITY : Rutland
PROJECT WATERSHED : Ware River
EOEA NUMBER : 13019
PROJECT PROPONENT : C.B. Blair Development Corporation
DATE NOTICED IN MONITOR : June 24, 2009

As Secretary of Energy and Environmental Affairs, I hereby determine that the Second Supplemental Final Environmental Impact Report (SSFEIR) submitted on this project **adequately and properly** complies with the Massachusetts Environmental Policy Act (M.G.L. c. 30, ss. 61-62I) and with its implementing regulations (301 CMR 11.00). However, as described below, I also find that the project may not be permissible as currently designed, and may therefore require the submission of a future Notice of Project Change.

The SSFEIR has described the project's design, environmental impacts and proposed mitigation sufficiently to meet the minimum requirements for me to find it adequate. As required in the Scope for the SSFEIR, the Proponent has now evaluated project alternatives for wastewater disposal in the event that the project is unable to obtain sewer service from the Town of Rutland. However, according to comments received from the Department of Conservation and Recreation (DCR), the project continues to require a Variance from the requirements of the Watershed Protection Act (WsPA) regulations in order to proceed as designed. The Proponent will therefore be required to address a number of outstanding issues pertaining to wetlands impacts and stormwater management during DCR's review of the project under the WsPA. The resolution of these issues may require a material re-design of the project as described in the

SSFEIR. In addition, according to the comments received from MassDEP, the Town of Rutland is without sufficient capacity under its existing Water Management Act (WMA) permit to serve the project's estimated potable water supply needs. Although the project itself does not require a permit from MassDEP under the WMA, I anticipate that the project may also need to undergo further revisions to address water supply alternatives because of the current constraint on the Town's permitted water withdrawals.

As indicated above, I am allowing the project to proceed to state permitting in accordance with 301 CMR 11.08(8)(c)(1), because I find that the primary aspects and issues of the project have been clearly described and that their nature and general elements were analyzed in the SSFEIR and previous submissions, notwithstanding the fact that certain aspects of the project will require additional analysis of technical details during the permitting process. I find that these aspects and issues can be fully analyzed during agency permitting and that further review of this project under MEPA in the form of a Third Supplemental Final EIR will not materially advance the agency review of the project. However, should there be material changes to the project design presented in the SSFEIR as a result of revisions made during the permitting process, further MEPA review may ultimately be required. The Proponent should consult with the MEPA Office to determine if any future changes to the project design will require the submittal of a Notice of Project Change (NPC) to the MEPA office.¹

Project History

As originally described in the April 2003 Environmental Notification Form (ENF), the project involved the development of an 80-unit Open Space Cluster residential subdivision on a 96-acre site located off Route 122A (Main Street) in Rutland. The project included the construction of 8,848 linear feet of roadway with sidewalk, and supporting utilities and drainage infrastructure including a 40,000 gallon per day (gpd) on-site sewage pump station, and eight stormwater detention basins. The proposed project resulted in the creation of approximately 54 acres of permanent open space.

In November 2006, the Proponent submitted a Draft Environmental Impact Report

¹ The Proponent is reminded that, under the MEPA regulations at 301 CMR 11.10, any "material change" to the project described in the SSFEIR, whether made as a result of needing to redesign the project to satisfy permitting requirements or otherwise, must be the subject of a NPC filed with the MEPA Office and circulated to project commenters. The regulations further specify that, as Secretary, I shall review any NPC submitted to determine whether the project change might significantly increase environmental consequences and, if so, I shall require the NPC to be published for review and comment by the public. Based on the outcome of this review, I shall determine whether further MEPA review is required.

(DEIR) and a Notice of Project Change (NPC) that described a number of changes and modifications to the proposed project. Subsequent to the issuance of the Secretary's Certificate on the ENF (May 22, 2003), the Proponent expanded the project site to include a total of approximately 122 acres of land area through the acquisition of an additional 25.45 acre development parcel (Lemon parcel) abutting the northwestern corner of the project site. The acquisition of the Lemon parcel allowed for the proposed construction of a secondary accessway into the project site. The revised project development program also included 32 additional residential lots (112 residential lots total). The revised project would result in additional impacts to on-site wetlands resource areas, rare species habitat, potable water supply and wastewater flows, as well as traffic. The Proponent proposed to place approximately 47.3 acres of the project site comprised of forested upland and wetland habitat under a Conservation Restriction (CR), to be held under the supervision of the Rutland Conservation Commission as permanently protected open space. The Secretary's Certificate on the DEIR/NPC (November 16, 2006) required the Proponent to provide additional information in the FEIR specifically pertaining to alternatives, wetlands, rare species, historic resources and wastewater.

In November 2007, the Proponent submitted a FEIR for the project proposing the development of a 112 unit Open Space Cluster residential subdivision including the construction of interior roadway with sidewalk, stormwater management infrastructure and supporting utilities. The MEPA office received numerous comments on the FEIR from permitting agencies and others expressing concerns about the magnitude of the project's potential environmental impacts and doubts about whether the project was permissible. According to the comments received from the DCR, the project described in the FEIR document would have resulted in extensive impacts to wetland resources and Outstanding Resource Waters (ORW) that were not consistent with the Watershed Protection Act's regulations and did not meet the Variance eligibility requirements. According to the comments submitted by MassDEP, the Massachusetts Water Resource Commissions' Advisory Board and others, the FEIR did not contain sufficient information to adequately describe the project's proposed water supply plan and wastewater management plan. The Army Corps of Engineers (ACOE) submitted comments which indicated that the FEIR did not successfully demonstrate the project's permissibility under Section 106 of the National Historic Preservation Act.

In the Certificate on the FEIR (November 17, 2007), I found that the FEIR did not adequately and properly comply with the Massachusetts Environmental Policy Act and required the filing of a Supplemental Final Environmental Impact Report (SFEIR) to provide a robust and detailed analysis of wastewater treatment alternatives, and of the project's potential impacts to and proposed mitigation for wetlands resource areas, stormwater drainage, and historic resources. The Certificate on the FEIR specifically required the Proponent to assess the viability of on-site and off-site wastewater treatment alternatives and the project's proposed stormwater management system and to demonstrate the project's consistency with the regulatory requirements of applicable State permit requirements and policies including the Variance provisions of the Watershed Protection Act regulations, the performance standards for filling of

an ORW pursuant to 314 CMR 9.06(3)(e)(3), MassDEP's Sewer Extension permit requirements and applicable Federal and State regulations governing properties listed in the Federal and State Registers of Historic Places.

In March 2009, the Proponent submitted a SFEIR for the project that provided a description of a number of proposed project changes. The project changes included the realignment of the project's internal roadway system, the elimination of 'Wetland Crossing A', and the construction of bridges to span four proposed wetland roadway crossings. The realignment of the internal roadway and revisions to the layout of building lots resulted in reductions in total land alteration (60.11 acres total) and impervious surface area (11.43 acres total). The project changes also resulted in reduced alterations to wetland buffer areas (approximately 35 acres total), watershed protection areas (4.43 acres total), and portions of a designated National Historic Landmark site. The Proponent also committed to place a Conservation Restriction (CR) on approximately 49.18 acres of the project site as permanently protected open space. However, comments on the SFEIR I received from DCR and MassDEP indicated that the Proponent still had not resolved several of the outstanding issues that had been highlighted during review of the FEIR.

Consequently, in the Certificate on the SFEIR (issued April 17, 2009), I found that the SFEIR did not adequately and properly comply with the Massachusetts Environmental Policy Act and required the filing of a Second Supplemental Final Environmental Impact Report (SSFEIR) to provide a robust and detailed analysis of wastewater treatment alternatives to serve the project's total wastewater flows, and the project's potential impacts and proposed mitigation for wetlands resource areas, stormwater drainage, wastewater management and historic resources.

Permits and Jurisdiction

The project is subject to MEPA review and was required to submit a mandatory EIR pursuant to Section 11.03 (1)(a)(2) of the MEPA regulations (because the project required state permits and proposed to create more than ten acres of new impervious surfaces), and pursuant to section 11.03 (1)(b)(1) of the MEPA regulations (because the project proposed to alter more than 25 acres of land). The project as currently proposed requires a Sewer Extension Permit, a Superseding Order of Conditions, and the approval of a National Pollutant Discharge Elimination System (NPDES) Stormwater General Permit Notice of Intent for discharges to Outstanding Resource Waters from the Department of Environmental Protection (MassDEP). According to the information provided in the Supplemental FEIR and discussed below, the proposed project no longer requires a 401 Water Quality Certificate from MassDEP.

The currently proposed project will no longer result in a "take" of rare species habitat and thus does not require a Conservation Management Permit from the Natural Heritage and Endangered Species Program (NHESP). The project appears to continue to require review by the Massachusetts Historical Commission (MHC). As discussed below, the DCR has indicated in its

comments on the SSFEIR that the project as currently designed will require a Variance from Watershed Protection Act (WsPA) regulations from DCR. According to the Proponent, the project design has been revised and no longer requires a 404 Programmatic General Permit from the US Army Corps of Engineers (ACOE), and is not be subject to review by the Advisory Council on Historic Preservation (ACHP) pursuant to Section 106 of the National Historic Preservation Act for work within historic properties (36 CFR Part 800). The project must comply with the National Pollutant Discharge Elimination System (NPDES) General Permit for stormwater discharges from a construction site of over one acre.

Because the Proponent is not seeking state funding for the proposed project, MEPA jurisdiction is limited to those aspects of the project that are within the subject matter of required or potentially required state permits and that are likely, directly or indirectly, to cause Damage to the Environment as defined in the MEPA regulations. In this case MEPA jurisdiction extends to wetlands, stormwater, wastewater, and historic impacts.

REVIEW OF THE SECOND SUPPLEMENTAL FEIR

Wastewater

The Proponent's preferred wastewater management plan continues to call for the discharge of the project's wastewater flows via a new on-site sewer pump station to the Rutland-Holden Trunk Sewer and Relief Trunk Sewer for conveyance to the City of Worcester's sewer system and, ultimately, to the Millbury Wastewater Treatment Facility (WWTF) for treatment and disposal. The Proponent asserts that the Town of Rutland has an adequate wastewater flow capacity to accommodate the project's wastewater flows. However, according to the comments received from MassDEP, DCR and others, the Town of Rutland continues to exceed its wastewater flow allocation to the Rutland-Holden trunk sewer and remains without sufficient capacity to accommodate the project's wastewater flows. In addition, comments previously received from DCR on the SFEIR indicated that several additional agreements between DCR, Worcester and the Town of Rutland would be needed before additional capacity allotments could be approved. As a result, the Proponent's preferred wastewater management plan is not currently permissible under MassDEP's Sewer Connection Permit regulations. If conditions change, the Proponent may be able to pursue this alternative in the future.

Title V Alternative

In response to the Scope included in the Certificate on the SFEIR, the SSFEIR provides a detailed description and evaluation of an on-site wastewater treatment alternative (Title V Alternative) involving a series of individual and shared on-site Title V-compliant systems to serve the project's wastewater flows. Under the Proponent's Title V Alternative, 28 of the

project's 112 house lots will be served by individual on-site septic systems. The Proponent proposes to construct five Shared Title V Systems comprised of a separate pump station and a corresponding leaching area. Each of the five Shared Systems will serve the wastewater flows for the remaining residential lots, with approximately 13 - 21 individual house lots to be served by each shared system.

The Proponent has proposed to locate the leaching beds ('easement areas') for each of the shared systems within the project's proposed Open Space area. Under the Title V Alternative, the total amount of Open Space area to be permanently protected under a Conservation Restriction (CR) will be reduced from 49.18 acres to 45.75 acres to accommodate the need for revised lot sizes and proposed easement areas. Comments received from MassDEP on the SSFEIR indicated that MassDEP prefers this type of on-site solution that allows the project's wastewater disposal to help recharge local groundwater resources.

I note that comments received from DCR on the proposed project indicate that DCR has several questions and concerns about the proposed on-site septic systems' design. However, after reviewing the SSFEIR and the comments from MassDEP and DCR, I have concluded that any remaining design issues related to the Title V Alternative can be addressed during the permitting of the systems by the Rutland Board of Health and MassDEP, which are the agencies responsible for approving on-site treatment systems under Title V.

Central Wastewater Treatment Facility

The SSFEIR also includes a brief discussion of an on-site centralized wastewater treatment facility alternative to serve the project's wastewater flows via construction of an on-site wastewater treatment plant designed to accommodate 49,280 gallons per day (gpd). According to the Proponent, the project site is characterized by slow infiltration rate soils, high groundwater and steep slopes that would hinder infiltration of treated wastewater and would require up to six acres of land area to accommodate a suitable groundwater discharge facility. According to the Proponent, it is cost prohibitive and technically infeasible to construct an on-site wastewater treatment plant to serve the proposed project's wastewater flows. In its comments on the SSFEIR, MassDEP has indicated that the project site's soils are suitable for on-site wastewater disposal systems and that a centralized wastewater treatment facility would require less land area for groundwater disposal than the total land area needed to accommodate the Proponent's Title V Alternative. As noted above, MassDEP has indicated its support for the use of an on-site wastewater treatment and disposal alternative for the project to take advantage of the project site's suitable soils and help recharge local ground water resources. I therefore strongly encourage the Proponent to abandon its preferred alternative of disposal to the Rutland sewer system and to work with MassDEP and the Rutland Board of Health to obtain permits for the some type of on-site treatment system, either as individual and shared Title V units, or through a central treatment facility.

Wetlands

The wetland resource areas located within the project site drain to the Mill Brook, and Thayer Pond which have been classified as Outstanding Resource Waters (ORW). As described in the SSFEIR, the project design has been revised to relocate the construction of the project's internal roadway system and building lots outside of the WsPA-regulated 200-foot primary watershed protection zone for the Mill Brook and/or Thayer Pond. Portions of approximately 12 house lots are located between 200 feet and 400 feet of the Mill Brook and/or Thayer Pond ('secondary watershed protection zone'). According to the Proponent, all land alteration and construction activities pertaining to these 12 house lots will be located outside of the 400-foot secondary watershed protection zone. The Proponent has committed to placing deed restrictions on house lots located within the primary and secondary watershed protection zones to prohibit future alterations and construction activities in WsPA-regulated areas.

The project also involves the construction of four arched bridged crossings to span bordering vegetated wetlands (BVW) located along Windham Drive (Wetlands Crossing 'B'), Woodside Avenue – north (Wetland Crossing 'C'), Woodside Avenue – south (Wetland Crossing 'D') and Sedona Circle (Wetland Crossing 'E'). According to the Proponent, the proposed wetland crossings 'B', 'C', 'D' and 'E' will not result in permanent alterations to BVW resources. Under the currently proposed project design, all five of the project's stormwater detention basins have been relocated and set back from BVW resource areas a minimum of 20 feet. The proposed project will result in permanent impacts to approximately 1.77 acres of wetland buffer area.

According to DCR, the Proponent is proposing to construct project roadways and bridge-span stream crossings, utilities, water and sewer conveyance systems and drainage systems within BVW resource areas that will require the removal and shading of BVW vegetation, cause significant changes in the site's stormwater runoff characteristics and result in discharges of stormwater flows to BVW resource areas. DCR has indicated that many of these proposed project construction activities are defined as alterations prohibited under the WsPA regulations (350 CMR 11.04(3)(b)(2)(n)) and require a Variance from the WsPA regulations. DCR has indicated that the currently proposed project design will require further revisions to meet the standards for a WsPA Variance.

I anticipate that DCR's Variance Permit review process will afford the Proponent an opportunity to demonstrate the proposed project's consistency with the Variance requirements under the WsPA. The Proponent will need to satisfactorily demonstrate to DCR that all standards for a Variance Permit under the WsPA regulations have been met in order for the project to be constructed as currently designed. Alternatively, the project may need to be redesigned to avoid the need for a Variance. As noted above, the Proponent must consult with the MEPA Office to determine if any proposed changes to the project design will require the submission of a NPC.

Stormwater

At full build-out, the Brice Lemon Estates Residential Subdivision project will create approximately 11.43 acres of new impervious surface area. As described in the SSFEIR, the stormwater management plan for the proposed project has been designed for the 2, 10 and 100-year storm events and includes the use of deep sump catch batch basins, a total of 5 stormwater detention basins with sediment forebays, and periodic road sweeping to treat the project's stormwater flows for eventual discharge to Bordering Vegetated Wetlands (BVW). The project's stormwater management system has been designed to remove 80 percent of total suspended solids (TSS). The stormwater management system for the proposed development phases (I-III) has been designed to be consistent with MassDEP's Stormwater Management Standards that were in effect prior to January 2, 2008. The stormwater management system for the Phase IV development phase has been designed in accordance with MassDEP's revised Stormwater Management Standards which became effective after January 2, 2008.

According to the information provided in the SSFEIR, the project's stormwater management plan has been further revised subsequent to the issuance of the Secretary's Certificate on the SFEIR to locate the discharge outfall points for each of the five proposed stormwater detention basins a minimum of 20 feet from BVW resource areas.

In its comments on the SSFEIR, the DCR has reiterated its comments and concerns expressed in previous MEPA submittals for this project and has indicated that Detention Basin #1 is still located in close proximity to BVW resource areas and will result in direct discharges from the detention basins to BVW that border on the Mill Brook and/or Thayer Pond during storm events. Such discharges, according to DCR, are prohibited under the WsPA regulations and will require a Variance under the Watershed Protection Act. DCR has also noted a potential design conflict with the proposed outfall location for Detention Basin #2 and its proximity to the proposed on-site septic system for Lot 112R. In order to proceed with the project as designed, the Proponent will need to submit information sufficient to demonstrate to DCR's satisfaction that the project qualifies for a Variance under the WsPA regulations. Alternatively, the Proponent will need to propose revisions to the project design to either achieve compliance with the Variance requirements or to avoid the need for a Variance altogether. Once again the Proponent is reminded that it should consult with the MEPA Office to determine if any changes to the project's proposed stormwater management plan will require the submission of an NPC.

I continue to encourage the Proponent to evaluate sustainable design alternatives such as Low Impact Development (LID) techniques in site design and stormwater management plans. LID techniques incorporate stormwater best management practices (BMPs) and can reduce impacts to land and water resources by conserving natural systems and hydrologic functions. The primary tools of LID are landscaping features and naturally vegetated areas, which encourage detention, infiltration and filtration of stormwater on-site. Other tools include water conservation and use of pervious surfaces. Clustering of buildings is an example of how LID can preserve

open space and minimize land disturbance. LID can also protect natural resources by incorporating wetlands, stream buffers and mature forests as project design features. For more information on LID, visit <http://www.mass.gov/envir/lid/>. Other LID resources include the national LID manual (Low Impact Development Design Strategies: An Integrated Design Approach), which can be found on the EPA website at: <http://www.epa.gov/owow/nps/lid/>.

Construction Period Stormwater Runoff

The project site has been described as containing steeply-sloping soil types that drain to BVW resource areas containing stream channels leading to surface drinking water supplies. As indicated in DCR's comments, it is critically important that the Proponent employ construction sequencing, erosion control and stormwater management to avoid construction impacts to BVW resources, ORWs and surface drinking water supplies located within and adjacent to the project site.

The project will require an NPDES General Permit for Stormwater Discharges from Construction Activities (Construction General Permit, CGP) for stormwater discharges from the project site of over one acre. The Proponent has committed to developing and submitting to MassDEP a Stormwater Pollution Prevention Plan (SWPPP) for approval under BRP WM 09 designed to prevent or minimize the project's stormwater impacts to protected ORWs during project construction.

Water Supply

As currently proposed, the potable water supply need for the proposed 122-unit Brice Lemon Estates Residential Subdivision project (approximately 49,280 gpd) will be served by the Town of Rutland's municipal water supply system which draws its source supply from the Nashua River basin. Based on the Proponent's analysis of the Town of Rutland's potable water use, the Proponent has determined that the Town of Rutland has adequate water supply to serve the proposed Brice-Lemon Estates project.

In its comments on this SSFEIR and previously submittals for this project, MassDEP has indicated that the Town of Rutland exceeded its existing permitted volumes under the Water Management Act in 2005, 2006 and 2007. According to MassDEP, the addition of the project's potable water supply demand would bring the average daily demand of the public water supply beyond the Town of Rutland's authorized water withdrawal volume under its existing WMA permit and will require the Town of Rutland to apply to MassDEP for a new WMA permit. The Proponent has committed to work closely with the Town of Rutland and MassDEP to examine potential leaks in the Town's water supply system and to identify opportunities to reduce the project's water supply demand including the use of low flow toilets and water efficient devices

for all new homes to be constructed as part of the proposed residential development project. However, should this effort prove insufficient, the Proponent will need to explore other water supply alternatives, which will likely require the submission of a NPC.

Water Conservation

I continue to strongly encourage the Proponent to incorporate water conservation and water use efficiency in the project design to comply with the most current State Plumbing Code. Specifically, the Proponent should commit to employing efficient residential water conservation technologies for the project including water saving devices, low flow toilets, and low flow appliances (dishwashers, washing machines). The Proponent should consult with MassDEP to ensure that the final project design meets the Commonwealth's water conservation standards, including those standards pertaining to lawn and landscape conservation. The Proponent should also consider implementing an Irrigation Management Plan (IMP) to further reduce the project's irrigation water demand.

An IMP could involve the use of amended soils and compost, the planting of native and drought-tolerant species of trees, shrubs, and turf grasses, an automated water efficient irrigation system, and a water management protocol for drought conditions. I ask that the Proponent consult with MassDEP, and refer to the Massachusetts Water Resources Commission's *Lawn and Landscape Water Conservation, An Addendum to the Water Conservation Standards for the Commonwealth of Massachusetts, October 2002*, during the final design of the Proponent's IMP.

Historic Resources

A large portion of the project site is located within the boundaries of the Rufus Putnam House and agricultural land (c. 1760), a National Historic Landmark site that is listed in the Federal Register and the Massachusetts State Register of Historic Properties. This National Historic Landmark site includes the Rufus Putnam House and approximately 135 acres of historically related agricultural land. In its previous comments on the FEIR, the US Army Corps of Engineers (ACOE) expressed concern for the project's potentially significant impacts on the character and setting of the Rufus Putnam National Landmark site and on the overall 135-acre historic property. As a result of the Proponent's most recent revisions to the proposed project design, the project no longer requires a 404 Programmatic General Permit from the ACOE and is no longer subject to review by the ACOE and the Advisory Council on Historic Preservation (ACHP) pursuant to Section 106 of the National Historic Preservation Act of 1966 (36 CFR 800), and Massachusetts General Laws Chapter 9, Section 26-27C (301 CMR 11).

The project continues to require review for historic impacts by MHC. According to the comments received from MHC on the SSEIR, the Proponent should complete a new photosimulation study for the project to include the currently proposed roadway and house lot

layouts. The new photosimulation study should also address the potential visual affects resulting from the changes in house lot size and configuration under the Title V Alternative described above. The new photosimulation study should be conducted in late Autumn or early Spring to avoid interference with snow cover on project area deciduous and coniferous trees.

Rare Species

In its comments on previously submitted MEPA filings for this project, the Natural Heritage and Endangered Species Program (NHESP) indicated that the Brice Lemon Estates project site was located within priority and estimated habitat for the Four-toed Salamander (*Hemidactylium scutatum*), a state-listed species of "Special Concern". The Proponent responded to NHESP's concerns and committed to a number of project design revisions and conditions that NHESP had determined were important to the long term protection of the Four-toed Salamander which satisfied the performance standards for a MESA Conservation and Management permit.

Although the Four-toed Salamander was removed from the Massachusetts Endangered Species Act (MESA) list of Endangered, Threatened and Special Concern species in June 2008. NHESP has indicated that the species remains vulnerable to the effects of road mortality and habitat loss. The Proponent has committed to maintain nearly all of the project modifications and revisions that NHESP previously determined were critically important to the long term protection of the Four-toed Salamander including:

- placing a Conservation Restriction (CR) on approximately 49.18 acres (40%) of the project site's forested uplands and wetlands resource areas that will include and permanently protect the Four-toed Salamander habitat;
- placing deed restrictions on particular residential development lots to ensure protection and compliance with adjacent CR land areas; and,
- implementation of construction mitigation activities including the installation of erosion control fencing prior to construction, and the restoration and monitoring of any temporary alteration along the streams to facilitate installation of the crossing structures.

Air Quality Construction Impacts

I ask that the Proponent voluntarily participate in MassDEP's Clean Air Construction Initiative (CACI) and the MassDEP Diesel Retrofit Program to mitigate the construction-period impacts of diesel emissions to the maximum extent feasible.

The CACI program helps Proponents identify appropriate mitigation for minimizing air pollution from construction vehicles such as retrofit of construction equipment with particulate filters and oxidation catalysts and/or use of on-road low sulfur diesel (LSD) fuel. The Proponent should consult with MassDEP to develop appropriate construction-period diesel emission

mitigation, which could include the installation of after-engine emission controls such as diesel oxidation catalysts (DOCs) or diesel particulate filters (DPFs). For more information on these technologies, see: <http://www.epa.gov/otaq/retrofit/verif-list.htm>. All construction-related refueling and equipment maintenance activities should be conducted under cover on impervious surface areas with containment, and outside of any wetlands resource areas, endangered species habitat areas, residential areas and wellhead protection areas.

Mitigation and Section 61

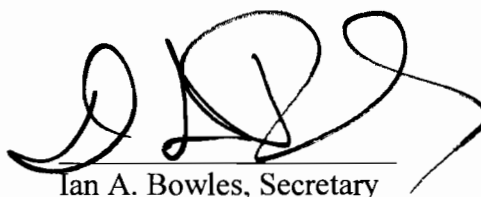
The SSFEIR contains a summary of all mitigation measures to which the Proponent has committed, including a description of timing (by year or appropriate trigger point), estimated cost, and responsible party. The SSFEIR includes Proposed Section 61 Findings for use by the state agencies. These Section 61 Findings will likely need to be updated as the project evolves during permitting in response to the issues outlined above.

Conclusion

The review of the SSFEIR has served to demonstrate that the impacts of the project as currently proposed do not warrant the preparation of a Third Supplemental FEIR. I conclude that no further MEPA review is required at this time. As discussed elsewhere in this Certificate, DCR has raised a number of significant issues pertaining to the proposed project's compliance with the Variance requirements of the WsPA regulations. Specific concerns regarding the proposed project's potential impacts to wetlands and stormwater management will need to be resolved during DCR's Variance review process. The Proponent is also required to notify the MEPA Office of any changes to the currently proposed project design to assess whether further MEPA review will be required.

July 31, 2009

Date



Ian A. Bowles, Secretary

Comments received:

07/14/09	Massachusetts Water Resources Commission (WRC)
07/23/09	Department of Environmental Protection (MassDEP) – CERO
07/24/09	Massachusetts Department of Conservation and Recreation (DCR)
07/24/09	Massachusetts Historical Commission (MHC)

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SSFEIR #13019