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December 19, 2007

CERTIFICATE OF THE SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS  
ON THE  
DRAFT ENVIRONMENTAL IMPACT REPORT

PROJECT NAME : Commercial and Indoor Sports Facility  
PROJECT MUNICIPALITY : Peabody  
PROJECT WATERSHED : Proctor Brook  
EEA NUMBER : 14090  
PROJECT PROPONENT : 194 Turnpike LLC  
DATE NOTICED IN MONITOR : November 12, 2007

As Secretary of Energy and Environmental Affairs, I hereby determine that the Draft Environmental Impact Report (DEIR) submitted on this project **adequately and properly complies** with the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-62H) and with its implementing regulations (301 CMR 11.00).

Project Description

As described in the DEIR, the project includes the construction of a multi-use development in two buildings, totaling 138,000 square feet, that will include retail and office space, a fitness center, restaurant, three basketball courts, and two indoor soccer fields on a 13.3 acre site in Peabody. Parking for 224 vehicles is proposed. In addition, there is a 3.73-acre lot behind the proposed development where about 40 residential units with 111 parking spaces are planned in the future.

At the MEPA site visit the proponent also discussed the 40 unit multi generational residence and accessory use facility that was not included in overall impact except for the parking numbers in the ENF. The anti-segmentation provisions of the MEPA Regulations (Section 11.01(2)(c)) require the review of the entire proposed residential development as a

"common plan or undertaking". Pursuant to the anti-segmentation provision of the MEPA regulations, I must consider the environmental impacts associated with the multi generational residence and accessory use facility as a common undertaking by the project proponent.

#### MEPA Jurisdiction and Required Permits

The project is undergoing review and requires the preparation of a mandatory EIR pursuant to Section 11.03 (6)(a)(6) of the MEPA regulations, because during the course of the ENF review it has been determined that the project will generate more than 3,000 new vehicle trips per day and requires state permits. The project requires an Access Permit from the Massachusetts Highway Department (MHD) and a 401 Water Quality Certification which was not identified originally identified by the proponent from the Massachusetts Department of Environmental Protection (MassDEP). An alternatives analysis is required as part of the 401 Water Quality Certification process, and information in the EIR on alternatives that consider measures to avoid, minimize, and mitigation wetlands impacts will be considered by MassDEP in permitting.

The project must comply with the National Pollutant Discharge Elimination System (NPDES) General Permit for stormwater discharges from a construction site of over five acres. An Order of Conditions will be required from the Peabody Conservation Commission, or in the case of appeal, a Superseding Order of Conditions from MassDEP.

Because the proponent is not seeking financial assistance from the Commonwealth for the project, MEPA jurisdiction extends to those aspects of the project that may have significant environmental impacts and that are within the subject matter of required or potentially required state permits. In this case, MEPA jurisdiction exists over land alteration, traffic, wetlands and stormwater.

While the DEIR adequately addressed the Scope, several substantive issues related to wetlands and stormwater management measures remain and must be addressed in the Final EIR. The Final EIR must address these issues and respond to the comments received that are within MEPA jurisdiction to be found adequate. The Final EIR must present additional narrative and technical analysis where necessary to respond to the substantive comments received.

#### **Review of the DEIR**

##### General

The Final EIR should contain a copy of this Certificate and a copy of each comment received. The Final EIR may incorporate by reference those portions of the DEIR that do not require further analysis. At a minimum, the proponent should circulate the Final EIR to those parties submitting individual written comments on the DEIR, and to any state agency from which the proponent will seek permits. The proponent should also make a reasonable number of hard copies of the Final EIR available on a first come, first served basis. A copy of the DEIR should be made available for review at the Peabody Public Library.

Response to Comments

The FEIR should respond to the comments received to the extent that the comments are within the subject matter of this scope. Each comment letter should be reprinted in the FEIR.

I particularly note that the DEIR did not respond to MassDEP previous comments during the EENF on the deficiencies identified in the stormwater management system. Therefore, in addition to responding to all comments received during the review of the DEIR, the FEIR must also address MassDEP's comments submitted during the review of the EENF.

Stormwater

In the certificate issued for the DEIR I requested that the proponent provide drainage calculations, stormwater system design plans at a readable scale, best management practice (BMP) designs and models for proprietary BMPs, and a clear description of the stormwater management plan to affirm that the stormwater system design is in conformance with the MassDEP Stormwater Management Policy (SMP). I also requested that the DEIR should discuss the feasibility of maximizing stormwater infiltration and identify the quantity and quality of flows. The DEIR did not provide even a conceptual stormwater management plan for the site. In the absence of plans it is unclear that the peak rates of runoff would be controlled on both lots.

The Stormwater management plan provided in the appendix is for the commercial and sports facility. There is no information for the parcel where housing is planned, other than a statement indicating that a rain garden and low impact development scheme has been undertaken (page 4-2), and the statement that the stormwater control system would be more conventional than previously indicated for runoff from paved surfaces, which is to be piped through catch basins and Stormceptor water quality units (page 7-1).

Even with these significant omissions, it is apparent that the stormwater management system will need to be redesigned. Stormceptor units are accepted as pretreatment devices only in critical areas. Therefore, the stormwater management system will need to include accepted best management practices in line and downstream of the Stormceptor units to provide water quality treatment. Critical areas include the wellhead protection area (Zone II) around public water supplies, and the project site is within the Zone II for the city of Peabody's Johnson and Pine Street groundwater supplies, as acknowledged by the DEIR. There is no information on the sizing of the water quality treatment systems. However, these systems need to be sized to capture and treat one inch of runoff multiplied by the impervious area, rather than 0.5 inches of runoff, because the site is within a critical area.

In addition, the DEIR is contradictory with respect to infiltration of rooftop runoff. The text (page 7-1) indicates that there would be no infiltration of rooftop runoff, but the Stormwater Management Plan in the appendix indicates that rooftop runoff would be infiltrated. Given that the project site is within a Zone II and the site has a Class A-1 Response Action Outcome, it would be appropriate to recharge clean runoff from the rooftop on site. I strongly advise the proponent to work closely with MassDEP to address all the comments submitted by MassDEP including those submitted during the review of the Expanded ENF and DEIR.

Wetlands

I note that the Peabody Conservation Commission issued an Order of Conditions (File Number 055-0660) for the construction of the sports center buildings at 190-194 Newbury Street. This Order of Conditions allowed for the alternation of approximately 4,680 square feet of bordering vegetated wetlands. Subsequently another Notice of Intent (DEP File # 055-0982) was filed with the conservation commission to subdivide the property and construct residential housing. However, the DEIR did not mention that the proponent filed a new Notice of Intent for the project site, dated October 26, 2007. I am requesting that the FEIR include all updated information pertaining to local permitting.

As previously noted in the EENF certificate, I reiterate that the proposal to subdivide the property triggers the thresholds under 314 CMR 9.04(3), which requires the filing of a 401 Water Quality Certificate for any discharge of dredged or fill material associated with the creation of a real estate subdivision. MassDEP has stated in their comment letter that in determining thresholds and conducting evaluations of applications for 401 Water Quality Certificate (WQC), the entirety of the activity, including likely future expansions shall be considered and not the separate phases or segments of a project. Therefore, I advise the proponent that, even though the work proposed under DEP File #055-0682 does not include any alterations to bordering vegetated wetlands, this proposed project must be reviewed for a 401 WQC in conjunction with the work approved under DEP File # 055-0660 in order to meet the single and complete requirements under 314 CMR 9.00.

A draft deed restriction was attached in the DEIR. However, I note that MassDEP has discretionary authority to require an application based on cumulative effects of multi-phased activities. Since the proponent has not obtained from MassDEP an approved deed restriction or obtained a 401 Water Quality Certificate, MassDEP has stated in their comment letter that no work proposed under Order of Conditions DEP File # 055-660 will be allowed to occur within bordering vegetated wetlands. I strongly advise the proponent to continue working closely with MassDEP on this issue. The FEIR should contain an update of this issue.

Traffic

The DEIR included a traffic impact and access study that generally conforms to EOEEA/EOTPW Guidelines for EIR/EIS Traffic Impact Assessments. Since the filing of the Expanded ENF, the project proponent has met with MassHighway to discuss the mitigation measures for this project. As a result, the off-site mitigation will include the removal of the frontage road and extension of the driveway to Route 1; a right-turn lane will be constructed from Countrywide Mortgage that will extend past Pine Street.

The project proponent has committed to providing bicycle racks for patrons on-site. However, travel along Route 1 may not be appropriate for bicyclists. Therefore, I encourage the proponent to investigate the feasibility of connecting the site to Pine Street as well as the Peabody Bikeway. Signage should be placed on-site directing patrons to safe bicycle and pedestrian routes.

The project proponent should implement a comprehensive transportation demand management (TDM) program aimed at reducing single occupancy vehicle travel to the site. The program should include measures that have been previously employed for similar activities, including: a guaranteed ride-home program and ride-matching program for employees. The proponent should contact the Peabody Council on Aging concerning transportation to the site.

The FEIR should include a storm water study with a plan showing the locations of all storm water components including catch basins, retention/detention basins and outlets. The proponent is reminded that connections to the State Highway drainage system should be avoided if possible. The proponent should make every effort to maximize the retention and infiltration of storm water runoff on site. This information should be included in the FEIR.

Mitigation

The DEIR included a separate chapter on mitigation measures however it did not include many details. The FEIR should include an updated chapter on mitigation measures. This chapter on mitigation should include updated proposed Section 61 Findings for all state permits. The proposed Section 61 Findings should contain a clear commitment to mitigation, an estimate of the individual costs of the proposed mitigation, and the identification of the parties responsible for implementing the mitigation. A schedule for the implementation of mitigation should also be included.

December 19, 2007  
Date

  
Ian A. Bowles

Comments received:

- 11/05/07 Ron Christensen
- 11/05/07 David Gamache
- 12/10/07 Executive Office of Transportation, Massachusetts Highway Department
- 12/11/07 Stewart Lazares, 1<sup>st</sup> Comment
- 12/11/07 William Toomey
- 12/12/07 Massachusetts Department of Environmental Protection – NERO
- 12/13/07 Arthur Athas
- 12/14/07 Stewart Lazares, 2<sup>nd</sup> Comment

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