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Peter C. Webber
COMMISSIONER

Secretary Bob Durand
Executive Office of Environmental Affairs
Attn: Jay Wickersham, Assistant Secretary
MEPA Office
251 Causeway Street, Suite 900
Boston, MA 02114

Re: ENF Filing Thresholds for Chapter 132 Forest Cutting Plans within ACECs

Dear Secretary Durand:

I am writing to request an Advisory Opinion pursuant to the Massachusetts Environmental Policy Act (MEPA) Regulations at 301 CMR 11.01 concerning the Environmental Notification Form (ENF) filing requirements for Mass. Gen. L. ch. 132 (hereafter, "Chapter 132") Forest Cutting Plans within Areas of Critical Environmental Concern (ACECs). The Department of Environmental Management (DEM) administers the Forest Cutting Practices Regulations (304 CMR 11.00), and we also administer the ACEC Program (301 CMR 12.00) on behalf of your Office.

As you know, the MEPA Regulations were revised in 1998. The revised regulations established Review Thresholds for Land at 301 CMR 11.03(1). These thresholds include filing requirements for ENFs or mandatory Environmental Impact Reports (EIRs) as follows:

- For the required filing of an ENF and a Mandatory EIR, direct alteration of 50 acres or more of land, unless the Project is consistent with an approved conservation farm plan or forest cutting plan or other similar generally accepted agricultural or forestry practices (301 CMR 11.03(1)(a)1.)
- For the required filing of an ENF and other MEPA review if the Secretary So Requires, direct alteration of 25 or more acres of land, unless the Project is consistent with an approved conservation farm plan or forest cutting plan or other similar generally accepted agricultural or forestry practices (301 CMR 11.03(1)(b)1.)

Regarding these thresholds, MEPA review is not required if the Project is consistent with an approved forest cutting plan, issued by DEM pursuant to Chapter 132 and 304 CMR 11.00 (unless some other MEPA filing threshold is met). We believe that since there are no Review Thresholds for Projects consistent with an approved forest cutting plan, then the Review Thresholds for ACECs listed at 301 CMR 11.03(1) do not apply to Projects consistent with an approved forest cutting plan (again, unless some other MEPA filing threshold is met). We seek your opinion on this issue.

It also appears that an approved Forest Cutting Plan under 304 CMR 11.00 would meet the requirements for Coordinated Review under 301 CMR 11.09 (4)(c). This would support the view that the issuance of an approved Forest Cutting Plan for forestry management projects within ACECs, unless some other MEPA filing threshold is triggered, is the full equivalent of the filing of an Environmental Notification Form (ENF).

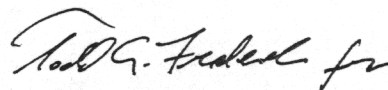
The review and permitting procedure for the issuance of Chapter 132 Forest Cutting Plans under 304 CMR 11.00 is described in the attached Summary of Forest Cutting Practices Regulations. As described in the attached Summary, the review and issuance of forest cutting plans is conducted in coordination with the Department of Environmental Protection (DEP), municipal conservation commissions, and the Natural Heritage & Endangered Species Program (NHESP) of the Division of Fisheries and Wildlife (DFW). The coordinated review required under 304 CMR 11.00 fully ensures that the environmental resource protection and management values for wetlands, water supply, wildlife and rare species habitat, and ACECs are fully addressed.

The issuance of forest cutting plans within ACECs, without the additional requirement of filing an ENF with MEPA, is consistent with over 10 years of ACEC Program practice and history regarding the MEPA regulations. There were no ENF filing requirements for forest cutting plans within ACECs until 1993. Following the MEPA review of a statewide Generic Environmental Impact Report (GEIR) on Forest Management Practices in 1992, a Memorandum of Understanding (MOU) was signed by the Secretary of Environmental Affairs and the Commissioner of DEM, which set forth limited ENF filing requirements for forest cutting within ACECs. The policies developed through the GEIR and the MOU were then reflected in the 1998 revisions to the MEPA Regulations and in the 1996 revisions to the Forest Cutting Practices Regulations.

DEM and ACEC Program staff have consistently advocated for sound environmental management of projects involving working farms and farmland and forest management since 1989, when DEM assumed administration of the ACEC Program regarding inland ACECs. Open farmland and forests are key environmental resource features of ACECs. Sustainable and economically feasible management of these resource bases is essential to meet the purposes of ACEC designation. Based upon the aforementioned, we believe that accepted farming and forestry management practices are subject to adequate review by agencies without the further requirement of filing an ENF, unless as mentioned above, another MEPA filing threshold is triggered.

Requests for further information or for copies of this letter may be referred to Leslie Luchonok, Director, ACEC Program, at (413) 586-8706, ext. 21; 136 Damon Road, Northampton, MA 01060; or leslie.luchonok@state.ma.us. Thank you for your consideration.

Very truly yours,



Peter C. Webber
Commissioner

Attachment

Cc: Todd Frederick, Susan Frechette, Mary Griffin, Jim Soper, Leslie Luchonok,
Elizabeth Sorenson, DEM
Robert O'Connor, EOEA
Jack Buckley, DFW

Description of Forest Cutting Practices Regulations

The **purpose of the regulations** is to develop minimum forest cutting practices to insure that the following values are not jeopardized: continuation and increase of the supply of forest products; conservation of water; maintenance of water quality; prevention of floods and soil erosion; and improvement of conditions for wildlife and outdoor recreation.

The **regulations apply** to all land devoted to forest growth owned or administered by private persons, corporations or organizations or by any federal, state, county, municipal, or other public agency.

Activities subject to the regulations are any commercial cutting of a volume of products equivalent in volume to more than 25,000 board-feet or 50 cords on any parcel at any one time. Approval of a forest cutting plan under the regulations means that the land is presently and primarily used in raising forest products and shall be maintained as forest land and continue to provide values as listed above.

Exempt activities are:

- cutting for clearance or maintenance of rights-of-way for public utilities and public highways;
- maintenance cutting in agricultural pastures;
- cutting of any amount of forest products that is not for sale or barter, but is for the non-commercial use of the landowner or the landowner's tenant;
- clearing land for cultivation or pasture when supported by physical evidence of such land use within one year after the cutting stops;
- clearing lands for the purpose of changing land use, such as the creation of a houselot, a subdivision, for mining gravel, or for any other activity requiring town or city permits, when supported by the issuance of the necessary permits prior to the start of cutting; and
- small commercial harvests, cutting a volume equivalent to 25,000 board-feet or 50 cords of products or less from a parcel of land at any one time.

Administration of the Regulations

The regulations are administered by the Department of Management (DEM), Division of Forests and Parks, Bureau of Forestry through five regional offices located throughout the state. Landowners must submit a completed forest cutting plan to the DEM regional office for review and approval. A copy of the plan must be submitted to the local conservation commission, and public notice must be provided to abutters of the property. DEM must forward the forest cutting plan to the Natural Heritage & Endangered Species Program for review if the proposed activity falls within an estimated habitat of rare wetlands wildlife or within a high priority site of rare species habitat. When DEM approves a forest cutting plan, DEM issues an approved forest cutting plan and certificate to the landowner, with copies to the local conservation commission and Department of Environmental Protection (DEP) regional office. If the proposed cutting area is within the watershed upstream of a public surface water supply reservoir, DEM sends a copy to the responsible water supply authority and the appropriate DEP regional office.

Forest Cutting Practices Regulations and the Massachusetts Environmental Policy Act (MEPA) Regulations

The **Forest Cutting Practices Regulations (304 CMR 11.04(2)(f))** state that before filing a forest cutting plan with the DEM regional office, a landowner may need to file an Environmental Notification

Form (ENF) in accordance with the MEPA Regulations (301 CMR 11.00) if the forest cutting plan exceeds one or more MEPA thresholds. These regulations were revised following the 1992 GEIR, but have not been revised since the MEPA regulations were revised in 1998.

Further Background regarding Forest Cutting Practices Regulations

As a follow-up to the GEIR completed in 1992 and at the urging of the Secretary of Environmental Affairs, DEM and DEP began a joint process in late 1993 to revise regulations pertaining to forest cutting under Ch. 132 and exemptions under the Wetland Protection Act. This process involved the formulation of a forestry subcommittee whose task was to develop regulations that provided protection of the resource elements addressed in the GEIR and the resource elements protected under the Wetlands Protection Act.

Regulations were promulgated in 1996 resulting in a commitment to protect the public values named in the Massachusetts Forest Cutting Practices, Mass. Gen. L. ch. 132, s. 40 (hereafter "Chapter 132") and additional protection measures under the Chapter 132 regulations. In addition, specific criteria were established for exempting forest cutting activities under the Wetlands Protection Act. Moreover, a Memorandum of Understanding between DEM and DEP that established agency procedures and responsibilities was signed in 1995. A strong working relationship between EOEAs at the state level developed and the relationship between DEM foresters and local conservation commissions improved greatly.

Chapter 132, Sec. 40-47 protects a wide range of forest values that go well beyond the traditional timber production values commonly associated with forestry. Great emphasis is placed on protection of water quality and wetlands primarily through the standards established for engineering and logging in the regulations and backed up with enforceable forestry best management practices detailed in the Forestry Best Management Practices Handbook. For example, the crossing of streams requires special considerations ranging from a MEPA filing for unbridged crossing with 1000 feet upstream of a public surface drinking water supply to avoidance of crossings or mitigation with bridges, poled fords or other sediment prevention measures. This effort has been hugely successful with bridges being commonplace on harvesting operations. It is important to note that the MEPA threshold for unbridged crossings has never been triggered. Restrictions on cutting and equipment in filter strips provide protection of streamside riparian areas and effectively prevent sediment from entering streams. The use of simple sediment control measures such as waterbars on skid road are effective and commonplace. When harvesting is planned in a watershed of a public water supply, a copy of the cutting plan is sent to the watershed authority for their scrutiny. Copies of all proposed and approved cutting plan involving wetlands are sent to conservation commissions inviting their input.

The Chapter 132 cutting standards require that landowners' objectives be stated on the plan. In addition, silviculture that deviates from standard systems must be explained and justified to insure that the forest is properly regenerated. The cutting standards provide for size thresholds for clearcuts being a maximum of 10 acres when relying on advanced regeneration to reforest the site and 5 acres when relying on seeding from surrounding stands to reforest the site. Larger clearcuts may be approved but a specific reason must be given showing that the environmental impact is less, or that environmental benefits would be enhanced by a larger cut. These size thresholds are extremely conservative particularly in light of the widely held view that the amount of early successional forest is less than desirable for maximizing biodiversity and enhancing wildlife habitat.

The forestry regulations provide for rare species protection through a cooperative arrangement with the Natural Heritage and Endangered Species Program (NHESP) NHESP staff review cutting plans that fall

within estimated habitat of rare wetlands wildlife or high priority site of rare species and make recommendations to DEM for mitigating impact. Awareness of species and protection measures has been increased dramatically among landowners and the forestry community.

ACECs contain many of the same kinds of resources that receive special emphasis under Chapter 132 and therefore are afforded a high degree of protection. Each cutting plan has a check-off indicating whether the property is located in an ACEC. The information is entered into the Chapter 132 database to insure that it is identified and treated as a critical area and tracked accordingly.

Finally, it is noteworthy to mention that DEM conducts a series of workshops annually across the state for licensed timber harvesters to insure their awareness and understanding of both the forestry and wetlands regulations. These workshops are attended by approximately 400 loggers statewide and have proven very beneficial in protecting the state's natural resources during harvesting under Chapter 132.