



# *The Commonwealth of Massachusetts*

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March 12, 2007

Matthew Watsky  
30 Eastbrook Road, Suite 301  
Dedham, MA 02026

Re: Request for Advisory Opinion  
Bruce Freeman Rail Trail – Lowell to Framingham

Dear Mr. Watsky:

I am writing in response to your letter of January 3, 2007, in which you requested a determination as to whether further review under the Massachusetts Environmental Policy Act (MEPA) would be required for the project referenced above.

The proposed Bruce Freeman Rail Trail was the subject of review under MEPA in 1999 as EOE #12109, when the Towns of Chelmsford and Westford submitted an Environmental Notification Form (ENF) that described a 6.8-mile long recreational trail to be located entirely within abandoned railroad right-of-way. The Certificate of the Secretary of Environmental Affairs on the ENF issued on January 7, 2000 did not require the submission of an Environmental Impact Report (EIR) primarily because the project reviewed at that time did not exceed thresholds requiring a mandatory EIR. According to your letter, Phase I of the rail trail (6.8 miles in Lowell, Chelmsford and Westford) has been designed and funded, and construction is scheduled to begin in 2007.

In your letter, you state that since 1999, the project has expanded to entail the construction of a 25-mile long trail extending from Lowell to Framingham, through the towns of Westford, Chelmsford, Carlisle, Acton, Concord, and Sudbury. On that basis, you requested an advisory opinion that the project, as now proposed, exceeds mandatory EIR thresholds for both land alteration and impervious surfaces. The project would be designed and constructed by each

of the eight municipalities through which it would pass and each municipality would receive state funding, thereby establishing broad-scope jurisdiction under MEPA.

In your letter, you cite the Blackstone River Bikeway (EOEA #13642), a 28-mile recreational trail that is currently undergoing MEPA review, as a comparable project for which an EIR has been required. In the case of the Blackstone River Bikeway, the project is being undertaken by a single proponent, the Massachusetts Highway Department (MassHighway), rather than the individual municipalities through which the bikeway will traverse.

The MEPA regulations include anti-segmentation provisions to ensure that projects, including any future expansion, are reviewed in their entirety. Proponents cannot evade, defer or curtail MEPA review by segmenting one project into smaller ones that, individually, do not meet or exceed MEPA thresholds. In determining whether work or activities constitute one project, the Secretary must consider whether the work or activities comprise a common plan or independent undertakings, regardless of whether there is more than one proponent, the timing of work and activities and whether the environmental impacts caused by the work or activities are separable or cumulative.

Based on the information presented in your letter, and consultation with MassHighway and the Town of Acton, I agree that the proposed extensions of rail trail would be subject to further review under MEPA. Therefore, I will direct each of the towns, who are the proponents in this case, to consult with the MEPA Office to determine their obligations for review under MEPA. However, I do not find that the rail trail constitutes a common plan or single undertaking, as each of its sections would be designed and constructed by the municipality through which it would pass, on its own schedule and securing its own funding, nor do I find any intent on the part of the municipalities to evade, defer or curtail MEPA review through segmentation. While it is possible that (in addition to the Lowell, Chelmsford and Westford sections) some sections of the rail trail may be constructed in the foreseeable future, other sections may not be constructed for many years, or possibly not at all. Moreover, to require the submission of a document under MEPA that examines the potential impacts of the entire rail trail when some towns have secured funding and are ready to proceed with their sections of the trail would only serve to unnecessarily delay those sections of the rail trail from being implemented.

Therefore, I find that the Bruce Freeman Rail Trail is not a common plan or undertaking requiring the submission of a single environmental review document under MEPA. However, in order to ensure due compliance with MEPA, I will require each municipality to submit an Environmental Notification Form (ENF) for its own portion of the rail trail, provided that it would exceed MEPA review thresholds. Each ENF should include an analysis of alternatives, including alternative alignments, and should present a project with logical endpoints, such as a road or public park, rather than municipal boundaries, in order to preserve the ability of adjacent municipalities to explore feasible alternative alignments that avoid or minimize environmental impacts. I strongly encourage each municipality to contact the MEPA Office prior to submitting its ENF in order to discuss its project and, by copy of this letter, hereby notify local Planning Boards of their potential obligations under MEPA. In the case of the Lowell, Chelmsford and Westford sections, I find that this section of the rail trail has independent utility as a stand-alone project and, because MEPA review was completed in 1999 and construction is scheduled to

begin this year, there is no rationale for requiring further review under MEPA for this section of the rail trail.

Please contact Richard Bourré, Assistant Director of the MEPA Office, at (617) 626-1130 if you have any questions concerning this matter.

Sincerely,



Deerin Babb-Brott  
Assistant Secretary

Cc: Kevin Walsh, Massachusetts Highway Department  
Stephen Anderson, Anderson & Krieger  
Acton Planning Board  
Concord Planning Board  
Sudbury Planning Board  
Carlisle Planning Board  
Chelmsford Planning Board  
Westford Planning Board  
Lowell Planning Board  
Framingham Planning Board  
Friends of the Bruce Freeman Rail Trail  
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