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January 2, 2008

CERTIFICATE OF THE SECRETARY OF ENVIRONMENTAL AFFAIRS
ON THE
SECOND SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT

PROJECT NAME: Depot Business Park (formerly Westminster Business Park)
PROJECT MUNICIPALITY: Westminster
PROJECT WATERSHED: Nashua
EEA NUMBER: 8074
PROJECT PROPONENT: Westminster Business Park, LLC
DATE NOTICED IN MONITOR: November 26, 2007

As Secretary of Energy and Environmental Affairs, I hereby determine that the Second Supplemental Environmental Impact Report (SSEIR) submitted on this project **does not adequately and properly comply** with the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-62H) and with its implementing regulations (301 CMR 11.00). Therefore, I am requiring that the proponent submit a Third Supplemental Environmental Impact Report (TSEIR) to respond to the issues identified in this Certificate. The proponent must meet with MEPA staff prior to the submission of the TSEIR to ensure that sufficient documentation and an adequate response to the Scope and comments will be provided in the TSEIR.

Project Description

The project consists of the construction of 1.57 million square feet (sf) of industrial space to be developed on approximately 312.2 acres of land. The project site includes 254.3 acres of industrial zoned land, 1.2 acres of commercial property, and 55.6 acres of residentially zoned land. The project site is located near the intersection of Batherick Road and Route 2A, and stretches from Batherick Road to North Common Road in Westminster. As noted in the SSEIR, the project will include the development of industrial zoned land; at

this time no development is proposed for the residentially zoned land. The project will create a 9,526 linear foot roadway (connecting Batherick Road to North Common Road) that will establish frontage for a total of ten (10) industrial development lots (Lots I-2, I-3, I-4A, I-4B, I-5, I-6, I-7, I-8, and I-9). The project site plan in the SSEIR also depicts two residential lots (Lots R-4 and R-5).

According to the SSEIR, the project will create 1,787 new parking spaces and will generate approximate 6,555 vehicle trips per day. Upon completion of the project build-out, approximately 184.7 acres of land will be altered and 76.6 new acres of impervious area will be constructed. Total alteration of Bordering Vegetated Wetlands (BVW) will be approximately 2,257 sf, mostly associated with stream crossings for the subdivision roadway. The project site contains an area of historical and archaeological significance, the Cowee-Smith Complex (MHC #WST-HA-9), identified by the Massachusetts Historical Commission (MHC).

Project History

The project has a lengthy history under MEPA, commencing in 1989 with the filing of an Environmental Notification Form (ENF) for a commercial rock crushing and gravel operation in advance of an industrial park development, with a full build-out potential of about 1,680,000 square feet (sf). The project categorically required the preparation of an Environmental Impact Report (EIR). In 1990, a Draft Environmental Impact Report (DEIR) was prepared in response to the scope issued by the Secretary of Environmental Affairs. Subsequent documents prepared included a Final Environmental Impact Report, (FEIR) submitted in December 1990, and a Supplemental Final Environmental Impact Report, (SFEIR) submitted in 1991. Each document and subsequent scope strived to clarify the project, potential environmental impacts, and necessary mitigation.

While the SFEIR was found to be adequate in 1991, there were several issues that were considered to be unresolved, including aspects of traffic and generation mitigation, archaeological/historical impacts, wetlands impacts, wastewater disposal, and drainage. Therefore, given the necessary resolution of environmental impact assessments and the challenges associated with a project with a lengthy build-out schedule, the Secretary of Environmental Affairs directed the proponent to prepare and submit Five-Year Updates for public review. These updates were given the status of an EIR and were meant to allow for ongoing analyses of environmental impact issues, present revised and updated Section 61 Findings, and resolve those issues unaddressed by the Certificate on the SFEIR.

In 2001, the proponent filed a Notice of Project Change (NPC) to reduce the overall build-out of the industrial park by 60,000 sf to 1.57 million sf, to reduce proposed land alteration from 236 acres to 164 acres, and to relocate the subdivision roadway. Between the period of 1989 and 2001, the project changed ownership, and then changed ownership again in 2003. The first of the Five-Year Updates was submitted in June 2007. This submission was given the status of a Supplemental Environmental Impact Report and was found to not adequately and properly comply with MEPA in a decision issued by the Secretary on August

1, 2007. The Secretary issued a scope for a Second Supplemental Environmental Impact Report (SSEIR). This certificate has been issued in response to the filing of the SSEIR.

The SSEIR has indicated a lengthy build-out process, with completion of the entire development by the year 2025. Only a small portion of the overall anticipated project square footage has been completed to date (approximately 24,000 sf), while earth removal on Lots I-2, I-3, I-4C and I-5 has been completed, and approximately 70 percent of earth removal has been completed on Lots I-4A and I-4B. Previous MEPA filings stated that the proposed building program was to be directly correlated with the rate of progress of the subdivision development and earthworks operations in an effort to avoid the advancement of mining operations without corresponding lot development.

Jurisdiction and Permitting

The project required the preparation of a mandatory EIR because it exceeded MEPA thresholds (as in effect in 1989) associated with the number of new vehicle trips, new parking spaces and land alteration. The project, as currently proposed, continues to exceed current thresholds related to these areas of impact. Additionally the project requires several State Agency actions, notably the issuance of a State Highway Access Permit from the Massachusetts Highway Department (MassHighway) and a Sewer Connection/Extension Permit from the Massachusetts Department of Environmental Protection (MassDEP). A Construction General Permit issued by the United States Environmental Protection Agency (U.S. EPA) under the National Pollutant Discharge Elimination System (NPDES) program will also be required.

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

Review of the SSEIR

The SSEIR included an updated summary of the project, including comparisons to previously reviewed versions of the project with regard to key areas of potential environmental impact. A project timeline was provided, with an estimated date of project completion in the year 2025. The SSEIR provided a summary of buildings and roadways that have already been constructed, those that have been permitted, and those to be permitted and built.

The SSEIR included a summary of potential permits required to achieve complete project build-out. The project has received several local subdivision approvals from the Westminster Planning Board for various phases of the roadway, as well as earth removal permits issued by the Westminster Board of Selectmen. The SSEIR states that no additional

Orders of Conditions are anticipated for future work within the Depot Business Park limits beyond those already granted by the Westminster Conservation Commission. The proponent has executed and recorded a Declaration of Restrictive Covenant; therefore a Section 401 Water Quality Certification from MassDEP will not be required. The Phase II subdivision roadway will require a Sewer Extension Permit from MassDEP pursuant to 314 CMR 7.00.

The SSEIR included a summary of the types and location of stormwater Best Management Practices (BMPs) to be utilized on-site. The SSEIR also provided a discussion of how the project complies with the MassDEP Stormwater Management Policy (SMP). The SSEIR addressed how project phasing will impact the overall stormwater management system, including the conversion or alteration of temporary sedimentation or detention basins upon completion of land alteration. I encourage the proponent, to the extent practicable, to recharge and infiltrate stormwater runoff on-site using acceptable MassDEP approved BMPs. The SSEIR contained an operations and maintenance plan, including a discussion of limiting erosion and sedimentation, to address the ongoing maintenance of the stormwater management system. Overall stormwater management practices should be conducted in a manner consistent with approved Orders of Conditions and the project's NPDES Construction General Permit.

Estimated wetland impacts include the alteration of approximately 2,257 sf of BVW. The proponent has received each anticipated Order of Conditions from the Westminster Conservation Commission for proposed work within the project site. The SSEIR conceptually outlined the location of replication areas and indicated that Wetland #1 will be replicated at a ratio of 1.5:1, and Wetland #2 will be replicated at a ratio of 2:1. The proponent has proposed the use of bottomless box culverts for wetland and intermittent stream crossings. Such crossings should be constructed in accordance with MassDEP Stream Crossing Guidelines and the applicable Order of Conditions.

The SSEIR included additional information on land alteration/earth removal, historical and archaeological impacts, wastewater and transportation, as detailed further in the scope outlined within this Certificate.

SCOPE

General

The Third Supplemental EIR (TSEIR) should address the items outlined in the following scope. This scope has been further refined and focuses primarily on ongoing concerns related to wastewater and traffic, as well as providing responses to comments. The TSEIR should also address those outstanding scope items outlined in the 1991 Certificate on the SFEIR to the extent that the item is within MEPA jurisdiction and the subject matter of a State Agency action. The TSEIR should be submitted as soon as feasible for review in accordance with the original intent of timely project updates on a five-year basis. Where indicated, additional items may be discussed in the next Five-Year Update, which should be submitted in 2012.

Land Alteration/Earth Removal

The SSEIR included estimates of the volume and location of earth removal that has occurred to date, existing and proposed grades, and supporting graphics. The SSEIR provided a timeline for earth removal operations based upon lot development and clarified the type of earth removal activities proposed on-site (i.e. gravel removal, not mass bedrock excavation). The TSEIR should clarify if any blasting permits will be required for ongoing or future earth removal processes, and whether or not these permits would be issued by State agencies or local permitting authorities. The TSEIR should include a revised "Earthwork for Site Development" graphic so that existing and proposed grades are legible and an assessment can be made as to the scale of proposed grade changes on-site.

Previous MEPA filings stated that the proposed building program was to be directly correlated with the rate of progress of the subdivision development and earthworks operations in an effort to avoid the advancement of mining operations without corresponding lot development. The proponent is reminded of this assumption and a continued good faith effort should be made to develop lots as they are cleared. However, I am aware that the continued renewal of earth removal permits and site plan approval for individual lots is within the jurisdiction of the Town of Westminster.

If significant changes in the location, type or frequency of earth removal operations occur throughout the build-out period, the proponent should identify such changes within a Five-Year Update, unless such changes meet the criteria for a Notice of Project Change (NPC) (301 CMR 11.10), in which case an NPC should be filed.

Historical/Archaeological

The project site contains a known area of historical and archaeological significance, the Cowee-Smith Complex (MHC #WST-HA-9). The Massachusetts Historical Commission (MHC) indicated in its comment letter that a Preservation Restriction was executed for the Cowee-Smith Complex on December 13, 2007. The SSEIR included a site avoidance and protection plan. This plan, and its terms, should be incorporated into the project construction and contract documents.

The SSEIR discussed methods by which archaeologically sensitive areas may be avoided in potential roadway improvement areas. However, the uncertainty of the future roadway layout makes a thorough evaluation of historic or archaeological impacts difficult. Roadway improvements are still in the planning stages and supplemental materials should be provided to MHC for review as design advances. The proponent should provide MHC with scaled project plans of the proposed roadway improvements at the 25 percent design level for review.

Subsequent Five-Year Updates for this project should address how roadway improvements have avoided, minimized or mitigated impacts to historic or archaeological resources, with supporting documentation as necessary.

Wastewater

In response to MassDEP's comments, the TSEIR should provide flow calculations documenting how wastewater flows from both the Phase I portion of the project and the remainder of project build-out were derived. Additionally, the TSEIR should clarify future sewer extension requirements, including capacity of the proposed pump station and sewer project schedule, as requested by MassDEP.

The TSEIR should demonstrate that there is available capacity in downstream sewers for future wastewater flows. Draft Section 61 Findings included in the SSEIR note that the proponent will not connect to the municipal sewer system for future Phase II subdivision lots (except Lot I-4A and Lot I-4B) until Westminster has made appropriate system improvements. It is unclear what types of improvements are needed, whether or not they are feasible, and how they may impact the proposed development timeline. The TSEIR should provide a response to these concerns. Furthermore, the TSEIR must address whether or not the project has been considered within the Town's draft Comprehensive Wastewater Management Plan (CWMP), and whether or not the project site is located within an identified Priority Needs Area. The proponent should work with MassDEP and the Town of Westminster to ensure that sufficient wastewater treatment capacity will be available for the project and that appropriate improvements and upgrades are considered to accommodate the project within the larger wastewater system. The proponent should be aware that, as the project moves forward, if a Sewer Extension Permit must be issued by MassDEP, an NPC and Phase I Waiver request may be required relating to the concurrent review of the draft CWMP for the Town of Westminster (EOEEA No. 13919).

Transportation

The Executive Office of Transportation and Public Works (EOTPW) comment letter stated that the SSEIR included a transportation study prepared in conformance with the EOTPW/EOEEA guidelines for traffic impact assessments. The EOTPW comment letter noted that the transportation study evaluated existing conditions of the original study area for the project and analyzed the impacts of the first development phase (270,000 sf in addition to the existing 24,000 sf by the Year 2012).

The proponent has initiated the design of the Route 2A/Batberick Road intersection and has committed to build improvements, including the signalization (when warranted), widening and dedicated left-turn lanes for each approach prior to the project generating 2,350 daily vehicle trips. In the TSEIR, the proponent should commit to monitoring traffic at this intersection annually and submit traffic signal warrant analyses and crash data to MassHighway for review and approval. Conduit and pullboxes for future signalization should

be installed when the geometric improvements at the intersection are under construction. Additionally, the TSEIR should include a conceptual design plan showing these intersection improvements, as it appears that this has been completed as part of the MassHighway 25 percent design process. The TSEIR should include an update on the design process and an anticipated timeline for the construction of these roadway improvements.

EOTPW has concluded that the anticipated traffic impacts associated with the scheduled build-out within the upcoming five-year period (2008-2012) will have minimal impact on the state highway system. However, future development associated with the completion of the project will likely have an impact on the state highway system. MassHighway has concluded that it will not issue an amended Section 61 Finding in association with the SSEIR, since no additional mitigation measures are required within this discreet five-year period beyond intersection improvements at the Route 2A/Batherick Road (which the proponent has committed to design and construct).

EOTPW has outlined specific requirements for subsequent MEPA filings for this project. These include the preparation of additional traffic assessments, revised draft Section 61 Findings and mitigation measures. The proponent should use the EOTPW comment letter as a guide to the minimum amount of traffic-related information that must be provided in the next Five-Year Update. Additionally, as directed by EOTPW, the proponent must consult with the MassHighway District 3 Office and the Public/Private Development Unit prior to any subsequent submission. Many of the comments received on the SSEIR pertain to concerns about traffic. I anticipate that the TSEIR will specifically respond to these traffic concerns in the Responses to Comments portion of the document.

Air Quality

The proponent should respond the MassDEP's request for a full build-out mesoscale analysis as part of the next Five-Year Update, utilizing the guidance provided in the MassDEP comment letter to determine the scope and scale of response necessary to meet MassDEP requirements. The proponent should also consider participating in construction period air quality mitigation measures, including participation in the MassDEP Diesel Retrofit Program.

Mitigation

The TSEIR must address any potential modifications to proposed draft Section 61 Findings for MassDEP as they pertain to the anticipated Sewer Extension Permit. The proponent should consult with the MEPA Office prior to preparation of these draft Section 61 Findings to ensure appropriate content and format. As part of future Five-Year Updates, the proponent must re-evaluate and likely draft amended Section 61 Findings related to traffic mitigation for consideration by MassHighway. These draft Section 61 Findings should contain clear commitments to implement mitigation measures, estimate the individual costs of each proposed measure, identify the parties responsible for implementation, and a schedule for implementation.

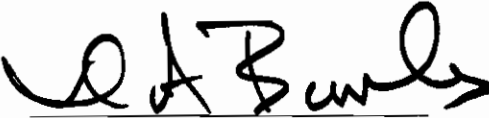
Response to Comments

The SSEIR did not provide a sufficient directed response to the comments received on the Five-Year Update. The TSEIR should contain a copy of this Certificate and a copy of each comment received. The TSEIR should provide a specific response to each comment letter received, presenting additional narrative and/or quantitative analysis necessary to respond to the comments received, to the extent that they are within MEPA jurisdiction. The TSEIR should provide a response to both those letters received in association with the Five-Year Update and the SSEIR. If other portions of the document substantively respond to individual comments, I will allow the proponent to reference sections of the TSEIR; however such responses must include page and paragraph references to assist the reader in review.

Circulation

The TSEIR should be circulated in compliance with Section 11.16(3) of the MEPA regulations and copies should be sent to any state agencies from which the proponent will seek permits or approvals. A copy of the TSEIR should be made available for review at the Westminster Public Library. The proponent must make every effort to provide a timely response to each request for copies of the TSEIR. While copies should be made available at the public library, this does not obviate the proponent from providing an individual copy of the document(s) to members of the public, or other interested parties who may request the document.

January 2, 2008
Date


Ian A. Bowles

Comments received:

- 12/19/2007 Massachusetts Historical Commission
- 12/26/2007 William D. Goodwin
- 12/26/2007 Montachusett Regional Planning Commission
- 12/26/2007 Massachusetts Department of Environmental Protection – CERO
- 12/26/2007 Joshua R. Schonborg
- 12/27/2007 Donna Brownell on behalf of Watchdogs for an Environmentally Safe Town (W.E.S.T)
- 12/27/2007 Nashua River Watershed Association
- 12/28/2007 Executive Office of Transportation

IAB/HSJ/hsj