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January 23, 2008

CERTIFICATE OF THE SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS  
ON THE  
NOTICE OF PROJECT CHANGE

PROJECT NAME : Snowy Owl Resort (formerly Brodie Mt. Resort)  
PROJECT MUNICIPALITY : New Ashford  
PROJECT WATERSHED : Housatonic  
EEA NUMBER : 12750  
PROJECT PROPONENT : Silverleaf Resorts, Inc.  
DATE NOTICED IN MONITOR : December 24, 2007

Pursuant to the Massachusetts Environmental Policy Act (G. L., c. 30, ss. 61-62H) and Section 11.06 of the MEPA regulations (301 CMR 11.00), I determine that this project **does not require** the preparation of an Environmental Impact Report (EIR).

Previously Reviewed Project

As originally described in the Environmental Notification Form (ENF) filed in April 2002, the project involved the reconstruction and expansion of the existing Brodie Mountain Resort. The project site is approximately 505 acres in area. The project included the replacement of 69 existing housing units and the construction of an additional 263 units (for a total of 332). The project also included the development of a wastewater collection, treatment, and groundwater disposal system and a non-community public water supply to provide potable water. Amenities associated with this timeshare development were to be located in several of the existing structures on-site.

According to the 2002 ENF form, the project's impacts were estimated at: 8.9 new acres of impervious area (for a site total of 15.6 acres); approximately 7,390 square feet (sf) of new alteration to the outer riparian zone of a Riverfront Area; an estimated 1,750 new vehicle trips per day, in addition to the existing 1,200 already associated with the project site, for a site total of 2,950 vehicle trips per day; and 470 new parking spaces in addition to the existing 468 parking spaces (for a total of 938 spaces). Total water use would be expanded by 58,000 gallons per day (gpd) to a total of 106,000 gpd and wastewater discharges would expand from 40,000 gpd to 106,000 gpd, with an estimated new flow of 66,000 gpd.

The project as presented in 2002 required a Water Management Act permit, a New Source approval, a Groundwater Discharge Permit, and permission to construct a wastewater treatment facility from the Massachusetts Department of Environmental Protection (MassDEP). No permit was required from the Massachusetts Highway Department, as the project site did not abut the State Highway layout. An Order of Conditions was required from the New Ashford Conservation Commission.

In 2003, the project proponent inquired to the MEPA office whether or not a Notice of Project Change (NPC) would be necessary based upon subsequent design changes. The modified project included the elimination of the majority of the commercial component and the proposed water park. Skiing at the resort was also eliminated, while a remaining snow tubing operation was to remain. Overall site traffic generation was estimated to drop from 2,950 vehicle trips per day to 1,900 vehicle trips per day, and overall water supply and wastewater demands dropped from 106,000 gpd to 85,000 gpd. New acres of land altered on-site remained the same at 11.2 acres, but new impervious area was estimated to drop from 8.9 acres to 6.6 acres. The Secretary of Environmental Affairs determined in a September 5, 2003 letter that the design changes did not constitute a "material change" in the project and therefore, a filing of an NPC was not required.

### Project Change Description

The primary changes to the project include the relocation of the proposed amenities; the ENF had these uses scattered throughout the site in re-used buildings, the NPC has clustered the amenities in the lower portion of the project site, in newly constructed buildings. Additionally, the commercial village, skier services (and skiing and snow tubing), and water slide have all been eliminated from the plan. Remaining amenities include tennis courts, a swimming pool and an activity center, as well as sales and marketing offices.

Based upon information provided in the NPC and subsequent correspondence from the proponent's consultant, overall site impervious area will be 14.9 acres in area (this is less than what was presented in the ENF, but slightly greater than that noted in the 2003 request regarding a project "material change"). The number of total vehicle trips per day associated with the project site has been further reduced to 1,050 trips, with 924 overall parking spaces. Water and wastewater demands remain similar to those presented to MEPA in 2003, with usage and discharges estimated at 85,000 gpd each. Notable changes since the 2002 ENF include: an

increase in land alteration, with an increase of 2.4 acres, for a total of 13.6 acres; and an increase in new non-degraded Riverfront Area alteration of 62,750 sf, for a site total of 70,150. Portions of the project site have been previously developed, including some portions of the Riverfront Area. The proponent is proposing Riverfront Area restoration efforts in accordance with the Massachusetts Wetlands Protection Act.

The project has already obtained permit pertaining to water supply and wastewater disposal. A Water Management Act Permit from MassDEP is no longer required for the project. A new Order of Conditions will be required from the New Ashford Conservation Commission due the scope of changes since the approval of the previous Order of Conditions for the project site.

At the time of the original 2002 filing, the project site was classified as containing estimated habitat of the Spring Salamander, a species of special concern identified by the Division of Fisheries and Wildlife Natural Heritage and Endangered Species Program (NHESP). The site is no longer considered estimated habitat of the Spring Salamander according to the most recent NHESP Atlas. Additionally, the original project was to receive state funding using Chapter 90 monies from the Massachusetts Highway Department (MassHighway). This funding source is no longer being pursued; therefore the current project will not be subject to broad jurisdiction MEPA jurisdiction.

### Jurisdiction

The project, as proposed in the NPC, requires MEPA review pursuant to Section 11.03(1)(b)(2), Section 11.03(3)(b)(1)(f), and Section 11.03(6)(b)(14) of the MEPA regulations because the project will require a State agency action and will result in the creation of five or more acres of impervious area, will result in the alteration of ½ or more acres of Riverfront Area, and will generate 1,050 or more new average daily trips on roadways providing access to a single location along with the construction of 150 or more new parking spaces at a single location. The project will require a drinking water supply permit - Modifications that serve 3,300 people or less (BRP WS 33) from MassDEP and approval of the permit BRP WS 36 - Abandonment of Water Supply Source from MassDEP in accordance with an existing Administrative Consent Order. The project will require a new Order of Conditions from the New Ashford Conservation Commission, or in the event of an appeal, a Superseding Order of Conditions from MassDEP. If the project cannot comply with applicable Massachusetts River and Stream Crossing Standards, the project may require a Category 2 review from the United States Army Corps of Engineers (U.S. ACOE) and a 401 Water Quality Certificate from MassDEP. The project will need to comply with the National Pollutant Discharge Elimination System (NPDES) General Permit from the U.S. Environmental Protection Agency (U.S. EPA) for stormwater discharges from a construction site of over one acre.

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, stormwater, wetlands, water, wastewater, and transportation.

### Land

The proposed project will alter approximately 13.6 new acres of land and create 14.9 new acres of impervious area on the 505-acre project site. Land impacts will be incurred due to the construction of residential units and amenity spaces, along with parking and roadways. It is unclear that despite a reduction in planned commercial activity on-site since the original filing that the number of parking spaces has remained virtually the same. The most recent vehicle trip per day data of 1,050 trips, in conjunction with the provision of 924 parking spaces, suggests that parking spaces can be reduced and potentially further avoid, minimize, or mitigate damage to the environment. The proponent should consider further reducing impact to Riverfront Area and land alteration in general through reducing parking areas, building footprints and circulation routes to the extent practicable. *gibberish*

### Stormwater

The proponent will be required to prepare an erosion and sedimentation control plan in accordance with NPDES CGP requirements. As part of the Notice of Intent review process with the New Ashford Conservation Commission, the proponent must demonstrate that the stormwater management system has been designed and will be constructed in accordance with the Massachusetts Stormwater Management Policy (SMP). The stormwater management system will include a combination of open and closed conveyances such as catch basins, piping, drainage swales, sediment forebay and extended detention basins. Portions of the project site are considered redevelopment areas and should meet the SMP to the extent practicable. MassDEP has noted that due to traffic volumes, the facility would be regulated as a facility with a higher potential pollutant load and that infiltration of stormwater is not allowed in the Interim Wellhead Protection Areas of a Public Water System.

I encourage the proponent to seek ways to infiltrate as much stormwater as possible on-site, in accordance with applicable regulations. Furthermore, while the proponent is employing some Low Impact Development (LID) techniques, the proponent should explore additional opportunities for the implementation of LID techniques and present them as part of the NOI process. The proponent must prepare an updated and detailed Operations and Maintenance Plan (O&M Plan) for consideration by the New Ashford Conservation Commission to ensure that appropriate steps are in place to operate and maintain the stormwater infrastructure on-site.

### Wetlands

The project site contains extensive areas of degraded Riverfront Area, both within the inner and outer riparian zones. MassDEP has indicated in its comment letter that the proposal appears to qualify for consideration as a "Redevelopment" project per 310 CMR 10.58(5). The

proponent has calculated that the total area of existing on-site degraded Riverfront Area is approximately 263,700 sf. Total proposed alteration of Riverfront Area on-site in association with the project is estimated at 333,850 sf. Therefore, new alteration of non-degraded Riverfront Area is estimated at 70,150 sf. This is an increase in Riverfront Area alteration of 62,760 sf from that reviewed in the ENF.

In accordance with the Massachusetts Wetlands Protection Act (WPA) and associated riverfront regulations, the proponent has proposed approximately 93,450 sf of riverfront mitigation area within areas not considered degraded. Areas selected for mitigation include areas cleared for ski trails and roads. Mitigation and replication plans should be provided for review by the New Ashford Conservation Commission. As noted previously, the proponent should continue to investigate alternative site design layouts that may further reduce direct impact to Riverfront Areas.

The project will also alter a total of 29 linear feet of Bank in conjunction with the construction of a new 36-inch culvert crossing, the installation of a drain pipe discharge location behind the Sales Center, and at the stream crossing with the water supply line. The NPC has indicated that no impact to Bank is anticipated in association with the replacement of a 72-inch culvert crossing, as the banks of the original stream channel have already been extensively altered when the original culvert was installed. As part of this NPC, the proponent has proposed several changes including: the existing large (400-foot long by 6-foot diameter) culvert that was to be converted to a stream will now be replaced by a new culvert, the method of crossing the intermittent stream with the proposed water supply line has been revised from a "bore" to an "open cut", and the lower detention basin has been re-located 350-feet to the north and east.

MassDEP has noted in its comment letter that the proposed culvert replacements will need to meet the Design Standards for Culvert Replacement as per the MA Stream Crossing Standards. The proposed work should also comply with the Massachusetts Programmatic General Permit (MA PGP) (December 18, 2006).

#### Water Supply / Wastewater

Water supply and wastewater demands will be approximately 85,000 gpd each. The NPC stated that the project has already obtained a New Source Approval from the water supply wells, a Groundwater Discharge Permit for the wastewater disposal system, and permission to construct a wastewater treatment facility from MassDEP. As part of the relocation and reconfiguration of amenities locations, the proponent has proposed changes to the drinking water system infrastructure originally approved by MassDEP. MassDEP has determined that these proposed changes are significant enough to require a permit modification. The proponent should work with MassDEP to file this modification application. MassDEP has also indicated that the proposed project changes with respect to the wastewater disposal facilities will not impact the current permit for groundwater discharge and the proposed wastewater disposal system. While no additional MassDEP permits are required for wastewater disposal in conjunction with this NPC, the proponent will need to renew the existing permit, as it is set to expire in November 2008.

Transportation

The project will result in a total of 1,050 vehicle trips per day to and from the project site. The project will create 924 total parking spaces on site. The project will not require a permit from MassHighway, as the project does not abut the State Highway layout, nor will it require improvements or modification that would require a State agency action on a State Highway. Should modifications be required on State Highway Route 7, the proponent may be required to obtain approval from MassHighway, and may be required to file an NPC with the MEPA office. The proponent should address items noted earlier in the certificate related to the anticipated number of traffic trips and the number of parking spaces (924) provided.

Construction Period Impacts

The proponent should prepare an erosion and sedimentation control plan in accordance with the NPDES CGP and any conditions outlined by the New Ashford Conservation Commission. The proponent should take measures to reduce potential demolition and construction period impacts (including but not limited to noise, odor, vibration, dust, and traffic flow disruptions).

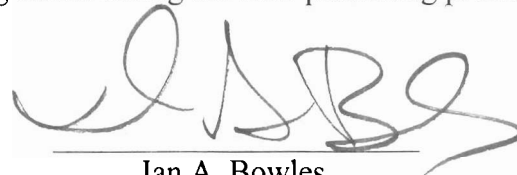
The proponent must comply with MassDEP's Solid Waste and Air Quality Control regulations during construction. I encourage the proponent to incorporate construction waste recycling activities as a sustainable measure for the project. The proponent should consult with MassDEP for appropriate standards and guidelines for managing construction waste.

I encourage the proponent to mitigate the construction period impacts of diesel emissions to the maximum extent feasible. This mitigation may be achieved through participation in the MassDEP Diesel Retrofit Program. The proponent should work with MassDEP staff to implement construction-period diesel emission mitigation, which could include the installation of after-engine emission controls such as oxidation catalysts or diesel particulate filters. The proponent is reminded that off-road equipment engines must use low sulfur diesel (LSD) fuel as of July 2007. The proponent may also use on-road low sulfur diesel (ULSD) fuel.

The proponent can resolve any remaining issues during the state permitting process. No further MEPA review is required.

January 23, 2008

Date



Ian A. Bowles

Comments Received:

1/10/2008     Berkshire Regional Planning Commission  
1/10/2008     S-K Design Group, Inc., on behalf of the proponent  
1/14/2008     Massachusetts Department of Environmental Protection - WERO

IAB/HSJ/hsj