



The Commonwealth of Massachusetts
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Deval L. Patrick
GOVERNOR

Timothy P. Murray
LIEUTENANT GOVERNOR

Ian A. Bowles
SECRETARY

Tel: (617) 626-1000
Fax: (617) 626-1181
<http://www.mass.gov/envir>

April 17, 2009

CERTIFICATE OF THE SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS
ON THE
SUPPLEMENTAL FINAL ENVIRONMENTAL IMPACT REPORT

PROJECT NAME : Brice Lemon Estates Residential Subdivision
PROJECT MUNICIPALITY : Rutland
PROJECT WATERSHED : Ware River
EOEA NUMBER : 13019
PROJECT PROPONENT : C.B. Blair Development Corporation
DATE NOTICED IN MONITOR : March 11, 2009

As Secretary of Energy and Environmental Affairs, I hereby determine that the Supplemental Final Environmental Impact Report (SFEIR) submitted on this project **does not adequately and properly** comply with the Massachusetts Environmental Policy Act (M.G.L. c. 30, ss. 61-62I) and with its implementing regulations (301 CMR 11.00) and requires the filing of a Second Supplemental Final (SSFEIR). Specifically, I find that the Supplemental FEIR has not satisfied the regulatory requirements to ensure that the project's environmental impacts have been clearly described and fully analyzed; that the Proponent has not committed to a set of mitigation measures that will allow the state agencies to satisfy their Section 61 obligations; and that the Proponent's Supplemental FEIR does not provide meaningful opportunities for public review of the additional required analysis prior to the taking of any Agency action. Accordingly, I must require the Proponent to file a SSFEIR pursuant to Section 11.08(c) of the MEPA regulations.

As described further herein, there are two primary deficiencies associated with the SFEIR. First, and most significantly, the Department of Environmental Protection (MassDEP) has stated in its comments on the SFEIR that the Town of Rutland is without sufficient wastewater conveyance capacity to accommodate the project's projected wastewater flows and that MassDEP cannot issue a Sewer Extension Permit for the project as currently proposed and

described in the SFEIR. The SFEIR has therefore failed to adequately describe the project's design, environmental impacts and proposed mitigation in the event that the project is unable to obtain sewer service from the Town of Rutland. The Proponent's failure to present a feasible and permissible preferred alternative requires me to find that the project has not adequately and properly complied with MEPA. Likewise, according to the comments received from the Department of Conservation and Recreation (DCR), the project as presented in the SFEIR includes numerous construction activities that will result in the alteration of bordering vegetated wetland (BVW) resource areas that will require a Variance from the Watershed Protection Act (WsPA) regulations. The SFEIR failed to adequately describe how the project will either meet the standards for a WsPA Variance or be redesigned to avoid the need for a Variance.

Based upon the comments received from MassDEP and DCR, it does not appear that the project can be permitted and constructed as currently designed. Further analysis of the project with modifications that will allow the project to meet the permitting requirements of the agencies and allow the public and agencies the opportunity to review the modified project and its proposed mitigation is therefore required.

Project History

As originally described in the April 2003 Environmental Notification Form (ENF), the project involved the development of an 80-unit Open Space Cluster residential subdivision on a 96-acre site located off Route 122A (Main Street) in Rutland. The project included the construction of 8,848 linear feet of roadway with sidewalk, and supporting utilities and drainage infrastructure including a 40,000 gallon per day (gpd) on-site sewage pump station, and eight stormwater detention basins. The proposed project resulted in the creation of approximately 54 acres of permanent open space.

In November 2006, the Proponent submitted a Draft Environmental Impact Report (DEIR) and a Notice of Project Change (NPC) that described a number of changes and modifications to the proposed project. Subsequent to the issuance of the Secretary's Certificate on the ENF (May 22, 2003), the Proponent expanded the project site to include a total of approximately 122 acres of land area through the acquisition of an additional 25.45 acre development parcel (Lemon parcel) abutting the northwestern corner of the project site. The acquisition of the Lemon parcel allowed for the proposed construction of a secondary accessway into the project site. The revised project development program also included 32 additional residential house lots (112 residential lots total). The revised project would result in additional impacts to on-site wetlands resource areas, rare species habitat, potable water supply and wastewater flows, and traffic. The Proponent proposed to place under a Conservation Restriction (CR) approximately 47.3 acres of the project site comprised of forested upland and wetland habitat, to be held under the supervision of the Rutland Conservation Commission, as permanently protected open space. The Secretary's Certificate on the DEIR/NPC (November 16, 2006) required the Proponent to provide additional information in the FEIR specifically pertaining to alternatives, wetlands, rare species, historic

resources and wastewater.

In November 2007, the Proponent submitted a FEIR for the project proposing the development of a 112 unit Open Space Cluster residential subdivision including the construction of interior roadway with sidewalk, stormwater management infrastructure and supporting utilities. The MEPA office received numerous comments on the FEIR from permitting agencies and others expressing concerns about the magnitude of the project's potential environmental impacts and doubts about whether the project was permissible. According to the comments received from the DCR, the project described in the FEIR document would result in extensive impacts to wetland resources and Outstanding Resource Waters (ORW) that were not consistent with the Watershed Protection Act's regulations and did not meet the Variance eligibility requirements. According to the comments submitted by MassDEP, the Massachusetts Water Resource Commissions' Advisory Board and others, the FEIR did not contain sufficient information to adequately describe the project's proposed water supply plan and wastewater management plan and to demonstrate that the Proponent's wastewater management plan was viable. The Army Corps of Engineers (ACOE) submitted comments which indicated that the FEIR did not successfully demonstrate the project's permissibility under the Federal Section 106 of the National Historic Preservation Act.

In the Certificate on the FEIR (November 17, 2007), I found that the FEIR did not adequately and properly comply with the Massachusetts Environmental Policy Act and required the filing of a Supplemental Final Environmental Impact Report (SFEIR) to provide a robust and detailed analysis of wastewater treatment alternatives to serve the project's total wastewater flows, and the project's potential impacts and proposed mitigation for wetlands resource areas, stormwater drainage, wastewater management and historic resources. The Certificate on the FEIR specifically required the Proponent to assess the viability of on-site and off-site wastewater treatment alternatives and the project's proposed stormwater management system and demonstrate the project's consistency with the regulatory requirements of applicable State permit requirements and policies including the Variance provisions of the Watershed Protection Act regulations, the performance standards for filling of an ORW pursuant to 314 CMR 9.06(3)(e)(3), MassDEP's Sewer Extension permit requirements and applicable Federal and State regulations governing properties listed in the Federal and State Registers of Historic Places.

Permits and Jurisdiction

The project is subject to MEPA review and required a mandatory EIR pursuant to Section 11.03 (1)(a)(2) of the MEPA regulations (because the project proposed to create more than ten acres of new impervious surfaces), and pursuant to section 11.03 (1)(b)(1) of the MEPA regulations (because the project proposed to alter more than 25 acres of land). The project as currently proposed requires a Sewer Extension Permit, a Superseding Order of Conditions, and the approval of a National Pollutant Discharge Elimination System (NPDES) Stormwater

General Permit Notice of Intent for discharges to Outstanding Resource Waters from the Department of Environmental Protection (MassDEP). According to the information provided in the Supplemental FEIR and discussed below, the proposed project no longer requires a 401 Water Quality Certificate from MassDEP or a Variance from WsPA regulations from DCR. As noted above, DCR indicates that the project continues to require a Variance. According to the Proponent, the project design has been revised and no longer requires a 404 Programmatic General Permit from the US Army Corps of Engineers (ACOE), and is not be subject to review by the Advisory Council on Historic Preservation (ACHP) pursuant to Section 106 of the National Historic Preservation Act for work within historic properties (36 CFR Part 800).

The currently proposed project will no longer result in a “take” of rare species habitat and thus does not require a Conservation Management Permit from the Natural Heritage and Endangered Species Program (NHESP). The project appears to continue to require review by the Massachusetts Historical Commission (MHC). The project must comply with the National Pollutant Discharge Elimination System (NPDES) General Permit for stormwater discharges from a construction site of over one acre.

Because the Proponent is not seeking state funding for the proposed project, MEPA jurisdiction is limited to those aspects of the project that are within the subject matter of required or potentially required state permits and that are likely, directly or indirectly, to cause Damage to the Environment. In this case MEPA jurisdiction extends to wetlands, stormwater, wastewater, and historic impacts.

REVIEW OF THE SUPPLEMENTAL FEIR AND SCOPE

Second Notice of Project Change

The Proponent has included a Second Notice of Project Change (2nd NPC) with the SFEIR that describes a number of additional project changes and modifications made by the Proponent subsequent to the issuance of the Secretary’s Certificate on the FEIR on November 15, 2007. The proposed project changes include the realignment of the project’s internal roadway system, the elimination of ‘Wetland Crossing A’, and the construction of bridges to span four proposed wetland roadway crossings. The Proponent’s proposed realignment of the internal roadway and revisions to the layout of building lots have resulted in reductions in total land alteration (60.11 acres total) and impervious surface area (11.43 acres total). The project as currently designed will also result in reduced alterations to wetland buffer areas (approximately 35 acres total), watershed protection areas (4.43 acres total), and portions of a designated National Historic Landmark site. The Proponent has committed to place a Conservation Restriction (CR) on approximately 49.18 acres of the project site comprised of forested upland and wetland habitat, to be held under the supervision of the Rutland Conservation Commission, as permanently protected open space.

While I commend the Proponent for the recent revisions to the project that have resulted in decreased environmental impacts, several problematic aspects of the project have remained largely unchanged since the filing of the FEIR. The remaining issues to be addressed are outlined below.

Wetlands

The wetland resource areas located within the project site drain to the Mill Brook, and Thayer Pond which have been classified as Outstanding Resource Waters (ORW). The Watershed Protection Act (WsPA) regulations (350 CMR 11.04) prohibit alterations within 200 feet of the bank of a Tributary or Surface Water or BVW that border on Tributaries or Surface Waters ('primary watershed protection zone'). The WsPA regulations also restrict alterations located between 200 feet and 400 feet of a Tributary or Surface Water body or BVW ('secondary watershed protection zone'). Proposed building lots that are located within the secondary watershed protection zone are subject to the WsPA's regulations governing impervious surface area, alteration of BVW, and residential density/wastewater flow limits.

As described in the SFEIR, the project design was revised subsequent to the issuance of the Secretary's Certificate on the FEIR to relocate the project's internal roadway system and building lot locations outside of wetland buffer areas and the 200-foot and 400-foot watershed protection zones. The previously proposed construction of Wetland Crossing 'A' has been eliminated. The Proponent is proposing to construct four arched bridged crossings to span bordering vegetated wetlands (BVW) located along Windham Drive (Wetlands Crossing 'B'), Woodside Avenue – north (Wetland Crossing 'C'), Woodside Avenue – south (Wetland Crossing 'D') and Sedona Circle (Wetland Crossing 'E'). According to the Proponent, the proposed wetland crossings 'B', 'C', 'D' and 'E' will not result in permanent alterations to BVW resources.

Under the proposed project design, portions of residential development lots and all five of the project's stormwater detention basins will be located either wholly or primarily within wetland buffer areas. Portions of residential development lots will be located within the 200-foot watershed protection zone for the Mill Brook and/or Thayer Pond, and approximately 11 development lots will be located wholly or primarily within the 400-foot watershed protection zone for the Mill Brook and/or Thayer Pond. According to the information provided in the SFEIR, no land alteration or construction activities are proposed within 200 feet of the Mill Brook or within the 200-foot primary watershed protection zone for the Mill Brook and/or Thayer Pond. The Proponent has proposed to place deed restrictions on lots located within the 200-foot watershed protection zone to prevent future alterations and construction activities within 200 feet of Thayer Pond and the Mill Brook. Thus, according to the Proponent, the currently proposed project no longer requires a Variance from the Watershed Protection Act regulations.

In its comments on the SFEIR, DCR has indicated that the Proponent is proposing to

construct project roadways and bridge-span stream crossings, utilities, water and sewer conveyance systems and drainage systems within BVW resource areas that will require the removal and shading of BVW vegetation, cause significant changes in the site's stormwater runoff characteristics and result in discharges of stormwater flows to BVW resource areas. DCR has indicated that the proposed project construction activities are prohibited and will require a Variance from the WsPA regulations. In addition, comments from DCR indicate that the location of detention basins and the roadway design will continue to impact wetland resources and water quality.

The Certificate on the FEIR required the proponent to present a clear plan for how the project would comply with the WsPA Variance requirements. While I recognize the Proponent's position that the project as currently designed will not require a Variance, DCR, the regulatory agency charged with implementing that Act, has indicated that the project still does not meet the regulatory standards. The Proponent must therefore respond to DCR's comments in the SSFEIR and address DCR's concerns, including those about BVW removal and shading and BVW impacts from stormwater flows. The SSFEIR must include a detailed discussion supporting the Proponent's assertion that the project as currently designed no longer requires a Variance from the WsPA regulations or, in the alternative, must demonstrate the project's consistency with the Variance requirements of the WsPA regulations. The Proponent should also consider additional revisions to the project design to further avoid and minimize impacts to BVW in order to demonstrate consistency with the WsPA regulations and performance standards. I strongly encourage the Proponent to coordinate closely with DCR to ensure any revised project design will meet the WsPA standards.

Stormwater

At full build-out, the Brice Lemon Estates Residential Subdivision project will create approximately 11.43 acres of new impervious surface area. As described in the SFEIR, the stormwater management plan for the proposed project has been designed for the 2, 10 and 100-year storm events and includes the use of deep sump catch batch basins, approximately 5 stormwater detention basins with sediment forebays, and periodic road sweeping to treat the project's stormwater flows for eventual discharge to Bordering Vegetated Wetlands (BVW). According to the Proponent, the stormwater management plan has been designed to remove 80 percent of total suspended solids (TSS). The Proponent's proposed development phases (I-III) have been designed to be consistent with MassDEP's Stormwater Management Standards that were in effect prior to January 2, 2008. The Phase IV development phase has been designed in accordance with MassDEP's revised Stormwater Management Standards which became effective after January 2, 2008.

In its comments on the SFEIR, the DCR has reiterated its comments and concerns expressed in previous MEPA submittals for this project and has again indicated that the project's five stormwater detention basins are located in close proximity to BVW resource areas located

throughout the project site and will likely result in direct discharges from the detention basins to BVW that border on the Mill Brook and/or Thayer Pond during storm events. According to DCR, such discharges are prohibited under the WsPA (350 CMR 11.04(3)(b)(c)) and will require a Variance under the Watershed Protection Act. The Proponent must respond to DCR's comments. As discussed above, the SSFEIR must demonstrate the project's consistency with the Variance requirements under the WsPA or in the alternative, the SSFEIR must provide a detailed explanation of why the project's stormwater management plan and detention basins location is not subject to the WsPA regulations.

I continue to encourage the Proponent to evaluate sustainable design alternatives such as Low Impact Development (LID) techniques in site design and stormwater management plans. LID techniques incorporate stormwater best management practices (BMPs) and can reduce impacts to land and water resources by conserving natural systems and hydrologic functions. The primary tools of LID are landscaping features and naturally vegetated areas, which encourage detention, infiltration and filtration of stormwater on-site. Other tools include water conservation and use of pervious surfaces. Clustering of buildings is an example of how LID can preserve open space and minimize land disturbance. LID can also protect natural resources by incorporating wetlands, stream buffers and mature forests as project design features. For more information on LID, visit <http://www.mass.gov/envir/lid/>. Other LID resources include the national LID manual (Low Impact Development Design Strategies: An Integrated Design Approach), which can be found on the EPA website at: <http://www.epa.gov/owow/nps/lid/>.

Construction Period Stormwater Runoff

The project site has been described as containing steeply-sloping soil types that drain to BVW resource areas containing stream channels leading to surface drinking water supplies. As indicated in DCR's comments, it is critically important that the Proponent employ construction sequencing, erosion control and stormwater management to avoid construction impacts to BVW resources, ORWs and surface drinking water supplies located within the project site.

The SFEIR indicates that the project will require an NPDES General Permit for Stormwater Discharges from Construction Activities (Construction General Permit, CGP) for stormwater discharges from the project site of over one acre. The Proponent will be required to develop and submit to MassDEP a Stormwater Pollution Prevention Plan (SWPPP) for approval under BRP WM 09 designed to prevent or minimize the project's stormwater impacts to protected ORWs during project construction. In its comments, MassDEP has identified the need for additional information to be included in the Proponent's SWPPP for the proposed project.

The SSFEIR should respond to MassDEP's comments and should include all the required elements to be included as part of the CGP submittal process, including but not limited to a description of all proposed erosion and sediment control practices, and commitments to stabilize all disturbed areas and employ necessary pollution prevention measures to provide water quality

protection to ORWs during project construction. The SSFEIR should continue to analyze construction-period impacts, including temporary impacts to wetlands, watershed protection areas, and historic resources, and the extent of any blasting and/or re-grading during construction.

Wastewater

In May 2000, DCR entered into a Sewer Use Agreement (SUA) with the City of Worcester that established wastewater flow allotments for a number of communities including the Towns of Rutland, Holden and West Boylston that could be conveyed to the Upper Blackstone Water Pollution Abatement District's Millbury wastewater treatment facility (Millbury WWTF). Under the SUA, the Town of Rutland was allotted 0.45 million gallons per day (MGD) of annual average wastewater flow for 2005. The Town of Rutland exceeded its allotted wastewater flow limit in 2005 and 2006, and in June 2007, DCR required the Town to halt all additional wastewater flows resulting from new sewer connections and extensions until the Town comes into compliance with its 0.45 MGD flow allotment, and needed improvements to the City of Worcester's sanitary system are completed.

The Proponent's preferred wastewater management plan continues to call for the conveyance of the project's wastewater flows via a new on-site sewer pump station to the Rutland-Holden Trunk Sewer and Relief Trunk Sewer and the City of Worcester's sewer system to the Millbury WWTF for treatment and disposal. According to the Proponent, the Town of Rutland has an adequate wastewater flow capacity to accommodate the project's wastewater flows. However, according to the comments received from MassDEP and DCR, the Town of Rutland continues to exceed its wastewater flow allocation to the Rutland-Holden trunk sewer and remains without sufficient capacity to accommodate the project's wastewater flows. In addition, comments received from DCR indicate that several additional agreements between DCR, Worcester and the Town of Rutland would be needed before additional capacity allotments could be approved. As a result, the Proponent's proposed wastewater management plan is not permissible under MassDEP's Sewer Connection Permit regulations.

The Certificate on the FEIR required the Proponent to include in the SFEIR a robust and detailed analysis of wastewater treatment alternatives to serve the project's total wastewater flows. The Proponent was required to include in this analysis an evaluation of both off-site and on-site wastewater treatment alternatives including the construction of a small on-site package treatment facility providing primary and secondary treatment and disposal of the project's wastewater flows. The SFEIR includes only a brief discussion of wastewater treatment alternatives to serve the project's wastewater flows involving the construction of an on-site package wastewater treatment plant designed to accommodate 49,280 gallons per day (gpd), and the construction of 112 individual on-site septic systems. This brief discussion is insufficient to meet the standards of adequacy under MEPA. In addition, the Certificate directed that soil testing be conducted as requested by MassDEP to evaluate the feasibility and potential configuration of an on-site wastewater treatment and disposal system within the project site. The

SFEIR also failed to provide this required soil analysis.

As described by the Proponent in the SFEIR, the project site's existing soils are comprised of Peru and Marlow soils and are characterized as having major limitations related to wetness and slow permeability. The Proponent has indicated that these soils would hinder infiltration for individual leach fields and would require up to six acres of land area to accommodate an on-site wastewater treatment plant for the proposed project. According to the Proponent, the 122-acre project site does not contain suitable land area to locate on-site wastewater treatment plant for the proposed project. However, according to the comments received from MassDEP, the stormwater management section of the SFEIR identified the project site's soils as comprised of fine sandy loam and gravelly fine sandy loam. MassDEP has indicated that these soils would not preclude the use of on-site wastewater disposal systems. This significant discrepancy must be resolved in the SSFEIR.

The Proponent must respond to the comments received from MassDEP and others regarding the feasibility of subsurface wastewater disposal alternatives to serve the proposed project. Specifically, the SSFEIR should include the results of soil test evaluations for the project site to demonstrate the feasibility of individual leach fields or an on-site treatment plant for the proposed project. The Proponent should evaluate the potential for using the Proponent's proposed open space areas within the project site for locating all or a portion of a small on-site package wastewater treatment facility. This section of the SSFEIR should also include an evaluation of off-site locations for the subsurface disposal of the project's wastewater flows in the Town of Rutland.

Water Supply

The potable water supply needs for the 122-unit Brice Lemon Estates Residential Subdivision project (approximately 48,730 gpd) are proposed to be served by the Town of Rutland's municipal water supply system which draws its source supply from the Nashua River basin. According to the comments previously received from MassDEP on the FEIR submittal for this project, the Town of Rutland exceeded its existing permitted volumes under the Water Management Act in 2005 and 2006. The addition of the project's potable water supply demand would bring the average daily demand of the public water supply beyond the Rutland's authorized water withdrawal volume under the existing Water Management Act permit and will require the Town of Rutland to apply to MassDEP for a new Water Management Act permit. The Secretary's Certificate on the FEIR required the Proponent to respond to MassDEP's comments and to identify water supply options for the project. According to the information in the SFEIR, the Proponent has estimated the Town of Rutland's current water withdrawals to be below the Town's permitted volume of 360,000 gpd under its Water Management Act Permit. The Proponent has offered to work with the Town of Rutland and MassDEP to demonstrate sufficient capacity in the Town's water supply system to serve the proposed project. MassDEP has asked that the Proponent develop a water supply plan.

Water Conservation

I strongly encourage the Proponent to incorporate water conservation and water use efficiency in the project design to comply with the most current State Plumbing Code. Specifically, the Proponent should commit to employing efficient residential water conservation technologies for the project including water saving devices, low flow toilets, and low flow appliances (dishwashers, washing machines). The Proponent should consult with MassDEP to ensure that the final project design meets the Commonwealth's water conservation standards, including those standards pertaining to lawn and landscape conservation. The Proponent should also consider implementing an Irrigation Management Plan (IMP) to further reduce the project's irrigation water demand. An IMP could involve the use of amended soils and compost, the planting of native and drought-tolerant species of trees, shrubs, and turf grasses, an automated water efficient irrigation system, and a water management protocol for drought conditions. I ask that the Proponent consult with MassDEP, and refer to the Massachusetts Water Resources Commission's *Lawn and Landscape Water Conservation, An Addendum to the Water Conservation Standards for the Commonwealth of Massachusetts, October 2002*, during the final design of the Proponent's IMP.

Historic Resources

A large portion of the project site is located within the boundaries of the Rufus Putnam House and agricultural land (c. 1760), a National Historic Landmark site that is listed in the Federal Register and the Massachusetts State Register of Historic Properties. This National Historic Landmark site includes the Rufus Putnam House and approximately 135 acres of historically associated agricultural land area. In its previous comments on the FEIR, the US Army Corps of Engineers (ACOE) expressed concern for the project's potentially significant impacts on the character and setting of the Rufus Putnam National Landmark site and on the overall 135-acre historic property. The Proponent has indicated that the proposed project has been revised and no longer requires a 404 Programmatic General Permit from the ACOE. Accordingly, as described in the SFEIR, the revised project is no longer subject to review by the ACOE and the Advisory Council on Historic Preservation (ACHP) pursuant to Section 106 of the National Historic Preservation Act of 1966 (36 CFR 800), and Massachusetts General Laws Chapter 9, Section 26-27C (301 CMR 11). According to comments received from MHC, the project appears to continue to require review for historic impacts by MHC. The SSFEIR should demonstrate the project's consistency with Federal and State regulations governing properties listed in the Federal and State Registers of Historic Places. The Proponent must continue to investigate all feasible methods of further avoiding, reducing, or minimizing adverse effects to historic landmark properties and resource areas.

Rare Species

In its comments on previously submitted MEPA filings for this project, the Natural Heritage and Endangered Species Program (NHESP) indicated that the Brice Lemon Estates project site was located within priority and estimated habitat for the Four-toed Salamander (*Hemidactylium scutatum*), a state-listed species of "Special Concern." According to NHESP's comments on the FEIR, the Proponent had committed to a number of design revisions and conditions that NHESP had determined were critically important to the long term protection of the Four-toed Salamander which satisfied the performance standards for a MESA Conservation and Management permit.

As described in the SFEIR, the Four-toed Salamander was removed from the Massachusetts Endangered Species Act (MESA) list of Endangered, Threatened and Special Concern species in June 2008. However, according to NHESP's comments on the SFEIR, the species remains vulnerable to the effects of road mortality and habitat loss. Although no longer required, the Proponent has committed to maintain nearly all of the project modifications and revisions that NHESP previously determined were critically important to the long term protection of the Four-toed Salamander including:

- placing a Conservation Restriction (CR) on approximately 49.18 acres (40%) of the project site's forested uplands and wetlands resource areas for the permanent protection of Four-toed Salamander habitat;
- implementation of construction mitigation activities including the installation of erosion control fencing prior to construction, and the restoration and monitoring of any temporary alteration along the streams to facilitate installation of the crossing structures; and,
- placing deed restrictions on particular residential development lots to ensure protection and compliance with adjacent CR land areas.

I echo NHESP's acknowledgment and appreciation of the Proponent's willingness to undertake the above measures to ensure protection of the Four-toed Salamander.

Air Quality Construction Impacts

I ask that the Proponent voluntarily participate in MassDEP's Clean Air Construction Initiative (CACI) and the MassDEP Diesel Retrofit Program to mitigate the construction-period impacts of diesel emissions to the maximum extent feasible. The CACI program helps Proponents identify appropriate mitigation for minimizing air pollution from construction vehicles such as retrofit of construction equipment with particulate filters and oxidation catalysts and/or use of on-road low sulfur diesel (LSD) fuel. The Proponent should consult with MassDEP to develop appropriate construction-period diesel emission mitigation, which could include the installation of after-engine emission controls such as diesel oxidation catalysts (DOCs) or diesel particulate filters (DPFs). For more information on these technologies, see:

<http://www.epa.gov/otaq/retrofit/verif-list.htm>. All construction-related refueling and equipment maintenance activities should be conducted under cover on impervious surface areas with containment, and outside of any wetlands resource areas, endangered species habitat areas, residential areas and wellhead protection areas.

Comments

The SSFEIR should respond to the substantive issues raised in the comments received to the extent that the comments are within the subject matter jurisdiction of MEPA. This directive is not intended to and shall not be construed to extend the Scope for the SSFEIR beyond what has been specifically identified herein. I recommend that the Proponent employ an indexed response to comments format, supplemented as appropriate with direct narrative response.

Mitigation and Section 61


The SSFEIR should contain a summary of all mitigation measures to which the Proponent has committed, including a description of timing (by year or appropriate trigger point), estimated cost, and responsible party. The SSFEIR should include Proposed Section 61 Findings for use by the state agencies.

Circulation

The SSFEIR should be circulated in compliance with Section 11.16 of the MEPA regulations and copies should also be sent to the list of "comments received" below and to the Town of Rutland officials. A copy of the SSFEIR should be made available for public review at the Rutland Public Library.

April 17, 2009

Date



Ian A. Bowles, Secretary

Comments received:

04/09/09	Massachusetts Water Resources Commission (WRC)
03/24/09	Natural Heritage and Endangered Species Program (NHESP)
04/10/09	Massachusetts Department of Conservation and Recreation (DCR)
04/10/09	Department of Environmental Protection (MassDEP) – CERO
04/14/09	Massachusetts Historical Commission (MHC)

IAB/NCZ/ncz
SFEIR #13019