The Commonwealth of Massachusetts
Executive Office of Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114-2524

MITT ROMNEY
GOVERNOR
KERRY HEALEY
LIEUTENANT GOVERNOR
ROBERT W. GOLLEDGE, JR.
SECRETARY

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

October 26, 2006

CERTIFICATE OF THE SECRETARY OF ENVIRONMENTAL AFFAIRS
ON THE
2nd NOTICE OF PROJECT CHANGE

PROJECT NAME	: Fly Ash Landfill Redevelopment
PROJECT MUNICIPALITY	: Freetown
PROJECT WATERSHED	: Taunton
EOEA NUMBER	: 1982
PROJECT PROPONENT	: **K.R. Rez**endes, Inc.
DATE NOTICED IN MONITOR	: September 26, 2006

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 hereby determine that this project **continues to require** the preparation of a Supplemental Environmental Impact Report (Supplemental EIR).

MEPA History

The project was the subject of Draft and Final EIR in 1976 for the landfilling of approximately 800 tons per day (tpd) of coal fly ash on a 35-acre portion of a 60.2-acre former sand and gravel mining site located off Route 79A (South Main Street) in Freetown. The daily tonnage of coal fly ash received at the site was increased to 1,500 tpd in 1994. The project site is bordered by Route 24, the Assonet River, Payne's Cove and South Main Street. The proponent also proposed to develop an industrial park within the project site comprised of the former sand and gravel and completed fly ash landfill containing approximately 3.7 million square feet (sf) of light manufacturing and commercial space. The business park was not constructed.

A Notice of Project Change (NPC1) was filed with the MEPA Office in March 2005 and described the addition of 19.9 acres to the project site (80.5 acres total) and a reduced mixed-use development (105,000 sf total) consisting of five commercial development lots with a sales and service center for recreational vehicles, a campground, a bank and offices, a retail center, and a restaurant. The additional 19.9 acre acreage is located between South Main Street and the fly ash landfill. The NPC submittal also contained the proponent's request for a Phase I Waiver to construct the recreational vehicle sales and service center prior to the completion of the Supplemental EIR for the project.

On May 20, 2005 a Secretary's Certificate was issued for the NPC submittal and required the proponent to prepare an EIR for the proposed mixed use project. A Record of Decision (ROD) granting the proponent's Phase I Waiver Request was issued on May 20, 2005.

As described in this second NPC (NPC 2), the project as currently designed involves the phased development (Phase I, Phase II) of approximately 451,700 sf of mixed-use commercial office and retail space with a bank and restaurant. The project site has been expanded with the addition of 0.88 acres of land area (81.38 acres total) to provide for increased separation between the project site's proposed site drive and the Route 24 southbound exit ramp (Exit 9). The additional acreage is located between South Main Street and the fly ash landfill. Phase I construction activities will include completion of the closure process for the fly ash landfill, construction of internal roadways, utilities and stormwater management infrastructure. Phase II will include the construction of the proposed mixed-use commercial and retail space, and approximately 1,980 surface parking spaces.

MEPA Jurisdiction

The project as currently proposed requires preparation of an Supplemental EIR pursuant to sections 11.03 (1)(a)2, 11.03 (6)(a)6, and (6)(a)7 of the MEPA regulations because the project requires state permits and will involve the creation of more than 10 acres (approximately 40 acres total) of new impervious surfaces, generate more than 3, 000 new vehicle trips per day (approximately 25,000 total) and result in the construction of 1,000 or more new parking spaces (1,976 spaces total), respectively. The project will require a Highway Access Permit from the Massachusetts Highway Department (MassHighway), and a Post-Closure Use Permit and Sewer Extension Permit from the Massachusetts Department of Environmental Protection (MassDEP). 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. According to the information provided in the NPC2 submittal, the project is estimated to generate approximately 25,000 vehicle trips on the average weekday. An air quality mesoscale analysis for ozone will be needed for this project to assess the total volatile organic compounds (VOC) and nitrogen oxides (NOx) emissions associated with all project-related vehicle trips.

Because the proponent is not seeking financial assistance from the Commonwealth for the project, MEPA jurisdiction extends to those aspects of the project within the subject matter of required or potentially required state permits and that have potential to cause Damage to the Environment. In this instance, MEPA jurisdiction exists over issues related to traffic, stormwater, and wetlands.

SCOPE

The Supplemental EIR should follow the general guidance for outline and content contained in Section 11.07 of the MEPA regulations, as modified by this Certificate. The Supplemental EIR should be circulated in compliance with Section 11.16 of the MEPA regulations and copies should be sent to those parties that submitted comments on the 2nd NPC submittal, and to any additional state agencies from which the proponent will be seeking permits and approvals.

Project Description

The Supplemental EIR should include a thorough description of the project and all project elements and construction phases. It should include an existing conditions plan illustrating resources and abutting land uses for the entire project site and a proposed conditions plan illustrating proposed structures, internal roadways, utilities and stormwater management systems.

Project Permitting and Consistency

The Supplemental EIR should briefly describe each state and local permit required for the project, and should demonstrate that the project meets any applicable performance standards. In accordance with section 11.01(3)(a) of the MEPA regulations, the Supplemental EIR should also discuss the consistency of the project with any applicable local or regional land use and open space plans and address the requirements of Executive Order 385 (Planning for Growth).

Land Alteration

The project site is the location of the former K.R. Rezendes, Inc. coal fly ash landfill. The landfill operated under applicable MassDEP permits until around 2002, when it ceased accepting and disposing of coal ash. To date, the proponent has capped approximately 80% of the landfill area in accordance with previously approved plans. Approximately 20% of the landfill area remains to be capped. In their comments, MassDEP has indicated that the proposed post-closure use project is permittable, but must comply with MassDEP's DSWM requirements before it can issue the proponent a Major Post-Closure Use Permit pursuant to 310 CMR 19.142. The Supplemental EIR should present documentation sufficient to demonstrate that the landfill will be capped and maintained in accordance with previously approved plans. The Supplemental EIR should present any proposed design changes to the cap of the landfill in order to accommodate the proposed post-closure land uses.

It should also present the findings of both qualitative and quantitative risk assessments in order to demonstrate that the proposed post-closure activities will not be placed at risk as a result of the underlying landfill. The Supplemental EIR should respond to MassDEP's comments. The Supplemental EIR should provide a detailed narrative description of the process by which the proponent arrived at the currently proposed mix of land uses for the site. For each component of the proposed project, the Supplemental EIR should quantify the amount of land to be altered, the amount of earthwork required to meet final grades, and the amount of impervious surfaces to be created.

Wetlands

All resource area boundaries, riverfront areas, applicable buffer zones, and 100-year flood elevations should be clearly delineated on a plan. Bordering vegetated wetlands that have been delineated in the field should be surveyed, mapped, and located on the plans. Each wetland resource area and riverfront area should be characterized according to 310 CMR 10.00. The text should explain whether the local conservation commission has accepted the resource area boundaries, and any disputed boundary should be identified. The Supplemental EIR should address the significance of the wetland resources on site, including public and private water supply; riverfront areas; flood control; storm damage prevention; fisheries; shellfish; and wildlife habitat. It should identify the location of nearby public water supplies and wells. The Wetland Section of the Supplemental EIR should contain an alternatives analysis to ensure that all wetland impacts are avoided, and where unavoidable impacts occur, impacts are minimized and mitigated. The Supplemental EIR should provide an accurate measurement of the wetland resource areas that will be affected by the project. The Supplemental EIR should illustrate that the impacts have been minimized, and that the project will be accomplished in a manner that is consistent with the Performance Standards of the Wetlands Regulations (310 CMR 10.00).

For any amount of required wetlands replication, a detailed wetlands replication plan should be provided in the Supplemental EIR that, at a minimum, includes: replication location(s) delineated on plans, elevations, typical cross sections, test pits or soil boring logs, groundwater elevations, the hydrology of areas to be altered and replicated, list of wetlands plant species of areas to be altered and the proposed wetland replication species, planned construction sequence, and a discussion of the required performance standards and monitoring. MassDEP is recommending a replication rate greater than 1:1.

Rare Species

In their comments, the Natural Heritage and Endangered Species Program (NHESP) indicated that portions of the project site are located within Priority and Estimated for the Diamondback Terrapin *(Malaclemys terrapin)* a state protected threatened species.

NHESP has requested that the proponent conduct a habitat assessment of the project site focusing on identifying suitable Diamondback Terrapin nesting habitat. The proponent should respond to NHESP's comments. The Supplemental EIR should report on the proponent's habitat assessment activities.

Stormwater

The project as currently designed will create approximately 40 acres of new impervious surface area. The Supplemental EIR should include a detailed description of the project's proposed drainage system design, including a discussion of the alternatives considered along with their impacts. The Supplemental EIR should identify the quantity and quality of flows. The rates of stormwater runoff should be analyzed for the 10, 25 and 100-year storm events. The locations of detention basins and their distances from wetland resource areas, and the expected water quality of the effluent from said basins should be identified. The Supplemental EIR should indicate and discuss where the Route 79A and Route 24 drainage systems discharge in this area. It should also be demonstrated that the proposed drainage system would control storm flows at existing levels. If the proponent ties into an existing municipal stormwater system or the MassHighway system, the Supplemental EIR should clarify the permits required and if there will be a recharge deficit on-site.

The Supplemental EIR should address the performance standards of DEP's Stormwater Management Policy. It should demonstrate that the design of the drainage system is consistent with this policy, or in the alternative, why the proponent is proposing a drainage system design not recommended by DEP. The proponent should use the DEP Stormwater Management Handbook when addressing this issue. The Supplemental EIR should discuss consistency of the project with the provisions of the National Pollutant Discharge Elimination System (NPDES) General Permit from the U.S. Environmental Protection Agency for stormwater discharges from construction sites. The Supplemental EIR should also include a discussion of best management practices employed to meet the NPDES requirements, and should include a draft Pollution Prevention Plan. In addition, a maintenance program for the drainage system will be needed to ensure its effectiveness. This maintenance program should outline the actual maintenance operations, sweeping schedule, responsible parties, and back-up systems.

The proposed stormwater management plan should address current and expected post-construction water quality (including winter deicing and sanding analyses) of the predicted final receiving water bodies. Proposed activities, including construction mitigation, erosion and sedimentation control, phased construction, and drainage discharges or overland flow into wetland areas, should be evaluated. I recommend that the proponent consider using a non-sodium based winter de-icing agent on parking areas and driveways. The drainage analysis should ensure that on- and off-site wetlands are not impacted by changes in stormwater runoff patterns.

Sufficient mitigation measures should be incorporated to ensure that no downstream impacts would occur. The drainage analysis should ensure that on- and off-site wetlands are not impacted by changes in stormwater runoff patterns. The proponent should recharge roof runoff and other treated stormwater runoff from parking areas and driveways in order to retain as much as possible of the existing groundwater flows and drainage patterns. I ask that the proponent consider incorporating the use of such LID measures as permeable surface parking materials and landscaped bioretention areas to significantly reduce the total amount of impervious area and stormwater runoff from the proposed project.

Drinking Water

The Supplemental EIR should quantify the water supply impacts for the proposed retail development project. According to statements made by the proponent at the MEPA site visit, this project's water supply will be served by the Town of Freetown. The DEIR should demonstrate that the use of the Town of Freetown's water supply to service the project is feasible. At a minimum, the Supplemental EIR should demonstrate that:

1. the Town's municipal water supply has sufficient design capacity to accommodate the proposed project's additional (36,000 gpd) water supply demand; and,
2. the proponent has secured permission from the Town of Freetown to obtain the necessary water supply.

The Supplemental EIR should identify any municipal water system improvements that will be required by the proponent in order to connect to the municipal water system. I strongly encourage the proponent to commit to incorporating water conservation technologies throughout the proposed retail development project, to the maximum extent practicable.

Wastewater

According to the information provided in the NPC2 submittal and comments made by the proponent during the October 13, 2006 MEPA site visit held for this project, the project's estimated wastewater flows (approximately 36,000 gpd) will be conveyed through the Town of Freetown's sewer collection system to the City of Fall River's wastewater treatment facility. The proponent has proposed to extend an existing municipal sewer line north to the project site within the South Main Street right-of-way to serve the proposed project. The Supplemental EIR should demonstrate that the proposed conveyance and treatment of the project's wastewater flows is feasible.

At a minimum, the Supplemental EIR should demonstrate that:

1. the Town of Freeetown's sewer collection system and the City of Fall River's wastewater treatment facility have sufficient design capacity to accommodate the proposed project's additional (36,000 gpd) wastewater flows; and,
2. the proponent has secured permission from both the Town of Freetown and the City of Fall River to direct the proposed project's wastewater flows off-site to said facility for treatment.

Impacts on New Growth in Sewer Improvement Areas

Additionally, the project may also involve the construction of new sewer infrastructure that will extend beyond the project site's northern boundary to enable future development within the project area to be served by the Town of Freetown's municipal sewer collection system. In accordance with Executive Order 385 (Planning for Growth) and section 11.01 (3)(a) of the MEPA regulations, the Supplemental EIR should identify the land use categories located within any proposed sewer improvement area identified in the Supplemental EIR, and contain a detailed analysis of the potential secondary growth impacts and increased wastewater flows that may be induced by the proposed sewer improvements from the project's proposed mixed-use retail development and sewer improvement areas. The Supplemental EIR should include full-build projections of these flows and volumes. I encourage the proponent to consult with the Town of Freetown, DEP and the Growth Management Policy staff at the Executive Office of Environmental Affairs in preparing this section of the Supplemental EIR. The Supplemental EIR should outline the proponent's efforts to reduce water consumption and thereby reduce wastewater generation. Based on the information and analysis provided in the Supplemental EIR, I reserve the right to require further analysis of the project's proposed methods of wastewater management, and any mitigation for wastewater impacts deemed necessary.

Traffic Generation

The Supplemental EIR should include a traffic impact and access study prepared in conformance with the EOEA/EOTC Guidelines for Traffic Impact Assessments and should identify appropriate mitigation measures for areas where the project will have impacts on traffic operations. The proponent should clearly commit to implementing appropriate mitigation measures and describe the timing of their implementation. The traffic study should include capacity analyses and a summary of average and 95th percentile queues for each intersection within the study area.

The traffic study should account for background development in the area, including the proposed Riverfront Business Park (EOEA #12367), the Boston Beer Company Brewery site, and all other projects in the project area. At a minimum, the Supplemental EIR should analyze traffic impacts by determining the level of service (LOS) at the following intersections:

- Route 24 ramp/79A (South Main Street) interchange;
- Route 24 ramp intersection/North Main Street interchange;
- Route 79A and the proposed project site drive; and
- South Main Street/Narrows Road intersection;
- South Main Street/Copicut Road intersection;
- Route 79 (South Main Street)/Ridge Hill Road intersection;
- Route 79 (South Main Street)/High Street intersection;
- Route 79 (South Main Street)/Simpson Lane intersection;
- Route 79 (South Main Street)/Elm Street/North Main Street intersection; and
- Route 79 (Elm Street)/Mill Street intersection.

The LOS analysis in the Traffic Study should include both p.m. peak weekday hours and Saturday peak hours. It should include volume to capacity ratios, a summary average and 95th percentile vehicle queues for each intersection, a traffic distribution map, and background growth from other proposed developments in the area. The LOS analysis should examine present and future build and no-build traffic volumes for all impacted roadways and intersections. The proponent should identify the Land Use Codes (LUC) used and how its trip generation estimates have been generated.

Traffic accident history for the three most recent years for which data are available should be reviewed and presented for the study area. I strongly encourage the proponent to consult with the Massachusetts Highway Department (MassHighway) prior to preparing the traffic impact and access study to discuss and resolve any issues pertaining to the proximity of the proposed project site drive with the Route 24 southbound on- and off-ramps. In their comments, MassHighway has requested that the proponent address the project's impacts to the Route 24/Route 79 interchange. Specifically, MassHighway has identified this intersection's existing capacity constraints resulting from the limited roadway cross section of the Route 24 underpass. The project's potential traffic impacts including the proximity of the project's proposed site drive will require an additional travel lane and possibly a new bridge spanning Route 79. The Supplemental EIR must respond to MassHighway's comments

The Supplemental EIR should discuss the suitability of any proposed signalization improvements and any roadway widening. Any proposed traffic signalization must include a traffic signal analysis according to the Manual of Uniform Traffic Control Devices (MUTCD) standards. It should discuss right-of-way (ROW) implications of possible widening and describe how such ROW's would be acquired. Existing truck volumes should be estimated from vehicular traffic counts.

Parking and Site Layout

The project includes the construction of approximately 1,976 on-site surface parking spaces. The proposed parking plan includes approximately 420 more surface parking spaces than the number of parking spaces required under local zoning. The Supplemental EIR should describe how the number of proposed parking spaces was determined, and should explain why the parking supply is greater than the amount required under local zoning. The Supplemental EIR should discuss the impacts of excess parking on the proposed Transportation Demand Management (TDM) program, and the feasibility of an alternative with fewer spaces. The proponent should show the overall vehicular and pedestrian internal circulation patterns for the project site and adjacent properties, both at the completion of the Lowe's project and upon completion of the full-build scenario.

Transit

The Supplemental EIR should provide an inventory of public transit and bus services in the project area that connect to the local commuter rail station. The proponent should work with local officials to identify bus connections and potential shuttle bus services from activity nodes and residential areas to the project site.

Pedestrian and Bicycle Facilities

The Supplemental EIR should show where sidewalks and bicycle facilities currently exist on a map of the area. It should identify any proposed pedestrian (sidewalk) and bicycle facility improvements included with this project.

Air Quality

An air quality mesoscale analysis for ozone will be needed for this project to assess the total volatile organic compounds (VOC) and nitrogen oxides (NOx) emissions associated with all project-related vehicle trips and to demonstrate that VOC/NOx emissions associated with the Preferred Alternative are less than those from the No-Build case in the short-term and long-term. If VOC/NOx emissions from the preferred alternative are greater than the no-build case, reasonable and feasible VOC/NOx reduction/ mitigation measures should be included. The proponent should consult DEP's "Guidelines for Performing Mesoscale Analysis of Indirect Sources" and with DEP to determine the appropriate study area. This section of the Supplemental EIR should discuss opportunities to enhance pedestrian, bicycle, and transit modes to reduce the air quality impacts of the proposed project. The Supplemental EIR should also discuss compliance with DEP's Ridesharing Regulations, 310 CMR 7.16.

Hazardous Wastes

In their comments, MassDEP has identified at least two sites, located near the project site where a release of hazardous waste material to soil or groundwater has been reported (RTN 4-86, RTN 4-13619). I strongly recommend that the proponent consult with DEP's Bureau of Waste Site Cleanup (BWSC) in the final design of this project to explore what impacts, if any, the proposed project might have on these hazardous waste release sites, and to evaluate the proponent's need for retaining a Licensed Site Professional (LSP) to assist in the project's construction. The proponent should ensure that the project contractors and sub-contractors maintain an emergency response plan for performing appropriate response actions in the event contamination is encountered during project construction.

Construction

The Supplemental EIR should evaluate potential construction period impacts (including but not limited to noise, dust, and traffic maintenance) and analyze feasible measures that can avoid or eliminate these impacts.

Mitigation/Draft Section 61 Findings

The Supplemental EIR should include a separate chapter on mitigation measures. It should develop transportation and parking demand management measures to reduce single passenger automobile trips to the project and encourage ridesharing to the site by employees. The Supplemental EIR should include any conceptual plans for roadway improvements with sufficient detail to verify the feasibility of constructing such improvements.

The plans should show proposed lane widths and offsets, layout lines and jurisdictions, and the land uses (including access drives) adjacent to areas where improvements are proposed. The Supplemental EIR should state whether land takings are necessary to implement proposed improvements and should identify the party responsible for such takings. Any proposed mitigation within the state highway layout must conform to MHD standards, including but not limited to, lane, median and shoulder widths, bicycle lanes and sidewalks.

This chapter on mitigation should include a Draft Section 61 Finding for all state permits. The Draft Section 61 Finding should contain a clear commitment to mitigation, an estimate of the individual costs of the proposed mitigation, and the identification of the parties responsible for implementing the mitigation. A schedule for the implementation of mitigation, based on the construction phases of the project, should also be included. I urge the proponent to participate in any discussions and studies, which evaluate the feasibility of traffic, transit, pedestrian, and bicycle improvements within the project area.

Responses to Comments

The Supplemental EIR should include a copy of this Certificate and a copy of each comment letter received. It should respond to the comments received to the extent that the comments are within the subject matter of this scope. Each comment letter should be reprinted in the Supplemental EIR. I defer to the proponent as it develops the format for this section, but the Response to Comments section should provide clear answers to questions raised.

Circulation

The Supplemental EIR 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 Seekonk town officials. A copy of the Supplemental EIR should be made available for public review at the Freetown Public Library.

October 26, 2006
Date

Robert W. Golledge, Jr, Secretary

Comments received:

10/13/06	Department of Environmental Protection SERO (MassDEP)
10/16/06	The Natural Heritage and Endangered Species Program (NHESP)
10/16/06	Executive Office of Transportation/Office of Transportation Planning (MassHighway)
10/20/06	Southeastern Regional Planning and Economic Development District (SRPEDD)

RWG/NZ/nz
EOEA #01982 NPC2