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November 21, 2008

CERTIFICATE OF THE SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS
ON THE
ENVIRONMENTAL NOTIFICATION FORM

PROJECT NAME : The Center at Lenox Retail Expansion Project
PROJECT MUNICIPALITY : Lenox
PROJECT WATERSHED : Housatonic
EEA NUMBER : 14332
PROJECT PROPONENT : MEC Lenox Associates, LP. c/o S.R. Weiner and
Associates, Inc.
DATE NOTICED IN MONITOR : October 22, 2008

Pursuant to the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-62I) and Section 11.06 of the MEPA regulations (301 CMR 11.00), I hereby determine that this project **requires** the preparation of an Environmental Impact Report (EIR).

Project Description

The proposed project consists of expansion of an existing retail development on a 36-acre site abutting Routes 7 and 20 in the Town of Lenox. The existing development, totaling 106,139 square feet, includes a restaurant, bank, and two retail buildings, which will remain. The site also includes parking and utilities for the existing development and a fire protection pond. The proposed project involves construction of a 13,225 square foot (sf) retail pharmacy and a 73,700 sf bank and retail building with associated utilities, driveways and parking areas. The project includes expansion of the fire pond and demolition of an existing 956-sf structure.

The project site includes a wooded wetland system, located to the north of the proposed retail expansion, and areas mapped as priority habitat for two state-listed plant species. According to the Environmental Notification (ENF), the proposed project will result in an additional 6.6 acres of land alteration, including 4.4 acres of new impervious area and alteration

of 4,500 sf of Bordering Vegetated Wetlands (BVW). The proposed project will result in 3,602 new vehicle trips per day for a total of 10,656 trips on an average weekday and 4,714 on an average Saturday for a total of 14,300 vehicle trips on an average Saturday, when combined with the existing development. Ninety-five new parking spaces are proposed, for a total of 768 spaces. Water demand for the project is estimated at 5,069 gallons per day (gpd) and wastewater generation is estimated at 4,608 gpd (a combined total of 13,642 gpd and 12,402 gpd respectively, including the existing development). The project will be served by municipal water and sewer system. The ENF indicates that the existing pond, currently used for fire suppression, may be expanded to provide increased volume needed for the proposed retail expansion.

MEPA Jurisdiction and Permitting

The project is undergoing environmental review because it requires a state agency action and exceeds a MEPA review threshold. The project is subject to a mandatory EIR pursuant to 301 CMR 11.03(6)(a)(6) because it will result in generation of 3,000 or more new vehicle trips per day. The project is also under review pursuant to 301 CMR 11.03(2)(b)(2) because it may involve a "take" of a state-listed species.

The project requires a Vehicular Access Permit for access to Route 7/20 from the Massachusetts Highway Department (MassHighway). The project requires an Order of Conditions from the Lenox Conservation Commission (and, on appeal only, a Superseding Order from the Massachusetts Department of Environmental Protection (MassDEP)). The project may require a Conservation and Management Permit from the Division of Fisheries and Wildlife, Natural Heritage and Endangered Species Program (NHESP). The project is subject to the requirements of the MEPA Greenhouse Gas (GHG) Emissions Policy and Protocol because it requires an EIR and a Vehicular Access Permit from MassHighway.

The proponent is not seeking financial assistance from the Commonwealth. Therefore, MEPA jurisdiction is limited to those aspects of the project that are within the subject matter of any required or potentially required state permits and that may cause Damage to the Environment as defined in the MEPA regulations. In this case, MEPA jurisdiction extends to transportation, greenhouse gas emissions, wetlands, rare species, and stormwater.

SCOPE

General

The proponent should prepare a Draft EIR (DEIR) in accordance with the general guidance for outline and content found in Section 11.07 of the MEPA regulations as modified by this Scope. The DEIR should include maps and plans at a reasonable scale, a project summary and schedule, and a description of any changes since the filing of the ENF.

The DEIR should include existing and proposed conditions plans. Site plans should clearly show all proposed project elements including the fire pond expansion, detention ponds and other components of the stormwater management system. Site plans for the proposed project

and its alternatives should delineate wetland resource areas and buffer zone, and mapped state-listed species habitat to facilitate review and evaluation of potential impacts.

Alternatives

The DEIR should include an evaluation of all feasible alternatives and describe how the preferred alternative will avoid, minimize and mitigate environmental impacts to the maximum extent feasible. The alternatives analysis should include a clear comparison (quantified to the extent feasible) of the impacts of each alternative and its project components (including but not limited to acres of land alteration, impervious area, wetlands, habitat impacts, traffic and parking, and greenhouse gas emissions). The DEIR should provide a rationale to explain why certain alternatives are selected and others ruled out for further consideration.

The DEIR should consider alternative site layouts and building configurations, and include an analysis of alternatives to avoid and minimize impacts to wetlands resource area and state-listed species habitat, as well as alternatives to reduce greenhouse gas emissions as further detailed in the Scope below.

The ENF proposes 768 parking spaces, which includes an additional 95 new spaces. However, the ENF indicates that town bylaws require 665 spaces. To reduce land alteration and impervious area, the DEIR should evaluate an alternative layout with the minimum parking required by the Town of Lenox. The proponent should consider a reserve parking area if needed in the future and provide a detailed explanation to justify the need for any additional spaces proposed.

Permitting and Consistency with State, Local and Regional Policies

The DEIR should discuss applicable permits and regulatory requirements, and describe how the project will meet relevant performance standards. The DEIR should include a list of required permits and approvals and provide an update on the status of each permit and/or approval.

The DEIR should address the issues raised in the comment letter from the Berkshire Regional Planning Commission (BRPC), which indicates that the proposed project is consistent with certain components of local and regional plans but not others, namely pedestrian connections with adjacent developments, aspects of transportation management, and wetlands and stormwater management.

The DEIR should describe the project's consistency with Executive Order No. 385, Planning for Growth and the Commonwealth's Ten Sustainable Development Principles. The DEIR should also demonstrate consistency with the MEPA Greenhouse Gas (GHG) Emissions Policy and Protocol in accordance with the GHG section of the Scope below.

Rare Species

The proposed project has the potential to adversely impact state-listed plant species. Portions of the project site are mapped as Priority Habitat for the Crooked Stem Aster (*Symphyotrichum prenanthoides*), the Hill's Pondweed (*Potamogeton hillii*) and the Intermediate Spike Sedge (*Eleocharis intermedia*). The proponent will be required to submit a formal Massachusetts Endangered Species Act (MESA) filing to NHESP pursuant to 321 CMR 10.00. The DEIR should include an update on the results of botanical assessments and field surveys conducted to evaluate potential impacts to state-listed plant species. The proponent should consult with NHESP regarding survey protocols and results. All field survey protocols will require approval from NHESP. The DEIR should evaluate alternatives with less impacts to state-listed plant species, and discuss how the preferred alternative will avoid and minimize, or mitigate impacts to the maximum extent practicable. The DEIR should describe how the project will avoid a "take", or if a take cannot be avoided, the DEIR should describe how the project will be designed to meet the performance standards for a Conservation and Management Permit pursuant to MESA.

As further detailed in the NHESP comment letter, the landscape surrounding the project site is habitat for a variety of native state-listed plants. The DEIR should describe the proposed landscape and erosion control plan and measures to avoid problems relating to invasive species as recommended by NHESP.

Wetlands and Stormwater Management

The ENF proposes alteration of 4,500 square feet of bordering vegetated wetlands (BVW) but does not evaluate alternatives or mitigation measures. The DEIR should include an analysis of alternatives to avoid and minimize impacts to BVW, as well as commitments to mitigation for any unavoidable impacts. The DEIR should demonstrate consistency with the general performance standards for BVW pursuant to the Wetlands Protection Act (WPA). The DEIR should quantify impacts to wetland resource areas and buffer zones, and clearly indicate impact locations on site plans, as well as proposed replication areas.

The DEIR should clarify whether or not the pond on site is a jurisdictional pond under the WPA and discuss how the proposed stormwater management plan is consistent with applicable performance standards. The DEIR should include a drainage analysis comparing existing and proposed conditions, and describe how the proposed project will comply with the General Performance Standards for all jurisdictional resource areas and the MassDEP's Stormwater Management Regulations (effective January 2, 2008). MassDEP's stormwater management standards were revised and incorporated into the Wetlands Protection Act Regulations (310 CMR 10.00) and the 401 Water Quality Certification Regulations (314 CMR 9.00). As noted in the comment letter from MassDEP, Western Regional Office, the project does not qualify as a stormwater redevelopment project and must fully comply with the ten stormwater standards.

The DEIR should evaluate low impact development (LID) techniques for the project and demonstrate the proponent's commitment to apply LID to the extent feasible. Pursuant to the stormwater regulations, the proponent is required to consider environmentally sensitive design

that incorporates LID techniques in addition to stormwater best management practices (BMPs). The DEIR should include a detailed stormwater management plan, with a description and location of proposed BMPs.

The DEIR should evaluate the feasibility of groundwater infiltration at the project site with respect to the shallow groundwater table. The DEIR should discuss compliance with MassDEP's proposed revisions to 314 CMR 5.00 *Groundwater Discharge Permitting Program Regulations*. The proposed regulation requires a General Permit for stormwater discharge into the ground from parking lots with high intensity use (more than 1,000 trips per day). Depending on the timeframe for permitting and construction, the project may be subject to either the proposed regulations or to the existing Underground Injection Control (UIC) Program registration requirement.

Transportation

The Executive Office of Transportation and Public Works (EOT) indicates in its comment letter that the traffic study provided in the ENF generally conforms to the EEA/EOT Guidelines for EIR/EIS Traffic Impact Assessments. The proponent committed to funding and implementing optimization of the signal timing for the intersection of Routes 7 and 20/main site drive/Holmeswood Terrace, and updating the traffic signal coordination to improve flow on the Route 7/20 corridor. EOT indicates that the traffic associated with the project can be accommodated by the existing infrastructure and proposed improvements. However, additional information and analysis should be provided in the DEIR as outlined below and in the EOT comment letter.

I note the detailed comments from the Berkshire Regional Planning Commission (BRPC) with questions and comments pertaining to the trip generation calculations and the level of service analysis. The DEIR should respond to BRPC comments and include revised calculations as necessary to clarify any changes in the traffic analysis or mitigation plan since the filing of the ENF.

The DEIR should evaluate the feasibility of including a sidewalk on the south side of the main site drive as recommended by EOT and BRPC. The DEIR should re-evaluate the proposed left-turn phase from Route 7/20 onto Holmes Road because MassHighway is planning to install additional signal heads at this intersection to reduce crash frequency. The DEIR should include an update on consultations with EOT/MassHighway on this issue as well as the proposed "red signal ahead" sign on the southbound approach of the Route 7/20/Dan Fox Drive intersection.

The DEIR should include a revised mitigation plan describing the proponent's commitments to traffic monitoring and a Transportation Demand Management (TDM) Program. EOT has recommended that the proponent commit to performing traffic counts two years after completion of the project at five intersections, which include the intersection of Route 7/20 with Dan Fox Drive, Secondary Site Drive, Main Site Drive, Holmes Road, and New Lenox Road.

The DEIR should describe in detail the proposed TDM measures. In developing a TDM program, the proponent should encourage and facilitate pedestrian access to the existing

Berkshire Regional Transit Authority (BRTA) bus route on Routes 7/20, and encourage use of carpools and/or vanpool access to the site. The DEIR should discuss how the site design will accommodate bus turn movements as proposed. I refer the proponent to the EOT and BRPC comment letters for suggestions on other TDM measures to consider including employee incentives, bicycle racks, bus turn-outs and shelters, posted schedule information, and other on-site services. The DEIR should discuss the results of the proponent's consultations with BRTA and MassRides statewide travel options program regarding the TDM program.

The DEIR should include a letter of commitment to mitigation that is sufficient to serve as the basis for MassHighway to issue a Section 61 Finding for the project.

Greenhouse Gas Emissions

A project at this early stage of development provides a multitude of opportunities for designing buildings and transportation management measures that reduce energy consumption and substitute fossil fuel with renewable energy sources. As further detailed in the comment letter from MassDEP and the Department of Energy Resources (DOER), recent studies have demonstrated the growing market demand for green buildings and the performance efficiencies associated with Leadership in Energy and Environmental Design (LEED)-rated buildings. I refer the proponent to the MassDEP/DOER comment letter for additional information and references to relevant studies. The DEIR should include an analysis of Greenhouse Gas (GHG) emissions and mitigation measures in accordance with the requirements of the MEPA GHG Policy and Protocol and as further detailed below.

The DEIR should quantify direct and indirect GHG emissions associated with the project's energy use and transportation-related emissions. Direct emissions include on-site stationary sources, which typically emit GHGs by burning fossil fuel for heat, hot water, steam and other processes. Indirect emissions result from the consumption of energy, such as electricity, that is generated off-site by burning of fossil fuels, and from emissions associated with vehicle use by employees, vendors, customers and others. The DEIR should outline and commit to mitigation measures to reduce GHG emissions. I refer the proponent to the GHG Emissions Policy and Protocol for additional guidance on the analysis. In addition, the appendix to the GHG policy and the comment letter from MassDEP and DOER include suggestions for GHG mitigation measures. I encourage the proponent to consult with the MEPA Office early in the design process regarding the scope and methodology of the analysis.

The proponent should establish a project baseline condition that includes energy use and transportation-related Carbon dioxide (CO₂) emissions associated with the existing development at the project site as well as emissions associated with code-compliant new buildings. The baseline condition should also include transportation-related emissions for the proposed retail expansion, modeled on the build without mitigation condition. The baseline code compliant quantification of CO₂-related emissions must reflect the recent amendment to the Massachusetts State Building Code that incorporates the performance standards of the International Energy Conservation Code (IECC) as further detailed in the MassDEP/DOER comment letter.

The DEIR should include a GHG emissions analysis that compares 1) a code-compliant baseline condition; 2) the preferred alternative, with mitigation; and 3) project alternatives with greater GHG emissions-related mitigation. The DEIR should indicate which energy modeling tool was used and present the data used to model the energy use in buildings. The DEIR should identify TDM measures proposed for each of the alternatives and the corresponding emission reductions expected.

The alternatives analysis helps identify opportunities for energy savings achievable by varying building design and layout strategies. If the proponent chooses not to select certain energy efficient techniques that would provide a greater reduction in emissions compared with the preferred alternative, the DEIR should explain why certain alternatives were rejected. The alternatives analysis should clearly demonstrate consistency with the objectives of MEPA review, one of which is to document the means by which the proponent plans to avoid, minimize, or mitigate damage to the environment to the maximum extent feasible. The proponent should fully explain any trade-offs inherent in the GHG analysis, such as increased impacts on some resources to avoid impacts on others.

The proponent should consider upgrading the existing buildings to improve energy efficiency as part of its GHG mitigation commitments. I encourage the proponent to conduct a comprehensive energy audit of the existing buildings on site and include the results of the audit, including any proposed energy efficiency improvements, in the DEIR. I also encourage the proponent to commit to the Massachusetts Leadership in Energy and Environmental Design (LEED) Plus standard, Energy Star elements, and purchase of power from renewable sources.

The DEIR should describe the proponent's strategy for monitoring energy performance of buildings to ensure the energy systems function as designed over the long-term. As noted by DOER, a system for monitoring energy performance would be expected to pay for itself by eliminating potential inefficient energy operations.

The DEIR should evaluate the feasibility of incorporating solar (photovoltaic) power on site to generate energy for some of the building's functions. DOER has recommended that a life-cycle analysis be included in the DEIR, that considers the subsidies available through the Commonwealth Solar and Renewable Portfolio Standard (RPS) Program and federal tax credits. DOER recommends that the life-cycle analysis evaluates the installation of a PV system during project construction under two scenarios: 1) construction, ownership and operation of a PV system by the building owner; or 2) construction, ownership, and operation of a PV system by a third party that will then enter into a long-term power purchase agreement with the building owner for the electricity produced by the system. If PV is considered economically infeasible at this time, DOER recommends that the proponent consider committing to PV installation at a future date or hosting a third-party-owned PV array under a favorable power purchase agreement.

The DEIR should include additional information and analysis in response to the DOER and MassDEP comments on: building orientation; energy-efficient lighting; interior day-lighting; duct insulation; roof and wall insulation; windows; high efficiency heating ventilation and air conditioning (HVAC) systems; high-albedo roofing materials; third party building

commissioning; lighting motion sensors, and climate control and building energy management systems.

Materials Management

The DEIR should respond to MassDEP comments regarding materials management including plans for waste reduction, environmentally preferable materials use, and storage and collection of recyclables and hazardous materials. MassDEP has requested that the proponent quantify the GHG impacts of materials management for the project development and future operation, which will assist in identifying and targeting GHG mitigation efforts. I refer the proponent to the MassDEP/DOER comment letter for guidance on this analysis.

MassDEP has requested that the proponent commit to developing a construction waste management plan (CWMP) that fully complies with the Massachusetts waste bans and establishes a minimum reuse/recycling goal of 50 per cent. MassDEP also recommends a waste management plan for the operations phase of the project. I refer the proponent to the MassDEP/DOER comment letter for additional guidance.

Mitigation and Section 61 Findings

The DEIR should include a separate chapter on mitigation measures, which should include proposed Section 61 Findings for all state permits required and a summary table of all mitigation proposed. The mitigation chapter of the DEIR should describe proposed mitigation measures, contain clear commitments to mitigation and a schedule for implementation, and identify parties responsible for funding and implementing the mitigation measures.

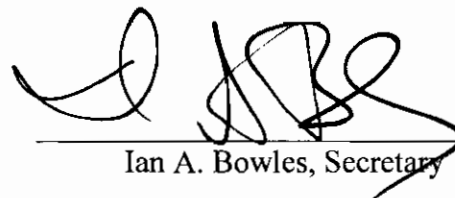
Response to Comments

In order to ensure that the issues raised by commenters are addressed, the DEIR should include a response to comments to the extent they are within MEPA jurisdiction. This directive is not intended to, and shall not be construed to, enlarge the scope of the DEIR beyond what has been expressly identified in this certificate. The DEIR should include a copy of this Certificate and a copy of each comment letter received on the ENF.

Circulation

The DEIR should be circulated in compliance with Section 11.16 of the MEPA regulations and copies should be sent to the list of "comments received" below. A copy of the DEIR should be made available for public review at the Town of Lenox and the City of Pittsfield Public Libraries.

November 21, 2008



Ian A. Bowles, Secretary

Comments Received

- 11/10/08 Division of Fisheries and Wildlife, Natural Heritage and Endangered Species Program
- 11/11/08 Berkshire Environmental Action Team
- 11/11/08 Berkshire Regional Planning Commission
- 11/12/08 Department of Environmental Protection, Western Regional Office
- 11/12/08 Department of Environmental Protection, Boston Office and Department of Energy Resources (joint comment letter on Greenhouse Gas Emissions Analysis)
- 11/14/08 Executive Office of Transportation & Public Works

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