



The Commonwealth of Massachusetts

Executive Office of Environmental Affairs

100 Cambridge Street, Suite 900

Boston, MA 02114-2524

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

MITT ROMNEY
GOVERNOR

KERRY HEALEY
LIEUTENANT GOVERNOR

ROBERT W. GOLLEDGE, JR.
SECRETARY

December 15, 2006

CERTIFICATE OF THE SECRETARY OF ENVIRONMENTAL AFFAIRS
ON THE
EXPANDED ENVIRONMENTAL NOTIFICATION FORM

PROJECT NAME:	Berkshire Gateway at Lee
PROJECT MUNICIPALITY:	Lee
PROJECT WATERSHED:	Housatonic
EOEA NUMBER:	13905
PROJECT PROPONENT:	F.L. Roberts & Co.
DATE NOTICED IN THE MONITOR:	November 8, 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 **requires** the preparation of an Environmental Impact Report (EIR).

Project Description

As outlined in the Expanded Environmental Notification Form (ENF), the project consists of the redevelopment of the former "Diesel Dan's" site off Route 102 in Lee, MA immediately south of the Route 20 intersection near Interchange #2 of the Massachusetts Turnpike. The subject property consists of 3 separate contiguous parcels; 2 are currently used for residential and 1 commercial, with a combined area of 8.0 acres. The proponent intends to raze the existing structures and redevelop the site with a 93 room hotel, a 210 seat restaurant, a convenience store, a 2-bay car wash, and a refurbished gasoline service station and truck fueling facility. The Housatonic River is the western border of the site and almost the entire site is located within the floodplain. The site has been impacted by numerous releases of oil and/or

hazardous materials and is classified as a Tier 2 site under Chapter 21E and is being regulated under the Massachusetts Contingency Plan (310 CMR 40.00).

Jurisdiction and Permitting

The project is undergoing environmental review and is subject to the preparation of a Mandatory EIR pursuant to Sections 11.03(6)(a)(6) of the MEPA regulations because it will result in the generation of 3,000 or more new average daily trips (adt) on roadways providing access to a single location. The project also meets an ENF review threshold at 301 CMR 11.03(3)(b)(1)(f) for the alteration of greater than ½ an acre of “any other wetlands”. The project is located within the habitat of a species state-listed as “Special Concern” pursuant to the Massachusetts Endangered Species Act (MGL c. 131A).

The project will require a NPDES Construction General Permit; an Access Permit from the Massachusetts Highway Department (MHD); a Sewer Connection Permit and possibly a 401 Water Quality Certificate and Chapter 91 License from the Department of Environmental Protection (MassDEP); review from the Division of Fisheries and Wildlife (DFW) Natural Heritage and Endangered Species Program (NHESP); an Order of Conditions (OOC) from the Lee Conservation Commission (and hence a Superceding OOC from MassDEP if the local Order is appealed); Site Plan Review from the Lee Planning Board; and a Special Permit and Floodplain Special Permit from the Lee Zoning Board of Appeals.

Because the proponent is not seeking financial assistance from the Commonwealth, MEPA jurisdiction is limited to the subject matter of required or potentially required state permits and/or review. In this case, MEPA jurisdiction extends to stormwater, wetlands, waterways, rare species, wastewater and hazardous waste.

Waiver Request

In accordance with Section 11.05 (7) of the MEPA regulations, the proponent has submitted an Expanded ENF with a request that I grant a full waiver of the EIR. The request was presented within the EENF and was discussed at the MEPA public consultation session for the project held on November 21, 2006. In addition, the proponent submitted supplemental information to the MEPA office and the ENF distribution list in support of its Waiver Request on November 13, 2006. The EENF and supporting documentation received an extended comment period pursuant to Section 11.06(8) of the MEPA regulations.

Section 11.11 of the MEPA Regulations provides that the Secretary may waive any provision or requirement of 301 CMR 11.00 not specifically required by MEPA, and may impose appropriate and relevant conditions or restrictions, provided that the Secretary finds that strict compliance with the provision or requirement would: a) result in undue hardship to the proponent, unless based on delay in compliance by the proponent; and b) not serve to minimize or avoid damage to the environment. Section 11.11(3) provides that, in the case of the waiver of a mandatory EIR review threshold, the Secretary shall at a minimum base the finding required in accordance with Section 11.11(1)(b) on a determination that: a) the Project is likely to cause no Damage to the Environment; and b) ample and unconstrained infrastructure facilities and

services exist to support the Project or those aspects of the Project within subject matter jurisdiction.

The project exceeds the Mandatory EIR threshold at 301 CMR 11.03 (6)(a)(6) for new vehicle trips on Saturdays only; the project is anticipated to generate 2,972 new average daily trips (adt) on weekdays and 3,698 adt on Saturdays. These trip generation estimates are unadjusted and do not account for internal or pass-by trips. According to the proponent, once multi-use internal trip rates are applied, the project totals fall below EIR thresholds for both typical weekdays and Saturdays. The EENF contained a Traffic Impact and Access Study prepared at an EIR level of detail in support of the proponent's Waiver Request.

While the information submitted by the proponent about the project's traffic impacts and mitigation is sufficient, I find that the EENF does not meet the standards for a full waiver of an EIR. The proponent has not demonstrated that an EIR would result in undue hardship to the proponent; that the project will cause no Damage to the Environment; and that ample and unconstrained infrastructure facilities and services exist to support the project. The EENF provided only a very limited amount of information on the project's impacts to wetlands, stormwater, rare species and wastewater; however MEPA jurisdiction on the project extends to these issues. While the project presents an opportunity to improve the aesthetics and resource value of this highly visible and environmentally sensitive site, I find that the project will benefit from a full environmental impact review.

Request for a Single EIR

In the event that the request for an EIR Waiver was not granted, the proponent has also requested that I allow it to fulfill its EIR obligations under MEPA with a Single EIR rather than the usual process of a Draft and Final EIR. Section 11.06(8) of the MEPA regulations sets forth the following standards for an EENF, which is required for a Single EIR:

When issuing a Scope in accordance with 301 CMR 11.06(7), the Secretary shall ordinarily require a draft and final EIR but may allow a single EIR, provided that the Secretary finds that the expanded ENF requesting a single EIR in accordance with 301 CMR 11.05(7):

- (a) describes and analyzes all aspects of the Project and all feasible alternatives, regardless of any jurisdictional or other limitation that may apply to the Scope;
- (b) provides a detailed baseline in relation to which potential environmental impacts and mitigation measures can be assessed; and
- (c) demonstrates that the planning and design of the Project use all feasible means to avoid potential environmental impacts.

While I acknowledge the proponent's efforts in developing the EENF, which contained considerable information on the project's anticipated traffic impacts, I find that the submittal does not meet the standards for a Single EIR at 301 CMR 11.05(7) and 11.06(8). The EENF did not contain sufficient information on the project's impacts to wetland resources, rare species, wastewater and stormwater. I am therefore denying the proponent's request for a Single EIR. The Scope for the Draft Environmental Impact Report (DEIR) is laid out in detail below. Should

the DEIR fully resolve the substantive issues outlined in the Scope, I will consider the procedural options available to me at 301 CMR 11.08 (8)(b)(2), as they may related to the Scope for the Final EIR.

SCOPE

General

The DEIR should follow the general guidance for outline and content contained in Section 11.07 of the MEPA regulations, as modified by this Scope. The DEIR should include a copy of this Certificate and a copy of each comment received. The proponent should circulate the DEIR to those parties that commented on the EENF, to the Town of Lee, to any state agencies from which the proponent will seek permits or approvals, and to any parties specified in Section 11.16 of the MEPA regulations. A copy of the DEIR should be made available for public review at the Lee Public Library.

Project Description and Permitting

The DEIR should include a thorough description of the project, including a detailed description of construction methods and phasing. The DEIR should include a brief description of each state permit or agency action required or potentially required, and should demonstrate that the project will meet applicable performance standards. In accordance with Executive Order No. 385, "Planning for Growth" and Section 11.03 (3)(a) of the MEPA regulations, the DEIR should discuss the consistency of the project with the local and regional growth management and open space plans. The proponent should also provide an update on the local permitting process for the project.

Alternatives

The DEIR requires a comprehensive alternatives analysis in order to ascertain which site layout minimizes overall impacts to land, wetlands, rare species and sensitive receptors. 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 DEIR should fully explain any trade-offs inherent in the alternatives analysis, such as increased impacts on some resources to avoid impacts to other resources.

In addition to the No-Build Alternative and the Preferred Alternative, the DEIR should present a reduced build alternative that pulls the proposed development away from the Riverfront Area and proposes more restoration in that area. The proponent should also consider alternative site layouts in which fueling stations, stormwater treatment and snow storage areas are moved out of the Riverfront Area. If these alternatives are deemed infeasible by the proponent, the DEIR should provide conclusive justification for this point.

The DEIR should also incorporate any alternatives analysis that may be required if the project needs a 401 Water Quality Certificate, and any other alternatives analysis required for state permitting purposes.

Stormwater

The EENF states that the proposed stormwater management system will meet the water quality and quantity requirements of the Massachusetts Stormwater Management Policy (SMP). The proposed stormwater management measures have been designed for the 2 year, 10 year, 100 year and 24 hour storm and include Best Management Practices (BMPs) designed to achieve greater than 80% removal of total suspended solids (TSS). BMPs include a series of deep sump catch basins, water quality swales, a detention basin, and a Stormceptor unit and infiltration tank. The detention basin, the Stormceptor Unit and infiltration tank are located within the Riverfront Area. The overflow pipes for the detention basin and the combined Stormceptor unit and infiltration tank will direct overflows to the Housatonic River.

The DEIR should provide more information on the stormwater management system including drainage calculations, pre- and post-construction run off rates and a detailed description of BMPs. Sufficient information to demonstrate that the system meets MassDEP's Stormwater Management Policy (SMP) should be included in the DEIR. The proponent should specifically address Standard #5 of the SMP which addresses stormwater discharges from areas with higher potential pollutant loads.

The proponent should discuss whether stormwater structures will be designed to accommodate existing overland flow coming down the MHD embankment and from the Mass Turnpike. The proponent should discuss proposed upgrades to existing stormwater outlets and whether the project will utilize the existing MHD outlet pipe at the site. The DEIR should respond to specific comments from the Housatonic Valley Association regarding infiltration of stormwater on site. The proponent should demonstrate that there will be a sufficient amount of separation between infiltration units and the seasonal high groundwater table in order for the units to function properly.

The DEIR should contain a draft Operations and Maintenance Plan for the stormwater management system. The plan should discuss long-term ownership of stormwater infrastructure, and should identify what entity will be responsible for the ongoing operation and maintenance of structural BMPs. The stormwater management plan should include a schedule for internal roadway sweeping, catch basin cleaning and snow removal. The proponent should respond to concerns about snow storage and salt use raised in comments on the EENF.

According to plans submitted with the EENF, spills from the refueling station and in the parking lot will be directed to the detention basin. The DEIR should contain a draft Emergency Plan for addressing fuel spills at the site. At a minimum, the plan should include designation of an emergency manager, training for staff members, and identification of emergency supplies to be housed on site at all times.

The proponent should consider the use of Low Impact Development (LID) in site design to reduce the impacts of stormwater runoff. 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/>. The proponent should provide a discussion in the DEIR of how LID techniques could be incorporated into site design.

Wetlands and Waterways

The project site contains the following wetland resource areas: Bank, Bordering Vegetated Wetland (BVW), Land Under Waterbodies and Waterways, Bordering Land Subject to Flooding (BLSF) and Riverfront Area. According to the EENF, the project will result in impacts to 262,000 sf of BLSF, 128,000 sf of Riverfront Area, 10 linear feet of Bank, and 110 sf of BVW. The DEIR should include plans that clearly delineate all applicable resource area boundaries on the project site including Riverfront Area, buffer zones, 100-year flood elevations, priority and/or estimated habitat, and the delineation of the Mean Annual High Water Line on all perennial rivers. The DEIR should quantify the project's estimated impact on each resource area. The proponent should explain what impacts to Riverfront area will be temporary or permanent, and should clarify whether the portions of Riverfront area to be revegetated are included in the area to be impacted.

The DEIR should provide a discussion of how the project would comply with the performance standards in the wetlands regulations and demonstrate that the alteration of resource areas has been avoided and minimized. The DEIR should provide more information on compensatory storage and impacts to BLSF. The proponent should explain how the proposed project will meet the performance standards of the wetlands regulations for Land Subject to Flooding at 310 CMR 10.57(4)(a).

The proponent proposes a stormwater outfall into the Housatonic River below the Mean High Water (MHW) line. In response to comments from MassDEP, the proponent should file a Request for Determination (BRP WW 04) with the Waterways Program to determine if a Chapter 91 License is required for the structure. The DEIR should report on the outcome of this consultation, and if a Waterways License is required for the project should discuss compliance with 310 CMR 9.00. MassDEP states in its comments on the EENF that the project may also require a Water Quality Certificate (WQC) pursuant to Section 401 of the Clean Water Act. MassDEP has recommended that the Lee Conservation Commission keep the project's Notice of Intent hearing open in order to issue an Order of Conditions that is consistent with conditions set in a WQC, if required. The DEIR should report on the need for a WQC for the project's

proposed stormwater management structures and if necessary demonstrate compliance with 314 CMR 9.00.

According to the EENF, a riverfront restoration corridor will be created along the Housatonic River with an average width of approximately 35 feet. The proponent should provide further information on wetlands restoration in the DEIR. The DEIR should provide a list of proposed wetland replication species; planned construction sequence; and a discussion of the required performance standards and long-term monitoring.

Given the amount of Riverfront Area and BLSF to be impacted by the project, considerably enhanced efforts at erosion control and the establishment of firm limits of construction activities will be required at the site. The DEIR should include an erosion and sedimentation control plan for review. The proponent should take care not to introduce invasive species with silt-fencing.

Rare Species

The NHESP has determined that the project site is located within the habitat of the Longnose Sucker (*Catostomus catostomus*). This species is state-listed as Special Concern under the MESA and its implementing regulations (321 CMR 10.00). The proponent is required to file pursuant to the MESA to determine whether the project will result in a prohibited "take". Projects resulting in the "take" of a state-listed species may only be permitted if they meet the performance standards for a Conservation and Management Permit at 321 CMR 10.23.

According to NHESP, the Longnose Sucker requires clean gravel substrates that are well oxygenated to rear their eggs and therefore the project raises concerns related to degradation to water quality, quantity or temperature of the Housatonic River. The proponent should coordinate with NHESP on the project's impacts to the Longnose Sucker. The DEIR should describe all impacts to state-listed rare species and should outline proposed measures that will be implemented to mitigate for any adverse impacts to habitat. The DEIR should specifically respond to NHESP's suggestions for stormwater management, snow management and protocols for dealing with spills.

Wastewater

The project is anticipated to generate 12,970 gallons per day (gpd) of wastewater. The DEIR should explain why the project's anticipated wastewater generation figures are double the projected water demand of 6,160 gpd. The project will receive water and wastewater treatment from municipal connections. According to the EENF, a Sewer Connection Permit may be required from MassDEP. The EENF did not specify whether a pump station is part of the proposed sewer connection. The proponent should coordinate with DEP to determine the appropriate wastewater permit required for the project and should discuss in the DEIR how the project will meet the applicable performance standards.

Wastewater will be discharged to the Town of Lee's municipal wastewater facility. According to the EENF, the Town recently began construction on a wastewater treatment plant

reconstruction project which will provide 25% additional treatment capacity over its current capacity of 1 million gpd. The DEIR should demonstrate that the proposed discharge of the wastewater flows for the proposed project to the Lee municipal sewer system is feasible. The DEIR should include correspondence from the Town of Lee demonstrating that:

1. The Town's sewer system has sufficient design capacity to accommodate the proposed project's additional wastewater flows; and
2. The proponent has secured permission from the Town to treat the project's wastewater flows.

The DEIR should outline how the proponent will manage wastewater and runoff from the proposed car wash facility.

Traffic

According to the EENF, the project is expected to generate 2,972 new average daily trips (adt) on weekdays and 3,698 adt on Saturdays. The anticipated volume of project-generated traffic on Saturdays exceeds MEPA review threshold for a mandatory EIR of 3,000 new daily trips. The proponent notes that this is an "unadjusted" or "baseline" projection which does not account for pass-by and internal trips. Upon making adjustments for pass-by and internal trips, the project falls below the EIR threshold for both typical weekdays and Saturdays.

The EENF contained a Traffic Impact and Access Study (TIAS) that was prepared in coordination with MHD District 1 and the Berkshire Regional Planning Commission (BRPC). Comments from the Executive Office of Transportation (EOT) indicate that the study was prepared in conformance with Executive Office of Environmental Affairs (EOEA)/EOT Guidelines for Traffic Impact Assessments, however MHD has questioned the validity of the traffic signal warrant analysis that was conducted for the Route 102/Site Entrance drive. The DEIR should include an updated Signal Warrant Analysis for this location using the 2003 Manual on Uniform Traffic Control Devices.

The TIAS indicates that the Level of Service (LOS) at intersections in the vicinity of the project site will not decline, with the exception of the Tyringham Road intersection which currently functions at LOS B and will decline to LOS C during the Evening and Saturday midday peak. The DEIR should respond to comments from BRPC regarding the inclusion of a drive-thru component at the convenience store in the EENF's projected trip generation figures. EOT states that the additional traffic associated with the project can be accommodated within the state highway system. I encourage the proponent to respond to concerns about the impacts of the project's traffic on downtown Lee.

To manage traffic from the site, the proponent proposes to build a new main site drive intersecting Route 102/Pleasant Street in a "T" intersection with Tyringham Road. This intersection will require a traffic signal which must be coordinated with the traffic signals at the intersections of Routes 20/102; the Mass Turnpike entrances and exits; and the Outlet Mall entrance on Route 20. A left turn lane into the site will be required for eastbound traffic on Route

102. The site driveway and Tyringham Road will also have turning lanes. The proponent should note suggestions from BRPC regarding signage for entrance and exit points at the site.

The proponent should provide a discussion of pedestrian and bicycle amenities within and surrounding the site. The proponent should discuss the feasibility of installing bicycle lanes along Route 102 in conjunction with planned roadway improvements. The proponent should indicate a commitment to install a pedestrian crossing button at the new traffic signal at the site entrance with a protected pedestrian phase to ensure safe crossing. The proponent should work with the Berkshire Regional Transit Authority to provide pull-outs with bus shelters along Route 102 near the main site driveway.

The proponent should discuss what efforts will be undertaken to ensure that users of the truck parking lot comply with the Massachusetts Anti-Idling Law (M.G.L. c. 90, ss. 16A) and with DEP Air Pollution Control Regulations (310 CMR 7.11(1)(b)) which limit vehicle idling to no more than five minutes in most cases.

Hazardous Waste

There are a number of Release Tracking Numbers (RTNs) associated with the project site. In addition, an Activity and Use Limitation (AUL) has been recorded for a large portion of the property that limits site activities and use. The DEIR should provide a discussion of how the construction and site work will comply with the provisions of the AUL. I strongly recommend that the proponent consult with MassDEP'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. The proponent should ensure that the project contractors and sub-contractors maintain an emergency response plan for performing appropriate response actions in the event that contamination is encountered during project construction.

Construction Period Impacts

The DEIR should include a discussion of construction phasing, evaluate potential impacts associated with construction activities, and propose feasible measures to avoid or eliminate these impacts. The proponent must comply with DEP's Solid Waste and Air Quality Control regulations. The proponent should implement measures to alleviate dust, noise and odor nuisance conditions which may occur during the construction activities.

Mitigation

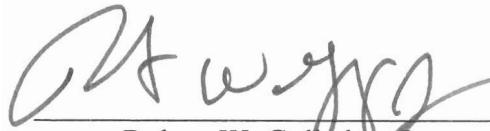
The DEIR should contain a separate chapter on mitigation measures. It should include a Draft Section 61 Finding and a Letter of Commitment for use by MHD for all state permits that includes a clear commitment to mitigation, an estimate of the individual costs of the proposed mitigation, and the identification of the parties responsible for implementing the mitigation. A schedule for the implementation of the mitigation, based on the construction phases of the project, should also be included.

Comments

The DEIR should respond to the comments received from state agencies, local officials and public citizens, in as much as the comments are within MEPA's jurisdiction. The proponent should use either an indexed response to comment format, or direct narrative response. The DEIR should present additional narrative and/or technical analysis as necessary to respond to the concerns raised.

December 15, 2006

Date



Robert W. Gollidge, Jr.

Comments received:

11/13/2006	James M. Scalise, II, S-K Design Group, Inc., for the Proponent
11/14/2006	Shepley W. Evans, Housatonic River Restoration
12/6/2006	James M. Scalise, II, S-K Design Group, Inc., for the Proponent
12/7/2006	Berkshire Regional Planning Commission
12/8/2006	Division of Fisheries and Wildlife, Natural Heritage and Endangered Species Program
12/8/2006	Deirdre Consolati, Concerned Citizens of Lee
12/8/2006	Berkshire Environmental Action Team
12/8/2006	Massachusetts Riverways Program
12/8/2006	Timothy Gray, Housatonic River Initiative
12/8/2006	Housatonic Valley Association
12/8/2006	Elisabeth C. Goodman
12/8/2006	Department of Environmental Protection, Western Regional Office
12/8/2006	Executive Office of Transportation
12/11/2006	Executive Office of Transportation

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