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February 15, 2008

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

PROJECT NAME: Fall River Executive Park
PROJECT MUNICIPALITY: Fall River and Freetown
PROJECT WATERSHED: Taunton
EEA NUMBER: 12902A
PROJECT PROPONENT: Fall River Redevelopment Authority
DATE NOTICED IN MONITOR: January 9, 2008

As Secretary of Energy and Environmental Affairs, I hereby determine that the Final Environmental Impact Report (FEIR) submitted on this project **does not adequately and properly comply** with the Massachusetts Environmental Policy Act (M.G.L. c. 30, ss. 61-62H) and with its implementing regulations (301 CMR 11.00). Therefore, the Proponent must submit a Supplemental FEIR in accordance with Section 11.08(8)(b)(3) of the MEPA regulations.

The proposed Fall River Executive Park (FREP) is a signature component of an economic development and environmental conservation project developed by agencies of this Secretariat, the City of Fall River and the Trustees of the Reservations (TTOR). It is not my intent that the requirement for a Supplemental FEIR (SFEIR) be an impediment to achieving the environmental and economic benefits on which the land transfer associated with the executive park is predicated. However, as outlined below, outstanding issues remain to be resolved before MEPA review on the project can be completed.

Project Description

The FEIR has been submitted for the Fall River Executive Park (FREP). The FREP and a proposed new interchange on Route 24 are interrelated projects that involve several elements, including the conveyance of 300 acres of land owned by the Department of Conservation and

Recreation (DCR) and currently part of the Freetown-Fall River State Forest to the City of Fall River for the development of up to 3,000,000 square feet (sf) of office/industrial space for the FREP. The proposed transfer is one of the largest contemplated dispositions of DCR forest and park land in the agency's history. In return, the City of Fall River will convey a Conservation Restriction (CR) on approximately 4,300 acres of City-owned water supply lands to DCR and the Division of Fisheries and Wildlife (DFW). The CR will provide permanent protection to a large parcel, which when taken together with already protected adjacent parcels will create a contiguous 14,000-acre area of protected open space known as the Southeastern Massachusetts Bioserve. The City will also provide \$2.45 million to the TTOR to aid in additional open space acquisition. The project design is governed by the requirements of Chapter 266 of the Acts of 2002 and a June 29, 2002 Memorandum of Understanding (MOU) among the Executive Office of Energy and Environmental Affairs (EEA), DFW, DCR, the City of Fall River, the Fall River Redevelopment Authority (FRRA) and the TTOR.

The FEIR presents a conceptual Master Plan for the 293- acre FREP site that designates a corporate campus comprised of 1.5 million square feet of office space in 11 three- and four-story buildings, and capacity for another 1.5 million square feet of office space within another 11 buildings. The proposed development will include interior access roadways, parking, stormwater management facilities, landscaped areas and infrastructure to support the office uses. The total land area required for the construction of the FREP is estimated to be 198.6 acres. The project is anticipated to result in the creation of 121.4 acres of new impervious surface (31.0 acres of building rooftops and structured parking areas and 90.4 acres of pavement).

To provide transportation access for the FREP and other development in the area, the Massachusetts Highway Department (MassHighway) proposes a new interchange on Route 24 between the existing interchanges 8 and 9. Development of the new interchange and access roadways will primarily occur on 35 acres of land in private ownership and approximately 7 acres of former State Forest land. The former State Forest land required for the interchange is part of the 300-acre land swap. MassHighway also proposes the construction of a new public roadway through the FREP, to be known as Executive Park Drive; a connecting access road between the new interchange and Executive Park Drive; and a new loop road from the proposed interchange west to South Main Street in Freetown.

MEPA History

The FREP and the Route 24 Access Improvements project were previously reviewed by MEPA under one file number, EEA #12902. All previous MEPA submissions were jointly submitted by the FRRA and MassHighway. An Environmental Notification Form (ENF) was submitted for the joint projects in 2002, in response to which the Secretary issued a Scope for the EIR and created a Special Review Procedure (SRP). The SRP was established in accordance with Section 11.09 of the MEPA regulations to allow for the transfer of the 300-acre State Forest parcel from DCR to the City prior to completion of the EIR process for the project as a whole. As of today's date, the land transfer has not been completed.

A Draft EIR submitted for the project in May 2005 was determined to be inadequate. A Supplemental Draft EIR (SDEIR) was submitted for review in June of 2007. In the SDEIR, the

FRRA and MassHighway requested that I allow the two elements of the project – the FREP and the new interchange proposed as part of the Route 24 Access Improvements project – to be considered as two separate projects for the remainder of MEPA review. In an August 1, 2007 Certificate, I amended the December 16, 2002 SRP such that the FRRA is now designated the Proponent for the FREP and MassHighway is the Proponent for the Route 24 interchange project. The Fall River Executive Park is now referred to as EEA# 12902A, and the Route 24 Access Improvements Project is now EEA #12902B. The SDEIR was adequate for the purpose of MEPA review and on August 1, 2007 I issued two Certificates outlining the Scopes for two FEIRs; one for the FREP and one for the interchange. The FEIR currently under review has been prepared by the City of Fall River in response to the Certificate on the SDEIR. The FEIR for the interchange project has not yet been submitted for review.

MEPA Jurisdiction/Required Permits

The FREP is undergoing MEPA review and requires the preparation of an EIR pursuant several sections of the MEPA regulations at 301 CMR 11.03. The project meets or exceeds the following mandatory EIR thresholds:

Land

- Section 11.03 (1)(a)(1) - Direct alteration of more than 50 acres of land
- Section 11.03 (1)(a)(2) - Creation of more than 10 acres of new impervious surface
- Transportation
 - Section 11.03 (6)(a)(2) - Generation of more than 3,000 new vehicle trips per day from a single location
 - Section 11.03 (6)(a)(7) - Construction of more than 1,000 new parking spaces at a single location

The project also meets or exceeds Environmental Notification Form (ENF) review thresholds related to Article 97 lands, wastewater and possibly archaeological impacts.

The project will require a National Pollutant Discharge Elimination System (NPDES) Construction General Permit from the U.S. Environmental Protection Agency (EPA); a Sewer Extension Permit and a Water Supply Distribution Modification permit from the Department of Environmental Protection (MassDEP); an Access Permit from MassHighway; a land transfer from the DCR; review from the Massachusetts Historical Commission (MHC); Orders of Conditions from the Freetown and Fall River Conservation Commissions; and several other local permits from the Town of Freetown and the City of Fall River. Because the project involves a state land transfer, MEPA jurisdiction extends to all aspects of the project that may cause Damage to the Environment as defined in the MEPA statute.

Review of the FEIR

The purpose of MEPA review is to ensure that a project Proponent studies feasible alternatives to a proposed project; fully discloses environmental impacts of a proposed project; and incorporates all feasible means to avoid, minimize, or mitigate Damage to the Environment as defined by the MEPA statute. I have fully examined the record before me, including but not

limited to the Scope issued on August 1, 2007, the FEIR filed in response; and the comments entered into the record. The Proponent has provided a considerable amount of information about the project to date; the SDEIR and FEIR included details about project impacts related to water supply, wastewater, air quality, construction period impacts, wetlands, and stormwater. Accordingly, this Certificate outlines a narrow Scope for the SFEIR, and focuses only on issues related to traffic mitigation, the buffer zone between the FREP and the state forest, sustainable design and project mitigation commitments.

Status of Land Transfer

The Proponent provided an update on the land transfer in the FEIR. The following tasks have been accomplished:

- Approval of the first draft of the 4,300 acres Southeastern Massachusetts Bioreserve Conservation Restriction of Fall River watershed land by DFG, DCR, the Fall River Watuppa Water Board and the Fall River City Council;
- Completion of an instrument survey and title examination for the 300 acres to be conveyed as part of the new highway ramps and the FREP;
- Revision of the Fall River Zoning Ordinance to allow proposed business uses with the FREP;
- Delineation of a buffer zone and the preparation of a draft Conservation Restriction for the buffer zone by the Proponent;
- Receipt of a draft letter from MassDEP approving the latest draft of the Southeastern Massachusetts Bioreserve Conservation Restriction as not inconsistent with MassDEP's guidelines and recommendations;
- Inspector General review of the transaction and comment to the Department of Capital Asset Management (DCAM) and submission by DCAM of the MOU, Inspector General's report and its own report to the House and Senate Ways and Means Committee and to the Joint Committee on State Administration; and,
Payment of \$2.4 million in escrow to the Trustees of the Reservation.

According to the FEIR, the following items remain to be completed:

- Draft of a deed by DCAM of the parcels comprising the 300 acres subsequent to completion of the FEIR process; and,
Final approval by DFG, DCR, TTOR, the Watuppa Water Board, the Mayor and the City Council of the City of Fall River and the FRRA of the 4,300 acre Southeastern Massachusetts Bioreserve Conservation Restriction, the deed, the buffer zone delineation and buffer zone conservation restriction, and the endorsement of the survey plans by the respective planning boards of the City of Fall River and the Town of Freetown.

A key condition in both the MOU and the Act for the disposition of the 300 acres of DCR land is that the City mitigate impacts on the Freetown-Fall River State Forest associated with the development of the FREP. To date, the Proponent has not demonstrated that it will be able to comply with this condition. DCR has expressed concerns, which I support, regarding the adequacy, enforceability and permanence of mitigation measures listed in the FEIR.

The 2002 SRP and subsequent Certificates for the project required the City to provide draft language for insertion into the deed on the 300 acres of DCR land that will secure mitigation commitments at the FREP in perpetuity. The Proponent's response in the FEIR is that including the language in the deed transfer was a requirement of the SRP, which was requested by the Proponent as a means of obtaining MEPA approval to complete the land transfer prior to the completion of MEPA review for the project. Because it now appears that MEPA review on the FREP will be completed before the land transfer is executed, the City regards the requirement to include language in the deed as no longer applicable.

SCOPE

General

Comments from DCR and DFG express concern regarding the formal mechanism by which mitigation commitments for the FREP will be legally enforceable. While the deed of transfer is clearly one such mechanism, I acknowledge the Proponent's concerns about the impact of this approach on the implementability of the project, and is open to discussing the use of other mechanisms with equivalent enforceability. The Proponent should consult with the relevant agencies to determine the appropriate mechanism that will ensure that the Proponent's, DCR's and DFG's interests are appropriately addressed, and the SFEIR should reflect the results of that consultation.

DCR has identified several areas where it considers additional mitigation measures necessary to satisfactorily address the interests regarding the land transfer enumerated in the Act and MOU, and as described in previous Certificates. I note that DCR intends to issue Section 61 Findings pursuant to 301 CMR 11.12(5)(b) and include these identified mitigation measures as additional conditions or restrictions on the transfer of the parcel. I anticipate that these issues will be addressed to DCR's satisfaction prior to the transfer; the SFEIR should provide draft Section 61 Findings as the basis for finalizing DCR conditions on the transfer.

The SFEIR should contain a copy of this Certificate and a copy of each comment received on the FEIR. In order to ensure that the issues raised by commenters are addressed, the SFEIR should include a response to comments. This directive is not intended to, and shall not be construed to, enlarge the scope of the SFEIR beyond what has been expressly identified in the initial scoping certificate or this certificate.

The SFEIR should be circulated in compliance with Section 11.16 of the MEPA regulations and copies should be sent to any state agencies from which the Proponent will seek permits or approvals, to the list of "comments received" below, and to Fall River and Freetown officials. A copy of the SFEIR should be made available for public review at the Fall River and Freetown Public Libraries.

Transportation

The FREP project is anticipated to generate 21,185 new average daily trips (atd). An Access Permit is required from the MassHighway for access to Route 24. The FEIR provided an updated analysis of traffic impacts in the No-Build, Build and Build with Interchange conditions to account for additional background development associated with the Payne's Crossing project (EEA # 1982).

In the updated analysis in the FEIR, the Proponent evaluated impacts to intersection capacity, rotaries, the Route 24 mainline, ramps, weaving and queuing. The analysis revealed that even with the proposed interchange, Level of Service (LOS) will degrade to "F" in the following areas in the 2030 Build condition: southbound Route 24 mainline between Exit 8 and the proposed interchange; southbound Route 24 mainline between Exit 7 and 8; northbound Exit 8 ½ (new interchange) and Exit 9 off-ramps; southbound Exit 8, Exit 8 ½ and Exit 9 on-ramps; and weave operations between Route 24 northbound and Route 79 northbound. In its comments on the FEIR, EOT states that the revised traffic study did not fully address its comments on the SDEIR and has recommended that the following issues be addressed in the SFEIR.

In the DEIR, the Proponent recommended widening Route 24 to three lanes to expand capacity to address traffic deficiencies from the FREP and other area developments. In response, EOT stated that the widening of Route 24 may not be feasible as part of the Route 24 Access Improvements project. The Certificate on the SDEIR required the Proponent to evaluate potential interim mitigation for locations that will function at low LOS in the FEIR; the Proponent has not proposed any interim mitigation. In the SFEIR, the Proponent should address EOT's suggestions including adding new on and off ramps to existing interchanges, geometric modifications to ramps, geometric modifications to the rotary at Exit 8, and improvements to acceleration and deceleration lanes.

The Proponent's analysis in the SDEIR revealed that only 400,000 sf of space could be built in the FREP prior to the opening of the proposed interchange 8 ½. The Proponent has not provided sufficient information to show that existing infrastructure is capable of accommodating 400,000 sf of development. Comments from EOT indicate that before the construction of the new interchange, access to and from the site would most likely occur via the Exit 9 rotary intersection, which is projected to operate at LOS F in the 2030 No Build condition. In the SFEIR, the Proponent should evaluate interim mitigation at this location to accommodate the proposed level of initial occupancy, and provide additional information to address EOT's concerns.

Transportation Demand Management

The FEIR presents an expanded list of Transportation Demand Management (TDM) measures that it proposes to implement upon construction of 500,000 sf of development at the FREP. The Proponent should note comments from EOT that it will require that some TDM measures be implemented upon initial occupancy of the site instead of upon occupancy of 500,000 sf. The Proponent should consult with EOT to determine the specific elements of the fixed TDM program to be implemented prior to occupancy of the initial 500,000 sf of

development, and should update its TDM commitments in draft Section 61 Findings in the SFEIR.

Given the uncertain mix of future development at the FREP, the TDM program includes both fixed commitments and a dynamic mode share monitoring and mitigation plan. The Proponent has set a mode-share goal of 85 percent single-occupancy vehicle (SOV) trips; based on the results of monitoring, the Proponent will implement additional TDM measures if actual trips exceed the mode-share goal for the site. According to the FEIR, the TDM monitoring results will be linked to the creation of parking supply at the FREP. A total of 12,000 parking spaces are planned for the project, with approximately 3,900 spaces in structured parking garages. The Proponent states that if the SOV mode-share is limited to 85 percent for the project as a result of proposed TDM measures, the proposed parking share could be reduced by 1,800 spaces to 10,200 spaces. The Proponent should clarify in the SFEIR how it will manage the timing of TDM monitoring with the demand to construct parking to support tenants' buildings.

The Southeastern Regional Transit Authority (SRTA) currently runs a bus route that extends from downtown Fall River to the Four Winds Apartment complex on North Main Street just south of the Freetown town line. The Proponent states that bus stops will be situated at strategic locations within the FREP, but has not clearly indicated that the SRTA is willing or able to service the project. The Proponent should report in the SFEIR on any consultation with the SRTA and discuss what would be required to modify existing services to provide transit into the site.

EOT is currently undertaking a planning effort to evaluate the location of stations for the South Coast Rail project. The Proponent states that as the Environmental Impact Statement/Environmental Assessment process for the South Coast Rail and station site selection process progresses, the Proponent will evaluate the feasibility and effectiveness of providing shuttle service between the station and the FREP. As directed in the Certificate on the SDEIR, the Proponent should consult with EOT/EOHED regarding the possibility of constructing a new station near the FREP project site. According to EOT, the MEPA review of the project at this time offers an important opportunity to provide synergies between the South Coast Rail project and the development of the FREP. The Proponent should report on this consultation in the SFEIR. I expect that the Proponent's draft Section 61 findings will reflect a commitment to link the FREP and the South Coast Rail line.

Cultural Resources

The Proponent should report in the SFEIR on consultation with MHC regarding the "Mystery Stone" site and should propose mitigation for potential impacts to cultural resources. Because the project is still conceptual nature, it should be possible to design around the Mystery Stone.

Buffer Zone

Chapter 266 of the Acts of 2002 required that a buffer of at least 43 acres between the eastern edge of the FREP and the state forest be placed under a CR to be held by a land trust or

other organization identified by DCR. The purpose of the buffer zone is to protect Rattlesnake Brook and its surrounding watershed, as well as to provide additional separation between the FREP and the Southeastern Massachusetts Bioserve. In the DEIR and SDEIR for the project, an 86-acre buffer zone was depicted. In the Certificate on the SDEIR, I asked that the Proponent consider placing the entire 86 acres into a CR for the purposes of land stewardship consistency. The Proponent states in the FEIR that there have been minor modifications to the site plan since the submission of the SDEIR due to some property line layout issues and state forest buffer area considerations. The current design provides approximately 52 acres of the site adjacent to the State Forest as a buffer area, and reserves an additional 35 +/- acres for potential future development. Because the FEIR did not analyze the development impacts associated with the 35 +/- acres, the SFEIR should characterize the potential environmental impacts pertaining to impervious surface, stormwater, wetland impacts, and additional traffic. The Proponent should clarify how much of the buffer zone will be protected under a CR. While the proposed buffer exceeds the MOU's requirement of 43 acres, the Proponent should address DCR's concerns regarding the configuration of the new area, which does not appear to provide an effective buffer between the proposed development and the state forest.

Sustainable Design

In response to the Certificate on the SDEIR, the Proponent provided an expanded discussion of sustainable design and energy conservation measures that could be incorporated into the FREP design. The level of commitment varies throughout the FEIR for particular measures; in some cases, the Proponent states clearly that it will implement a particular mitigation measure, whereas in others the FEIR states that the Proponent will consider implementing a measure, or will encourage tenants to implement mitigation. The Proponent should clarify how the Executive Park will function and outline how much of the actual project it will construct and manage, how much will be completed by tenants, and how much control the Proponent will have over what tenants build. The Proponent should provide more detail and clarity about the responsible party for specific mitigation measures, how and when they will be implemented, who will be responsible for maintenance at the site and within each tenant's area, and how the success of mitigation measures will be monitored.

In instances where it is more difficult to ascertain the needs of future tenants, the Proponent should commit to minimum sustainability standards by which the project will be built out. For example, I note that the Proponent has stated in the FEIR that it will encourage tenants to participate in a voluntary LEED (Leadership in Energy and Environmental Design) program. A commitment reflected in draft Section 61 Findings that all buildings at the FREP include measures to be LEED Certified, as defined in the U.S. Green Building Council's Green Building Rating System would be one way of establishing a sustainability standard while preserving flexibility for future build-out. Similarly, a commitment by the Proponent to not only meet, but exceed all of the standards in MassDEP's Stormwater Management Policy would be another way to achieve a high level of sustainable design.

Last, to develop a project consistent with the City's stated commitment to the principles of sustainable development, and given the challenge of making upfront commitments in advance of development design, the Proponent should focus on and commit to improvements that it can

control across the FREP, such as a high level of protection for Rattlesnake Brook, a defined and real connection to transit, a site layout that maximizes pedestrian and bicycle infrastructure, and the implementation of a comprehensive stormwater management system for the entire site.

Mitigation

The SFEIR should outline all mitigation measures to which the Proponent is committed for the FREP project. The SFEIR should also include revised draft Section 61 Findings for use by the state permitting agencies. The FEIR included one Section 61 Finding for use by MassHighway, and two for use by MassDEP in conjunction with the wastewater and drinking water permits. Pursuant to DCR's comments, the SFEIR should include a draft Section 61 Finding for use by the Department of Capital Asset Management (DCAM) and DCR for the land disposition.

February 15, 2008

Date

Ian A. Bowles

Comments received:

1/25/2008	Massachusetts Historical Commission
2/3/2008	Friends of Freetown/Fall River State Forest
2/3/2008	Green Futures
2/6/2008	Southeastern Regional Planning & Economic Development District
2/8/2008	Department of Fish and Game
2/8/2008	Department of Environmental Protection, Southeast Regional Office
2/8/2008	Mass Audubon
2/8/2008	Green Futures
2/8/2008	Department of Conservation and Recreation
2/11/2008	Executive Office of Transportation

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