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November 16, 2006

CERTIFICATE OF THE SECRETARY OF ENVIRONMENTAL AFFAIRS
ON THE
DRAFT ENVIRONMENTAL IMPACT REPORT

PROJECT NAME : Brice Lemon Estates Residential Subdivision
PROJECT MUNICIPALITY : Rutland
PROJECT WATERSHED : Ware River
EOEA NUMBER : 13019
PROJECT PROPONENT : C.B. Blair Development Corporation
DATE NOTICED IN MONITOR : October 10, 2006

As Secretary of Environmental Affairs, I hereby determine that the Draft Environmental Impact Report (DEIR) submitted on this project **adequately and properly complies** with the Massachusetts Environmental Policy Act (M.G.L. c. 30, ss. 61-62H) and with its implementing regulations (301 CMR 11.00). However, for the Final Environmental Impact Report (FEIR) to be found adequate, I am requiring the proponent to provide additional information in the FEIR specifically pertaining to alternatives, wetlands, rare species, historic resources and wastewater. This information is necessary to ensure that the requirements of 301 CMR 11.07 are met, that the aspects and issues of the project have been clearly described, that a range of project alternatives have been fully analyzed, that the proponent has committed to a set of mitigation that will allow the state agencies to satisfy their Section 61 obligations, and that there will be meaningful opportunities for public review of the additional analysis prior to any Agency action.

Project History

As originally described in the April 2003 Environmental Notification Form (ENF), the proposed project involved the development of an 80 unit Open Space Cluster residential housing subdivision on a 96-acre site located off Route 122A (Main Street) in Rutland. The project

included the construction of 8,848 linear feet of roadway with sidewalk, and supporting utilities and drainage infrastructure including a 40,000 gallon per day (gpd) on-site sewage pump station, and 8 stormwater detention basins. The proposed project resulted in the creation of approximately 54 acres of permanent open space.

The project had undergone review and required a mandatory EIR pursuant to Section 11.03 (1)(a)(2) of the MEPA regulations, because the project proposed to create more than ten acres of new impervious surfaces (12.6 acres total). The project also underwent review pursuant to section 11.03 (1)(b)(1) of the MEPA regulations, because the project proposed to alter more than 25 acres of land (33 acres total). The project as currently proposed continues to require a 401 Water Quality Certificate and Sewer Extension Permit from the Department of Environmental Protection (MassDEP), and a Variance from the Department of Conservation and Recreation (DCR). Because the project requires a 404 Programmatic General Permit from the US Army Corps of Engineers (ACOE), it will also be subject to review by the Advisory Council on Historic Preservation (ACHP) pursuant to Section 106 of the National Historic Preservation Act for work within historic properties (36 CFR Part 800). The project will result in a "take" of rare species habitat and thus requires a Conservation Management Permit from the Natural Heritage and Endangered Species Program (NHESP). The project also continues to require review by the Massachusetts Historical Commission (MHC) and an Order of Conditions from the Rutland Conservation Commission (and hence Superseding Order(s) from MassDEP if any local Orders were appealed).

Notice of Project Change

Included with this DEIR submittal, the proponent has described a number of changes and modifications to the proposed project. Subsequent to the issuance of the Secretary's Certificate on the ENF (May 22, 2003), the proponent acquired an additional 25.45 acre development parcel (Lemon parcel) abutting the northwestern corner of the project site to allow for the proposed construction of a secondary accessway into the project site. As a result the project site has been expanded to include a total of approximately 122 acres of land area. The development plan for the Brice-Lemon Estates Residential Subdivision project has also been revised to include approximately 32 additional residential house lots (112 residential lots total). The currently proposed residential subdivision project will result in additional impacts to on-site wetlands resource areas, rare species habitat, potable water supply and wastewater flows, and traffic. The proponent proposes to place under a Conservation Restriction (CR) on approximately 47.3 acres of the project site comprised of forested upland and wetland habitat, to be held under the supervision of the Rutland Conservation Commission, as permanently protected open space.

Land Alteration

The project as currently designed results in significant alterations to wetland buffer areas (approximately 35 acres), watershed protection areas (4.43 acres) and the creation of significant amounts new impervious areas (approximately 19.0 acres).

I note that according to the project site plans included in the DEIR submittal, approximately 30 proposed residential development lots and all five of the project's stormwater detention basins appear to be located either wholly or primarily within wetland buffer areas. Approximately 15 additional residential development lots also appear to be located wholly or primarily within 400' of either the Mill Brook or Thayer Pond which are classified as Outstanding Resource Waters (ORW). As currently proposed, the project will require a variance under the Watershed Protection Act (350 CVMR 11.00) from DCR for work within the 200 feet and 400 feet of Mill Brook and Thayer Pond, and proposed impacts to wetland resource areas associated with these ORWs. The FEIR must continue to investigate all feasible methods of further avoiding, reducing, or minimizing project construction impacts to wetland resource areas, watershed protection areas, and the creation of impervious surface area.

Wetlands

The project will result in the permanent alteration of approximately 4,974 sf of bordering vegetated wetlands (BVW) for impacts associated with the proposed construction of up to five roadway crossings. The proponent proposes to construct two arched bridged crossings to span BVW along Windham Circle, and three culvert crossings over BVW located along Woodside Avenue and Sedona Circle. The FEIR should quantify the amount of overstory/canopy clearing associated with the project, and discuss whether any proposed overstory clearing is permissible under the Wetlands Protection Act. I note that all of the wetland resources areas located within the project site drain to the East Branch of the Ware River and are classified as Outstanding Resource Waters (ORW). The FEIR should demonstrate the project's consistency with the performance standards for filling of an ORW pursuant to 314 CMR 9.06(3)(e)(3). The FEIR should also analyze any indirect impacts to wetlands that may result from receipt of drainage and stormwater runoff from the site. The FEIR should discuss the consistency of the project's proposed stormwater management plan with MassDEP guidelines. The FEIR should also include a phased erosion and sedimentation control plan that minimizes the amount of disturbed soils.

In their comments on the DEIR submittal, the DCR has indicated that the project design appears to contain multiple wetlands crossings designed primarily to increase the developability of the project site and may not be permitted under the variance provisions of the Watershed Protection Act regulations. As noted elsewhere in this Certificate, numerous residential development lots appear to be located wholly or primarily within 200' of either the Mill Brook or Thayer Pond. According to DCR, the proposed development and future use of these specific residential lots may not be permitted under the variance provisions of the Watershed Protection Act regulations. The proponent should continue to consult with DCR during final project design. The FEIR should respond to DCR's comments.

The proponent has committed to constructing approximately 10,000 sf (2:1) of on-site wetlands mitigation, in three wetlands replication areas to be located adjacent to existing wetlands abutting Woodside Avenue and Windham Drive. The proponent has also committed to maintain approximately 58 acres (52%) of the project site as permanently protected open space.

As described below, the proponent's open space plan includes the placement of a Conservation Restriction on approximately 47 acres of the project site including uplands, and wetlands habitat areas as part of the proponent's proposed Conservation Management Plan. I strongly encourage the proponent to consider placing deed restrictions on any residential development lots located within 600 feet of any vernal pools, or within the 100-foot wetlands buffer zone to further limit the extent of tree clearing within each of the proposed development lots, to avoid future impacts to wetlands from homeowner and/or Resident Association lawn and yard maintenance activities, and ensure the permanent protection of the maximum amount of undisturbed open spaces located throughout the project site.

Stormwater

The stormwater management plan for the proposed project has been designed as a closed drainage system to meet MassDEP's Stormwater Management Policy guidelines, and includes the use of deep sump catch batch basins, approximately 5 detention basins with sediment forebays, and periodic road sweeping to service the project's stormwater flows for eventual discharge to Bordering Vegetated Wetlands (BVW) abutting the project site. I encourage the proponent to evaluate sustainable design alternatives such as Low Impact Development (LID) techniques in site design and stormwater management plans. LID techniques incorporate stormwater best management practices (BMPs) and can reduce impacts to land and water resources by conserving natural systems and hydrologic functions. The primary tools of LID are landscaping features and naturally vegetated areas, which encourage detention, infiltration and filtration of stormwater on-site. Other tools include water conservation and use of pervious surfaces. Clustering of buildings is an example of how LID can preserve open space and minimize land disturbance. LID can also protect natural resources by incorporating wetlands, stream buffers and mature forests as project design features. For more information on LID, visit <http://www.mass.gov/envir/lid/>. Other LID resources include the national LID manual (Low Impact Development Design Strategies: An Integrated Design Approach), which can be found on the EPA website at: <http://www.epa.gov/owow/nps/lid/>.

Rare Species

According to the information provided in the DEIR, the Brice Lemon Estates project site is located within priority and estimated habitat for the Four-toed Salamander (*Hemidactylum scutatatum*), a state-listed species of "Special Concern."

The Four-toed Salamander and its habitat are regulated pursuant to the implementing regulations of MA Endangered Species Act (MESA) (321 CMR 10.00). Based on the plans included in the filing, the Natural Heritage and Endangered Species Program (NHESP) has determined that the proposed project will result in a "take" of state-listed species. In their comments, NHESP has indicated that necessary habitat protection will be achieved through a combination of construction related measures to ensure machinery remains within the limit of work, long-term protection of areas through formal Conservation Restriction, and deed

restrictions on several lots. According to NHESP, the proponent has also committed to changing the culverts to spanning structures and re-configuring the open space to improve continuity of habitat for the Four-toed Salamander and ensure a configuration that lends itself to adequate enforcement for areas to remain unaltered. Based on the plans and materials submitted to date, and improved by the modifications to the open space and bridging structures, the project as currently proposed will likely meet the performance standards for a MESA Conservation and Management permit.

The proponent, in consultation with NHESP, has designed a Conservation management Plan (CMP) containing a number of necessary conditions that NHESP has determined are critically important to the long term protection of the Four-toed Salamander, or having an adverse effect on its habitat areas located within the project site including:

- placing a Conservation Restriction (CR) on approximately 47.3 acres (42%) of the project site for the permanent protection of Four-toed Salamander habitat,
- implementation of construction mitigation activities including the installation of erosion control fencing prior to construction, and the restoration and monitoring of any temporary alteration along the streams to facilitate installation of the crossing structures, and
- placing deed restrictions on particular residential development lots to ensure protection and compliance with adjacent CR land areas.

I adopt these conditions as my own, and ask that the proponent clearly identify the CR land areas and the designated development areas within the project site on an appropriately scaled map. I strongly encourage the proponent to install permanent boundary markers throughout the project site that clearly identify the extent of the permanently protected CR land areas. The proponent should forward a copy of the proponent's executed and recorded CR, and any proposed deed restriction documentation to NHESP for review and comment. I ask that the proponent forward a copy of the final project site plan identifying the designated conservation areas and development areas to the MEPA Office for the project file.

Water Supply

The potable water supply needs for the Brice Lemon Estates Residential Subdivision project (approximately 49,280 gpd) will be served by the Town of Rutland's municipal water supply system. According to MassDEP however, the Rutland public water system exceeded its existing registered and permitted volumes under the Water Management Act by approximately 86,000 gallons in 2005. The addition of the project's 49,280 gpd of potable water supply demand would bring the average daily demand of the public water supply beyond the 100,000 gallon threshold limit permitted under the existing Water Management Act permit. The FEIR must respond to MassDEP's comments. Based on the information and analysis provided in the FEIR, I reserve the right to require further analysis of the project's proposed potable water supply management.

Water Conservation

I strongly encourage the proponent to incorporate water conservation and water use efficiency in the project design to comply with the March 1989 state plumbing code. Specifically, the proponent should commit to employing efficient residential water conservation technologies for the project including water saving devices, low flow toilets, and low flow appliances (dishwashers, washing machines). The proponent should also consider implementing an Irrigation Management Plan (IMP) to further reduce the project's irrigation water demand. An IMP could involve the use of amended soils and compost, the planting of native and drought-tolerant species of trees, shrubs, and turf grasses, an automated water efficient irrigation system, and a water management protocol for drought conditions. I ask that the proponent consult with MassDEP, and refer to the Massachusetts Water Resources Commission's *Lawn and Landscape Water Conservation, An Addendum to the Water Conservation Standards for the Commonwealth of Massachusetts, October 2002*, during the final design of the proponent's IMP.

Wastewater

As described in the DEIR, the project's wastewater flows will be discharged from the project site via a proposed new on-site sewer pump station to the Rutland-Holden Trunk Sewer and Relief Trunk Sewer collection system and conveyed to the Upper Blackstone Water Pollution Abatement District's wastewater treatment facility (WWTF) in Millbury for treatment and discharge. According to the comments received from the Massachusetts Water Resources Authority's Advisory Board (MWRA Advisory Board), the Rutland-Holden Trunk Sewer and Relief Trunk Sewer collection system is currently managed and maintained by the Massachusetts Department of Conservation and Recreation (DCR).

Currently, the Massachusetts Water Resources Authority (MWRA) reimburses DCR for all costs associated with the maintenance and management of the Rutland-Holden Trunk Sewer and Relief Trunk Sewer collection system including approving all new sewer connections to the Rutland-Holden Trunk Sewer and Relief Trunk Sewer collection system. In their comments, the MWRA Advisory Board has expressed concern with potential capacity constraints associated with the Rutland-Holden Trunk Sewer and Relief Trunk Sewer collection system and its ability to accommodate additional wastewater flows from new development including the proposed Brice Lemon Estates Residential Subdivision project. The FEIR should respond to the comments received from the MWRA Advisory Board. The MWRA Advisory Board is also recommending that any new connections, including the Stony Brook Estates project, be restricted until sewer management responsibilities are transferred to host communities. In their comments, MassDEP has indicated that the proposed project would take potable water from the Chicopee basin and discharge it to the Blackstone basin. According to MassDEP, the proponent will be required to obtain a Certificate of Insignificance under the Interbasin Transfer Act regulations from the Massachusetts Water Resources Commission if the proponent does not construct an on-site wastewater treatment system. The FEIR should respond to MassDEP's comments.

The Secretary's Certificate on the ENF required the proponent to include in the DEIR submittal an "Alternatives Analysis" relative to the construction of an on-site wastewater treatment system in lieu of conveying wastewater to an out-of-town wastewater treatment facility. The DEIR did not contain an on-site wastewater treatment system alternative. Because the proposed sewerage of this project has raised a number of infrastructure capacity questions and pertaining to the Rutland-Holden Trunk Sewer and Relief Trunk Sewer collection system, the Upper Blackstone Water Pollution Abatement District's wastewater treatment facility (WWTF), and concerns for the interbasin transfer of water resources from the Chicopee basin to the Blackstone basin, I am requiring the proponent to include in the FEIR a detailed discussion of on-site wastewater treatment infrastructure that would be needed to accommodate wastewater flows from the proposed residential subdivision project. The FEIR should demonstrate the feasibility of the construction of an on-site wastewater treatment system for the proposed project, that meets all MassDEP requirements for a Major Groundwater Discharge Permit pursuant to 314 CMR 5.00 and 6.00, and has sufficient design capacity to accommodate the proposed project's (49,280 gpd) wastewater flows. Based on the information and analysis provided in the FEIR, 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.

Historic Resources

The project site is located within the boundaries of the Rufus Putnam House Site, a National Historic Landmark that is listed in the Massachusetts State Register of Historic Properties. This National Historic Landmark includes the Rufus Putnam House and approximately 135 acres of historically associated land area.

In their comments on the DEIR submittal, the Massachusetts Historical Commission (MHC) has indicated that the proposed Brice-Lemon Estates residential subdivision project will adversely impact the Rufus Putnam House Site through the introduction of visual elements that will alter the character and setting of the State Register and National Historic Landmark property. As noted above, the project will also be subject to review by the ACOE and the Advisory Council on Historic Preservation (ACHP) pursuant to Section 106 of the National Historic Preservation Act for work within historic properties (36 CFR Part 800).

I strongly encourage the proponent to work closely with MHC and ACOE during the Section 106 review process and final project design to avoid, minimize and mitigate the project's potential impacts to the historic setting of the Rufus Putnam House Site, and any remaining historic agricultural fields located within its boundaries. The FEIR should include a detailed update of the Section 106 review process and any additional consultations with MHC.

Construction Period

The FEIR should analyze construction-period impacts, including temporary impacts to wetlands, and the extent of any blasting and/or re-grading during construction. The FEIR should discuss whether the project will require a federal NPDES permit for construction activities, and

explain how the proponent will meet any performance standards.

Comments

The FEIR should respond to the substantive issues raised in the comments received to the extent that the comments are within the subject matter jurisdiction of MEPA. I recommend that the proponent employ an indexed response to comments format, supplemented as appropriate with direct narrative response.

Mitigation and Section 61

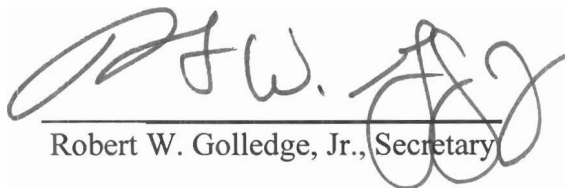
The FEIR should contain a summary of all mitigation measures to which the proponent has committed, including a description of timing (by year or appropriate trigger point), estimated cost, and responsible party. The FEIR should include Proposed Section 61 Findings for use by the state agencies.

Circulation

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

November 16, 2006

Date



Robert W. Golledge, Jr., Secretary

Comments received:

10/31/06	Massachusetts Water Resources Authority – (MWRA) Advisory Board
11/08/06	Water Supply Citizens Advisory Committee (WSCAC)
11/13/06	Natural Heritage and Endangered Species Program (NHESP)
11/14/06	Massachusetts Department of Conservation and Recreation (DCR)
11/14/06	National Trust for Historic Preservation – Northeast Office
11/15/06	Massachusetts Historic Commission (MHC)
11/15/06	Department of Environmental Protection – CERO

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