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April 23, 2009

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

PROJECT NAME : Housatonic Street Shared-Use Pathway Project
PROJECT MUNICIPALITY : Lenox
PROJECT WATERSHED : Housatonic
EEA NUMBER : 14561
PROJECT PROPONENT : Town of Lenox
DATE NOTICED IN MONITOR : March 24, 2010

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 **does not require** the preparation of an Environmental Impact Report (EIR).

Project Description

The proposed project consists of construction of a 10-foot wide shared use path, approximately one mile in length, which will begin at the Lenox Memorial Middle and High School on East Street and extend along Housatonic Street to the intersection of Crystal Street, Willow Creek Road, and Housatonic Street. The proposed Shared-Use Path is intended to serve bicyclists, pedestrians, wheelchair users and other non-motorized means of travel, and to provide a link in the future Berkshire Bikeway. At the Willow Creek Road end of the proposed path, there is an existing pedestrian bridge over the Housatonic River that leads to recreation trails and conservation areas including Woods Pond and the October Mountain State Forest.

The project is located within the recently designated Upper Housatonic River Area of Critical Environmental Concern (ACEC) and will result in wetland resource alteration and removal of over 60 public shade trees.

Permits and Jurisdiction

The project is undergoing environmental review because it requires state Agency Action and exceeds MEPA thresholds for transportation and for projects within an ACEC. The project will receive federal and state funding through the Transportation Improvement Plan (TIP). The project is under review pursuant to Section 11.03(6)(b)(1)(b) of the MEPA regulations because it involves widening of an existing roadway by four or more feet for one-half or more miles; Section 11.03(6)(b)(2)(b) of the regulations because it will result in cutting of five or more living public shade trees of 14 or more inches in diameter at breast height; and Section 11.03(11)(b) of the regulations because it is located within a designated ACEC and does not consist solely of a single-family home.

The project will result in alteration of wetland resource areas including Bordering Vegetated Wetlands (BVW) and Inland Bank. 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 is required to meet the Limited Project provisions of the Wetlands Protection Act in order to be permissible within an ACEC. The project may require a 401 Water Quality Certification from MassDEP and a Category 2 Programmatic Permit from the U.S. Army Corps of Engineers.

The project will be funded by a state agency, the Massachusetts Department of Transportation (MassDOT). Therefore, MEPA jurisdiction is broad and extends to all aspects of the project that may, directly or indirectly, cause Damage to the Environment as defined in the MEPA regulations.

Review of the ENF

As described in the ENF, the proposed project involves full-depth construction of a 10-foot paved path parallel to adjacent streets. The path will be separated from the roadway by at least five feet including a 3-foot roadway shoulder with 6-inch depth of dense graded crushed stone and a 2-foot wide path shoulder with 4 inches of loam and seed. The project will result in alteration approximately 2.57 acres of land, which includes creation of 1.28 acres of new impervious area.

The ENF indicates that the proposed 1.06-mile Shared-Use Pathway would result in 4,800 square feet of BVW alteration, 20 linear feet of Bank impact, and removal of 67 public shade trees. Wetlands replication at a ratio of 1:1 was proposed in the ENF. However, the Town of Lenox has since made design changes based on recommendations during the site visit and comment letters received. As indicated in its Response to Comments letter, dated April 20, 2010, the Town has added additional boardwalks to the project design that will serve to reduce BVW impacts to approximately 2,300 square feet and Bank impacts to approximately 12 linear feet, and will reduce tree removal. The letter also indicates that BVW will be replaced at an increased ratio of 1:1.5. The Town should develop and implement a monitoring plan to ensure that wetlands replication efforts are successful and an invasive species management plan to avoid introduction of invasive species as recommended by the Department of Conservation and Recreation (DCR).

Alternatives

The Town considered two alternative routes in addition to the preferred route. As described in the ENF and the Town's April 20, 2010 letter, Alternative 1 traverses private land between Crystal Street and East Street, bisecting undisturbed wooded area, and would result in more tree clearing and wetlands alteration than the proposed route. Handicap accessibility is also an issue on this route. Alternative 2 consists of a preliminary plan for a route similar to the preferred route that was proposed by the Town in 2004. This alternative is more narrow (6-8 feet wide) than the preferred route with potentially fewer resource impacts. However, the design was determined insufficient for safe two-way bike and pedestrian travel and does not meet the current shared-use path standards required to obtain funding for the project. In its Response to Comments (April 20, 2010), the Town discusses the rationale for eliminating a possible alternative along Pine Knoll Road. This route was not selected due to steep grades and handicap accessibility concerns as well as a relatively narrow right-of-way through an established residential neighborhood.

Limited Project Status

The ENF indicates that the project is a Limited Project pursuant to 310 CMR 10.53(3)(f) which applies to: maintenance and improvement of existing public roadways but limited to widening less than a single lane; adding shoulders; correcting substandard intersections; and improving inadequate drainage systems. During the MEPA site visit and in its April 20, 2010 letter, the Town indicated that it will be applying for Limited Project status under two additional categories: 310 CMR 10.53(3)(j) for the construction of footbridges; and 310 CMR 10.53(3)(k) for routine maintenance and repair of road drainage structures.

As noted in the comment letter from the Department of Conservation and Recreation (DCR), alteration of BVW is not permitted within an ACEC unless the project qualifies as a Limited Project. It appears that the three Limited Project categories referenced above, 301 CMR 10.53(f), (j) and (k) may be applicable to the project. However, it has not yet been determined whether the project will meet the criteria for Limited Project status. This determination will be made by the Lenox Conservation Commission. MassDEP outlines in its comment letter some of the requirements for Limited Project status pursuant to 310 CMR 10.53(3) for work within jurisdictional areas that cannot meet the General Performance Standards. In its filings under the Wetlands Protection Act (WPA), the Town should specifically state, for each impact location, which limited project criteria is applicable. The Town is required to prepare a written alternatives analysis including, as may be applicable, alternatives involving off-site parcel access opportunities, purchase of limited access rights, spanning of resource areas via bridges, box culverts, and other existing technologies. The ENF and the Town's April 20, 2010 letter included a brief discussion of alternatives. However, additional analysis of alternatives will be required during permitting to meet the WPA regulatory requirements.

As noted in the MassDEP comment letter, Limited Project status requires the applicant to demonstrate practicable avoidance and minimization of alteration to jurisdictional resource areas, and then describe appropriate mitigation measures for the remaining unavoidable alteration. The

comment letters from MassDEP and DCR highlight additional information needed to clarify the type and amount of resource alteration.

Resource Delineation

The ENF describes existing conditions and proposes measures, including boardwalks and retaining walls, to avoid and minimize impacts to wetland resources. However, some uncertainty remains as to the extent of impacts, and whether a 401 Water Quality Certification will be required, because all resources have not yet been delineated. MassDEP recommends that an Abbreviated Notice of Resource Area Delineation (ANRAD) or a Request for Determination of Applicability (RDA) be filed with the Conservation Commission to legally establish the regulated resource areas for all of the project onsite work areas. All delineations of jurisdictional resources should be accomplished by flagging in the field and surveying, and then the survey results should be presented on a scaled site plan. I refer the Town to MassDEP's comment letter and its guidance documents and regulations for specific requirements and methods for all resource delineations. MassDEP staff is available to provide additional assistance and I encourage the Town to contact MassDEP's Western Regional Office for a pre-permitting meeting.

Stream Crossings and Culverts

In response to DCR comments on the number of stream crossings and status of an intermittent stream, the Town's letter clarifies that the project involves impacts to one intermittent stream crossing as a result of culvert replacement at East Street. The Town notes that the intermittent status of the stream at East Street was confirmed during a previous Notice of Intent and Order of Conditions issued by the Lenox Conservation Commission. The project includes replacement of the existing East Street culvert with an open-bottom arch culvert. The proposed expansion of a culvert along Housatonic Street has been removed from project design since the ENF filing. This area will now be spanned with another section of boardwalk.

The project may be subject to permitting by the U.S. Army Corps of Engineers (the Corps). The Town should consult the Corps for a determination of applicability under the Clean Water Act. The Town should ensure that any new stream crossings are designed according to Condition 21 of the Massachusetts Regional General Permit (PGP) (effective date January 20, 2010) issued by the Corps as indicated in MassDEP's comment letter. If it is not practicable to meet the standards, the Town should consult with the Corps and submit a Section 401 Water quality Certification application to MassDEP.

Stormwater

The project includes improvements to roadside drainage ditches along the proposed route of the Shared-Use Path, and implementation of erosion and sedimentation controls. Although the ENF states that the project will comply with the MassDEP Stormwater Policy and standards to the maximum extent practicable, the Town also states (in its April 20, 2010 letter) that the project is not subject to the MassDEP Stormwater Management Regulations because there are no new point source discharges. While this may be the case, additional information on the proposed

design is needed to confirm applicability and the Town should be aware that certain aspects of the proposed stormwater management system may trigger the policy requirements. The Town should consult with MassDEP on this issue during pre-permitting.

Public Shade Tree Removal

The project as proposed involves cutting a substantial number of public shade trees ranging in diameter from 14 inches to 46 inches at breast height. Overall, approximately 171 trees are proposed for clearing, including 67 public shade trees. In its letter dated April 20, 2010, the Town indicates that design changes to incorporate additional boardwalk sections will result in saving some trees and that it will work with MassDOT and the Town Tree Warden to evaluate additional tree protection using tree wells and other protective measures. In addition to the ecological impacts, removal of these trees may have a marked affect on the quality of views in the project area. The Town should continue its efforts to modify the project design where feasible to maintain as many mature healthy trees as possible along the route.

The ENF indicates that a tree planting plan will be implemented. The Town should also develop and implement a monitoring plan as recommended in the comment letters received to ensure that tree planting efforts are successful. I expect that issues relating to vegetation removal in the wetlands buffer zone, as well as replanting and other mitigation measures will be addressed during the local Conservation Commission review and permitting.

Construction

I note MassDEP's recommendation that the Town should obtain written confirmation from the Department of Public Works that drinking water and wastewater infrastructure will not be impacted by the construction. The Town should also implement measures to control air pollution during construction. I refer the Town to MassDEP's comment letter for guidance on air pollution control, solid waste management, and procedures and notifications relating to oil and hazardous materials.

Consistency with Local and Regional Plans

The Berkshire Regional Planning Commission (BRPC) indicates in its comment letter that the proposed project is consistent with the goals of the Berkshire Bicycling and Walking Plan and the Massachusetts Bicycle Transportation Plan as well as the Regional Transportation Plan (2007), which recommends a county-wide multi-use trail. As noted by the BRPC, the current Transportation Improvement Program, which was approved by the Berkshire Metropolitan Planning Organization in August 2009, includes funding for the project. The Town should consider BRPC's comments and recommendations during design and permitting, including those related to wetlands replication, stormwater, preservation of mature trees and tree replacement.

Rare Species

The ENF indicates that the Town contacted the Division of Fisheries and Wildlife, Natural Heritage and Endangered Species Program (NHESP) in 2009 and that the project site is not mapped as Priority or Estimated Habitat of state-listed species. As noted in the comment letter from DCR, additional rare species inventories were conducted in the project area during 2009-2010. Based on consultation with NHESP during ENF review, the proposed work is outside of Priority Habitat area and NHESP has no concerns with the proposed Shared-Use Pathway.

Cultural Resources

The Board of Underwater Archaeological Resources indicates in its comment letter that the project is unlikely to impact submerged cultural resources. I refer the Town to the BUAR comment letter for guidance in the event that resources are encountered during project implementation.

Conclusion

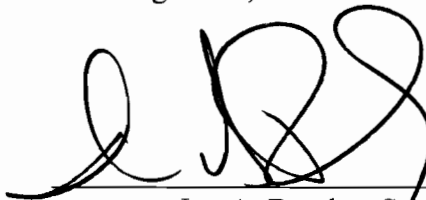
The ENF has sufficiently defined the nature and general elements of the project for the purposes of MEPA review, and has proposed measures to avoid and minimize, or mitigate environmental impacts. As noted above and in the comment letters received, additional information and analysis on wetlands impacts and mitigation will be required during permitting. MassDOT should consider the comments received as part of its funding approval process and ensure that project-related impacts in the Upper Housatonic River ACEC are avoided and minimized, or mitigated to the maximum extent feasible. I expect that MassDOT will condition its funding approval as appropriate to include design measures that avoid and minimize impacts, and an effective mitigation and monitoring plan.

The ENF indicates that the proposed path will be incorporated into a longer multi-use path at some point in the future, the county-wide Berkshire Bikeway. The Town of Lenox should consult with the MEPA Office when plans for other segments of the bikeway/shared-use path are further defined to discuss whether any additional MEPA review is required. In addition, if there are material changes to the project based on the outcome of the wetlands review and permitting, the Town should consult with the MEPA Office to discuss whether or not a Notice of Project Change is required.

I am satisfied that any outstanding issues can be addressed through the state agency review and funding process, and during the local approval process. Based on review of the ENF and comments received, and in consultation with state agencies, I have determined that no further MEPA review is required.

April 23, 2009

DATE



Ian A. Bowles, Secretary

Comments Received:

- 4/13/2010 Department of Conservation and Recreation, Area of Critical Environmental Concern (ACEC) Program
- 4/13/2010 Berkshire Regional Planning Commission
- 4/13/2010 Department of Environmental Protection, Western Regional Office
- 4/14/2010 Board of Underwater Archaeological Resources
- 4/16/2010 Division of Fisheries and Wildlife, Natural Heritage and Endangered Species Program
- 4/20/2010 Foresight Land Services (on behalf of the Proponent) - Response to Comments.

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