



TOWN OF WESTBOROUGH MASSACHUSETTS

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Conservation Commission

March 24, 2015

Secretary Matthew Beaton
Executive Office of Energy and Environmental Affairs
Attention MEPA Office
Page Czepiga, EEA No. 15334
100 Cambridge Street – Suite 900
Boston, Massachusetts 02114

RE: MassDOT I-90/I-495 Interchange Improvement Project (Environmental Notification Form)

Dear Ms. Czepiga,

The Town of Westborough Conservation Commission is submitting comments on the above-referenced I-90/I-495 Interchange Improvement Project in accordance with 301 CMR 11.06(3). As a preliminary matter, the Commission repeats and endorses the comments offered by The Town of Westborough Conservation Agent at the scoping meeting held in Westborough on Thursday, March 19th 2015.

General Comments

1. The ENF Does Not Meet the Definition of a “Project”

The main issue, which made it difficult to provide substantive comments, is that the ENF is not for a specific project, as defined in the regulations but for three “Concepts” which at some unknown point will be presented as a single “Project.” The substitution of “concepts” for a “project” makes it practically impossible for stakeholders to determine if the Secretary has met its regulatory responsibility. The ENF is therefore confusing, flawed, and inconsistent with 301 CMR 11.00 which always refers “Project”.

301 CMR 11.01(b) states in part:

“The Secretary’s decision that a review document is adequate or that there has been other due compliance with MEPA and 301 CMR 11.00 means that the Proponent has adequately described and analyzed the Project and its alternatives and assessed its potential environmental impacts and mitigation measures”.

The regulation uses the term “Project” in its singular form, defined in 301 CMR 10.02(2). Because the three concepts do not constitute a single Project, it is very difficult to effectively comment upon the

potential environmental impacts and proposed mitigation measures and ultimately a tremendous waste of resources for reviewers. It leaves the Commission unable to intelligently analyze the intentions of the project proponent.

Furthermore, without a project identified within the meaning of the regulations, it is impossible to conceive of how an alternatives analysis can be performed, as required by 301 CMR 11.05(4).

301 CMR 11.05(4)(a) states in part:

*“The ENF shall include a concise but accurate description of the **Project and its alternatives**, identify and review thresholds the project may meet or exceed and any Agency Action it may require, present the Proponent’s initial assessment of potential environmental impacts, propose mitigation measures, and may include a proposed Scope”.*

Given this major deficiency, it difficult to understand how the Secretary can issue decision which complies with 301 CMR 11.06(7) which requires the Secretary to *“issue a written certificate stating whether or not an EIR is required and, if so, what to require in the Scope in accordance with 301 CMR 11.06(9)”*. In accordance with 301 CMR 11.06 (9) entitled “Limits of Scope” subsection (a) entitled “Potential Environmental Impacts” states, *“The Secretary shall limit the Scope to those aspects of the **Project** (emphasis added) that are likely, directly, or indirectly, to cause Damage to the Environment”*. How can the Secretary develop a Scope on three separate Concepts which incidentally will all cause “Damage to the Environment” as defined in 301 CMR 11.02(2)?

The ENF gives The Commission no guidance on critical decision making that is contemplated by the interchange project.

- Does the Secretary pick which Concept affords the least Damage to the Environment?
- At what point does a Concept get chosen?
- Will the ENF certificate mandate three separate EIR’s under one filing for each Concept?

There has not been enough on-the-ground data to factually and accurately choose one of the three Concepts. Until such time a single Project is presented for thorough review it is difficult to almost impossible for stakeholder to formulate and provide accurate comments or for the Secretary to issue a final decision that is at all meaningful.

2. Omitted Transportation Threshold

The ENF form is supposed to list all applicable MEPA review thresholds. The Commission has reviewed the list and concurs, with the exception of the threshold entitled, “301 CMR 11.03 (6)(b)(1)(b) – *Widening of an existing roadway by four or more feet for one-half or more miles.*”

All presented concepts will trigger more than one Transportation threshold. All concepts, to varying degrees, also meet the threshold cited in “301 CMR 11.03 (6)(b)(1)(a) – *Construction of a New roadway one-quarter or more miles in length*”.

The term “roadway” as defined in 700 CMR 7.02 (Use of the Massachusetts Turnpike and the Metropolitan Highway System” reads *“refers to that portion of a way consisting of travel lanes, including acceleration lanes and deceleration lanes, creeper lanes, and ramps or approaches to toll plazas”*.

The term “roadway” as defined in 720 CMR 9.01 (Driving on State Highways” reads *“That portion of a highway between regularly established curb lines or that part, exclusive of shoulders, improved and intended to be used for vehicular traffic”*.

There is substantial new “roadway” proposed in each of the three Concepts and therefore the MEPA threshold as cited within *“301 CMR 11.03 (6)(b)(1)(a) – Construction of a New roadway one-quarter or more miles in length”* is applicable.

3. Abbreviated Notice of Resource Area Delineation

The Conservation Commission will require an Abbreviated Notice of Resource Area Delineation be filed to confirm all jurisdictional wetlands within the Town of Westborough. The Conservation Commission will issue an Order of Resource Area Delineation in accordance with 310 CMR 10.05(6)(a)3. This requirement shall be viewed separately from the future Variance request in accordance with 310 CMR 10.05(10) and shall occur as soon as possible. This requirement is the foundation for all subsequent permitting.

The Abbreviated Notice of Resource Area Delineation should also clearly illustrate where any invasive plants are located. In addition, all wetlands should be characterized by type and community in order to aid in future mitigation or final Concept/ Project approval. In addition, some of these areas are very remote and difficult to access. The ANRAD should include substantial supporting information to allow reasoned consideration of the wetlands delineation which will allow the Commission to fulfill its obligations under the law.

The Abbreviated Notice of Resource Area Delineation should comply with Section 5.10 entitled “Colors for Plan Contents”, as provided in the Town of Westborough Wetlands Protection Regulations and as discussed at the March 19, 2015 scoping session. Coordination with DCR to review the delineations within Westborough upon their lands should also be conducted.

4. Abbreviated Notice of Resource Area Delineation Landowner Information/Signatures

MassDOT’s representatives should adhere to the requirements of the WPA Form 4A - *Abbreviated Notice of Resource Area Delineation, Section A. General Information, subsection 3. Property Owner*, by listing all the names of the various owners of property within the scope of the ANRAD request.

MassDOT’s representatives should follow the requirements of the WPA Form 4A - *Abbreviated Notice of Resource Area Delineation, Section E. Signatures*, by providing the signatures of all property owners as listed in Section A. General Information, subsection 3. Property Owner. This statutory requirement is needed to secure permission to the Conservation Commission and DEP

to enter and inspect the area subject to the ANRAD at reasonable hours to evaluate the wetland resource boundaries and to require the submittal of any data deemed necessary by the Conservation Commission or the DEP for that evaluation.

The Conservation Commission will consider the Abbreviated Notice of Resource Area Delineation application incomplete if the above-cited Sections are not adhered to.

5. Wildlife Habitat Evaluations

MassDOT's representatives should follow 310 CMR 10.60 (Wildlife Habitat Evaluations) as it is foreseeable that the final selected Project will adversely effect wildlife habitat thresholds and associated General Performance Standards under the Wetlands Protection Act. This Evaluation should have already been done as part of the ENF process so that the Secretary could be made aware of the impacts associated with all three alternative Concepts.

6. Bordering Land and Isolated Land Areas Subject to Flooding Impacts

Impacts to both Bordering Land and Isolated Land Areas Subject to Flooding should be minimized to the greatest extent. Each Concept in the ENF submittal should thoroughly reviewed the impacts to these Resource Areas. The filling of critical existing flood storage can have significant impacts upon existing hydrologic regimes and to wildlife habitat. Potential impacts to floodplain closest to the Sudbury River need to be avoided as these areas flood more frequently. A full analysis of potential changes to the flooding regime as a result of floodplain filling shall be conducted to ensure that no properties within the area will be adversely affected.

The Secretary in accordance with 310 CMR 10.57(2)(a)5 should require supplemental information concerning vernal pool habitat within both Bordering Land and Isolated Land Areas Subject to Flooding. In addition, vernal pool habitat needs to be evaluated within the entire 141.9 acres and perhaps beyond said area.

7. Site Visit

Given the sensitivity of the 141.9 acres some of which lies within the first designated ACEC, will a site walk be conducted as provided in 301 CMR 11.01(4)(a) which in parts states "*which ordinarily conducts a site visit*" considering the magnitude of the proposed Damage to the Environment?

If, so, the Conservation Commission respectfully requests to be a party to the site walk.

8. Article 97 Land Transfer

The Project shall comply with the MEPA threshold associated with 301 CMR 11.03 (1)(b)(3) – *Conversion of land held for natural resources purposes in accordance with Article 97 of the Amendments to the Constitution of the Commonwealth to any purpose not in accordance with Article 97*. These protected open space parcels comprise critical resource protection to the ACEC. All three Concepts should have broken down how much of this protected open space was

to be affected and converted out of open space. The ENF gives no guidance on which of the Concepts will require takings of Article 97 open space and this deficiency must be corrected.

Section 301 CMR 11.06(5) states in part *“Upon request of the Secretary during the review period for an ENF, the proponent shall file with the Secretary a copy of any application for a Permit, Financial Assistance, or a Land Transfer and other information relevant to the Secretary’s review of the Project, its alternatives, its potential environmental impacts and mitigation measures”*.

The term Land Transfer under subsection (a) is defined in 301 CMR 11.02(2) as *“The execution and delivery by an Agency of any deed, lease, license or other document that transfers real property or an interest in real property”*. Numerous parcels of open space land will be transferred out of Article 97 and into a new held interest for MassDOT. These actions would result in loss of constitutionally protected open space and without proper alternatives analysis, it is impossible for commentators to understand whether any of the possible takings would be justified.

The Secretary’s thinking here should be guided by the Commonwealth of Massachusetts Executive Office of Environmental Affairs *“EOEA Article 97 Land Disposition Policy”*, dated February 19, 1998, only “exceptional circumstances” can land be removed from Article 97 status. Section II of the policy guideline *“Conditions for Disposition Exceptions”* lists 6 enumerated conditions that must be met in determining “exceptional circumstances”.

Number 2, for example, requires that the following condition be met and it reads in full *“The disposition of the subject parcel and its proposed use do not destroy or threaten a unique or significant resource (e.g., significant habitat, rare or unusual terrain, or areas of significant public recreation), as determined by EOEA and its agencies”*. The lands that are currently held as open space meet all these criteria and also meet the Values of Cedar Swamp ACEC in Section IV of the “Order Designating “An Area of Critical Environmental Concern”, dated July 3, 1975.

The Conservation Commission respectfully requests that the Secretary utilize Section 301 CMR 11.06(5) to better ascertain where the open space would need to be transferred to another use as this is a critical component to the overall decision making within the ENF process and other permitting processes moving forward.

Last, because no formal Project has been designated, it is impossible to calculate the total net loss of open space. All three Concepts will most likely affect some level of open space. At some point, the process as identified in Section III of the “EOEA Article 97 Land Disposition Policy”, entitled *“Procedures for Disposition”* will need to be acted upon before a final Project can actually be portrayed. If the disposition process fails then so does the Project and other alternatives will need to be investigated.

9. Temporary Impacts Not Evaluated

Section of ENF application entitled “*Wetlands, Waterways, and Tidelands, Subsection II Wetlands Impacts and Permits, Subsection C*” does not provide any estimate of temporary impacts as required.

Under 301 CMR 11.01(2)(c) “*the Secretary shall consider the entirety of the Project, including any likely future Expansion, and not separate phases or segments thereof*”. Also 301 CMR 11.05(2) requires all “*cumulative environmental impacts*”.

The construction process and its impact on protected resources absolutely needs to be included within the ENF and must be a critical factor in final selection, but there is no information in the Concepts that would allow a reasonable decision on the construction impacts. In the Commission’s experience, temporary impacts will most likely leave permanent damage.

In reviewing the surrounding land types and uses it is very difficult to locate any staging areas required for any of the proposed concepts. This issue is not trivial as there will be considerable swamp matting, temporary filling, cutting of vegetation, and so on, all of which constitute as an impact and if not considered early, could result in permanent Damage to the Environment. Both permanent and temporary impacts must be cumulatively addressed for each of the three Concepts. Adjacent businesses and property owners should also be made aware early if temporary easements are to be sought.

10. Representation

The Westborough Conservation Commission and staff shall be considered *representatives of the respective communities* regardless of the future Variance application in accordance with 310 CMR 10.05(10).

11. Mitigation Measures

Under the Section entitled “Alternatives Screening” on page 9 of the ENF summarizes mitigation measures. This Section is entirely inadequate in accordance with the requirements 301 CMR 11.05(4)(a) stating in relevant part , “*The ENF shall separately assess potential environmental impacts and proposed mitigation. The ENF shall identify the sources on which the assessments are based.*” Likewise, page 9 under the above-mention Section states in part, “*Mitigation measures will be identified, calculated, and designed during the EIR phase of the project, in consultation with the environmental agencies and the representatives of the respective communities*”. This approach turns the notion of reasoned selection of a concept on its head. The ENF should provide a far more detailed assessment of the potential to provide some projected plans for mitigation within all three Concepts.

The Commission’s reading of the ENF is that it promotes Concept 22-3, which causes the most damage to the environment, as a desirable concept by eliminating the two existing loop ramps as

described on Page 8 under Figure 1 and using those areas for mitigation, which is not a promising approach to reviewing potential mitigation. The document indicates that the project with the greatest potential damage to the environment somehow is negated by removing two existing loop ramps which will never be able to replicate for the loss of existing natural resource communities.

Regardless, correct assessment of any mitigation through ecological restoration first starts with a careful and thorough field survey of the existing land use types, flora & fauna communities, rare species, vernal pools, wetland buffer zones characteristics, lands protected under Article 97 and their attributes, impacts to private landowners and abutting businesses and many other important variables. None of these are considered in the ENF and this approach is not acceptable. It seems as though, most of the requirements within the ENF, are being delayed until the EIR and as result, the ENF application is substantially incomplete.

In the event that a form of potential mitigation involves “in-kind open space purchases” as mentioned on page 9 of the ENF those purchases for protected land taken in Westborough should be replaced in Westborough.

DEP and the University of Massachusetts at Amherst just finished a detailed study of the high failure rates of wetland replication rates in the Commonwealth. The study has been posted on DEP’s website and the website of the Massachusetts Association of Conservation Commissioners and its understanding of the shortcomings of mitigation should guide the Secretary and more support for the commonsense approach commonly known as, “Avoid, Minimize, & Mitigate.”

12. ACEC Groundwater Protection

The protection of the ACEC’s groundwater is critical in relation to mitigating stormwater impacts. Again, the ENF is silent on how this standard will be achieved. This omission is not consistent with 301 CMR 11.05(4)(c) which states in part *“the ENF shall also include an explanation of the Project’s impact on groundwater levels. The ENF shall also describe the Project’s compliance with any municipal regulations designed to protect groundwater levels”*. Nowhere does the ENF provide a discussion of these considerations and the status of the project proponent is not a reason to ignore groundwater protection.

13. Stormwater

A complete assessment of the existing stormwater within the project location as shown on Attachment A, Figure A-1 of the ENF should be provided as there has been considerable damage to the environment from the existing stormwater outfalls in this interchange. The existing stormwater system and associated outfalls should be rehabilitated to the best practicable extent within the final Project design.

Newly proposed detention basins should not be located within existing wetland resource areas, Outstanding Resource Areas, the ACEC, or areas designated as Wildlife Habitat.

Each of the three alternative Concepts should have demonstrated where stormwater structures could have been placed given all of the above-mentioned environmental constraints, which would have enabled the Secretary to examine the Alternatives with information that would permit a reasoned choice among the alternatives. As noted before, the incomplete and vague nature of the ENF gives no basis for deciding which concept would handle storm water in a fashion that best protects groundwater in the ACEC, therefore the proponent's ENF is premature.

Groundwater elevations should be determined for any proposed detention basins located within the Town of Westborough. All exploratory borings (test pits) to determine groundwater elevations shall be witnessed by Town personnel (Town Engineer, Board of Health Director, Assistant Town Planner/Conservation Officer, etc.) The test pits shall be conducted within the actual proposed basin locations.

All exploratory borings within an actual wetland resource area or that are needed for access over and through a wetland resource area, are not covered by the exemptions cited in 310 CMR 10.02(2)(b)2.g. and shall require a Notice of Intent. All property owners shall be duly notified and require their endorsement of the Notice of Intent for such activities.

The ENF did not calculate the amount of impervious areas created within each of the three alternative Concepts. Because there is such a limited amount of real estate to construct detention basins within the vicinity of all three alternative Concepts, the Concept that minimizes an increase of impervious over existing conditions should be given foremost consideration.

In accordance with the Massachusetts Stormwater Handbook all MassDOT projects should adhere to the standards and practices announced in "*MassHighway Stormwater Handbook For Highways and Bridges*", dated May 7, 2004.

14. Sudbury and Foss Reservoirs Watershed 2010 Public Access Plan Update

The Department of Conservation and Recreation, Division of Watershed Protection, Office of Watershed Management's report, "*Sudbury and Foss Reservoirs Watershed 2010 Public Access Plan Update*", dated July 2010 should be reviewed relative to the final Project design. This would be consistent with the Cedar Swamp original designation dated July 3, 1975, in regards to Section IV Values of Cedar Swamp subsection B. Public Water Supply.

Summary

Clearly, the ENF filing does not conform to 301 CMR 11.00. The result, as was also stated by the representative of DEP at the March 19, 2015 scoping session, is the complete inability to comment effectively upon a proposed Project because there is no Project, only alternative Concepts, none of which were presented in sufficient detail to meet the regulatory standards of an ENF. It seems very difficult to ascertain how the Commissioner can issue a Scope in accordance with 301 CMR 11.06(7) and 301 CMR 11.06(9).

The Secretary should consider requesting an Expanded ENF in accordance with 301 CMR 11.05(7). The Expanded ENF should address all the deficiencies identified herein and the comments submitted by other stakeholders.

Respectfully submitted,



Andrew Koenigsberg
Chairman, Westborough Conservation Commission
On behalf of the Commission based on a unanimous vote



Derek Saari
Assistant Town Planner/Conservation Officer