

Berkshire Regional Planning Commission Clearinghouse Review Report

August 1, 2007

SUBJECT: Berkshire Gateway at Lee
EOEEA#: 13905
LOCATION: Lee
ESTIMATED COST: \$15 million
REVIEW TYPE: FEIR
PROPONENT: F.L. Roberts and Co., Inc.
COMMENTS DUE: August 10, 2007

PROJECT DESCRIPTION:

The project consists of the redevelopment of the former “Diesel Dan’s” site off Rte. 102 in Lee, immediately south of the Rte. 20 intersection. According to the Final Environmental Impact Report (FEIR), the project site consists of three separate, contiguous parcels. The existing site contains two residential properties and one commercial property. The property contains a truck fueling facility with a small retail store and a vacant motel/restaurant. The owner has purchased two homes fronting on Rte. 102 and those will be demolished as part of the development. The entire site is 8 acres and currently 4.7 acres are impervious surface. The FEIR states that an additional 0.9 acres of land will become impervious. The Housatonic River is the western border of the site and nearly the entire site is located within the 100 year floodplain. The redevelopment consists of a redevelopment of the truck fueling station, a much larger convenience store with a fast-food drive-thru window, retail gas pumps and car wash, a 210 seat sit-down family restaurant, and a 93 unit 4-story hotel.

The project will require an Order of Conditions from the Lee Conservation Commission, review from the Division of Fisheries and Wildlife (DFW) Natural Heritage and Endangered Species Program (NHESP) and an Access Permit from the Massachusetts Highway Department (MHD). Additional permits that will be required include a NPDES Construction General Permit, a Special Permit from the Lee Planning Board, and a Special Permit for work in the floodplain from the Lee Zoning Board of Appeals. A Chapter 91 License and a 401 Water Quality Certification from the Department of Environmental Protection (DEP) may be required. The project 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). The site has a deed restriction for an Activity and Use Limitation (AUL). Since no state funding is involved, MEPA jurisdiction is limited only to activities subject to a state permit: transportation, stormwater, wetlands, waterways, rare species, wastewater and hazardous waste.

BRPC reviewed and commented on the Draft Environmental Impact Report (DEIR) in May 2007. In the certificate issued on May 11, 2007, the Secretary of EOEEA determined that the DEIR submitted adequately and properly complied with MEPA. The proponent was instructed to submit a FEIR. In his certificate the Secretary laid out a detailed scope for the FEIR that includes:

- A comprehensive alternatives analysis;
- Sufficient information to demonstrate that the stormwater management system meets the MassDEP’s Stormwater Management Policy (SMP);
- Documentation and quantification of the degraded area at the site, the areas of restoration, the location of restoration and the types of restoration included in the calculations;
- An expanded alternatives analysis to minimize Riverfront Area impacts;

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- A response to BRPC's suggestions for traffic mitigation that should be implemented if the site drive is kept open;
- A clarification of whether relocated fueling stations are located within the area subject to the AUL and which construction activities are within the AUL; and
- The FEIR should expand the section on mitigation measures and include a clear commitment to mitigation, an estimate of the individual costs of the proposed mitigation, and identification of the parties responsible for implementing the mitigation.

CONSIDERATIONS AND POTENTIAL ISSUES:

Alternatives Analysis

The MEPA ENF Certificate required that the DEIR was required to include a comprehensive alternatives analysis to determine which site layout minimized overall impacts to Riverfront Area, rare species and sensitive receptors. The DEIR did not provide substantive justification for alternatives that are deemed infeasible by the proponent; instead alternatives were cursorily dismissed as not meeting the proponent's development objectives. The scope established for the FEIR required an alternative in which proposed uses are reduced in size, eliminated or combined, thereby reducing the density of the proposed project. In addition, the FEIR was to include an alternative site layout in which fueling stations, stormwater facilities and snow storage areas are moved out of the Riverfront Area. (*See Certificate of the Secretary May 11, 2007 page 4*) BRPC had proposed an additional site layout alternative that should be provided and analyzed in which the existing entrance is closed since it is too close to the Rte. 20/102 intersection.

In addition to the No-Build Alternative and the Preferred Alternative, the FEIR includes an alternative where fueling stations, stormwater facilities and snow storage areas are moved out of the Riverfront Area. The alternative presented in the FEIR replaces the detention basin with an underground storage system. However, the subsurface stormwater system is still in the Riverfront Area. The proponent has determined that this alternative would not meet the Stormwater Management Standards to the maximum extent practicable. We agree with the proponent that a subsurface stormwater system is less desirable from an operational standpoint and given the location proposed by the proponent, still within the Riverfront Area, thereby continuing the impacts of having a surface system in the same area.

We do not believe that the alternative as presented complies with the Secretary's requirement for this alternative to show stormwater facilities moved out of the Riverfront Area.

The FEIR includes a reduced-build alternative that reduces the density of the site development by eliminating the restaurant and its associated parking. The FEIR states that this alternative removes one of the primary attractions to the site to high quality hotel developers. The proponent has determined that the income stream from the restaurant is necessary to recoup the high development costs resulting from the constraints of this site. The proponent has deemed this alternative to be infeasible due to financial feasibility. The proponent determined that the proposed gasoline and diesel fueling facilities, convenience store and carwash form a package that cannot be separated. This potential alternative and other potential reduced-build alternatives are not presented within the FEIR.

We remain unconvinced that a reduced build alternative which, while not maximizing the proponent's legitimate profit motivations, meets enough of the development objectives to have a financially viable project, has been considered. The need for the combination of five uses (truck fueling, auto fueling, convenience store, drive-through window for fast food, and car wash) is not

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clear or obvious. Similarly, a restaurant attached to the hotel, even somewhat superficially, rather than as a free-standing restaurant and hotel, is another option. The proponent did not bother to provide an alternative showing closure of the existing entrance into the truck fueling area, as requested by BRPC. The lack of creativity in addressing a sensitive site by the proponent is troubling.

As required by MEPA under 301 CMR 11, a description and analysis of alternatives to the project should be presented in the FEIR including:

1. all feasible alternatives, including but not limited to those indicated in the Scope;
2. the alternative of not undertaking the project (*i.e.*, the no-build alternative) for the purpose of establishing a future baseline in relation to which the project and its alternatives can be described and analyzed and its potential environmental impacts and mitigation measures can be assessed;
3. an analysis of the feasible alternatives in light of the objectives of the Proponent and the mission of any Participating Agency, including relevant statutes, regulations, executive orders and other policy directives, and any applicable Federal, municipal, or regional plan formally adopted by an Agency or any Federal, municipal, or regional governmental entity;
4. an analysis of the principal differences among the feasible alternatives under consideration, particularly regarding potential environmental impacts; and
5. a brief discussion of any alternatives no longer under consideration including the reasons for no longer considering these alternatives.

It is BRPC's opinion that the proponent has not adequately described and analyzed the project and its alternatives, and assessed its potential environmental impacts and mitigation measures as required through MEPA review. The alternatives analysis submitted with the FEIR does not satisfy the scope specified by the written certificate issued by the Secretary in accordance with 301 CMR 11.06(7). In addition, the FEIR does not present a reasonably complete and stand-alone description of the alternatives and an analysis of environmental impacts as required by MEPA.

The FEIR does not provide conclusive justification for alternatives that are deemed infeasible. Table 3-1 "Summary of Alternatives" (Page 12 of Section 3) of the FEIR does not include all four alternatives. While we agree with the proponent that leaving the site in its current condition is less desirable than either of the two other alternates shown on the table, based on the table it would appear that the Reduced-build alternative has significantly less impact than the Preferred alternative. A simple statement that "Developing the Reduced-Build Alternative is not feasible" does not provide adequate justification to overcome the obvious greater environmental impacts.

Land Alteration / Drainage

Runoff from the site has been divided into two watersheds; northerly and southerly. According to the FEIR, the southerly portion of the site may be considered redevelopment under the Stormwater Management Policy (SMP) because no new impervious areas are being added. The northerly portion of the site is not considered redevelopment, because new impervious surfaces are being added. The stormwater management system is designed to meet all of the standards of the SMP as if the entire site were new development. Each watershed's stormwater management system will remove a minimum 80% of total suspended solids (TSS).

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The drainage system within the southerly watershed has been modified since the filing of the DEIR. The drainage system now includes deep-sump (and hooded) catch basins, piping, water quality swales, a Stormceptor © and a grassed drainage swale outfall. The constructed wetland proposed in the DEIR has been eliminated.

The drainage system within the northerly watershed includes deep-sump hooded catch basins, piping, a forebay, a water quality swale, and a detention basin. Since filing the DEIR, the proponent has included a dedicated oil-water separator that will be installed in the truck parking area. This structure has been designed to store up to 1,000 gallons of oil or gas. The grades of the parking lot have been modified to accommodate the structure. A “low point” has been created in the parking surface which can store an additional 26,000 gallons on the surface, above and beyond the oil-water separator capacity.

The northerly portion of the site contains uses that have higher potential pollutant loads specifically associated with the fueling facilities. Areas with higher potential pollutant loads are subject to Standard #5 of the SMP. The use of infiltration practices without pretreatment is prohibited and stormwater management within such areas is required to include source reduction and pretreatment. According to the FEIR, source reduction will be accomplished through the implementation of a comprehensive Spill Prevention Control & Countermeasures Plan and by designated snow storage areas that force melt water into one or more of the pre-treatment best management practices (BMPs).

The drainage patterns will direct any spills at the diesel fueling station to the oil-water separator. The drainage patterns will direct any spills at the gas fueling stations to the forebay and the detention basin. The parking area for tractor trailers is in close proximity to both the detention basin and the river. The proponent has included the oil-water separator as an additional measure to capture and treat stormwater before directing such flows to the detention basin and the river. The grading of the parking area has been modified to direct run-off to the oil-water separator.

We believe that the modified stormwater management system in the FEIR is an improvement from what we reviewed in the DEIR.

Wetlands / Waterways

The wetland boundary illustrated on the DEIR plans has been re-delineated. It was discovered that the boundary has is further inland behind the proposed hotel than was previously shown.

Bank

The project as proposed in the DEIR included alteration of 10 L.F. of Bank in connection with the new southerly drainage outfall. The project as proposed in the FEIR no longer proposes impacts to Bank.

Bordering Vegetated Wetlands (BVW)

As a result of the new wetland boundary, the project has been revised. These new wetlands will be filled and replicated on-site pursuant to the guidelines of the Wetland Protection Act. A total of 1,125 S.F. of BVW will be altered, an increase of 1,095 S.F. A replication area of 3,000 S.F is proposed in proximity to the alteration. The proponent will conduct annual inspections of the replacement area to confirm plant survival and progress toward surface coverage of 75% of the surface area with indigenous wetland species within two growing seasons.

Bordering Land Subject to Flooding (BLSF)

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A significant portion of the site is located in BLSF. Much of the new construction will take place in this Resource Area. According to the DEIR, the project will cumulatively alter over ten percent (10%) or 5,000 S.F. of BLSF and will result in approximately 93,205 C.F. of lost flood storage. Also according to the DEIR, this will be mitigated by providing 110,116 C.F. of on-site compensation. Incremental compensatory storage will be provided in the form of building demolition and parking lot re-grading.

Riverfront Area

The property contains a total of 161,000 S.F. of Riverfront Area. According to the FEIR, approximately 131,000 S.F. or 81% is already degraded. Approximately 49,000 S.F. of riverfront enhancement will be created. According to the break down of degraded Riverfront Area on page 23 of the FEIR, the total square feet of post-construction degradation as proposed is 85,450. According to the FEIR the degraded area is made up of gravel, pavement, and buildings. Vegetated areas are not included as degraded.

The FEIR does not include a detailed narrative of the riverfront enhancement. According to the DEIR, the Riverfront Area will be improved by creation of a new planting corridor immediately adjacent to the top of slope. The corridor will be a total of 55,000 S.F., which includes the 3,000 S.F. Riverfront restoration area and will run the entire length of the site. An area along the river that is currently gravel and asphalt paving will be restored as a natural corridor. The area varies from 35' to 60' wide, beginning at the top of the river bank. A portion of the corridor will contain grass swales, forebay and a detention basin. The remainder of the Riverfront corridor will be planted with a selection of grasses, wildflowers, legumes, shrubs, and trees. Most of the species proposed for planting are indigenous. The size of the final restored area will be more than 55,000 S.F. with an average width of approximately 50 feet.

In accordance with the Scope issued by the Secretary of EOEEA, the proponent should provide more thorough documentation and quantification of the degraded area at the site. The FEIR should clarify whether the portions of the Riverfront Area to be restored are included in the area impacted. The proponent should thoroughly document and quantify the restoration including the areas of restoration, the location of restoration, and the types of restoration included in the calculations.

In accordance with the Wetlands Protection Act 310 CMR 10.58 (5) Redevelopment Within Previously Developed Riverfront Areas; Restoration and Mitigation, work to redevelop a previously developed riverfront area may be allowed, provided the proposed work improves existing conditions. At a minimum, proposed work shall result in an improvement over existing conditions of the capacity of the riverfront area to protect the interests of the WPA and stormwater management is provided according to standards established by the Department of Environmental Protection (DEP). The FEIR should document how the existing conditions have been improved in addition to how the stormwater management is provided in accordance with the standards established by the DEP.

The FEIR does not document the extent of Riverfront Area disturbed by this project, degraded or otherwise. Based on the site visit on November 21, 2006 it appears that currently vegetated areas will be disturbed and in some cases will be permanently impacted. BRPC does not dispute the possibility that areas with vegetation may be degraded. However the change in the Riverfront Area remains unclear, for example will gravel areas be vegetated or will vegetated areas be paved. It is unclear how the calculations were made such as if the wetland replication area and stormwater management devices (i.e. detention basin, forebay, swales, etc.) are included within the 49,000 S.F. of enhanced riverfront.

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Waterways

The proponent has submitted a Request for Determination to MA DEP's Waterways Program to determine whether a Chapter 91 License is required for the proposed project. The proponent has submitted revised plans to the MA DEP. At the time of the FEIR the proponent has not received a response from MA DEP.

Erosion Control

The proponent will file a Stormwater Pollution Prevention Plan (SWPPP) under the NPDES program prior to construction. The proponent is committed to using dust suppression methods and to implement the suggestions of the NHESP. The proponent must maintain its commitment to enhanced efforts at erosion control and the establishment of firm limits of construction activities at the project site.

Rare Species

A portion of the project site is located in designated significant habitat and may result in the alteration of such habitat. The state listed species is a species of fish, the Longnose Sucker (*Catostomus catomus*). Application has been made to the NHESP for review under the Massachusetts Endangered Species Act (MESA). NHESP will render a final decision as to whether a Conservation and Management Permit will be required after the project has completed the MEPA process.

If this project results in the alteration of designated significant habitat or a "take" of rare or endangered species it would require a permit under MESA. If a permit is required, NHESP should require the proponent to develop a Conservation and Management Plan that meets the terms of the permit. This project will discharge both treated stormwater runoff and overflow into the Housatonic River potentially altering designated significant habitat. Care should be taken to limit work within the environmental windows as determined by NHESP. The proponent should continue to work closely with NHESP throughout the MEPA and MESA process and abide by their recommendations.

Due to the site's prior contamination issues and AUL and 21E permit, there may be some potential for proposed construction activities to allow existing contamination to migrate toward or into the adjacent river causing negative habitat impacts. The proponent has committed to implementing the recommendations of MA DEP and NHESP to reduce the potential for this project to create a negative impact on those habitat resources at and downstream of the project site.

Wastewater

Existing infrastructure is in place that provides the site with both sewer and water.

The project site currently discharges 7,403 gpd of wastewater. The total discharges upon the completion of the project will be 19,495 gpd. The project will result in the additional discharge of approximately 12,092 gpd of wastewater to the existing town wastewater treatment facility.

Sewage from the project will be treated at the municipal wastewater treatment plant. The Lee Department of Public Works has submitted a letter verifying the ability to treat sanitary waste from this project. An oil/water separator will be installed at the carwash. The carwash will be equipped with floor drains that will tie directly into the oil/water separator before discharging into the receiving sewer pipe. A portion of

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the apparatus will recycle water. Recycled water accounts for approximately 15% of the water usage. It is impractical to incorporate 100% recycling since fine particles in recycled water could damage car finishes.

Transportation

BRPC had a number of concerns with the traffic impacts of the project which were stated in our comments regarding the DEIR. Page 11 of the Secretary's Certificate stated: "I strongly encourage the proponent to consult with MHD and the BRPC on all state highway issues and mitigation in advance of filing the FEIR." It should be noted that there was no attempt by the proponent or his consultants to communicate with BRPC at all in the time period from issuance of the Secretary's Certificate to the issuance of the FEIR.

A number of items in the DEIR certificate have been addressed. Issue numbers were assigned based on order of appearance in the May 11, 2007 DEIR Certificate. The issues adequately addressed are:

Issue #3 – Consideration of peak seasonal traffic in signal warrant analysis

Issue #4 – Provision of updated summary diagrams that are balanced

Issue #8 – pedestrian accommodations should there not be a signal/provision of crosswalk

Issue #9 – consideration of parking area on south side of Rte. 102

Issue #12 – comprehensive discussion of mitigation measures

Issue #13 – timing of implementation of mitigation measures

However, there are a number of items in the DEIR certificate, for which BRPC continues to have considerable concerns:

Issue #1-Mitigation of Main Site Drive Intersection

Although the text on p.44 is detailed, there is no correlated commitment and/or visualization provided on Figure 19- Intersection Improvement Plan.

Issue #2 – Mitigation to address unacceptable LOS during peak tourist season

Page 44 cites that "The signal timing plan and design layout of the intersection was revised to accommodate elevated traffic levels associated with the BRPC peak season factors." There was no indication of change to any plan provided.

Issue #5 – fast food drive thru, relative to proposed main entrance/exit

Page 45 cites that "the drive through lane alignment was re-designed with consideration of public safety." There was no change clearly specified on the plans and what is shown does not appear to resolve the safety conflict.

Issue #6 – pass by lane on west side of convenience store

The FEIR has slightly modified the driveway location but it still creates an undesirable and potentially unsafe dog-leg intersection with the restaurant driveway on the main site driveway.

Issue #7 – Response to BRPC suggestions for traffic mitigation re: maintenance of site drive

Page 45 cites that "The Project Team has coordinated with MHD District 1 office regarding the operations of the entrance only drive. MHD District 1 is confident the existing design will continue to operate as a safe intersection." Although BRPC does not discount MHD District 1, BRPC concern with

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the safety issues is not resolved by MHD District 1's confidence. On page 9 of the May 2, 2007 Clearinghouse Review Report, BRPC cited specific activities of (1) widening Route 102 for a small (100 foot) stretch so as to accommodate a truck only exit/slip ramp, (2) access be configured, sized and signed to preclude entrance onto Route 102 and (3) that truck traffic be separated from car traffic on site. BRPC would have hoped that instead of citing MHD District 1's confidence in the proposed design that there would have been at least reasons cited why any and/or all of the BRPC suggestions were not considered.

At the July 24, 2007 Clearinghouse Review Committee meeting, the proponent distributed written responses. The one provided for this issue that reads "MassHighway has jurisdiction over the site driveway configuration and is responsible for the safe operation of the state highway system" and that "MHD District 1 is confident the existing design will continue to operate as a safe intersection" are not responsive in a meaningful way to our comment. It also ignores the fact that two of the recommendations made are internal to the site and therefore are not subject to MassHighway permitting.

Issue #10 – provision of bus, bicycle and pedestrian facilities in instance of increased number of lanes/ how turning lanes would be added without compromising existing shoulder conditions

Page 46 cites that "The proposed widening will have no negative impacts on the provisions for pedestrian facilities, bike lanes, bus service or shoulders along the outside surface of the travel lanes." It further states, on Page 40, ". . . the reconstruction of the Route 102 intersection with Tyringham Road will be conducted to include bicycle lane accommodations **as determined feasible within the highway right-of-way** (emphasis added)." BRPC concern is that Figure 19 - Intersection Improvement Plan clearly shows the additional lane but that if the proponent's consultants' statements regarding the maintenance of the parking area and the provision of a bus stop are to be believed, there will be impacts on the shoulder with the widening. As was done with the Bradley's Plaza site in Pittsfield, if additional right-of-way is necessary to provide for the turning lanes, bicycle accommodation, bus stop and sidewalks, the proponent should be required to provide the additional right-of-way as the impact is necessary entirely due to his project.

Issue #11 – clear indication of provisions for transit accommodations

Although the proponent's consultants have text related to a bus stop location on page 46 of the FEIR, Figure 19 - Intersection Improvement Plan does not show any indication/plan for provision of such a bus stop.

Issue #14 – discussion of what efforts will be undertaken to ensure compliance with MA Anti-Idling Law and DEP Air Pollution Control Regulations

Although the proponent's consultants include the citation of the appropriate regulations in the mitigation chapter and that there is text that indicates the limitation on number of trucks that will be able to park overnight, there is no discussion of efforts to ensure compliance.

A much more fundamental issue that has been created by the information provided in the FEIR is the adequacy of the traffic study. The information on amount of delay and level of service was modified to indicate the peak season as we requested. However, that was submitted to us for review during the latter stages of the DEIR review. The information provided in the FEIR is modified from that. The supplemental information provided earlier clearly shows a significant negative impact on the level of service at the Rte. 102/Tyringham Road intersection during peak season, peak hour. We have provided the following table to try to explain our discomfort with the traffic study:

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**Table 7-6
PEAK SEASON LEVEL OF SERVICE SUMMARY**

Intersection	Peak Hour	2006 Existing Peak Season Conditions				2011 No-Build Peak Season Conditions				2011 Build Peak Season Conditions			
		Delay		LOS		Delay		LOS		Delay		LOS	
		NON-PEAK	PEAK	NON-PEAK	PEAK	NON-PEAK	PEAK	NON-PEAK	PEAK	NON-PEAK	PEAK	NON-PEAK	PEAK
		<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>	<u>8</u>	<u>9</u>	<u>10</u>	<u>11</u>	<u>12</u>
SR 20 at I-90 Off Ramp	Evening	24	28	C	C	24	28	C	C	24	29	C	C
	Sat Midday	28	23	C	C	28	25	C	C	30	28	C	C
SR 20 at SR 102	Evening	28	23	C	C	28	24	C	C	29	25	C	C
	Sat Midday	29	26	C	C	29	28	C	C	30	29	C	C
SR 20 at Prime Outlets	Evening	22	17	C	B	23	17	C	B	27	17	C	B
	Sat Midday	24	24	C	C	25	29	C	C	25	34	C	C
SR 102 at Old Pleasant St. North	Evening	18	31	C	D	19	35	C	D	18	32	C	D
	Sat Midday	19	40	C	E	20	47	C	E	20	48	C	E

There is a row with italicized, underlined numbers that are “column numbers” for ease in referencing data; this row is immediately below the line indicating “non-peak” and “peak”

The *pattern with the dot stipple* indicates improvement in delay time along SR20, going from non-peak seasonal traffic to peak seasonal traffic. The *highlighted* row indicates improvement in LOS, going from non-peak seasonal traffic to peak seasonal traffic at SR20 at Prime Outlets. The pattern with *cross hatching* indicates improvement in delay, going from no-build to build conditions at the SR102 at Old Pleasant Street, North intersection.

The following discussion is based on the provision of written responses from the proponent at the July 24th meeting:

- Improvement in delay going from non peak to peak (i.e. LOWER number in column 2 than column 1, LOWER number in column 6 than column 5, LOWER number in column 10 than column 9) – this situation occurs at the following locations/conditions:
 - SR20 at I-90 Off Ramp during Sat. Midday peak hour
 - SR20 at SR102 during evening peak hour
 - SR20 at SR102 during Sat. Midday peak hour

Typically one would expect higher numbers in column 2 than column 1, higher numbers in column 6 than column 5, higher numbers in column 10 than column 9 since the peak seasonal traffic implies higher volumes of traffic, and thus delay (i.e. waiting at the intersection)

- Improvement in LOS going from non peak to peak

For the SR20 at Prime Outlets, during the evening peak hour, there is actually cited an IMPROVEMENT in LOS going from non-peak to peak

LOS can be compared to a school grade, A being best and F being worst; in all cases except the evening peak hour at SR20 at Prime Outlets, columns 4, 8, and 12 have “grades” equal to or worse than columns 3, 7, and 11

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The consultant's explanation for this anomaly is that the non-peak data (columns 1, 3, 5, 7, 9 and 11) was based on an overly conservative estimate of pedestrian signalization/crossing and that for the peak data (columns 2, 4, 6, 8, 10 and 12), the consultant changed his assumptions about pedestrian activity.

The exact wording is as follows:

"The DEIR analysis was conducted with signal phasing to include timing assigned during each phase for pedestrian service. MassHighway commented that the use of pedestrian activity at the Route 20 intersection is scarce and therefore, this application was overly critical. During analysis of Peak Season conditions, it was determined that overly critical approach would present unrealistic failures to the intersection operations and therefore, the pedestrian phases were removed from the capacity analysis. The resultant findings of the analysis when compared to non-peak conditions yield reduced delays during peak season conditions without pedestrian phase calls during each timing cycle. The report references this retiming application."

The consultant responses about changing assumptions mid stream causes concern to us on both the philosophical level (it's not ethical to do that, especially without documentation thereof) and on the data level (for instance, why was the SR20 at I-90 off ramp Evening peak hour traffic (the first row of data) not subject to the same improvement in delay as its Sat. midday counterpart - or why did the SR20 at Prime Outlets Sat. midday data not reflect the same improvement in delay, let alone LOS as its evening peak hour counterpart. There are still troubling inconsistencies. The information, as provided, is spotty and a peer review cannot be done based on it. There is no way, based on what has been provided to us, or to other reviewers of the FEIR, to ascertain the validity of the assumptions and the analysis in their entirety.

3. Improvement in delay going from 2011 No Build to 2011 Build

Unlike all other instances, for the SR102 at Old Pleasant Street North intersection, during the evening peak hour, there was an improvement in delay going from the 2011 No Build to the 2011 Build condition, for both the non-peak seasonal data as well as the peak seasonal data (i.e. one would expect that (a) Column 5 (non peak season, no build) would have less delay than column 9 (non-peak season, build) and that (b) Column 6 (peak season, no build) would have less delay than column 10 (non-peak season, build)

The consultant's July 24th written response provided at the Clearinghouse Review Committee meeting indicates that the improvement in delay at this intersection is due to the construction of the new main site driveway and thus the current truck traffic exiting the site will not use the Old Pleasant Street North intersection. This is a logical decrease, as long as the new traffic created by the hotel and restaurant, both of which would have fairly easy access to Old Pleasant Street doesn't simply replace the truck traffic. As with many other statements made regarding the traffic study, this was the first time this rationale was communicated.

Based on discussion during the July 24, 2007 meeting, it was made readily apparent that the proponent's consultants changed the paradigm and the associated critical assumptions regarding pedestrian and bicyclist activity and how that is analyzed in the FEIR, as opposed to how they had been factored into the analysis previously, without documenting that change. It was also clear during the July 24th meeting that the Town of Lee has invested considerable effort and financial resources to improve the pedestrian and bicyclist amenities. There is no indication in the FEIR of this expenditure and effort.

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There is an accountability issue that is particularly troubling. The fact that in the May 1, 2007 email from the proponent's consultant to MEPA with copies to the proponent's project team included an attachment showing LOS of E/F at the SR102 at Tyringham Road intersection and then in the FEIR, the Table 7-5 (page 42) showed LOS of B/B at the SR102 at Tyringham Road intersection without any documentation that the page in the FEIR is based on that intersection having a traffic signal as mitigation is unacceptable, in part because the traffic signal is NOT guaranteed at this point. There is no commitment at this time from MassHighway that a traffic signal will be installed. It would, in fact, assist the proponent in proving the need for the mitigation by showing on Table 7-5 the 2011 build alternative delay and LOS with and without the mitigation measures. At a minimum, the Table should have indicated that these are the expected delays and LOS with the suggested mitigation.

Similarly, changing the paradigm of signal analysis in between the DEIR and FEIR without explicit documentation on the Level of Service Summary is unacceptable.

We also disagree with a traffic analysis which now discounts all pedestrian and bicycle activity at the intersections. There have been millions of state dollars spent at the Rte. 20/102/MassPike intersection and along Housatonic Street in Lee over the past five years which include significantly improved pedestrian and bicycle accommodations. There has not been an activity center on the proponent's site in the past few years which would generate additional pedestrian traffic. The site is in very reasonable walking distance of the Outlet Villages and for patrons to walk to Housatonic Street and to downtown Lee. Thus, we would fully expect that the reputedly small amount of pedestrian traffic would increase considerably. Therefore, a traffic analysis which does not factor in any level of pedestrian/bicycle activity at these intersections is fundamentally flawed. When that single factor apparently changes the primary site intersection to go from LOS B (with traffic signal but no pedestrian usage) to LOS F (if there is no traffic signal and factoring in pedestrian usage), this analysis, and that it be properly and completely presented and documented, is absolutely critical.

The proponent should also consult with Town officials regarding the possibility of providing accommodations for a riverwalk along the restored bank of the site with connections to possible future extensions which have been at least discussed. This could provide an additional form of project mitigation.

An extremely vital transportation user group, whose voice was not heard prior to an August 1, 2007 Commission meeting, comprises the existing users – truck drivers.

There are two elemental issues and several related and/or resulting issues; the first elemental issue is that this user group has depended on this site for use as a truck stop and the second is that length of truck that the proponent has assumed is less than that which is typically the case (the proponent assumed 64 feet, the more likely length is 70 feet to include a sleeper).

The related/resulting issues are as follows:

1. inadequate turning radius at the exit from the site drive onto Route 102, particularly westbound – the consultant must re-assess the adequacy of the turning radii for the larger (70 ft.) rigs
2. potential for inadequate internal circulation for the truck drivers (as a test the proponent should consider placing traffic cones on the site that would replicate the proposed conditions) - the consultant must re-assess the adequacy of the turning radii for the larger rigs
3. the consultant must address how the site will accommodate the trucks during heavy winter storms

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- when I-90 becomes closed; more than 18 trucks have been observed using the site during a storm
4. although the confluence of Route 20 traffic with the signed YIELD traffic headed west of Route 102 (the intersection just east of the entrance only access) is a systemic problem (i.e. related to roadway configuration and/or motorist behavior) the traffic that would access the proposed land uses would only exacerbate an already bad condition.

Hazardous Waste Issues

The AUL boundary completely encompasses the truck fueling islands and partially encompasses the car fueling islands. Car fueling islands are in addition to the existing fuel islands and do not currently exist on the site. The proponent has identified which construction activities are within the AUL and which construction requirements must be met through this project.

Construction Period Impacts

The proponent will comply with measures to limit air pollution outlined in the Air Pollution Control regulations administered by MA DEP under 310 CMR 7.00. Demolition activities that involve the removal of asbestos will be identified and abated in accordance with applicable regulations.

Mitigation

Given the significant encroachment into the Riverfront Protection Area, considerably enhanced efforts at erosion control and the establishment of firm limits of construction activities are needed. Detailed Erosion and Sediment Control Plans are included as an attachment in the FEIR. The Erosion Control Plans call for construction of grassed swales, temporary sediment basin and silt fences along the river to be constructed first. An Operations and Maintenance Plan (O&M Plan) for stormwater management devices is included as an attachment in the FEIR. The proponent has documented within the O&M Plan the use of high-efficiency street sweepers and that the parking lot will be swept a minimum of 3 times per year. The O&M Plan also documents removal of sediments from the catch basins when 25% of the capacity is depleted, and removal of sediment from the detention basin and forebay when it reaches a maximum depth of 6".

COMMENTS AND RECOMMENDATIONS:

The project reached a mandatory EIR review threshold for transportation by exceeding 3,000 vehicle trips per day. MEPA jurisdiction extends to transportation, stormwater, wetlands, waterways, rare species, wastewater and hazardous waste. Under the local special permit process, any and all aspects of the development are subject to review and conditions and, if the Special Permit Granting Authority finds that the development's impacts are unacceptable, it may deny granting the special permit.

BRPC is supportive of seeing the antiquated and dilapidated former Diesel Dan's site redeveloped in a thoughtful and careful fashion, as long as impacts are appropriately mitigated. Such redevelopment is strongly supported as a regional policy in the *Regional Plan for the Berkshires*.

Recommendations to MEPA for continuing EIR and State Permitting Issues

1. The proponent should prepare a description and analysis of alternatives with sufficient detail to meet the requirements of MEPA under 301 CMR 11 and as established by the Secretary in the

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scope. The proponent has not adequately described and analyzed the project and its alternatives, and assessed its potential environmental impacts and mitigation measures as required through MEPA review. The alternatives analysis submitted with the FEIR does not satisfy the scope specified by the written certificate issued by the Secretary in accordance with 301 CMR 11.06(7). In addition, the FEIR does not present a reasonably complete and stand-alone description of the alternatives and an analysis of environmental impacts as required by MEPA.

In addition to the No-Build Alternative and the Preferred Alternative, the FEIR included an alternative where fueling stations, stormwater facilities and snow storage areas are moved out of the Riverfront Area. The alternative presented in the FEIR replaces the detention basin with an underground storage system. However, the subsurface stormwater system is still in the Riverfront Area. We do not believe this is in compliance with the Secretary's requirement.

The five-use fueling/convenience/fast-food/car wash complex is not considered for reduction or partial elimination, nor is a consolidation of the restaurant/hotel. Both would appear to be feasible reduced-build alternatives which have not been considered and which have the potential to reduce project impacts.

The FEIR does not provide conclusive justification for alternatives that are deemed infeasible. Table 3-1 "Summary of Alternatives" (Page 12) of the FEIR does not include all four alternatives. Based on the table it would appear that the Reduced-build alternative has less impact than the Preferred alternative. The proponent has not adequately documented that the non-preferred alternatives are not feasible from a financial standpoint. It is obvious that he believes them to be less advantageous but that does not equal not feasible. We would like the alternatives analysis to provide economic justification in somewhat quantified terms, i.e., this alternative would be expected to generate a gross profit of \$X or this alternative would be expected to result in a net loss of \$Y annually for the project. We don't expect to see detailed financial pro-formas but do need to see something more than a statement that this alternative does not meet the developer's financial objectives. We can presume that the developer's financial objectives are to maximize their profit.

Potential reduced build alternatives for analysis should include the elimination of the largest site constraints (truck fueling and parking or the hotel) and reducing the total development package for the fueling/convenience/drive-thru/car wash (for instance, the car wash and drive-thru could be eliminated, the number of pumps and size of convenience store could be reduced or the restaurant be a smaller size). Previously, BRPC has recommended an alternative where the existing entrance is closed since it is too close to the Rte. 20/102 intersection. Closing the existing entrance provides additional benefits by creating an opportunity to analyze alternative site layouts that could pull development further away from the river and allowing the detention basin to be further from the riverbank.

2. The proponent should document how the existing conditions have been improved in addition to how the stormwater management is provided in accordance with the standards established by the DEP.
3. The proponent should clarify how the calculations of riverfront enhancement were made including whether the wetland replication area and stormwater management devices (i.e. detention basin, forebay, swales, etc.) are included within the 49,000 S.F. of enhanced riverfront.
4. The proponent should continue to work closely with NHESP throughout the MEPA and MESA process and abide by their recommendations. Careful consideration should be given to the potential impacts to rare species and rare species habitat. This should include the consideration

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of potential hydrological connections between the ground water and the river that could result in contaminated water migrating into the river.

5. The FEIR outlines additional Low Impact Development (LID) techniques that are incorporated in the stormwater management plan. To reduce impervious surfaces the proponent should incorporate the use of pervious pavement technologies wherever possible. Potential areas for LID include the patio and walkways. Indicating they will discuss this with the hotel/restaurant franchisees is not an adequate response.
6. The proponent needs to carry forth the text that they present in response to the Secretary's Certificate into the balance of the FEIR, such as showing the improvements on Rte. 102 to accommodate turn lanes, bicycle lanes, bus stop and sidewalks on the site map.
7. The proponent should provide documentation in plan view form as well as text that details the bicycle and pedestrian amenities along routes 20 and 102, including the signalized intersections that have pedestrian phasing, the sidewalks, etc. The phasing and timing cycle data should be included
8. If in fact, the pedestrian and bicyclist amenities will be present to the level that was implicitly presented during the July 24th Clearinghouse Review Committee meeting, the proponent should re-assess the validity of having changed the assumptions regarding timing of pedestrian signalization
9. The proponent should document explicitly the changes that are being made in the FEIR, or supplement thereof.
10. The traffic study needs to be much clearer in documenting all of the assumptions and pedestrian delay should be factored into the analysis. Information should be presented in a clearly comparable fashion, including current condition, 2011 No-build condition, 2011 Build Condition without mitigation, and 2011 Build Condition with mitigation and should show both non-peak season and peak season, for both weekday peak hour and Saturday peak hour. The proponent should re-assess the validity of the Level of Service Analysis that has been prepared in that there appears to be illogical components such as an apparent (1) improvement in delay and/or LOS at the three SR20 intersections going from non-peak seasonal traffic to peak seasonal traffic and (2) improvement in delay during the weekday evening assessment at the SR102 at Old Pleasant Street, North intersection, going from 2011 No Build to 2011 Build.

In summary, it is the recommendation of the BRPC that the proponent be required to provide a more complete and balanced alternatives analysis and re-evaluate validity of the traffic analysis. We do not feel that the FEIR adequately complies with the Secretary's certificate for the DEIR.

Recommendations to Town of Lee Boards and Commissions for the Local Permitting Process

The project has been submitted to the Lee Conservation Commission for wetlands permitting and to the Lee Planning Board for site plan review and special permit. Neither of those processes has been completed. Filing for floodplain impacts with the Lee Zoning Board of Appeals has apparently not yet been initiated. Since the local permitting processes have not been completed, we continue to recommend the following to the various boards and commissions in Lee which will evaluate this project:

1. The wetlands permitting process should carefully review the sediment and erosion control plans and require the appropriate conditions for and the establishment of firm limits of construction

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activities. DEP should thoroughly review the local order of conditions after it has been approved by the Lee Conservation Commission. The Planning Board should also require submittal of a detailed plan showing all land disturbance and construction details as to how heavy equipment operators will be limited in their activities and that adequate erosion and sediment control is provided during construction. This should be added as a condition of the special permit.

2. The Operations and Maintenance Plan established for the stormwater management devices should be established in perpetuity. The town should require that the proponent submit maintenance logs to the Town of Lee annually. In addition the Town of Lee should consider establishing a stormwater management district to address long term stormwater management and maintenance for projects of this nature.
3. The proponent should document how the existing conditions have been improved in addition to how stormwater management is provided in accordance with the standards established by the DEP. The proponent should thoroughly document and quantify the disturbance of Riverfront Area, degraded or otherwise. The proponent should thoroughly document and quantify the project's estimated impact on each resource area and both the method and location of restoration. The proponent should document that the proposed replication of BVW will be achieved at a ratio in square feet of at least 1:1.
4. The Conservation Commission shall include a continuing condition in the Certificate of Compliance as required in the Wetlands Protection Act for redevelopment projects proposed under 310 CMR 10.58(5)(f) or (g). The Certificate of Compliance should prohibit further alteration within the restoration or mitigation area, except as may be required to maintain the area in its restored or mitigated condition. Prior to requesting the issuance of the Certificate of Compliance, the applicant shall demonstrate the restoration or mitigation has been successfully completed for at least two growing seasons, preferably five to seven years as described in the following recommendation.
5. The Conservation Commission should require monitoring of restoration areas and bioretention areas for this project for a minimum of 3 years. The monitoring should be instituted until after the goal of 75% native vegetated cover has been achieved. Ideally, the monitoring period should be extended to 3 years after the 75% success rate, resulting in a minimum 5-7 year monitoring program after successful completion of the installation. This is appropriate given the requirement under the Wetland Protection Act 310 CMR 10.58(5)(a) and 310 CMR 10.58(5)(f). Two years is too short to determine the viability of 1:1 restoration and the establishment of a constructed wetland. A plan should be developed to control and remove invasive plant species during the monitoring.
6. Given the sensitive nature of the site, which includes Priority Habitat for Rare Species, Riverfront Protection Area, Bordering Vegetated Wetlands and Bordering Land Subject to Flooding, it is critical that extreme care be taken not to introduce invasive species. All fill material should be carefully selected to protect against the introduction of invasive species.
7. Again, given the sensitive nature of the site, careful management of all construction activities/impacts is warranted. Such construction activities include, but are not limited to, dust control/suppression, construction limits, operation of heavy vehicles, sediment and erosion controls, and air pollution control. In addition, refueling and servicing of construction equipment and the consideration of the use of biodegradable plant-based hydraulic fluids is warranted.
8. The proponent should continue to work closely with the Town of Lee and local interest groups to determine whether riverfront access can be accommodated on the site and to keep open the

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possibility of a future “river walk” or “greenway” along the river. This could provide an additional form of project mitigation.

9. The Planning Board might consider requiring changes to the site plan to deal with safety concerns regarding the merge of the restaurant drive through traffic with the main site driveway and the creation of a “dog-leg” intersection on the main site driveway where the driveways from behind the convenience store and the restaurant enter. The FEIR continues to show that traffic exiting the drive-through window will be entering the main site driveway at an acute angle in the passenger-side blind spot. Given that this driveway will be utilized by all the exiting truck traffic and a considerable amount of the hotel and restaurant traffic, this is a potential safety hazard. Dog leg intersections, whether on public roads or on private driveways with fairly high traffic, are inherently unsafe.
10. The traffic impacts from this development, particularly based on the Peak Season level of service information received on May 1st and as substantially modified in the FEIR should be carefully considered by the Town in considering the special permit for this project. As noted in our comments on the DEIR, without mitigation (and there is no guarantee that MassHighway will allow a traffic signal) the Rte. 102/Tyringham Road/main site driveway intersection will apparently see a substantial decline in the Level of Service, from C to E (evening peak) and F (Saturday peak). The Rte. 102/Old Pleasant Street North intersection is already operating at poor Levels of Service and will continue to do so if the project is built as proposed without traffic mitigation, with an increase of 20% in the total amount of delay (40 seconds average delay to 48 seconds). We cannot tell from the information provided but presumably the side street traffic coming from the existing neighborhood, as well as traffic from the site, would suffer most of the delay since the Rte. 102 traffic has the right-of-way.
11. According to the EPA, diesel pollution is a serious air quality issue across the country and running a vehicle’s engine while it is stopped (known as idling) wastes fuel and creates air pollution and noise. A typical idling truck burns nearly a gallon of fuel per hour. Massachusetts has anti-idling rules that are included in the State Implementation Plan approved by EPA outlining how national air quality standards will be met. Regulations in the state implementation plan are enforceable by the state and by EPA. The Massachusetts rule prohibits vehicle idling over five minutes (with exceptions for periods of traffic, repairs, or operation of loading or refrigeration equipment). Through the special permit process the Town of Lee might consider requiring no idling signs, such as those used by the MTA which state “Attention Truck Drivers: State Regulation Truck Idling Time Limited to: 5 Minutes Maximum.