

# Berkshire Regional Planning Commission Clearinghouse Review Report

Comments  
Approved by the BRPC Executive Committee  
May 2, 2007

**SUBJECT:** Berkshire Gateway at Lee  
**EOEA#:** 13905  
**LOCATION:** Lee  
**ESTIMATED COST:** \$15 million  
**REVIEW TYPE:** DEIR  
**PROPONENT:** F.L. Roberts and Co., Inc.  
**COMMENTS DUE:** May 1, 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 DEIR, 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 DEIR 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 Sewer Connection Permit, 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 Expanded Environmental Notification Form (EENF) in December 2006. The EOEA Secretary issued a certificate on the project on December 15, 2006, requiring an EIR for the project. In his certificate the Secretary laid out a detailed scope for the DEIR that includes:

- A comprehensive alternatives analysis;
- Sufficient information to demonstrate that the stormwater management system meets the MassDEP’s Stormwater Management Policy (SMP);
- A discussion of how the project would comply with the performance standards in the wetlands regulations and demonstrate that the alteration of resource areas has been avoided and minimized;

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- A description of all impacts to state-listed rare species and outline of proposed measures that will be implemented to mitigate for any adverse impacts to habitat;
- Explanation of why the project's anticipated wastewater generation figures are double the projected water demand of 6,160 gpd;
- An updated Signal Warrant Analysis for this location using the 2003 Manual on Uniform Traffic Control Devices;
- A discussion of construction phasing, evaluate potential impacts associated with construction activities, and propose feasible measures to avoid or eliminate these impacts; and
- The DEIR should contain a separate chapter on mitigation measures.

### **CONSIDERATIONS AND POTENTIAL ISSUES:**

#### Comprehensive Alternatives Analysis

The DEIR requires a comprehensive alternatives analysis in order to ascertain which site layout minimizes overall impacts to land, wetlands, rare species and sensitive receptors. The alternatives analysis should clearly demonstrate consistency with the objectives of MEPA review, one of which is to document the means by which the proponent plans to avoid, minimize or mitigate Damage to the Environment to the maximum extent feasible. The DEIR should fully explain any trade-offs inherent in the alternatives analysis, such as increased impacts on some resources to avoid impacts to other resources.

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 DEIR 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 DEIR does not present the alternatives, and an assessment of its potential environmental impacts and mitigation measures that are reasonably complete and stand-alone descriptions and analysis as required by MEPA. In the DEIR, as well as in meetings with the BRPC Clearinghouse Review Committee, the proponent has dismissed all alternatives, indicating that they did not meet his development objectives as the primary, if not sole reason. Our understanding of the MEPA evaluation alternatives is that while financial viability is a consideration, maximizing profit is not necessarily germane to that (which is how we interpret the proponent's development objectives comment).

The individual uses proposed on this site are not inappropriate considering the previous use of the site. The location of this project is appropriate for these uses. However, the project as proposed may simply be too large for the site. The increased intensity of the development resulting from the number of uses and buildings and the proximity to the river is inappropriate. It is recognized that the site has been altered and is degraded; however the previous use of the site and the amount of degradation should not dictate the size of redevelopment. The DEIR does not include an alternative site layout that reduces the density of the site development, which may include a reduction in the number and/or size of the buildings thereby eliminating or combining features included in the proposed layout (i.e., hotel, restaurant, 2-story convenience store with drive through, car wash, and both diesel and gas fueling stations).

In addition to the No-Build Alternative and the Preferred Alternative, the DEIR should include alternative site layouts in which fueling stations, stormwater treatment and snow storage areas are moved out of the Riverfront Area. The DEIR does not assess alternatives to the proposed mitigation measures, noting the relative benefits and costs of these alternative mitigation measures. The DEIR does not prove conclusive justification for alternatives that are deemed infeasible by the proponent, simply dismissing them as not meeting the proponent's development objectives.

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An additional site layout alternative should be provided and analyzed closing the existing entrance which is too close to the Rte. 20/102 intersection as discussed in more detail in the traffic section of these comments.

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

### Stormwater

Runoff from the site has been divided into two watersheds; northerly and southerly. According to the DEIR, 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.

This project is adding new impervious surface area, and the future use is one that has a high potential pollutant load. The sectioning of the site may not be appropriate for a large commercial site that is being intensely developed, increases impervious surfaces, locates much of the development within the Riverfront and floodplain areas, and contains higher potential pollutant loads. It is unclear to BRPC if the intent of Standards #5 and #7 of the SMP are being met when the site is divided.

The drainage system within the northerly watershed includes deep-sump hooded catch basins, piping, a forebay, a water quality swale, and a detention basin. The drainage system within the southerly watershed includes deep-sump hooded catch basins, piping, water quality swales, and a constructed wetland. Each watershed's stormwater management system will remove a minimum 80% of total suspended solids (TSS).

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. Stormwater management within such areas is required to include source reduction and pretreatment. According to the DEIR, 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). In addition, restrictions to certain BMPs are applied within areas of higher potential pollutant load. These restrictions include the use of detention basins and constructed wetlands only if sealed or lined. In a

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meeting of BRPC's Clearinghouse Review Committee the proponent stated that the detention basin will be lined or sealed as required.

The drainage patterns will direct any spills at the diesel station to the detention basin. In addition, the parking area for tractor trailers is in close proximity to both the detention basin and the river. Any spills within the parking lot will be directed to the detention basin. As designed, overflow from the detention basin will discharge directly into the river. If a large fuel spill occurs during or following a large storm event, petrochemicals may be discharged into the river with stormwater overflow. The proponent should consider measures that would capture and treat stormwater overflows before directing such flows to the river. It is not clear to us whether the stormwater system and management plan in the truck fueling/parking area is adequate to prevent a significant spill, for instance if a tanker truck were to be ruptured, from reaching the river.

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 DEIR. 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 is included as an attachment in the DEIR.

The DEIR outlines additional Low Impact Development Techniques that have been incorporated in the stormwater management plan. To reduce impervious surfaces the proponent should incorporate the use of pervious pavement technologies wherever possible. The proponent can research the most up-to-date information on low impact development techniques at [www.lid-stormwater.net](http://www.lid-stormwater.net). Another good source is the EOE website at [www.mass.gov/envir/lid](http://www.mass.gov/envir/lid).

### Wetlands & Waterways

#### *Bank*

The proposed project will alter 10 L.F. of Bank in connection with the new southerly drainage outfall. The bank will be restored to its original condition. The outfall will be rip-rapped to protect the integrity of the bank.

#### *Bordering Vegetated Wetland (BVW)*

A total of 30 S.F. of BVW will be altered in connection with the drainage outfall in the southern portion of the site. Since the filing of the EENF, the southerly drainage outfall has been redesigned and the project's impact on BVW has been reduced. An outfall pipe is no longer proposed at this location and has been replaced by a stabilized outfall. A replication area in the form of a 800 S.F. constructed wetland is proposed directly adjacent to the proposed work. At least 75% of the surface of the replacement area shall be re-established with indigenous wetland species within two growing seasons. 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.

#### *Bordering Land Subject to Flooding (BLSF)*

A significant portion of the site is located in BLSF. Much of the new construction will take place in this Resource Area. The project will cumulatively alter over ten percent (10%) or 5,000 S.F. of land in this Resource Area. The project will result in approximately 93,205 C.F. of lost flood storage. 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.

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The plans included within the DEIR document that the existing fueling stations will be demolished. New diesel and gasoline fueling stations will be constructed. New construction will not be located in the footprint of existing buildings. According to the proposed plan the gasoline fueling station is located within the existing 100 year floodplain. This should be clearly stated within the DEIR as well as reflected on the plans. Strict attention should be given to impacts to BLSF and the proposed compensatory storage measures.

### *Riverfront Area*

The property contains a total of 161,000 S.F. of Riverfront Area. According to the DEIR, approximately 132,800 S.F. or 82% is already degraded. The project will alter approximately 30 S.F. of additional Riverfront through the construction of the new drainage outfall. Approximately 3,000 S.F. of Riverfront Area will be restored.

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.

Upon completion of the proposed work, including the forebay, detention basin, and constructed wetland, the riverfront disturbance will be reduced to a total of 108,000 S.F. Of that, approximately 13,000 S.F. will be temporary impacts associated with drainage controls.

Several areas have been designated for snow storage on the site. Snow storage areas are proposed within the Riverfront Protection Area. Salt will be applied to the parking areas and roadways in the winter. All snow storage areas should be located outside of the Riverfront Area.

The proponent should thoroughly document and quantify the degraded area within the site and the project's estimated impact on each resource area. The proponent should explain what impacts to BVW, BLSF, and Riverfront Area will be temporary or permanent, and should clarify whether the portions of the Riverfront Area to be restored are included in the area to be 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. The proponent should thoroughly document that the proposed restoration of degraded riverfront area will be achieved at a ratio in square feet of at least 1:1 of restored area to area of alteration, as required under 310 CMR 10.58(5)(f). If the 1:1 ratio of restored area to area of alteration cannot be met the proponent must consider mitigation alternatives as documented in 310 CMR 10.58(5)(f) where mitigation is achieved on-site or in the riverfront area within the same general area of the river basin. Such mitigation measures may include the purchase of development rights within the riverfront area, the restoration of bordering vegetated wetland, projects to remedy an existing adverse impact on the interests of the WPA.

### Rare Species Habitat

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*).

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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. 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/into the adjacent river, impacting the rare and endangered species habitat, as well as downstream bald eagle habitat and Game and Inland Fisheries properties. We understand from the DEIR that the existing DEP 21E permit for this site expires in a few months. The potential for this project to create a negative impact on those resources should be carefully reviewed by DEP and NHESP.

### 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. We understand that there may be more stringent requirements for car washes requiring that the water be recycled for use.

### Air Quality

A new issue which has been identified is the air quality impact of trucks idling at the truck stop, as well as overall traffic at the site. We believe that an air quality assessment should be provided and a management plan developed as to how the proponent will ensure that trucks do not remaining idling. This site is in close proximity to two residential neighborhoods and is located in a narrow river/stream valley which will serve to concentrate air pollution generated by idling diesels.

### Transportation / Traffic

It was unclear whether, as submitted in the DEIR, the traffic data was correct or not because the presentation and/or communication of data was not done in a manner that we could follow or in the format which we typically see from traffic consultants for traffic studies.

Some issues have been resolved as a result of the meeting of BRPC’s Clearinghouse Review Committee and an additional meeting between BRPC Transportation Program staff and representatives of the proponent’s consultant team. We also received supplemental information very late in the afternoon on

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May 1<sup>st</sup>. We have had very limited time to review that, however to the extent possible we have tried to reflect the additional information in these comments. However other issues still require resolution.

### *Issues That Are Resolved*

While not entirely comfortable with the consultant's assumptions in the traffic analysis, BRPC staff is willing to accept the consultant's judgment in regards to the following issues:

- The proponent has addressed concerns regarding the use of land use codes.
- The proponent has provided explanation of how only approximately 2,000 S.F. of space is allocated for the convenience store and that the land use of the second story of the 4,800 S.F. convenience store is associated with the truck stop and therefore does not generate additional trips.
- In accordance with the *Guidelines for EIR/EIS Traffic Impact Assessment*, the proponent's consultant used unadjusted Institute of Traffic Engineers (ITE) rates for the appropriate land use code from Trip Generation and complied with the requirement that the rates should be developed from the fitted curve equations and used according the methods outlined. Therefore there would be no difference in trips generated by a hotel regardless of the following:
  - density of similar facilities, which includes the number of hotels within a 20 mile radius; and
  - presence, or lack thereof, of cultural, entertainment and/or recreational facilities nearby.
- The *Guidelines for EIR/EIS Traffic Impact Assessment* cite that average annual weekday volumes should be shown both for 24 hours and for the AM and PM peak hours on all links. According to the proponent, the requirement to provide the AM peak hour data was waived by MassHighway at a pre-ENF meeting.
- The proponent has addressed concerns regarding the low number of vehicles (6) leaving the I90 off-ramp during the weekday peak hour with the destination of the proposed site. The proponent has addressed these concerns through the provision of trip distribution and assignments. The total number of trips generated is reasonable. The proponent has addressed concerns regarding the internal and pass by trip reductions.
- The proponent has addressed concerns regarding the hotel based PM peak hour trips by use of a Factor of Safety that would compensate for a differential between anticipated and actual behavior.
- Number of parking spaces provided meets the parking requirement.

### *Issues That Require Resolution*

- Omission of seasonal peak traffic. The *Guidelines for EIR/EIS Traffic Impact Assessment* state that peak seasonal adjustments should be made when applicable. Data for both average month and peak month should be included. The statewide seasonal factors used (i.e., 2% increase during seasonal peak) do not reflect the Berkshire County seasonal factor. The traffic consultant has been provided with the Berkshire County seasonal factors provided by MassHighway District 1 prior to the use of statewide seasonal factors which are more accurate for this site and region than the statewide guidance. The statewide guidance does not provide a different factor for the Berkshires, as it does for the Cape and Islands. A letter has been submitted to MassHighway requesting the consideration of seasonal peak factors in Berkshire County, particularly for the months of July and August. Given the high seasonal variation in Berkshire County, which is borne out by data from the permanent MassHighway traffic count station on Rte. 20, just east of the Rte. 102 intersection, both average and seasonal traffic information and analysis should be provided. This request was made to the traffic consultant for this project at the pre-ENF traffic scoping session. The DEIR presents neither the information nor an analysis for both average and peak season traffic impacts.

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Please note that BRPC would expect that from the last week of June through the first week of September (the Tanglewood season) and during the month of October (foliage) that for the build condition, peak month, the trips generated by the hotel and restaurant would reflect the peak occupancy conditions (i.e. no vacant rooms at the hotel).

The proponent provided supplemental information to MEPA in the late afternoon of May 1<sup>st</sup>, including a Peak Season Level of Service Summary. That summary clearly indicates that the level of service for the Rte. 102/Tyringham Road intersection will degrade to unacceptable levels of service under 2011 Build Peak Season conditions (from LOS C to LOS E in the Evening Peak and LOS F in the Saturday Peak). In addition, the Rte. 102/Old Pleasant Street North intersection is apparently already operating at unacceptable LOS (D in the Evening Peak and E in the Saturday Peak) in the peak season. This contradicts statements made by the proponent that all intersections are functioning and will continue to function at acceptable Levels of Service. Due to the lack of detail in the supplemental information, there is no way to determine which traffic movements are subject to the failure in LOS. No mitigation has been proposed to deal with the unacceptable Levels of Service or the decline in LOS created by this project. There is also an apparent incongruity when non-seasonal peak LOS data is compared with seasonal peak LOS data as use of the seasonal factors by the proponent's consultant appears to improve the Route 20 intersections while degrading the Rte. 102 intersections. There is not any detailed information provided which explains this incongruity.

- The traffic consultant should provide balanced traffic summary diagrams for the following conditions:
  - Existing conditions, average month, PM Peak Hour<sup>\*</sup>
  - Existing conditions, average month, Sat Peak Hour<sup>\*</sup>
  - Existing conditions, peak month, PM Peak Hour
  - Existing conditions, peak month, Sat Peak Hour
  - 2011 No Build, average month, PM Peak Hour<sup>\*</sup>
  - 2011 No Build, average month, Sat Peak Hour<sup>\*</sup>
  - 2011 No Build, peak month, PM Peak Hour
  - 2011 No Build, peak month, Sat Peak Hour
  - 2011 Build, average month, PM Peak Hour<sup>\*</sup>
  - 2011 Build, average month, Sat Peak Hour<sup>\*</sup>
  - 2011 Build, peak month, PM Peak Hour
  - 2011 Build, peak month, Sat Peak Hour
  - PM Trip Distribution; new trips – percentages<sup>\*\*\*</sup>
  - Sat Trip Distribution; new trips – percentages<sup>\*\*\*</sup>
  - PM Trip Assignment; new trips<sup>\*\*</sup>
  - Sat Trip Assignment; new trips<sup>\*\*</sup>
  - PM Trip Assignment- Pass By<sup>\*\*\*</sup>
  - Sat Trip Assignment – Pass By<sup>\*</sup>

\* Conditions for which the intersection data has been provided, but not in the form of a summary traffic diagram that is balanced; again BRPC does acknowledge the consultant's application of a seasonal factor (just not necessarily one that reflects Berkshire County). BRPC asks that the consultant provide the average month data as well as the seasonal peak data, per the attached Berkshire County factors.

\*\* Conditions for which the intersection data was provided during the April 9<sup>th</sup> meeting, but not in the form of a summary traffic diagram, a composite of all trip generating land uses that is balanced and that

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has the number of new trips entering and exiting the site. A copy of a recent summary traffic diagram for a traffic study is provided to the consultant in order to give guidance regarding the expected format.

\*\*\* Data provided during April 9<sup>th</sup> meeting, with weekday and Saturday distributions lumped together; should be included in report, separate from one another

- Peak summer season conditions for existing, 2011 no build and 2011 build for both the PM and Saturday peaks should be incorporated into Table 7-5, rather than introduced as a new table, in order to facilitate comparison.
- There are significant concerns regarding the safety of motorists at the entrance only access point off of Route 102 into the site. The second edition of the *Berkshire Access Management Guidelines* replicates two tables sourced from AASHTO that indicate minimum and ideal spacing of driveways, one based on travel speed and the other based on roadway functional classification. Route 102 is classified as an Urban Principal Arterial and has 45 mph speed limit posted. For a major arterial, the minimum spacing is 300 ft and the ideal spacing is 400 ft. For a 40 mph speed, the minimum spacing is 305 ft and the ideal spacing is 445 ft; for a 50 mph speed, the minimum spacing is 425 ft and the ideal spacing is 555 ft. Regardless of whether the criteria used is based on the functional classification or the speed, the minimum spacing and ideal spacing far exceed the 100 feet that separates the merge point from the site driveway entrance. During the recent reconstruction of the Route 20/Route 102 intersection by MassHighway the intent was to avoid impacts given the existing site layout that would result from closing the driveway, however the situation has changed. With the total redevelopment of this site, the 100 foot distance is potentially unsafe; the clearly substandard conditions should be thoroughly reconsidered through a new alternative site layout as mentioned in the earlier discussion of the alternatives analysis. It is important to note that there are only two feasible alternatives, both of which should be discussed during alternatives analysis that would resolve the significant concerns of safety and promotion of access management. From a corridor access management and safety standpoint, the optimum alternative would be to close the entrance only access point and direct the traffic along the main site drive. If, through MEPA action, MassHighway driveway permit decisions, or the Town special permit decision action, this access point is closed, the traffic analysis would need to be modified accordingly. If, however, the entrance only access is kept open, BRPC believes it is imperative that: Route 102 be widened to accommodate a truck only exit/slip ramp for the entire 100 feet from the merge point to site access point; that the access is configured, sized, and signed to preclude entrance from the site onto Route 102; and that truck traffic be separated from car traffic throughout the truck fueling and parking portion of the site, through signing, a physical barrier, etc.
- There is concern with regard to the potential for accidents where the fast food restaurant drive-through exiting traffic is navigating through the proposed main entrance and exit. The drive-through drivers will be entering the main site driveway from the drive-through window at a very acute angle in their passenger-side blind spot and also having to avoid traffic entering the site from Rte. 102. BRPC has suggested rotation of the convenience store/drive thru building such that the drive thru is at right angles to the main site drive and is aligned with the access to/from the restaurant; there are quite possibly other site design options which can also improve traffic safety on the site.
- The proponent has indicated in the DEIR that pedestrian accommodations, including a pedestrian actuated crossing light, and crosswalk at the main site driveway will be provided. If MassHighway determines that the signal warrant is not met and no traffic signal is installed, there should be provision of pedestrian accommodations in addition to a crosswalk across Route 102. This is important for employees and visitors to the site but is compounded by the existence of a parking area on the opposite side of Rte. 102 for fishermen/women, bicyclists, etc.

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- If the left turn lanes are added at intersections such that the number of lanes is increased, the proponent should provide increased highway right-of-way such that the bus/bicycle/pedestrian facility of the existing shoulder is not compromised.
- The proponent should clearly indicate the provisions for transit accommodations that are being made, after consultation with the BRTA, and not simply indicate that they will consult with the BRTA.
- The pass-by lane on the west side of the convenience store and the driveway from the restaurant are configured to create a “dog-leg” intersection on the main site driveway. This creates an unsafe condition and these two driveways should line up or one of them should be eliminated.

### **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 DEIR requires a comprehensive alternatives analysis in order to ascertain which site layout minimizes overall impacts to land, wetlands, rare species and sensitive receptors. The alternatives analysis does not adequately demonstrate consistency with the objectives of MEPA review, one of which is to document the means by which the proponent plans to avoid, minimize or mitigate Damage to the Environment to the maximum extent feasible. The DEIR does not fully explain any trade-offs inherent in the alternatives analysis, except to compare the alternatives to the preferred alternative as identified by the proponent.

The DEIR does not present a reduced build alternative that pulls the proposed development away from the Riverfront Area and proposes more restoration in that area as required in the Secretary’s ENF Certificate. The proponent did not provide alternative site layouts in which fueling stations, stormwater treatment and snow storage areas are moved out of the Riverfront Area.

The proponent has not provided adequate justification that these alternatives are deemed infeasible. Even without the required alternative pulling all development away from the Riverfront Area, based on Table 3-1 (Page 14) of the DEIR, it would appear that at least two of the alternatives (#2 and #3) have significantly less impact than the developer’s Preferred alternative. The DEIR does not provide adequate justification to justify removal of all other alternatives from consideration and the facts presented lead to exactly the opposite conclusion. In accordance with 301 CMR 11.07 (6)(f), a description and analysis of alternatives to the Project shall include all feasible alternatives, including but not limited to those indicated in the Scope. An analysis of the feasible alternatives shall be conducted 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

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plan formally adopted by an Agency or any Federal, municipal, or regional governmental entity. This analysis should be presented within the FEIR.

We request that the Secretary require that the proponent submit a DEIR which includes a complete and comprehensive alternatives analysis as well as which specifically addresses the detailed scope required in the ENF certificate.

2. The impacts on wetlands, riverfront area, floodplain, and rare and endangered species habitat should be thoroughly documented in the DEIR. The DEIR does not clearly document the means by which the proponent plans to avoid, minimize or mitigate Damage to the Environment to the maximum extent feasible. Appropriate mitigation for the unavoidable impacts should be identified. In addition, the DEIR does not include an assessment of potential alternatives to the proposed mitigation measures, noting the relative benefits and costs of these alternative mitigation measures. Due to the complexities of the site and the interrelated nature of the environmental resources, this may be best achieved within a more complete alternatives analysis than was provided in the DEIR.
3. The proponent should thoroughly document and quantify the degraded area within the site and the project's estimated impact on each resource area. The proponent should explain what impacts to BVW, BLSF, and Riverfront Area will be temporary or permanent, and should clarify whether the portions of the Riverfront Area to be restored are included in the area to be 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.
4. The proponent should document compliance with the Massachusetts Stormwater Management Policy. Specifically, the proponent should document compliance with Standards #5 and #7. This project is adding new impervious surface area, and the future use is one that has a high potential pollutant load. The sectioning of the site may not be appropriate for a large commercial site that is being intensely developed, increases impervious surfaces, locates much of the development within the Riverfront and floodplain areas, and contains higher potential pollutant loads. It is unclear to BRPC if the intent of Standards #5 and #7 of the SMP are being met when the site is divided.

The proponent should document that no infiltration practices are used without pretreatment and document methods of source reduction and pretreatment. BMPs including sand or organic filters, detention basins, wet ponds, and constructed wetlands are allowable only when sealed or lined. Source reduction could be achieved through parking lot sweeping 3-4 times per year, removal of sediments 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”.

5. The northerly portion of the site contains uses that have higher potential pollutant loads specifically associated with the fueling facilities. The drainage patterns will direct any spills at the diesel station and gasoline station to the detention basin. In addition, the parking area for tractor trailers is in close proximity to both the detention basin and the river. Any spills within the parking lot will be directed to the detention basin. As designed, overflow from the detention basin will discharge directly into the river. If a large fuel spill occurs during or following a large storm event, petrochemicals may be discharged into the river with stormwater overflow. The proponent should consider measures that would capture and treat stormwater overflows before directing such flows to the river.
6. Due to the contamination on the site long term review and remediation efforts should remain in place. If there are any buried pipes, proper techniques should be employed to insure that there is

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no leaching of materials into the groundwater or that construction activities do not create a means for existing contamination to migrate into the adjacent river. The proponent should clearly document the location of the new diesel and gasoline fueling stations in relation to the existing fueling stations. The proponent should clarify whether the fueling stations are located within the area subject to the AUL. The proponent should identify which construction activities are within the AUL and which construction requirements must be met through this project.

7. The proponent should clearly document impacts to BLSF and specifically identify which activities are located within the 100 year floodplain. The proponent should clearly document the proposed compensatory storage measures in relation to pre and post construction activities.
8. 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 of potential hydrological connections between the ground water and the river that could result in contaminated water migrating into the river.
9. Sewage from the project, including from the car wash, will be treated at the municipal wastewater treatment plant. Although the Lee Department of Public Works has submitted a letter verifying the ability to treat sanitary waste from this project, the proponent should recycle car wash waters in order to avoid unnecessary connections to the municipal wastewater treatment plant that limits future capacity.
10. The DEIR outlines additional Low Impact Development (LID) techniques that 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.
11. The proponent should apply the Berkshire County seasonal peak traffic and carry said seasonal peak traffic through both the summary traffic diagrams. This should be provided for all scenarios and the Level of Service summary in Table 7-5. The supplementary information provided to MEPA and copied to BRPC on May 1<sup>st</sup> does not provide the information in sufficient detail, although it was sufficient to show that the peak seasonal traffic factors are very important in this location.
12. The Proponent should factor in the impact of additional traffic from the Oak 'n' Spruce build out further to the west on Rte. 102 into the analysis of the Level of Service summary table in Table 7-5.
13. Serious consideration should be given to eliminating the entrance only access that is only 100 feet from a point of highway merge; a new alternative should be provided in the EIR which accomplishes the elimination of the entrance only access. We recognize that this may require a significant redesign of the site and/or elimination one or more of the proposed uses.
14. The proponent should provide an assessment of appropriate pedestrian mitigation for crossing Rte. 102 should the traffic signal not be warranted. This assessment should include consideration of the existing parking area on the south side of Route 102, near the entrance to Tyringham Road. This parking area is used by anglers, bicyclists, joggers, and walkers.
15. The proponent should provide an assessment documenting the means by which the additional turning lanes on Rte. 102 will be added without compromising the existing shoulder conditions.

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16. The proponent should provide more specific proposals for transit accommodations than a promise to consult with the BRTA.
17. The proponent should provide mitigation measures to deal with the unacceptable level of service at both the Rte. 102/Tyringham Road and Rte. 102/Old Pleasant Street North intersections during peak tourist season which has been identified by the traffic consultant in the supplemental information provided on May 1<sup>st</sup>.
18. An air quality assessment should be added which provides an analysis of the air pollution created from the additional trucks utilizing the facility. While in the recent past, the site has been used as an “unofficial” truck stop, there were not significant facilities such as the trucker’s lounge on the second floor of the convenience store which serviced trucker’s needs. The project as proposed will encourage additional truck parking. Especially in colder weather, this may significantly increase the idling of trucks for extended periods of time with resulting potentially significant impacts on air quality. A management plan stipulating how the operator will control prolonged idling of diesel trucks on the site should be provided.

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

In addition to the MEPA related comments, many of which have direct applicability in the local permitting considerations, we recommend the following to the various boards and commissions in Lee which will evaluate this project.

1. The Town of Lee might consider broadening its use of outside consultants for independent review, at the applicant’s expense. The review of the project should include zoning, infrastructure, transportation, wetlands, rare and endangered species and floodplain impacts. This potentially affects most local boards and commissions which have jurisdiction over some part of this project, including but not limited to the Planning Board, Conservation Commission, and Zoning Board of Appeals. The Town of Lee might consider hiring an outside consultant with specific transportation analysis experience as it has for environmental issues including stormwater management techniques. In addition, the Town of Lee might consider utilizing the services of the Berkshire Conservation Agent.
2. The Town should continue to work with the proponent and convene a pre-development meeting(s) prior to submittal of any applications with town boards or agencies. This should include representation from the various boards, departments and agencies that will have to deal with aspects of this project and the developer to scope out the issues and information that will be necessary to carefully consider the project. Given the traffic issues, MassHighway and BRPC might also be invited to participate in such pre-development meeting(s).
3. 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 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.
4. 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

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stormwater management district to address long term stormwater management and maintenance for projects of this nature.

5. The proponent should thoroughly document and quantify the project's estimated impact on each resource area. The proponent should thoroughly document and quantify the degraded areas, the impacts, and both the method and location of restoration. The proponent should thoroughly document that the proposed restoration of degraded riverfront area will be achieved at a ratio in square feet of at least 1:1 of restored area to area of alteration.
6. 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.
7. The Conservation Commission should require monitoring of restoration areas, bioretention areas, and constructed wetlands 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.
8. Given the sensitive nature of the site, which includes Priority Habitat for Rare Species, Riverfront Protection Area, 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.
9. Again, given the sensitive nature of the site, careful management of refueling and servicing of construction equipment and the consideration of the use of biodegradable plant-based hydraulic fluids is warranted.
10. The proponent should provide an assessment of 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.
11. The traffic impacts from this development, particularly based on the Peak Season level of service information received on May 1<sup>st</sup>, should be carefully considered by the Town in considering the special permit for this project. As noted, without mitigation (and none has been provided in the DEIR) 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.

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12. 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.

In summary, it is the recommendation of the BRPC that the proponent be required to provide a more complete and balanced alternatives analysis. The traffic impacts need to be more carefully and completely documented. Traffic mitigation is not addressed at all in the DEIR.

We request that the Secretary require a FEIR providing all information necessary and as required by the MEPA regulations and the Secretary's certificate for the EENF.