



June 20, 2008

Secretary Ian Bowles
EOEEA, Attn: MEPA Office
Anne Canaday, EOEEA No. 14115
100 Cambridge St., Suite 900
Boston, MA 02114

Re: Proposed Article 97 Land Swap off High Street, Randolph MA DEIR – EOEEA #14115

Dear Secretary Bowles:

The Department of Conservation and Recreation (“DCR”) has reviewed the Draft Environmental Impact Report (“DEIR”) for the Proposed Article 97 Land Swap in Randolph dated May 15, 2008. Notwithstanding the existing legislative mandate to complete the proposed land swap, DCR believes substantive issues still exist in demonstrating the disposition would be mitigated properly in a manner consistent with Executive Office of Energy and Environmental Affairs (“EOEEA”) Article 97 Land Disposition Policy (“Article 97 Policy”). DCR believes the Final Environmental Impact Report (FEIR) is an appropriate avenue to provide the necessary information.

Background

Under the terms of Chapter 240 of the Acts of 2002 (the “Act”), the Massachusetts Legislature directed the Division of Capital Asset Management and Maintenance (“DCAMM”) to convey to the Hart Family Limited Partnership (the “Proponent”), a 3.2 acre parcel of land located within the Blue Hills Reservation (“DCR Parcel”) in exchange for a parcel purported to be of equal size located off of High Street in Randolph, MA (the “Hart Parcel”). In addition, the Act required the Commonwealth to receive the difference between the full and fair market value of the parcels, either in cash or in-kind contributions. In connection with this legislative mandate, the Proponent filed an Environmental Notification Form (“ENF”) in October 2007 wherein the Proponent proposed to change the existing use of the DCR Parcel to allow the site to be used as an overflow parking facility for the Proponent. DCR provided comments on the ENF to your office in a letter dated November 28, 2007. On December 3, 2007, the Secretary of EOEEA issued its Certificate.

The Certificate required the Proponent to submit an Environmental Impact Report (“EIR”) to fully assess the project impacts and demonstrate compliance with the Article 97 Policy, including determinations that 1) no other alternative with less environmental impact is feasible, and 2) any impacts found unavoidable receive maximum feasible mitigation.

COMMONWEALTH OF MASSACHUSETTS · EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS

Department of Conservation and Recreation
251 Causeway Street, Suite 600
Boston MA 02114-2119
617-626-1250 617-626-1351 Fax
www.mass.gov/dcr



Deval L. Patrick
Governor

Timothy P. Murray
Lt. Governor

Ian A. Bowles, Secretary, Executive
Office of Energy & Environmental Affairs

Richard K. Sullivan, Jr., Commissioner
Department of Conservation & Recreation

In response to the Certificate, the Proponent prepared a DEIR which describes the following actions it has undertaken since the Certificate was issued:

1. The purchase of an additional two acres of property (described in Section 3.1.3 of the DEIR) that abuts the Blue Hills River south of Route 93/128 and east of Route 28 in Randolph (the “Blue Hills River Parcel”);
2. The preparation of a proposed site plan for the parking lot on the DCR Parcel (as shown in Figure 5);
3. An analysis of potential development (contained in Section 3.5 of the DEIR) that could occur on the existing overflow parking lot;
4. Preparation of an alternatives analysis (contained in Section 4.0 of the DEIR) that provides baseline information and outlines seven additional options to provide safe pedestrian access between the present overflow parking lot and the Lantana facility across Scanlon Drive;
5. Preparation of a Habitat Assessment Report for the Marbled Salamander on the DCR Parcel (the “Habitat Assessment Report”); and
6. The provision of traffic count data on eastbound and westbound traffic on Scanlon Drive collected over five days in March 2008.

The Proponent undertook these actions to demonstrate compliance with the Article 97 Policy. DCR also notes that it has engaged in substantive discussions with the Proponent regarding mitigation. In light of the Proponent’s actions as outlined in the DEIR and DCR’s substantive mitigation discussions with the Proponent, DCR offers the following comments on the DEIR.

Article 97 Land Disposition Policy

DCR acknowledges that the “no net loss” provisions of the Article 97 Policy will be satisfied by the conveyance to DCR of both the Blue Hills River Parcel and the Hart Parcel. However, DCR remains concerned that the proposed disposition does not adequately address certain conditions of the Article 97 Policy.

From the outset, DCR does not believe that the DCR Parcel has been adequately or appropriately appraised to reflect its fair market value. DCR strongly suggests that new appraisals should be performed for the Hart Parcel and the DCR Parcel. DCR respectfully requests these appraisals should be scoped in consultation with DCR and should be ultimately reviewed and accepted by all parties involved, including DCR, DCAMM, the Inspector General’s office, and the Hart Family.

DCR’s reasons for this request stem from its observation that the appraisals were performed nearly three years ago, and are therefore outdated. In the normal course, EOEEA requires an appraisal be completed within one year of a transaction. More importantly, DCR notes the

estimated value of the 3.2 acre DCR Parcel is not in line with similar DCR transactions. For instance, one similar disposition valued DCR property at approximately \$20.00 per square foot. By comparison, under this proposed disposition, the DCR Parcel is valued at approximately \$2.08 per square foot (3.2 acres * 43,560 sq. feet per acre = 139,392 square feet; \$290,000/139,392 sq. feet = \$2.08). While DCR does not hold a standard value for all of its property, DCR's analysis demonstrates a large disparity in appraised values based on previous dispositions. Despite the Proponent's knowledge of this disparity, the Proponent has declined to improve the mitigation package through a voluntary contribution to DCR's Urban Parks Trust Fund.

DCR also notes that the appraisal of the DCR Parcel was adjusted because of the "extraordinary site cost" to blast and process ledge for purposes of constructing the proposed parking lot (valued at \$301,000 on page 23 of the DCR Parcel Appraisal Report dated October 28, 2005, submitted in Appendix K). The site plan, as shown in Figure 5 of the DEIR and described in Section 3.4, differs from the appraisal in that it does not propose to undertake the blasting. The Proponent states "rather than undertake the disruptive process of blasting ledge that would be required to lower the site, the Proponent has developed a more environmentally sound plan to raise the elevation of the parking lot to allow the installation of subsurface drainage structures" (Section 3, Page 5). In light of the foregoing observations, and in keeping with EOEEA protocol, DCR encourages the Secretary to require new updated appraisals for this transaction.

DCR is encouraged by the Proponent's acquisition of the Blue Hills River Parcel and the Proponent's proposal to convey, at no cost, that parcel to DCR as part of its mitigation proposal. The Blue Hills River Parcel (also known as the PBC Realty Parcel) is adjacent to the so-called Pacella parcel, acquired by DCR in fiscal year 2007. Conveyance of the Blue Hills River Parcel to DCR will strengthen connections between DCR properties along the Blue Hill River. DCR believes that this proposal will ensure that the Proponent achieve an acceptable 1.5:1 ratio of newly protected land to mitigate the disposition.

DCR remains concerned that the disposition of land for the proposed parking lot does not serve an appropriate public purpose, as required by the Article 97 Policy. Given, however, that the Act requires DCAMM to dispose of the property, DCR, as the steward of the Commonwealth's state and urban recreation lands, is compelled under its enabling statutes and Article 97 to advocate for proper mitigation when its land is being transferred. In this instance, proper mitigation cannot be properly determined until the properties subject to this transaction have been appraised in keeping with usual and customary standards.

Finally, the Article 97 Policy requires that disposition of the subject parcel and its proposed use does not destroy or threaten a unique or significant natural resource, including a significant habitat or rare, unusual terrain. DCR defers to the analysis of the Natural Heritage Endangered

Species Program (“NHESP”) on the issue of significant habitat and whether the Habitat Assessment Report conducted in November 2007 is adequate to support the DEIR’s findings.

Future Development

DCR notes the Proponent’s statement in the DEIR that it does not plan to develop the existing parking lot (see Section 3, Page 2). Any future action undertaken by DCR is premised on this statement. Accordingly, DCR requests the Secretary to require an appropriate deed restriction to limit the uses of the existing parking lot in a manner consistent with the Proponent’s statement.

Blue Hills River Parcel

DCR has no evidence that a Phase I Site Assessment has been performed on the Blue Hills River Parcel. DCR asks the Secretary to require such an assessment. In addition, DCR further asks the Secretary to require the Proponent to permanently remove non-native invasive species from the parcel before transfer to DCR.

Management and Use Agreement

Finally, the Act requires that the Proponent enter into a Management and Use Agreement with DCAMM and DCR. DCR requests the Secretary direct the Proponent to comply with this requirement.

Thank you for the opportunity to comment on the DEIR. Please contact DCR MEPA Review Coordinator, Nat Tipton (617.626.1341) or Bureau of Planning and Resource Protection Director, Joe Orfant (617.626.4933) with any questions or to request additional information or coordination with the DCR.

Sincerely,



Richard K. Sullivan, Jr.
Commissioner

cc: The Lantana c/o the Hart Family Limited Partnership
Jeffrey O’Connell, Coler and Colantonio
Douglas McGarrah, Hoag and Foley
David Opatka, DCAMM (electronic copy)
Carol Kemp, DCAMM (electronic copy)