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City Engineer (Interim)

Date: September 21, 2017
TO: Kevin J. Murphy, City Manager
VIA: Tom Bellegarde, Assistant City Manager/DPW Commissioner
FROM: Nicolás H. Bosonetto, P.E., City Engineer (Interim)

SUBJECT: City Council Motion 8.14. (9/12/17) - M. Kennedy - Request City Mgr. Instruct The City Traffic Engineer To Prepare A Report On Whether The Increase In Traffic Generated By A New High School At The Cawley Site Would Trigger A Broad Base Traffic Impact Assessment (TIA) By Mass Department Of Transportation (Mass DOT) Pursuant To The Massachusetts Environmental Policy Act (MEPA). The Report Should Include A Reasonable Estimate Of The Scope, Cost, And Time That It Would Take To Complete A Traffic Impact Assessment As Well As Where Such An Assessment Belongs In The Schedule Of Events Pertaining To The Construction Of A New High School At The Cawley Site.

The Massachusetts Environmental Policy Act (MEPA) is a statutory process requiring that state agencies study the environmental consequences of their actions, including permitting, financial assistance, and land transfers. MEPA is not a permitting process and does not result in any adjudicative decision in regards to the project itself. The outcome of the MEPA process is a Final Environmental Impact Report (FEIR) certified by the EOEEA Secretary as having adequately described the project, analyzed alternatives, their impacts, and the necessary mitigation strategies. The FEIR is then utilized by the permitting agencies, as well as local Conservation Commissions and Planning Boards, in their decision making process to ensure that those agencies are fully cognizant of the consequences of their actions. Agency actions are therefore preempted by MEPA – including MassDOT review, MSBA financing, stormwater permitting and Article 97 dispositions. ⁱ

Thresholds

Not all projects require MEPA review. Only projects that exceed certain review thresholds as outlined in 301 CMR 11.00 must comply with the MEPA statutory process. Two thresholds are met or exceeded by the proposed LHS at Cawley project:

11.03(1)(b)3 - Conversion of land held for natural resources purposes in accordance with Article 97 of the Amendments to the Constitution of the Commonwealth to any purpose not in accordance with Article 97.

11.03(6)(a)6 - Generation of 3,000 or more New adt on roadways providing access to a single location.

The Cawley site is anticipated to generate over 4,000 new daily trips, exceeding the traffic generation threshold.ⁱⁱ The Cawley site also required disposition of Article 97 lands, triggering another threshold.

It should be noted that review thresholds do not apply to a lawfully existing structure, facility or replacement project.

Initiation of MEPA process

The MEPA process may be initiated by one of three ways:

- 1) Upon filing of an Environmental Notification Form (ENF) by the project proponent with the EOEEA Secretary; or
- 2) Upon petition by 10 or more persons to the EOEEA Secretary for fail-safe review; or
- 3) Upon petition by one or more agencies to the EOEEA Secretary for fail-safe review.

Study Scope

The projected increase in average daily trips (adt) at the LHS Cawley Site exceeds the traffic generation threshold, triggering a mandatory requirement that the project proponent file an Environmental Notice Form (ENF) and Environmental Impact Report (EIR). Since the project is funded through state funds, MEPA has full scope jurisdiction, meaning that the EIR shall cover all aspects of a project that are likely, directly or indirectly, to cause Damage to the Environment.ⁱⁱⁱ This means that the EIR must include studies covering the following subjects:

- 1) Article 97 disposition and replacement fields;
- 2) Traffic Impact Assessment (TIA) study analyzing traffic generation at the site, congestion on local roadways and proposed roadway improvements necessary to mitigate traffic impacts;
- 3) Analysis of busing program necessary to transport students to the site;
- 4) Environmental Justice analysis (i.e. Transportation Equity). The EOEEA enacted an environmental justice policy stating that all people regardless of race, color, national origin, income, or English language proficiency have a right to equitable distribution of environmental benefits and burdens.
- 5) Stormwater management and impacts upon nearby wetlands. This would include an analysis to determine the volume and quality of stormwater being discharged into the nearby wetland. ^{iv}

Segmentation

MEPA does not allow the segmentation of projects, meaning that the LHS Cawley project must be viewed in its entirety, including field replications and busing policies. The ENF and EIR must therefore analyze the environmental impacts of both the Cawley site and the field replication sites in their aggregate. The impact of a new busing policy throughout the Lowell Public School system would also have to be analyzed.

Public Participation

The MEPA process is essentially a public process. The public review and comment period for the ENF lasts no fewer than 20 days and no fewer than 30 days for the EIR. Public comments, submitted in written form, become part of the EIR and the applicant must address these comments as part of the final EIR. Public hearings, workshops, or public meetings may be held in conjunction with the MEPA process.

Costs and Timeframes

A typical MEPA process for this type of project could take up to 12 months to complete. This timeframe is based on the following typical schedule which includes time for preparation of documents, review by city officials, submission of materials to EOEEA, public participation periods, and response periods:

- ENF preparation and filing 1.5 Months
- ENF Review 1 Month
- Draft EIR Preparation 6 Months
- Draft EIR Review 1 Month
- Final EIR Preparation 1.5 Months
- Final EIR Certified 1 Month

The length of time required to perform these studies and analysis may well determine the overall length of the MEPA process.

Perkins/Eastman is aware of the MEPA process. Once the schematic design phase is completed they will request an informal meeting with the EOEEA Secretary to determine the scope of the ENF/EIR. Design of the project will be concurrent with the MEPA process.

ⁱ See <http://www.mass.gov/eea/agencies/mepa/about-mepa/>

ⁱⁱ [Traffic Impact Analysis](#), Bryant Associates May 2017, pg. 39

ⁱⁱⁱ 301 CMR 11.01 General Provisions, Section 2

^{iv} 310 CMR 10.05(6)(b)(1)