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May 26, 2022

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Re: Northeast Metropolitan Regional Vocational Technical High School Project

Dear Mr. Fogel:

On behalf of Secretary Bethany Card, I write to respond to your letter of March 14, 2022 ("March 14 letter"), in which you requested an advisory ruling, on behalf of the Friends of Wakefield's Northeast Metro Tech Forest ("Friends"), in relation to the above-referenced project (the "Project"). In accordance with 301 CMR 11.01(6)(c), your March 14 letter was published in the April 8, 2022 Environmental Monitor for a 20-day public comment period. I received 19 public comments, including a letter from your client, expressing support for your request. I also received additional information from you on March 31 and May 6, 2022, and received input from the Proponent, the Northeast Metropolitan Regional Vocational High School District ("District"), on April 28 and May 13, 17, and 24, 2022.

Background

Your March 14 letter seeks a ruling that the Project is subject to review under the Massachusetts Environmental Policy Act ("MEPA") and implementing regulations at 301 CMR 11.00 et seq.

As indicated in information from the Proponent,¹ the Project involves the replacement of the existing 1,256 student Northeast Metropolitan Regional Vocational High School with a new high school on the same 59-acre parcel of land. In anticipation of future student growth, the new high school will

¹ 4/28/22 email, with attachments, from Adam Kahn, Foley Hoag LLP, to Tori Kim, MEPA Director.

include space for 1,600 students. According to the Proponent, the existing school building is well-beyond its useful life, with accessibility issues, failing mechanical systems/envelope, and undersized spaces that are negatively impacting delivery of education. Through the facility expansion contemplated by the Project, the Proponent aims to expand enrollment and course offerings to provide beneficial opportunities to underserved students and adults. The Proponent has received funding approval from the Massachusetts School Building Authority (“MSBA”) for the current Project design.

Several comments object to the location of the proposed new high school atop a hill that the Friends refers to as “an irreplaceable oak and pine rock outcrop forest in migrating and breeding bird habitat.”² The Friends asserts that the “threatened Hentz’s Red-bellied Tiger Beetle lives on bedrock outcrops where larvae overwinter in the moss, lichens and cracks,” and indicates that the trails that crisscross the hilltop have been utilized by trail walkers for over 60 years. The Friends indicates that the hilltop location was initially disfavored in a 2016 “pre-feasibility report,” in part, due to cost considerations.

According to the Proponent, the site was chosen from among 30 options evaluated during a multi-year “MSBA Feasibility Study phase.” The Proponent’s letter highlights environmental impacts associated with several of the options considered, and indicates that the selection process was evaluated and approved by the District’s Building Committee and the MSBA. The Proponent indicates that, at this stage, material changes to the building footprint may affect MSBA grant funding. As further discussed below, the Proponent, while acknowledging that portions of the proposed site are currently mapped as rare species habitat, asserts that the site qualifies under a provision in regulations promulgated by the Natural Heritage and Endangered Species Program (NHESP), related to delineations that occur after a project has met certain permitting milestones.

Determination

MEPA review is required if there is “Agency Action” for a Project, and one or more review thresholds in 301 CMR 11.03 are triggered. See 301 CMR 11.01(2)(a)-(b). As defined in 301 CMR 11.02, “Agency Action” consists of either an Agency directly undertaking a Project, or, if the Project is undertaken by a Person, any action that “grants a Permit, provides Financial Assistance, or closes a Land Transfer.” MEPA jurisdiction is broad (or “full scope”) when a Project is undertaken by an Agency or involves Financial Assistance. 301 CMR 11.01(2)(a).

Here, the Proponent does not dispute that MSBA funding qualifies as an Agency Action that would confer broad, or full, scope jurisdiction if MEPA review were undertaken. Therefore, the only disagreement relates to applicability of MEPA review thresholds; your March 14 letter initially flagged three thresholds at 301 CMR 11.03 as follows:

- 11.03(1)(b)2. *Creation of five or more acres of impervious area;*
- 11.03(2)(b)2. *Greater than two acres of disturbance of designated priority habitat, as defined in 321 CMR 10.02, that results in a take of a state-listed endangered or threatened species or species of special concern; and*
- 11.03(6)(b)1. *Unless the Project consists solely of an internal or on-site roadway or is located entirely on the site of a non-roadway Project: a. construction of a New roadway one-quarter*

² 4/28/22 Friends comment, available at <https://eeaonline.eea.state.ma.us/EEA/PublicComment/Landing/>.

or more miles in length; or b. widening of an existing roadway by four or more feet for one-half or more miles.

In addition, your May 6 letter indicates that an additional threshold could apply as follows:³

- 11.0(3)(1)(b)1. *Direct alteration of 25 or more acres of land, unless the Project is consistent with an approved conservation farm plan or forest cutting plan or other similar generally accepted agricultural or forestry practices.*

The core dispute centers on 301 CMR 11.0(3)(2)(b)2., relating to disturbance of designated priority habitat as defined in 321 CMR 10.02. Under NHESP regulations, any project or activity located in priority habitat must be reviewed by NHESP prior to commencement of work to determine if a “take” will occur under the Massachusetts Endangered Species Act. See 321 CMR 10.18(1). However, review is not required if the work falls under certain specified exemptions at 321 CMR 10.14, or is subject to 321 CMR 10.13(2) related to “Projects or Activities that were not in Priority Habitat when they were proposed but the project site is thereafter delineated by the Division as Priority Habitat.” NHESP regulations do not define when a project or activity must be “proposed” to qualify under 321 CMR 10.13(2), but do specify certain permitting “milestones” that must be completed “prior to the project site being mapped as Priority Habitat or within the specified timeframes [in the regulation],” namely: (a) completion of MEPA review through issuance of an ENF, DEIR, or FEIR certificate; (b) issuance of a wetlands permit; and (c) if the Project or Activity is not subject to the Wetlands Protection Act and subsection (a) “does not apply,” the issuance of any permit or final approval that has been subject to public hearing that was publicly noticed, or issuance of a building permit. See 321 CMR 10.13(2)(a)-(c). Subsection (d) also specifies limits on how the subsequent delineation provision in 321 CMR 10.13(2) may be applied.

Here, the requisite wetlands permit was issued, but no MEPA certificate has been issued. While there is therefore some question as to whether the criterion in 321 CMR 10.13(2)(a) was met,⁴ prior correspondence from NHESP to the Proponent indicated that the Project would still qualify under 321 CMR 10.13(2), so long as the Project “is not subject to MEPA” and obtained the requisite wetlands permit in subsection (b).⁵ As further clarified by NHESP to the MEPA Office, I understand this correspondence to mean that the Project could qualify if it either underwent MEPA review which culminated in issuance of a certificate, or was not subject to MEPA review prior to the Project site being mapped as priority habitat—i.e., August 1, 2021. Because the site was not located in mapped habitat at that time, the Project necessarily would not have resulted in the requisite “take” for the MEPA review threshold at 301 CMR 11.0(3)(2)(b)2. to apply. In turn, if the Project is not subject to review under 321 CMR 10.13(2), it does not trigger the MEPA threshold now for purposes of MEPA review.

Because the review threshold at 301 CMR 11.0(3)(2)(b)2. does not apply, I must assess the applicability of other MEPA review thresholds.

³ The Proponent submitted information indicating that no other MEPA review thresholds apply (Attachment 7 to 4/28/22 email from Adam Kahn, Foley Hoag LLP, to Tori Kim, MEPA Director), and you have not disputed this assertion.

⁴ In prior correspondence with NHESP, the consultant for the Proponent merely referred to 321 CMR 10.13(2)(a) as “not applicable,” and, therefore, did not address this requirement. See 2/22/22 Letter from LEC Consulting (Attachment 4 to 4/28/22 email from Adam Kahn, Foley Hoag LLP, to Tori Kim, MEPA Director).

⁵ 2/25/22 email from David Paulson to LEC Consulting (Attachment 5 to 4/28/22 email from Adam Kahn, Foley Hoag LLP, to Tori Kim, MEPA Director).

As to 301 CMR 11.0(3)(1)(b)2. (impervious area), the Proponent acknowledges that the construction of the new high school would result in approximately 7 acres of impervious area but indicates that 4.2 acres⁶ of existing impervious area at the site of the former high school will be converted to pervious area, including athletic fields. Thus, it asserts that the Project should be viewed as “creating” 2.8 acres (i.e., 7 minus 4.2) of “net new” impervious area, which is under the 5-acre threshold. While your May 6 letter argues that MEPA regulations should be read to mean any “creation” of the requisite acreage of impervious area without offsets, MEPA certificates have consistently referred to creation of “new” or “increased” impervious area in determining applicability of thresholds. See, e.g., EEA #16531 Florence Roche School (4/8/22 certificate); EEA #16221 CT Douglas Elementary School and Paul P Gates Elementary School (7/10/20 certificate); EEA #16097 Waltham High School (6/26/20 certificate). I see no reason to deviate from prior practice here.

As to 301 CMR 11.0(3)(6)(b)1. (new roadway), the Proponent asserts that a new driveway, which is described to be 1,300 linear feet (lf) from Farm Street to the Main Entrance entry, and 1,425 lf from the Main Entrance entry to the lower parking lot (where it meets the existing Hemlock Road) (total of 2,725 lf, or about 0.5 miles),⁷ consists solely of an internal or on-site roadway or is located entirely on the site of a non-roadway Project. The Proponent asserts that the driveway, therefore, falls within the stated exceptions to this threshold. While your May 6 letter notes that the new driveway connects to a public way (Farm Street), this fact does not alter the fact that the driveway is located entirely on the site of the Project (which is a “non-roadway” school project). Thus, this threshold does not apply.

Finally, as to 301 CMR 11.0(3)(1)(b)1. (land alteration), correspondence from the Proponent indicates that 13.82 acres of land alteration will occur associated with construction of the new school (13.57 acres) and alteration of previously undisturbed areas on the portion of the site where the old school will be demolished and other work completed (0.25 acres).⁸ Further correspondence clarified the nature of work activities that will occur in the area of the old school (total 13.7 acres, which is in addition to the 13.57 acres to construct the new school), as follows:⁹

- Of the 11.8 acres of existing impervious area:
 - 4.2 acres will be converted to new pervious surface;
 - Parking: 1.46 acres will replace existing parking in the same location;
 - Driveway: 0.22 acres will replace existing parking in the same location;
 - Pedestrian Walkways: 0.26 acres will replace existing parking in the same location;
 - Tennis Courts: 0.67 acres will replace existing parking and roadway in the same location;
 - Running track: 0.64 acres will replace existing parking and circulation/emergency roadways in the same location;
 - Remaining areas will remain impervious but serve other uses.
- Of 1.9 acres of existing pervious area:
 - 0.25 acres is identified as direct alteration of previously undisturbed area;

⁶ While this number was originally represented as 4.7 acres, subsequent correspondence with the Proponent confirmed that the correct number is 4.2 acres. See 5/24/22 email from Adam Kahn, Foley Hoag LLP, to Tori Kim, MEPA Director.

⁷ 4/28/22 email from Adam Kahn, Foley Hoag LLP, to Tori Kim, MEPA Director.

⁸ Attachment 8 to 4/28/22 email from Adam Kahn, Foley Hoag LLP, to Tori Kim, MEPA Director.

⁹ 5/24/22 email from Adam Kahn, Foley Hoag LLP, to Tori Kim, MEPA Director.

- Remaining areas either will remain pervious, or were included in the 7.0 acres of impervious area identified for the new school and other uses

The foregoing indicates that the majority of impervious area will be replaced by impervious surfaces with similar uses and character in the same location (meaning that the land surface may not be “altered” in those locations). Thus, even if the land in the entire area of the old school (13.7 acres) is assumed to be altered except the areas replaced with similar impervious surfaces (3.25 acres), the total land alteration for the Project would equal 24.02 acres (13.57 acres for construction of new school + 13.7 acres in area of old school – 3.25 acres of similar replacement). I note that the Project does not involve significant earthwork or changes in grading. Based on these factors, I find that the land alteration threshold does not apply. This finding shall apply only to the facts and circumstances of this Project, and shall not serve as precedent for future projects.

* * * * *

Based on the foregoing, I find that MEPA review is not required for the Project as currently proposed because, while it requires Agency Action, it does not meet or exceed any MEPA review thresholds. I note that, if any thresholds (other than 301 CMR 11.0(3)(2)(b)2.) were to be met or exceeded due to project changes made at a future time, MEPA review would be required and the provision at 321 CMR 10.13(2) would no longer apply; in that instance, the Proponent would be required to undertake review under 321 CMR 10.18 to determine if a “take” would occur under current NHESP mapping. As you have noted, NHESP also retains authority to determine, “based on special circumstances,” that any Project otherwise exempt should be subject to review to “prevent a substantial and permanent modification, degradation or destruction of Priority Habitat.” 321 CMR 11.13(2)(d).

If you have any questions regarding this determination, please contact the MEPA Office at MEPA@mass.gov.

Sincerely,

/s/ *Tori T. Kim*
Tori T. Kim
Assistant Secretary

cc: Adam Kahn, Foley Hoag LLP

January 27, 2023

Tori Kim
MEPA Director
Executive Office of Energy and
Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Dear Director Kim,

We are writing in reference to the Northeast Metropolitan Regional Vocational High School construction project (the Project) at 100 Hemlock Road in Wakefield, MA. The Project is within MEPA full-scope jurisdiction as it involves Financial Assistance from the Massachusetts School Building Authority (MSBA). Every aspect of the Project is financed by taxpayer money. As shown below in our Fail-Safe Petition a full Environmental Impact Report (EIR) is essential to avoid or minimize Damage to the Environment that will otherwise be extensive and involve multiple environmental resources. Information recently submitted by the Project indicates at least two MEPA review thresholds are exceeded under 310 CMR 11.03.

The Participating Agencies for this Project include MADEP and the Wakefield Conservation Commission, currently reviewing the Notice of Intent (NOI) and Stormwater Report (Nitsch Engineering, September 21, 2022; Revised January 12, 2023).

Key documents, including the revised NOI, revised Stormwater Report, and revised plan sets were received by the Wakefield Conservation Commission, and made public, January 12, 2023. Review of these documents provided a clearer picture of the extent of damage to the environment and exceedance of review thresholds, as discussed below. We request that if any additional information is provided to you in response to this letter and failsafe petition that is not in the public record, we receive that information with an opportunity to review and comment before you make your final determination.

As interested persons committed to environmental protection, we have closely followed the Project developments through public document submissions, presentations at public meetings, and public hearings held by the Wakefield Conservation Commission.

The purpose of our letter is two-fold: (1) to submit a fail-safe petition under 301 CMR 11.04 submitted by ten Persons, the undersigned; and (2) provide documentation from Project submissions to the public record which indicate exceedance of MEPA review thresholds. We urge you to use your discretion to grant this Fail-Safe Petition to require an ENF and draft and final EIR because all of the following Fail-Safe criteria of 11.04(1) are met:

- (a) the Project is subject to MEPA jurisdiction;
- (b) the Project has the potential to cause Damage to the Environment and the potential Damage

to the Environment either:

1. could not reasonably have been foreseen prior to or when 301 CMR 11.00 was promulgated; or
 2. would be caused by a circumstance or combination of circumstances that individually would not ordinarily cause Damage to the Environment; and
- (c) requiring the filing of an ENF and other compliance with MEPA and 301 CMR 11.00:
1. is essential to avoid or minimize Damage to the Environment; and
 2. will not result in an undue hardship for the Proponent.

Undisturbed portions of the project location are considered highly archaeologically sensitive by numerous experts including staff at the Department of Conservation and Recreation. The archaeological sensitivity of the site was previously documented during a partial survey by former DCR archaeologist Thomas Mahlstedt. It is inexplicable and a gross disservice to the heritage of the citizens of the Commonwealth, especially Native American persons, that an intensive (locational) archaeological survey was not required or conducted by the proponent well in advance of project construction. We appeal to MEPA officials to rectify this injustice.

This letter states with specificity the Project-related facts that the Petitioners believe support the Secretary's required findings under 11.04(1). The following two thresholds are exceeded:

- 11.03(1)(b)1. Direct alteration of 25 or more acres of land unless the Project is consistent with an approved conservation farm plan or forest cutting plan or other similar generally accepted agricultural or forestry practices.
- 11.03(1)(b)3. Use of Article 97 land for project-related activities.

With MEPA review, a third review threshold, 11.03(2)(b)2., would also be exceeded which pertains to greater than two acres of disturbance of designated priority habitat, as defined in 321 CMR 10.02.

As stated in 301 CMR 11.00, the purpose of MEPA is to:

“provide meaningful opportunities for public review of the potential environmental impacts of Projects for which Agency Action is required, and to assist each Agency in using (in addition to applying any other applicable statutory and regulatory standards and requirements) all feasible means to avoid Damage to the Environment or, to the extent Damage to the Environment cannot be avoided, to minimize and mitigate Damage to the Environment to the maximum extent practicable.”

This letter demonstrates for the public record the Damage to the Environment from this Project and that MEPA thresholds are exceeded and at a minimum an ENF is required. We urge you to require full MEPA review and an Environmental Impact Report, or other review based on both exceedance of review thresholds and Damage to the Environment. The Proponent should be required to comply with MEPA and demonstrate it has used all feasible means to prevent, mitigate and avoid Damage to the Environment.

Background

On March 14, 2022 (“March 14 letter”), an advisory ruling was requested on behalf of the Friends of Wakefield’s Northeast Metro Tech Forest (“Friends”), in relation to the above-referenced project with additional information submitted on March 31 and May 6, 2022. Input from the Proponent, the Northeast Metropolitan Regional Vocational High School District (“District”), was submitted on April 28 and May 13, 17, and 24, 2022.

The following determination was issued by Assistant Secretary Tori Kim on May 26, 2022:

“Based on the foregoing, I find that MEPA review is not required for the Project as currently proposed because, while it requires Agency Action, it does not meet or exceed any MEPA review thresholds. I note that, if any thresholds (other than 301 CMR 11.0(3)(2)(b)2.) were to be met or exceeded due to project changes made at a future time, MEPA review would be required and the provision at 321 CMR 10.13(2) would no longer apply; in that instance, the Proponent would be required to undertake review under 321 CMR 10.18 to determine if a “take” would occur under current NHESP mapping. As you have noted, NHESP also retains authority to determine, “based on special circumstances,” that any Project otherwise exempt should be subject to review to “prevent a substantial and permanent modification, degradation or destruction of Priority Habitat.” 321 CMR 11.13(2)(d).”

The Project involves two distinct areas, the current school site (~30 acres) and the proposed school site (~29 acres). The two areas differ in terms of topography, natural resource value, and final configuration.

In the May 2022 Determination, you stated regarding the issue of land alteration:

“I note that the Project does not involve significant earthwork or changes in grading.”

This is incorrect. Both areas of the Project will undergo extensive intrusive land alteration including excavation, earth removal, grading, filling and stockpiling. In addition, the proposed school site will undergo “mass tree clearing and rock blasting” [Drummey Rosane Anderson (DRA). January 2021. Preferred Solution Narrative <https://northeastbuildingproject.com/wp-content/uploads/sites/199/2021/01/3.3.4-Preferred-Solution-Narrative.pdf>]]. As allowed in the advisory ruling, here we provide new documentation on the nature and extent of land alteration at the site that was not available or not provided to you when the May 26, 2022 determination was issued. This documentation shows direct alteration of 25 or more acres of land per 11.0(3)(1)(b)1.

The Project now involves adjacent Article 97 land, review threshold 11.03(1)(b)3, that will be altered for the construction of an “Energy Park” to house batteries and associated infrastructure for the solar system on the new school. Additional details are provided below.

With the exceedance of these two thresholds, MEPA review is required and, as a result, the provision at 321 CMR 10.13(2) providing exemption to NHESP regulations would no longer

apply. Therefore, a third MEPA review threshold, 11.0(3)(2)(b)2., would also be exceeded which pertains to greater than two acres of disturbance of designated priority habitat, as defined in 321 CMR 10.02.

I. Fail-Safe Petition: Damage to the Environment within the meaning of 301 CMR 11.02

The Project causes actual and probable damage to the natural resources of the Commonwealth as defined by 301 CMR 11.02.

“Damage to the Environment. Any destruction or impairment (not including insignificant damage or impairment), actual or probable, to any of the natural resources of the Commonwealth including, but not limited to, air pollution, GHG emissions, water pollution, improper sewage disposal, pesticide pollution, excessive noise, improper operation of dumping grounds, reduction of groundwater levels, impairment of water quality, increases in flooding or storm water flows, impairment and eutrophication of rivers, streams, flood plains, lakes, ponds or other surface or subsurface water resources, destruction of seashores, dunes, marine resources, underwater archaeological resources, wetlands, open spaces, natural areas, parks, or historic districts or sites.”

The Project involves two distinct areas, the current school site on the northern portion of the site (~30 acres) and the proposed school site on the southern portion of the site (~29 acres) (**Attachment 1**). The two areas differ in terms of topography and natural resource value. The Damage to the Environment will be primarily on the 29 acres associated with the proposed school location. Project architects describe the new school location as “an undeveloped hillside area”, “wooded with a significant amount of ledge outcroppings” that will require “creation of a flat building pad through a mass tree-clearing and blasting operation in an early site enabling phase.”

<http://northeastbuildingproject.com/wp-content/uploads/sites/199/2021/01/3.3.4-Preferred-Solution-Narrative.pdf>. Construction of a half mile driveway, parking lots and location of the school in the middle of the forested site degrades and impairs the natural resources of the Commonwealth across the entire 29-acre site.

The full impact of road building, blasting, chemical contamination, filling of wetland buffers, clear cutting, soil grubbing, settling ponds, rock crushing, clearing areas for stockpiling rock, installing pipes for water discharge and heavy truck hauling will destroy the entirety of this forest. A few trees remaining on the edges is not a functioning forest. All the symbiosis within the forest itself and extending to Breakheart Reservation will be lost and without need. There is a much better site available to build the school.

While claiming they have used an environmentally sensitive site design (Nitsch Stormwater Report. 1/12/23), this is contrary to the Wetlands Regulations, 310 CMR 10.04, and the Water Quality Certification Regulations, 314 CMR 9.02, which define environmentally sensitive site design to mean design that incorporates low impact development techniques to prevent the generation of stormwater and non-point source pollution by reducing impervious surfaces, disconnecting flow paths, treating stormwater at its source, maximizing open space, minimizing disturbance, protecting natural features and processes, and/or enhancing wildlife habitat.

The destruction of natural and cultural resources associated with this mass tree-clearing and blasting operation is detailed below.

A. Destructive effects of construction

The project involves clearcutting and deforestation of over 16 acres followed by topsoil removal and extensive blasting of approximately 10 acres of extremely hard water-filled volcanic bedrock that will alter hydrology in an area near multiple wetlands, including a certified vernal pool, and require ongoing management of significant volumes of water during and after construction. The deep blasting to bench out a level foundation will remove up to 35 vertical ft of water-filled bedrock over approximately 10 acres severely impairing underground springs, streams and the hydrology that supports the adjacent certified vernal pool and other wetlands.

The blasting operation will be destructive to the environment and generate rock debris that will be transported for processing to a rock crushing location behind the current school site (**Attachment 2**). Blasting operations on this scale generate high levels of noise, vibration, and dust. Land that is currently pervious surface/grass behind the existing school will be used for a stockpiling and rock crushing operation for rock that is trucked down from the new school site (Gilbane Presentation to Wakefield Conservation Commission 12/6/22).

The blasting operation will create a 650 ft long cliff wall up to 35 ft high exposing additional impervious surface and adding to the groundwater and stormwater impacts to the nearby wetlands. Geotechnical experts (Scarptec. July 25, 2022. Rock Engineering Design and Construction Recommendations) reported that along this cliff, one of several blasted areas,

“long-term weathering from water and ice action may result in localized erosion, raveling and degradation of the slope and overlying backslope soils. Exposure of the rock mass to physical and chemical weathering and slope destressing necessitates periodic scaling of the completed rock slopes and monitoring of the rock reinforcement installed during construction. Due to expected surface water runoff and episodic fracture-controlled hydraulic conductivity, localized ice buildup on the new slopes is likely. Ice build-up can induce ice jacking forces on the rock, which can in turn increase the chances of rockfall.”

Introduction of fill, loam, stone dust from rock crushing operations, and construction vehicles will introduce and spread invasive species to the remaining fragmented habitat, especially on the newly created edges and in the soil and plants introduced to the site. Newly introduced fill and loam will be at increased risk of erosion and runoff due to the steep grades on the hilltop.

B. Destruction of Native American cultural sites, 301 CMR 11.03(10)

According to the National Register of Historic Places, there are 50 ancient Native American sites within 1 mile of the proposed building site including 4 destroyed sites within the adjacent Breakheart Reservation. The proposed hilltop building site includes felsite outcrops, clay deposits and site characteristics consistent with early Indigenous Heritage sites (National Historic Register <https://catalog.archives.gov/id/63790266>). The archaeological sensitivity of

the site, including archaeological resources, were previously documented during a partial survey by former DCR archaeologist Thomas Mahlstedt. Undisturbed portions of the project location are considered highly archaeologically sensitive by numerous experts including staff at DCR. An intensive (locational) archaeological survey needs to be conducted before irreparable harm occurs.

On December 9, 2022, Faries Gray, Sagamore of the Massachusetts Tribe at Ponkapoag and expert on Indigenous Heritage sites, visited the location of the proposed new school site. On that day, he observed archaeological resources supporting the necessity of conducting a full intensive (locational) archaeological survey of this potentially important Indigenous Heritage site.

Despite being an area of known archeological sensitivity, the Massachusetts Historical Commission failed to make a determination of adverse effect within 30 days of receipt of an adequately documented Project Notification Form. This is not equivalent to a determination that *cultural resource surveys or other evaluations determined that historic properties do not exist*, as claimed by the Project in this excerpt from Appendix E of the Stormwater Report:

"During the study and permitting process with the Massachusetts State Building Authority and the Massachusetts Environmental Policy Act Office it was determined that there are no historic properties on the site."

In addition, in the Historic Properties Screening Process in the Draft Stormwater Pollution Prevention Plan (Nitsch 9/21/2022) the Project answers YES to the following question but provides no documentation for the answer, as required:

Have prior cultural resource surveys or other evaluations determined that historic properties do not exist, or that prior disturbances at the site have precluded the existence of historic properties? If yes, provide documentation of the basis for your determination.

In the SWPPP, Attachment L - Historic Preservation Documentation is included as a placeholder but it is BLANK.

There has been no Determination of No Adverse Effect by the Massachusetts Historical Commission (MHC) or disclosure of the manner in which the Project is consistent with any "Memorandum of Understanding" with MHC. There can be no determination or finding by the Secretary on this issue until there is a full on-location archaeological survey conducted with full public involvement and transparency. This is needed to prevent the destruction of significant archaeological and historic resources. The cumulative past and actual and potential future damage to these historic sites and areas must be addressed in the ENF and with a full MEPA review. There must be transparent and full consultation with the Native American community. To exclude the Native American community would violate MEPA's Environmental Justice Policy and violate MEPA.

C. Pollution

The Project reports construction and ongoing maintenance activities will involve several pollutant-generating activities known to cause damage to the environment (Nitsch, Stormwater

Pollution Prevention Plan. section 2.7 of Long-term Pollution Prevention Plan and Stormwater Operation and Maintenance Plan. p. 228. In Stormwater Report. 1/12/23). These pollutants include herbicides for weed control, nitrogen and phosphorus containing fertilizers, asphalt for and from streets and parking lots, gasoline, diesel fuel and kerosene during construction and in run-off from roads and parking areas after construction. This table does not mention the chemicals that will be used for blasting in the mass rock clearing operation needed to level the site for construction. Five areas were identified for blasting ([Attachment 2](#)). The Project has not reported the type or amount of blasting chemicals that will be used on site and whether these will include perchlorate-containing explosives. Fragmentation of bedrock with explosives for construction projects is a potential source of nitrate contamination of groundwater and hundreds to tens of thousands of kg of NO₃⁻ are typically used at a construction site. Nitrate is a component of ammonium nitrate (NH₄ NO₃), which is approximately 90% of commonly used commercial explosives by weight (Degnan, et al. 2015. <https://pubs.acs.org/doi/10.1021/acs.est.5b03671>).

Blasting will cause fracturing of the underlying hydrology that may impact areas outside the areas subject to blasting and send potentially contaminated groundwater to neighboring wetlands and abutting private residences. Geotechnical reports show ground water at surface level and in multiple locations close to the surface. One of the borings in the building footprint (B 102) had to be capped after 24-hrs for a possible “artesian condition”.

Road-salt management at the proposed NEMT project has not addressed the potential degradation and viability of wetland and vernal pool biota from applications of deicing chemicals on roads, parking lots and sidewalks. The primary pollutant of concern is chloride, which is regulated at both the federal and state level for freshwater resources such as wetlands and vernal pools, and which should be part of any project evaluation through the Wetland Protection Act.

According to the Stormwater Pollution Prevention Plan (Nitsch Stormwater Report 1/12/23. Appendix E. Long-term Pollution Prevention Plan and Stormwater Operation and Maintenance Plan), pretreatment of roads for deicing will be done with Pre-Mix (rock salt and calcium chloride). Premix, sodium chloride, magnesium chloride and calcium chloride are all injurious to freshwater aquatic organisms when chloride concentrations exceed the Clean Water Act (CWA) standards. All contain chloride, which can be toxic to wetland and vernal pool fauna. They are not environmentally friendly. EPA defined chloride toxicity to aquatic life using chronic and acute criteria.

During winter storm road-salt applications on the access road, levels of chloride that exceed the acute Ambient Water Quality Criteria of 860 mg/l are likely to flow into adjacent wetlands from the level-spreader outfalls from Subsurface Systems and subsequently degrade biota viability. While the proposed stormwater sump systems may reduce total suspended solids in effluent, they do not reduce chloride concentrations.

At the state level, Massachusetts Surface Water Quality Standards have adopted these criteria.

Light pollution is also a concern with streetlights and building lights on 24-hours/day. The lighting plan to install streetlights along the half-mile access road from Farm St to Hemlock and

along pedestrian walkways will adversely impact wildlife. The large expanse of glass in a multistory hilltop building lit at night for evening classes in migratory and resident bird habitat next to a migration corridor along the powerline cut will pose an ongoing threat to resident and migrating birds and nocturnal wildlife.

D. Destruction of core forest and rare species habitat and native soils

Over 16 acres of core forest habitat for rare wildlife will be destroyed by clearcutting, blasting and road construction. The project site of 16 acres of hilltop and wetlands is both Forest and Rare Species Core Habitat and part of a larger Critical Natural Landscape documented in BioMap3 (mass.gov/biomap). Because the project site is part of the western-most section of the larger Critical Natural Landscape and historically the least impacted by human presence, it is exceptionally rich in biodiversity, supporting rare and threatened species and multiple species of Greatest Conservation Need. Larger habitat sizes and their continuity are essential to maintaining healthy populations of rare species. Fragmentation of this forest will impact adjacent areas and drive local species extirpation (**Attachment 3**). The proposed project will not only destroy the acidic rock outcrop forest ecosystem that includes Priority Habitat 1550 for Hentz's Red-bellied Tiger Beetle, but the increased human presence, cars, noise, particulates, air, light, and chemical pollution, including deicing salts, will adversely impact the adjacent vernal pools, bordering vegetated wetlands, forest edge habitat and multiple species of greatest conservation need, including a recently documented population of state-listed Eastern Whip-poor-will (<https://ebird.org/checklist/S115056994>).

The predominantly oak forest with regenerating and mature oak, white pine, and hickory supports the highest possible number of caterpillar/moth species that together with multiple wetlands provide food, migratory bird stopover habitat, and support resident bird and bat populations. Multiple bird species of Greatest Conservation Need nest and forage in the forest and adjacent shrubland edge habitat and power line cut including Eastern Whip-poor-will, American Woodcock, Wood Thrush, Scarlet Tanager, Prairie Warbler, Eastern Towhee and Field Sparrow.

Ongoing rock crushing and blasting operations during nesting season will not only destroy the resident forest breeding bird habitat but will also adversely impact the adjacent shrubland and forest edge habitat in Breakheart Reservation. Both large and small bat species were observed while recording Eastern Whip-poor-will and bats are commonly observed flying out from the forest over the nearby football field. Since no investigations have been done into the multiple bat species supported by the forest, there may be endangered species including the federally endangered Northern Long-eared Bats as well as other bats of greatest conservation need. The project site habitat meets the requirements for endangered Northern Long-eared bats.

Deforestation of 16 acres of designated forest core habitat, when a suitable alternative site exists, represents callous and unnecessary damage to the environment. As part of site reconnaissance for the Energy Park on adjacent Article 97 land (discussed in the land alteration section below), a tree count was conducted indicating 170 trees (over 8 inch diameter) per acre, a number representative of the 16 acres to be deforested. We estimate a total of >2000 trees will therefore be removed from the new school site to build the school and associated pavement/hard scape.

As described in the recently released EOEEA Massachusetts Healthy Soils Action Plan 2023 <https://www.mass.gov/doc/healthy-soils-action-plan-2023/download> :

“Healthy soils are central to retaining, filtering, infiltrating, and storing water. By these functions, soils prevent flooding, erosion, and spreading of contaminants, and they provide local climate cooling. When the characteristic structure, biology and chemistry of soils is intact, they work like a sponge to slow stormwater, recharge groundwater, and clean polluted surface flows. As climate change brings more and heavier storms to our region, these vital soil functions become even more essential.”

The forest and wetland ecosystems in the area are supported by healthy native soils, rich in soil organic carbon and mycorrhizal fungal interactions that support remarkable diversity of native plants. The Floristic Quality Index of 43 - where over 35 is exceptional - indicates that this forest has taken a long time to develop, is remarkably free of invasive species, and should be protected based on plant species alone (Floristic Quality Assessment provided by Walter Kittredge, Botanist, Oakhaven Sanctuary, North Reading, MA).

The ecosystem in the area is supported by a canopy of trees, with a predominance of oaks, creating a climate-resilient habitat critically important for storing carbon and cleaning the air. The oaks are supported by mycorrhizal fungal interactions with 150-200-yr old stump-sprouted oak root systems contributing to carbon capture, and deep oak litter helps to prevent encroachment by invasive species. The forest canopy provides local cooling and both the canopy and oak litter contribute to stormwater management and regeneration of the multiple forested wetlands.

E. Destruction and Impairment of Wetlands and associated Buffer Zones

Project plans include 2.6 acres of disturbance within the 100-foot Buffer Zone of the wetlands series identified on the project site (Nitsch. Buffer Zone Existing and Proposed Conditions. Prepared for Conservation Commission Hearing. December 6, 2022. <https://www.wakefield.ma.us/sites/g/files/vyhlf3986/f/uploads/northeast-metro-tech-buffer-zone.pdf>). The work will alter the water quantity and quality functions of the area, contribute to flood control and storm damage, impair wildlife habitat, and is contrary to the damage prevention interest of the Wetlands Protection Act.

Disturbance of the Buffer Zone to this degree “can be expected to result in alteration of the wetland characteristics that provide important functions and values associated with the Bordering Vegetated Wetland and the interests of the WPA (Notice of Intent Peer Review. BSC Group. November 4, 2022). <https://www.wakefield.ma.us/sites/g/files/vyhlf3986/f/uploads/bsc-group-peer-review-northeast-tech.pdf>). Extensive rock blasting in multiple locations planned for the site may result in the destruction of wetland habitat even if not directly constructed upon, due to blasting uphill from wetlands, potential water contamination, and the alteration of groundwater circulation.

The forested wetlands include a certified vernal pool with breeding populations of spotted salamander and wood frogs within 400 m of another certified vernal pool comprising a vernal pool cluster. The vernal pool cluster is connected by a network of wetlands and ephemeral

streams that form a half mile amphibian migration pathway from the certified vernal pools in neighboring Breakheart Reservation near Hemlock Rd to vernal pools and bordering vegetated wetlands near Farm St.

Impacts to the wetlands from dramatic post-development changes in stormwater volumes are discussed in Section *G. Increases in flooding and storm water flows*.

F. Impairment of Water Quality

Buffer Zones protect water quality by slowing the rate of overland flow and increasing infiltration. Vegetated buffers act as filters that adsorb and trap nutrients, toxic pollutants, bacteria, sediment, organic material, and debris before it enters a resource area. The project as proposed retains almost no naturally vegetated buffers on the site (Notice of Intent Peer Review. BSC Group. November 4, 2022).

Chemicals used in extensive and prolonged blasting such as ammonium nitrate, perchlorate, and fuel oil will potentially contaminate groundwater in the forest, pollute surrounding waterways including the Saugus River and Mill River, both located within 1/3 mile of the blasting, and contaminate wetlands making them unusable for amphibians and aquatic insects.

The potential impacts of blasting chemicals and deicing chemicals on water quality is discussed in Section C. Pollution.

G. Increases in flooding and storm water flows

The proposed project will create at least 10 acres of new impervious surface on the site of the new school. The addition of this amount of impervious surface will drastically alter the flood and storm water conditions in the area. There will be significant changes to the pre-existing drainage characteristics and flow patterns across the current school and new school portions of the site, as discussed in the section on land alteration above.

The Project reports significant changes in post-development runoff volumes in several areas which would drastically alter wetland habitats during 1-year, 2-year, and 10-year events (Table 6 of 1/12/23 Stormwater Report). The Project did not report 25-year and 100-year runoff volumes as required by Town of Wakefield <https://ecode360.com/15403856#15403856>. They state they will apply for a waiver from Stormwater requirements on this basis.

As a result of development, the post-development 1-year runoff volumes in the vicinity of two wetlands, DP-3 and DP-9 (offsite wetland), will increase by 6-fold and 2-fold, while runoff volumes will decrease in DP-10 and DP-12 (offsite wetland) by 3-fold and 4-fold, respectively. The changes are as significant for the 2-year and 10-year events. The total area within the 100-ft buffers of the highly impacted wetlands is 1.36 acres (Nitsch. 1/12/23 Notice of Intent. Buffer Zone Area Takeoffs Table pp. 72-73). The total area of the watersheds, or subcatchment areas feeding these highly impacted wetlands is 19 acres, and while some of that is offsite it will certainly be impacted by the change in onsite conditions [3.8 acres (DP-3), 13 acres (DP-9), 1.5 acres (DP-10), and 1.1 acres (DP-12) (Inflow areas from HydroCad Model. Nitsch Stormwater Report 1/12/23)].

Increasingly severe storms and channeling of water off of the hilltop will impact the large

bordering vegetated Red Maple and Yellow Birch wetland near Farm St and other nearby wetlands. It is not possible to reproduce the stormwater-holding capacity of deep oak litter over native soils and bedrock in a mature hilltop forest after grubbing out the soil and blasting the bedrock.

H. Reduction of groundwater levels

The Project will not meet Standard 3 of the MASSDEP Stormwater Management Standards pertaining to groundwater recharge stating that “Due to the presence of high groundwater and bedrock throughout the site, recharge is considered unfeasible, and is met to the best extent practical.” (Nitsch Stormwater Report 1/12/23). The increase in impervious surface and loss of almost all of the naturally vegetated buffers on the site will severely damage infiltration rates into the soil, associated groundwater recharge and result in a reduction in groundwater levels. Vegetated buffers slow the velocity of surface water flow, allowing sediments to drop out of the flowing water and increasing recharge to groundwater (Davies, G., BSC Group Scientists, & MACC Buffer Zone Review Team. (2019). MACC Wetlands Buffer Zone Guidebook (Vol.288). MACC).

The Project states they have employed environmentally-sensitive design to minimize these impacts. Environmentally-sensitive design is intended to minimize stormwater impacts, including reduction of groundwater levels. The Wetlands Regulations, 310 CMR 10.04, and the Water Quality Certification Regulations, 314 CMR 9.02, define environmentally sensitive site design to mean:

“design that incorporates low impact development techniques to prevent the generation of stormwater and non-point source pollution by reducing impervious surfaces, disconnecting flow paths, treating stormwater at its source, maximizing open space, minimizing disturbance, protecting natural features and processes, and/or enhancing wildlife habitat”.

Our thorough review of site development plans suggests the use of environmentally-sensitive design did not meet this definition.

We urge you to use your discretion to grant this Fail-Safe Petition to require an ENF and draft and final EIR because all of the following criteria of 11.04(1) are met:

- (a) the Project is subject to MEPA jurisdiction;
- (b) the Project has the potential to cause Damage to the Environment and the potential Damage to the Environment either:
 - 1. could not reasonably have been foreseen prior to or when 301 CMR 11.00 was promulgated; or
 - 2. would be caused by a circumstance or combination of circumstances that individually would not ordinarily cause Damage to the Environment; and
- (c) requiring the filing of an ENF and other compliance with MEPA and 301 CMR 11.00:

1. is essential to avoid or minimize Damage to the Environment; and
2. will not result in an undue hardship for the Proponent.

The Project is currently planned for site C.3. but the alternate site, C.2, considered by the school district when evaluating construction options, is more cost-effective and has far fewer environmental impacts (**Attachment 4**). Requiring an Environmental Notification Form and full Environmental Impact Report would not be an undue hardship for the Project, nor would changing the proposed location of the school to site C.2. as the alternate site will “also achieve the District’s educational program goals and would allow the existing school to remain in operation throughout construction of the new school with minimal disruption” (MSBA Recommendation to Proceed to Schematic Design, February 2021). The cost of the C.2 option is substantially lower than C.3 and switching to the C.2. site would more than compensate for any design and engineering costs that have been expended to date.

II. Project changes that now meet or exceed MEPA review thresholds

1. Direct land alteration of 30 acres exceeds the threshold of 11.03(1)

There is no definition of land alteration, direct or otherwise, in the MEPA regulations. In the case of undefined terms such as land alteration, 301 CMR 11.02 states:

“any term not defined in accordance with 301 CMR 11.02(2) shall have the meaning given to the term by any statutes, regulations, executive orders or policy directives governing the subject matter of the term. Examples include a term pertaining to:

(a) wetlands, which is defined by the Massachusetts Wetlands Protection Act, M.G.L. c. 131, § 40, and its implementing regulations, 310 CMR 10.00: *Wetlands Protection*, and 33 USC 1341 and 314 CMR 9.00: *401 Water Quality Certification for Discharge of Dredged or Fill Material, Dredging, and Dredged Material Disposal in Waters of the United States within the Commonwealth* regarding Water Quality Certification, as well as other statutes, regulations, executive orders, or policy directives that govern wetlands issues; and

(b) roadways or traffic, which is defined by the Massachusetts Department of Transportation Highway Division at 700 CMR 13.00: *Approval of Access to Massachusetts Department of Transportation Highways and Other Property.*”

In the absence of a regulatory definition, and in recognition of the importance of clear, unambiguous guidance on this term for making consequential determinations as to the applicability of MEPA, we sought guidance from MEPA staff on the availability of any statutes, regulations, executive orders or policy directives governing the subject matter of the terms, i.e., a working definition of land alteration and direct land alteration. We were informed by Assistant Director Page **Czepiga** (January 19, 2023 email correspondence) “we do not currently maintain a list of “statutes, regulations, executive orders or policy directives” that specifically pertain to the term “direct land alteration” in 301 CMR 11.03(1).” In this correspondence, Ms. Czepiga provided a copy of your May 2022 determination letter which states:

“The foregoing indicates that the majority of impervious area will be replaced by impervious surfaces with similar uses and character in the same location (meaning that the land surface may not be “altered” in those locations). Thus, even if the land in the entire area of the old school (13.7 acres) is assumed to be altered except the areas replaced with similar impervious surfaces (3.25 acres), the total land alteration for the Project would equal 24.02 acres (13.57 acres for construction of new school + 13.7 acres in area of old school – 3.25 acres of similar replacement). I note that the Project does not involve significant earthwork or changes in grading. Based on these factors, I find that the land alteration threshold does not apply.”

Respectfully, we disagree with the characterization of “altered” as simply a change in the ultimate condition of the land surface from impervious to pervious or vice versa. In the absence of a working definition of direct land alteration from MEPA we contend that land alteration involves actions typically part of construction that alter the physical condition of the land including, but not limited to, clearing, grubbing, excavation, filling, grading, surfacing, paving, compaction, stockpiling, and stabilizing. In addition to the direct alteration to the land resulting from demolition, mass tree clearing, rock blasting, creation of new impervious surfaces (including the new school, driveway, and parking areas), there will be additional land alteration, including erosion, associated with the following changes: (1) alteration of site steepness from creation of 650-ft long cliff requiring 15 foot wide catch basin for debris; (2) soil compaction by heavy equipment; (3) alteration of pre-existing drainage characteristics and flow patterns across both the current school and new school portions of the site; and (4) alteration of the groundwater regime which in turn further impacts drainage, slope stability, survival of existing vegetation and establishment of new plants. The total land alteration of 30 acres is described in the following narrative and summarized in Table 1.

A. Current School Site Land Alteration = 11.69 acres

The current school site includes buildings (4.69 acres), pavement/hard scape (7.76 acres) and landscape areas (11.05 acres), and some amount of woods on the current school site that have not been separately reported.

Land where the current buildings are located will undergo alteration associated with demolition, earth moving, compaction, and cuts in the existing topography. The buildings will be demolished and converted into athletic fields. Construction of the athletic fields will require cuts of up to 9

feet for the proposed tennis courts and up to 6 feet for the combined football/soccer field and fill up to 7 feet (Geotechnical Report, Appendix G of Stormwater Report 1/12/23). Based on these reported values we estimate approximately 13,762 cubic yards of earth moving just for this portion of the project.

Land that is currently pavement/hard scape will be altered and reconfigured with creation of new parking areas around the new athletic fields, repaving, resurfacing, and regrading. We conservatively estimate this alteration to be 4 acres.

Land that is currently landscaped includes athletic fields, one of which has been considered as the future site of a new hockey rink/athletic facility. Several official presentations by the project team and their affiliates in 2018, 2020, 2021, 2022 include a proposed hockey rink/athletic facility located on an existing football field, also evaluated as an alternative site for the new school (**Attachment 6**). These presentations are in the public record. Most notably, at the meeting in December 2020, when the school building committee voted on their preferred option for this project, located on site C.3., a figure was presented showing a hockey rink on the alternate site C.2.

There is evidence that the ranking of the alternative site was negatively biased in order to reserve C.2 for this hockey rink even though C.2 meets the criteria for the new vocational school. The Project has stated: “The district gains additional athletic fields with the C.3 option and maintains the potential of reserving the current football field/ track for future development as a hockey rink” (Final Evaluation of Alternatives Narrative <http://northeastbuildingproject.com/wp-content/uploads/sites/199/2021/01/3.3.3-Final-Evaluation-of-Alternatives-Narrative.pdf>). The repeated presentation of figures by the project team showing the hockey rink on the existing football field indicates additional land alteration may occur at this site, the majority of which would be impervious surface. **The area associated with this football field is estimated at 2 acres.** We ask that Project proponents officially clarify in their response to this letter the intended use of this current football field with respect to future alteration plans with implications for 301 CMR 11.10(5). Please note the majority of land alteration would include new impervious surface that would need to be considered against the review threshold of 5 acres of new impervious surface. The Project has reported there will be a change in impervious surface (net new) of 3.87 acres (Stormwater Report 1/12/23, p. 7), an increase from the net new 2.8 acres reported in the 4/28/22 Response to Request for Advisory Opinion from “Friends of Wakefield’s Northeast Metro Tech Forest”: Northeast Metropolitan Regional Vocational Technical High School Project.

Land that is currently a baseball field will be altered with construction of an “open stone-lined infiltration pond” or “settling basin”. The pond will be used for the drainage of stormwater that will be released from the rocks during blasting and described in the Site Sequence Plan and in page C305 of the Plan Set on the Wakefield Conservation Commission website. This pond will constitute land alteration of at least 1 acre.

B. New school site land alteration = 17.2 acres

The Project reports a change of 16.3 acres of woods associated with construction of the new

school (pg. 7 of 1/12/23 Stormwater report). We assume the vast majority of this deforestation is on the new school site, which consists of designated forest core habitat. This area will be cleared and replaced with new buildings (3.3 acres), pavement and hardscape (6.82 acres), gravel/rip/rap (1.35 acres) and grass (3.2 acres). The Project has not reported whether additional woods on the site of the existing school will be cleared.

Deforestation of 16 acres along with the creation of nearly 10 new acres of impervious surface in a previously wooded area with an elevation 60 ft above the surrounding area will impact the hydrology, vegetation, and biological communities in watersheds, downgradient wetlands, and buffer zones. The following conditions, all associated with the new school site, are widely recognized to result in increased erosion and other adverse alterations to the land:

- Removal of plant cover
- Regrading the terrain and altering steepness
- Road construction
- Decrease in the area of soil that can absorb water
- Soil compaction by heavy equipment which reduces water intake
- Altering the groundwater regime resulting in adverse effects to drainage, slope stability, survival of existing vegetation and establishment of new plants

Source: Massachusetts Erosion and Sedimentation Control Guidelines, 2003

<https://www.mass.gov/doc/complete-erosion-and-sedimentation-control-guidelines-a-guide-for-planners-designers-and/download>

In addition to the direct alteration to the land surfaces resulting from demolition, mass tree clearing, rock blasting, soil grubbing, creation of new impervious surfaces including the new school, driveway, and parking areas, there will be significant changes to the pre-existing drainage characteristics and flow patterns across the current school and new school portions of the site, both of which are considered altered per Wetlands (310 CMR 10.00) where:

Alter means to change the condition of any Area Subject to Protection under M.G.L. c. 131, § 40. Examples of alterations include, but are not limited to, the following:

- (a) the changing of pre-existing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns and flood retention areas;
- (b) the lowering of the water level or water table;
- (c) the destruction of vegetation;
- (d) the changing of water temperature, biochemical oxygen demand (BOD), and other physical, biological or chemical characteristics of the receiving water.

The Project reports significant changes in runoff volumes in several areas which would drastically alter wetland habitats during 1-year, 2-year, and 10-year events (Table 6 of 1/12/23 Stormwater Report). The Project did not report 25-year and 100-year runoff volumes as required by Town of Wakefield <https://ecode360.com/15403856#15403856>.

A significant portion of the acreage of land in the vicinity of the current school site and new school site that will be vulnerable to land alterations because of site development, including erosion, changes to the groundwater regime and impacts to the survival of existing vegetation

and biological communities in and outside wetlands and buffer zones. The limit of work includes approximately 0.21 acres within the 25-ft buffer of three wetlands and 2.4 acres within the 100-ft buffer of seven wetlands.

As a result of development, the post-development runoff volumes for 1-year storm events in the vicinity of two wetlands, DP-3 and DP-9 (offsite wetland), will increase by 6-fold and 2-fold, respectively, while runoff volumes will decrease in DP-10 and DP-12 (offsite wetland) by 3-fold and 3-fold, respectively. The changes are as significant for the 2-year and 10-year events. The total area within the 100-ft buffers within the limit of work that are highly impacted wetlands is 1.36 acres (Buffer Zone Area Takeoffs Table. Submitted to Wakefield Conservation Commission 01/12/23 <https://www.wakefield.ma.us/sites/g/files/vyhlif3986f/uploads/northeast-metro-tech-buffer-zone.pdf>).

Of the 1.36 acres, approximately 0.9 acres will remain pervious and 0.43 acres will be converted to impervious surface. Land alteration will occur in both. The pervious surface will be altered at the surface and subsurface by the significant changes in runoff volumes including alteration of soil characteristics and the hydrologic regime. The amount converted to impervious surface is already counted in our calculation of land alteration but we propose the remaining 0.9 acres within 100-ft buffers of the highly impacted wetlands should be added to land alteration per the definition of alter in Wetlands (310 CMR 10.00), cited in 301 CMR 11.02(2)(a).

C. Additional Land Alteration Outside of Project Site = 1.3 acres

Energy Park - Working in close collaboration with Project proponents, the Wakefield Municipal Gas and Light Department (WMGLD) has proposed construction of an “Energy Park” on Article 97 land adjacent to the Project site that would house batteries and associated infrastructure for the solar panels on the new school (**Attachment 5**). Use of this Article 97 land for project-related activities would constitute another MEPA review trigger listed at 11.03(1)(b)3. This Energy Park project would alter 0.8 acres of woods adjacent to the new school portion of the site (see Attachment 1) and must be considered in terms of MEPA restrictions to **segmentation** (301 CMR 11.01(2)(c)). While the installation of solar panels on the school is commendable, the project owner has refused to allow the batteries and emergency generator for the system to be sited anywhere else on the current or new school site requiring WMGLD to instead seek another acre of forested land, the Article 97 land, for the batteries and infrastructure that will service the school’s solar panels.

Rotary - The Town of Wakefield has also proposed that a new rotary be constructed at the base of the new driveway to the southwest of the building site, with egress on Farm Street. The additional amount of land converted to impervious surface as a result of the new rotary is estimated to be at least 0.5 acres (Alternate Driveway Routing - Farm Street. Wetland Alteration Exhibit. For Conservation Commission Hearing 11/01/2022). This 0.5 acres is added to the total estimate of land alteration associated with the Project as presented in Table 1.

Table 1 - Total Land Alteration

Land Use	Acres	Alteration activities	Altered Acreage
A. Current School Site			
Buildings	4.69	Demolition, earth moving, cuts up to 9 feet and fill up to 7 feet for conversion to athletic fields, installation of subsurface drainage system, soil compaction	4.69
Pavement/Hard Scape	7.76	Repaving, regrading, subsurface drainage system, and creation of new parking areas	4
Landscaped Areas including existing playing fields	11.05	Current football field converted to future athletic facility (hockey rink)	2
Baseball field	1	Conversion to open stone-lined infiltration pond (settling basin) and subsurface drainage	1
B. New School Site			
Woods	30.47	Mass Tree Clearing and rock blasting for conversion to school building and pavement/hardscape	16.3
Water/Wetlands	2.88	Alteration of remaining pervious areas from dramatic changes to stormwater runoff volumes in DP-3, DP-9, and DP-10.	0.9
C. Additional Project-related land alteration			
Woods on adjacent Article 97 land	1.0	Tree clearing, paving and installation of batteries and emergency generated for school's solar panels (Energy Park)	0.8
Woods, landscaped, and paved area at bottom of proposed driveway	1.0	Construction of rotary/ roundabout	0.5
Total Land Alteration			30 acres

III. Conclusions

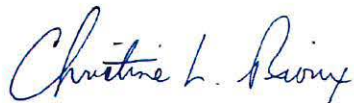
We believe this letter demonstrates the following:

- Your requiring the filing of an ENF and EIR is essential to avoid or minimize Damage to the Environment that will otherwise be extensive and involve multiple environmental resources.
- The MEPA threshold for land alteration at 11.0(3)(1)(b)1. is exceeded and therefore an ENF is mandatory. The Project will result in ≥ 30 acres of land alteration.
- Use of Article 97 land for project-related activities constitutes exceedance of a second MEPA review trigger listed at 11.03(1)(b)3. With MEPA review, a third review threshold, 11.0(3)(2)(b)2., would also be exceeded which pertains to greater than two acres of disturbance of designated priority habitat, as defined in 321 CMR 10.02.
- Native American cultural sites will suffer actual or potential damage or destruction because of this project if no action is taken. An intensive (locational) archaeological survey must be conducted in this area well in advance of any further project construction.

Given the thresholds are exceeded, we request a full Environmental Impact Report, based on the MEPA review thresholds and overwhelming damage to the environment that we have discussed. Anything less would place an undue hardship on the current and future citizens of the Commonwealth who will bear the loss of this ecosystem, forest core habitat and historic and archaeological resources at a time when protection of these natural resources must be prioritized.

In closing, we respectfully request that you require an ENF and full MEPA review of this Project, in consideration of the extensive documentation we have provided. Consistent with the authority granted you in 301 CMR 11.00, we ask that you use all feasible means to avoid Damage to the Environment of this historic, irreplaceable, and beloved natural resource of the Commonwealth. **Based on these factors, and to ensure that irreversible Damage to the Environment does not occur at the Project site, we call upon you to notify the Proponent that no work can commence on the Project site pending your Determination.**

Sincerely,



Christine L. Rioux, MS, PhD (corresponding signatory)

Christinerioux2017@gmail.com

cc. Jonathan. K. Patton, DCR, Archaeologist, Office of Cultural Resources
Wakefield Conservation Commission

10 Petitioners

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 Bob Brooks 7 June Circle Wakefield MA 01880	 Bronwyn Della-Volpe 8 Cyrus Street Wakefield MA 01880
 Sasha Simone 43 East Highland Ave Melrose MA 02176	 Robin Bergman 320 Park Avenue Arlington MA 02476
 Brian Thomson 65 Prospect Street Wakefield MA 01880	 Lee Farrington 441 Washington Street #201 Chelsea MA 02150

List of Attachments

Attachment 1 – Aerial Locus Map

Attachment 2 - Site Prep Sequence with areas of blasting

Attachment 3 - Natural Heritage and Endangered Species Program Map

Attachment 4 - School site alternatives (12/2020-NEMT Building Committee Presentation)

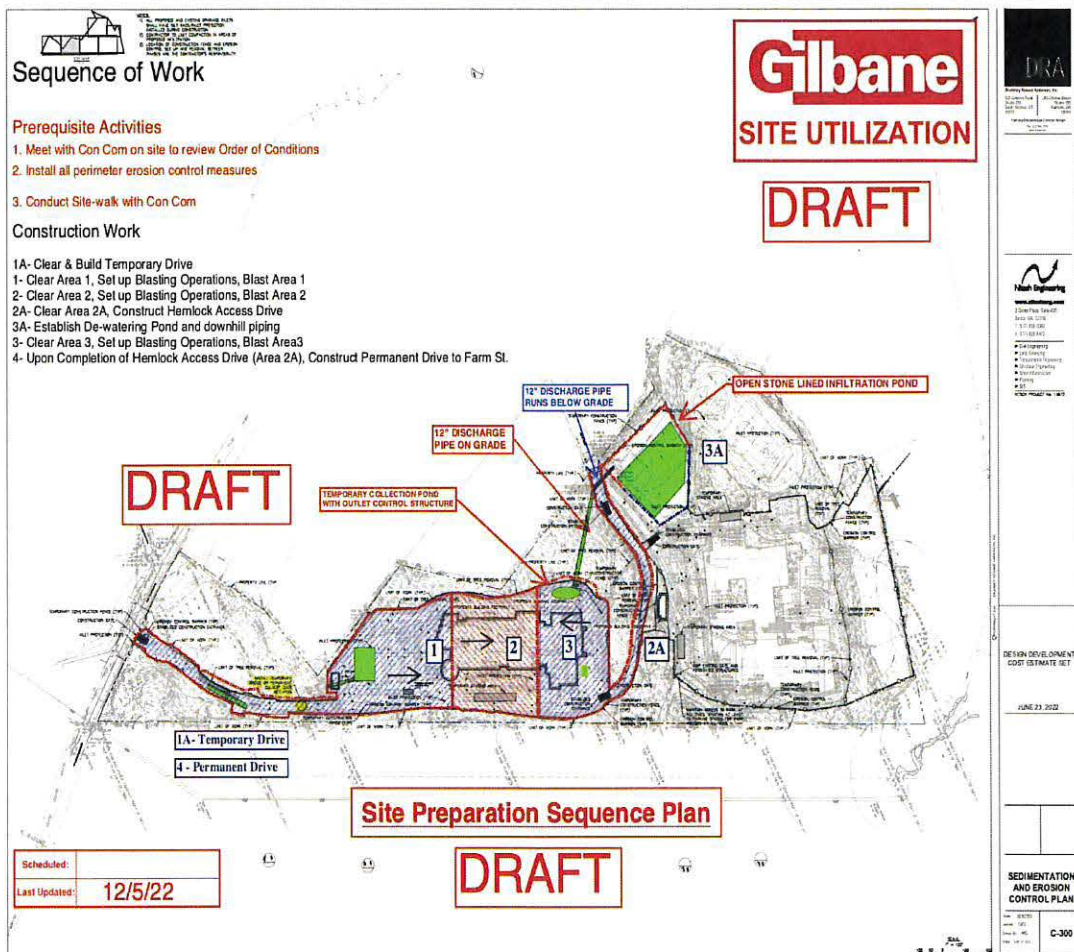
Attachment 5 - Energy Park on Article 97 land (WMGLD)

Attachment 6 – Presentations showing Hockey Rink on Project Site

Attachment 1 – Aerial Locus Map - Current school left of Hemlock Rd and proposed



Attachment 2 - Site Prep Sequence with areas of blasting



Attachment 3 - Natural Heritage and Endangered Species Program Map (Nitsch Engineering)

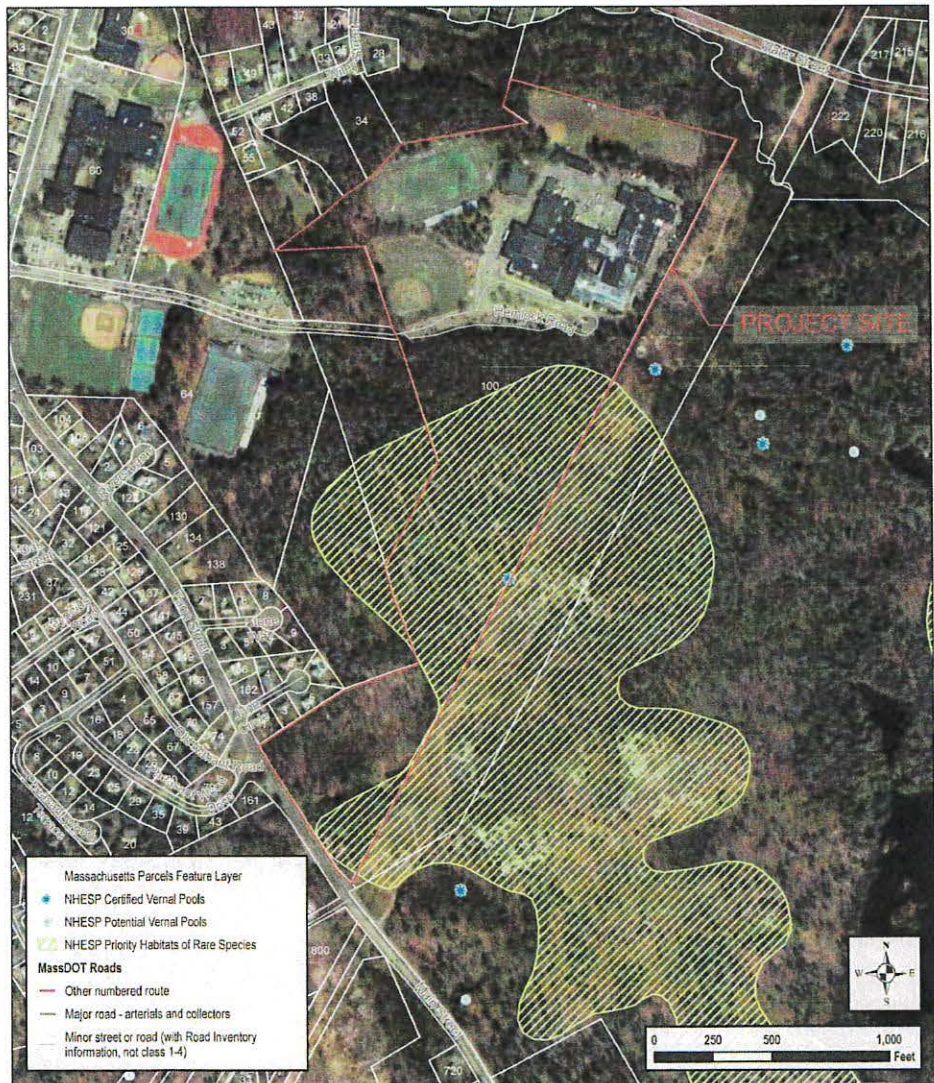


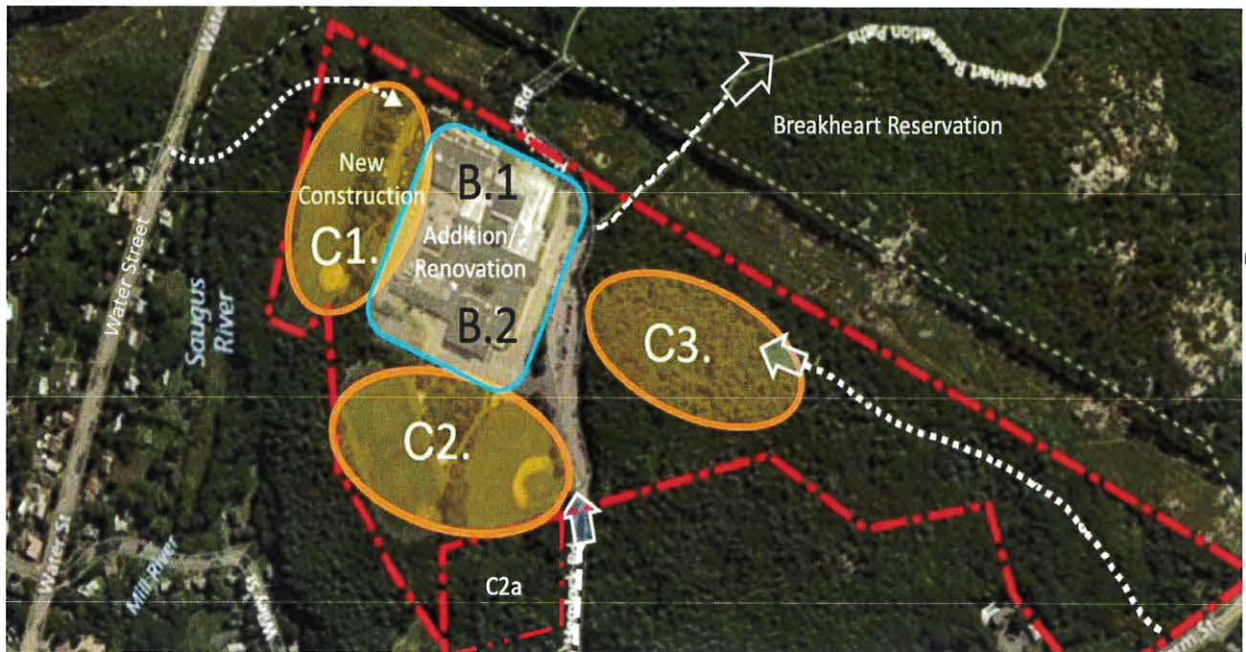
Figure 4b. Natural Heritage and Endangered Species Program Map
 Northeast Metropolitan Regional Vocational High School
 100 Hemlock Rd, Wakefield, MA 01880

8/10/2022

Data Source: MassGIS
 Nitsch Project #13872



Attachment 4 - School site alternatives (12/2020-NEMT Building Committee Presentation)



The image is a detailed site plan for an 'Energy Park'. The main map shows a network of roads and utility lines. Key features include:

- Existing Infrastructure:** Hemlock Rd, Hemlock P.S., and various existing utility lines (e.g., 300kV AC line, 120/20kV, 277/480V).
- Proposed Infrastructure:** A new road labeled 'HEMLOCK ROAD' with a 'PROPOSED DRIVEWAY' and 'PROPOSED DRIVEWAY'.
- Article 97 Land:** A specific area highlighted with a red outline and labeled 'Article 97 land'.
- New School Site:** A new school site is indicated by a red outline and labeled 'New school site'.
- Legend:** A legend in the bottom right corner defines the symbols used:
 - Land on Site
 - 120/20kV 2500
 - 277/480V 2500
 - 300kV AC line
 - Vacuum Switch
 - On Primary
 - UG Primary
 - Electric MH
- Scale:** A scale bar at the bottom right indicates distances in feet (0, 125, 250, 500).

The plan also includes labels for 'Existing M.S.', 'Future M.S.', 'Duck 1500kV', '300kV AC Emergency', '2 sets of 2-4" conductors in separate duct banks', 'New Athletic Bldg', 'New M.S.', 'Existing M.S.', 'Town-Owned land', and 'New school site'.

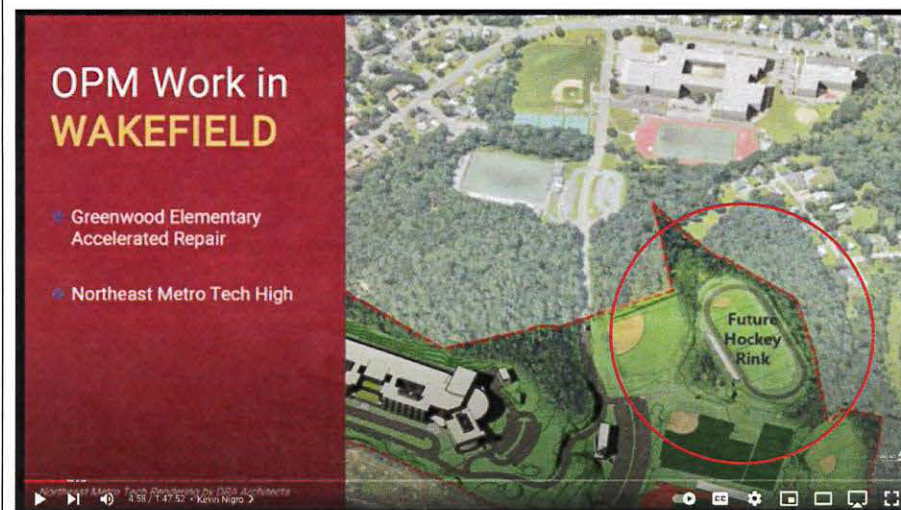
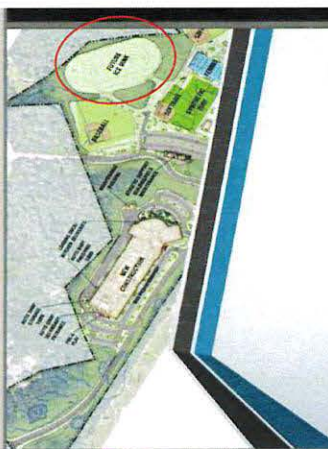
Attachment 6 – Presentations showing Hockey Rink on Project Site

Preparing for the vote, 11/12/2020 and 12/10/2020, day of School Building Committee vote. Presentation by Drummey Rosane Anderson, Inc. (DRA) To School Building Committee



OPM Work in Wakefield, 03/30/2021

Presentation by PMA Consultants LLC To Wakefield Permanent Building Committee

Rooftop Solar and EV Chargers

- WMGLD will manage, own and operate the solar on both schools
- Some buildings are built "solar ready" (just to meet Leeds standards) but may never have solar installed. These schools will be built with solar from the start, guaranteeing savings
- Any excess solar energy not used by the schools will charge the emergency battery at the Energy Park
- WMGLD will provide each school with electric vehicle chargers from the beginning instead of simply being "EV Ready"

WMGLD Energy Park 09/28/22

Presentation by Wakefield Gas & Light Dept
To Wakefield Town Council



Michael P. McCarthy, Esq. General Counsel
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March 1, 2023

Tori Kim
MEPA Director
Executive Office of Energy and
Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Re: Wakefield Municipal Light Department Energy Park, Hemlock Road, Wakefield MA

Dear Director Kim:

I take this opportunity to respond to certain representations contained in a January 27, 2023, request for full MEPA review ("MEPA Request") by Ms. Christine Rioux, and others, of a project referred to as the Northeast Metropolitan Regional Vocational High School construction project (the "Project") located at 100 Hemlock Road, Wakefield, Massachusetts.

The MEPA request includes an assertion that an energy park proposed by the Wakefield Municipal Gas & Light Department ("WMGLD"), an entity formed under M.G.L. Chapter 164, should be considered a "segment" of the Project. The WMGLD disagrees with any such assertion and states in support of its position as follows:

1. WMGLD is a separate and distinct legal entity from the proponent of the Project. The two entities have no commonalty in governance or control;

2. The proposed location for the WMGLD energy park is separate and distinct from the Project property. The Project is located at 100 Hemlock Road. The proposed WMGLD energy park would be located on a town-owned parcel of land situated between the Project location and the Wakefield Memorial High School both of which abut Hemlock Road;
3. Neither the Project nor the proposed WMGLD energy park are dependent on the other. The Project would be served by existing electric and gas utilities owned by the WMGLD if the energy park is not constructed. The function of the energy park as it relates to the Project would be to eliminate the use of natural gas, promote the use of solar power and EV chargers at the site. The energy park would also serve the existing Wakefield High School and/or a new Wakefield High School (which is currently in line for state School Building Assistance funding and was recently approved by the Wakefield Town Meeting).
4. The energy park is an initiative of the WMGLD, has been approved by the Wakefield Finance Committee, Planning Board, Town Council and Wakefield Town Meeting, all completely independent of the Project approval process. As the land to be utilized was originally obtained by the town for "park purposes" the land is subject to Article 97 of the Articles of Amendment to the state constitution and is currently the subject of a Home Rule Petition pending before the Massachusetts legislature. The Project proponent is not a party to the said petition and has had no role in the energy park or Article 97 legislative or approval process.
5. The WMGLD energy park would, by virtue of a proposed easement from the town, utilize a roughly 1-acre portion of a six-acre parcel of the owned by the Town of Wakefield. The Town of Wakefield, and not the Project proponent, owns and will continue to own the land. The Project proponent has no interest in the six-acre town parcel and no right to control the said land or the easement.

For the foregoing reasons, collectively and independently, the Project and the proposed WMGLD energy park are not "segmented" as that term is used in 310 CMR 11.01 – 11.17.

Thank you for the opportunity to comment on this matter. Please feel free to reach out to the undersigned if we may of any assistance to you.

Very truly yours,

Michael P. McCarthy

Michael P. McCarthy, Esq.,
General Counsel

March 13, 2023

Tori Kim
MEPA Director
Executive Office of Energy and
Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Dear Director Kim,

We are writing to provide new information and corrections to the principal inaccuracies most relevant to your determination that were presented in the March 3, 2023 Foley and Hoag reply submitted on behalf of the project proponents (Proponents) to our Fail Safe Petition with Information on Exceedance of Review Thresholds submitted January 27, 2023. In addition to the comments you received in support of our submission, nearly 6000 people have signed our Change.org petition (<https://www.change.org/saveforest>) in support of our efforts to Save the Forest and build the vocational school in a less environmentally destructive location.

I. Review Thresholds

A. New Information for Land Alteration

Exhibit 1 presents the total area of scheduled land alteration on the old school site and new school site, coterminous with the limits of work for these two areas (Attachment 1). This figure was prepared by Architect Brian Thomson, Registered Architect (Massachusetts License #3999) by extracting an AutoCAD dwg. file from a file submitted by the Proponent and made public in PDF form. There is less than a 0.001 % margin of error in this process.

Land alteration within the limit of work for the old school will be 16.1 acres, including 2.7 acres for an infiltration/retention pond on the site of the existing baseball field that will be underlain by a stormwater collection system. The Proponent claims the infiltration pond will be temporary though its operation will likely be on the order of years, not months. Construction of the pond involves extensive earth moving, complete alteration of the baseball field surface and subsurface down to at least 3 feet, removing soil and replacing it with stones. A new permanent stormwater storage unit (0.4 acre) will be installed beneath the infiltration pond. Restoring this area back to a baseball field will require removing the rock lined pond, backfilling with soil, and creating another surface. The amount of restoration required to bring this area back to its original use is significant. This area should be considered in the calculation of land alteration. Nitsch January 12, 2023 Plan Set. Page 20/72).

Land alteration for the new school will be 15.53 acres. The Proponent's Attachment 4 shows two cut-outs of land from the new school gray area around the staircase and does not count this as land alteration. This area (1 acre) will be altered by the construction of ramps and sidewalks that will require extensive surface and subsurface disturbance and earth moving for the installation of steel

beams to support the 1100 sq ft ramp. The soil ecosystem and tree canopy in that area will be altered and destroyed, and the remaining few trees in that area will be only fragments of the original forest. Therefore, we assert that the entire limit of work area shown will undergo land alteration. Total scheduled land alteration within the limits of work will be 15.53 acres (new school) + 16.1 acres (old school) = 31.6 acres. Outside the limits of work, there is an additional 0.9 of altered wetland and 0.8 acre for the adjacent Energy Park built to serve the new school on Article 97 land.

We describe in the January 27th submission the additional 0.9 acres of altered land (Per the definition of “alter” in 310 CMR 10.00) within the wetland buffer zones resulting from extremely high volumes of stormwater runoff stemming from the conversion of permeable forest to acres of impervious surface. This topic has been discussed in memoranda submitted to you by Hydrogeologist Doug Heath on March 6th.

Another 0.8 acres outside the original limit of work that is currently forested land from the adjacent Article 97 land will house the Energy Park for the new school and must be added to total land alteration.¹ As described on the Project website, the Energy Park is a partnership between the NEMT Project Team and WMGLD.² In response to questions from the public concerned about the loss of another acre of forested land, WMGLD has repeatedly stated there is “no other possible location” for the Energy Park. It is being built in that location because of the new vocational school.

Use of this Article 97 land for project-related activities constitutes another MEPA review trigger listed at 11.03(1)(b)3. /

As shown on Attachment 1 - Total Scheduled Land Alteration is 33.3 Acres. Below we discuss which areas could be validly subtracted from this total as replacement areas of “similar use and character”.

A. Inaccuracies in Proponent Response regarding Land Alteration

The Proponent’s reply identifies 13 “areas of similar replacement” totaling 6.11 acres that they claim should be subtracted from their estimate of total land alteration of 27.82 acres. The concept of areas of similar replacement stems from your Advisory Opinion of May 2022 which states that where “impervious area will be replaced by impervious surfaces with similar uses and character in the same location”, the land may not be considered to be “altered” in those locations.

¹Wakefield Town Warrant Article 5 <https://www.wakefield.ma.us/sites/g/files/vyhlf3986/f/uploads/regular-town-meeting-warrant-2022-11-19.pdf>

² <https://northeastbuildingproject.com/sustainability/> “The NEMT project team is working closely with the Wakefield Municipal Gas and Light Department (WMGLD) on coordinating the design of the building systems with the “all-electric” energy source. The “all-electric” option would involve WMGLD constructing an energy pack – creating a microgrid that will use a combination of energy storage equipment, rooftop solar, natural gas generator, and connection to the Town of Wakefield’s main utility service. In lieu of gas-powered equipment in the building, the design has changed to electric equipment, powered by solar energy harvested from the rooftop solar panels. Please [Click Here](#) for a video overview of the WMGLD Energy Park and partnership with the Northeast Metro Tech and Wakefield High School projects.”
Energy Park Website: <https://wmgld.com/energy-park-project/>

Of these 13 replacement areas, the following nine clearly do not qualify as being of similar use and character for several reasons including ultimate purpose (use), overall construction materials, dimensionality, or extent of needed subsurface excavation and drainage requirements:

Replacement Area <i>NOT</i> of Similar Use or Character	Area Impacted
Parking replaced by pedestrian walkway	0.37
Parking replaced by track	0.72
Asphalt basketball court replaced by parking	0.24
Building replaced by bleachers	0.04
Parking replaced by bleachers	0.04
Building replaced by pedestrian walkway	0.16
Parking replaced by building	0.24
Building replaced by track	0.65
Total Area <i>NOT</i> of Similar Use or Character	2.46
Proponents Total Area of Replacement	6.11
Valid Area of Replacement of Similar use and Character	3.65

These areas should be deleted from the 6.11 acres to yield a valid area of replacement of similar use and character of 3.65 acres (6.11 – 2.46) which is included in our calculation of **Total Scheduled Land Alteration (Table 1) of 29.7 acres.**

Table 1 - Total Land Alteration

Total Scheduled Land Alteration	Acres
Old School Site	13.38
+Infiltration Pond and subsurface system*	2.71
New School Site	15.53
+Energy Park (Article 97 Land)	0.8
+Wetland Buffer Zone	0.9
Total Scheduled Land Alteration	33.3
Less Replacement Area of Similar Use and Character	-3.65
Total Scheduled Land Alteration (less valid replacement areas)	29.7
Future Hockey Rink (see Attachment 2)	3.0
Total Land Alteration with Future Hockey Rink	32.7

*See page 20/72 of January 12, 2023 Plan Set

We include 3.0 acres for a future hockey rink in the final calculation of Total Land Alteration with additional details supporting this provided in Attachment 2.

C. Impervious Surface Review Threshold and Consideration of Similar Use and Character

Table 4 of the Nitsch Stormwater Report (February 16, 2023) lists 16.31 acres of impervious surface on the proposed new site. From a review of the design drawings and inputs to the Stormwater model reported therein, 10 acres of that will be on the forested hilltop site and 6.3 on the old school site. Largely using offsets for conversion of existing buildings to “new pervious areas” (estimated at 7.8 acres) including athletic fields (3.8 acres) they argue that only 3.73 acres of the newly created impervious surface on the hilltop should be counted toward the review threshold of 5 acres of new net impervious surface. This logic equates a natural, functioning forest core habitat (Photos - Attachment 3) to either small, landscaped areas inserted between parking lots or artificially constructed athletic fields. It is totally inconsistent with the criterion of “similar use and character” raised by the Proponent, to say that pervious surface that is a forest can be replaced by or offset by these types of pervious areas. None of the newly created pervious surface on the old school site should be considered similar use and character to the forest.

Therefore, with no offset of similar use and character that can possibly replace 10 acres of forest converted to impervious surface, we assert the review threshold of 5 acres of new impervious surface is exceeded.

II. Fail Safe Petition

A. Fail Safe Criteria

Here we provide further evidence and rationale that we in fact meet the preconditions for a Fail Safe petition.

11.04 (1) - There is a potential for an Agency Action as a result of a number of outstanding issues. The Proponent’s most recent project schedule includes dates (March 16- 25, 2023) to appeal the Order of Conditions from Conservation Commission, which will likely be moved back; plans to submit a permit for the MA DEP BWP Air Quality Program 10 days in advance of excavation; and MA Board of Health Review (April 28, 2023). The Stormwater Plan is not yet approved, has significant flaws and unresolved issues as discussed in memoranda submitted to you (and local boards) by Hydrogeologist Doug Heath (March 3rd and March 6th).

11.04(1)(a) - The project is subject to MEPA jurisdiction.

11.04(1)(b)(1) - As we have documented, the project has “the potential to cause Damage to the Environment” *and* the potential Damage to the Environment either “could not reasonably have been foreseen prior to or when [the MEPA regulations were] promulgated. Detailed design documents revealing the potential damage to the forest and other natural resources were not available until late 2021, thus the damage to the environment could not have been foreseen prior to 1998. If this criterion is intended to include only those “types” of damage to the environment that did not even exist prior to 1998, it is unclear why the very definition around which the Fail Safe regulations are organized, i.e., the definition of Damage to the Environment, includes an extensive list of many types of damage that were in existence prior to 1998. In the absence of policy or guidance documents to clearly explain this to engaged and informed citizens like ourselves, and if this most narrow and nearly unattainable interpretation is to be used in our case, that being only types of damage that were not known to even exist prior to 1998, it is a serious flaw in the regulations and

undermines the purpose of MEPA which is to provide meaningful opportunities for the public to assist each Agency in using all feasible means to avoid Damage to the Environment. Despite our objections to the use of this most narrow interpretation, we document in our submission several types of damage to the environment that were not known or understood fully (and are still not) prior to 1998 including:

- Light pollution impacts on wildlife - general awareness but mechanisms of action and adverse effects on humans and wildlife not fully understood.
- Noise pollution impacts on wildlife - general awareness but mechanisms of action and adverse effects on humans and wildlife not fully understood.
- Loss of habitat for multiple Species of Greatest Conservation Need as reported in State Wildlife Action Plans developed after 2005 including Eastern Whip-poor-will.
- Loss of carbon sequestration, mycorrhizal networks, and healthy soil resulting from loss of mature trees.
- The irreversible impact of land alterations and invasive species on pollinator communities, biodiversity and native forest ecosystem.

11.04(1)(b)(2) - Building a school in this location, on a pristine forested hilltop covered with rock outcrop, as compared, for instance to building that school in a previously altered location, causes damage to the environment unique to the circumstances of this location. This location requires removing over 14 acres of forest, blasting more than 8 acres and creating 10 new acres of impervious surface. Construction of the school in this location represents a circumstance that would not ordinarily cause Damage to the Environment of the nature and extent that we have documented. Those circumstances are in fact, unique, and justify the Fail Safe petition.

11.04(1)(c)(1) - If you do not find our evidence about the exceedance of review thresholds to be adequate, the Fail Safe review is “essential to avoid or minimize Damage to the Environment”.

11.04(1)(c)(2) - The fail-safe review does not result in undue hardship for the Proponent. A delay in schedule to conduct proper scrutiny of this project and provide a full environmental impact report will not present an undue hardship, is long overdue and is owed to the Citizens of Massachusetts.

B. Inaccuracies in Proponent Response to Fail Safe Petition

We noted several inaccuracies in the Proponent’s response but will focus here on one with particular significance.

In their reply, the Proponents state, “In addition to the environmental protections designed by the District or required by regulators, in an effort to further minimize environmental impacts, the District is pleased to offer to enhance and permanently protect potential habitat of the Hentz’s Red-bellied Tiger Beetle (the “Beetle”) on the Project site.” They also state, “These habitat areas would be enhanced with targeted selective vegetation clearing along the southern edge of these areas to ensure long-term maximum solar exposure. These habitat protection areas would be permanently protected by an approximately 1.7 acre Conservation Restriction that would surround these areas and extend along the southeastern site boundary.”

A group of Citizen Scientists have documented populations of the threatened Hentz’s Red-bellied Tiger Beetle (HRBTB) thriving on outcrops at the Core Forest Habitat. These outcrops are fairly large,

relatively flat, lichen-covered bedrock with crevices to hide in and decent sight lines for hunting other arthropods which in turn are dependent upon the surrounding vegetation. The Project will be destroying these outcrops by a series of mass-blasting and 30' deep earth excavation activity and pouring concrete over this location for the foundation of the new school building, thereby extirpating forever this population of beetles and their next generation along with other species they have coevolved with over hundreds of years. Sequestering an area of presumably 'potential habitat' as proposed by the Project cannot be taken as a measure of mitigation for the obliteration of current population and the next larval generation of endemic HRBTB burrowed in the crevices of the outcrops at the project site. These tiger beetles are found on relatively flat outcrops of a certain size, composition, and texture based on the action of lichens and mosses, seasonal changes, and microclimate, and have evolved elytral maculation for background-camouflaging to local conditions (Photos - Attachment 4). Cutting of mature trees and vegetation around arbitrary rock outcrops as proposed by the Project may not provide beetle habitat but will contribute to removal of more critical core forest habitat. Furthermore, the proposed location of Conservation Restriction Area is delineated by the new access road and Farm St., which means any population of the HRBT beetles, if any, will be subjected to incessant traffic and the detrimental effects of light, noise, chemical pollution resulting in further decimation of their populations.

In closing, we have provided new information that documents the following:

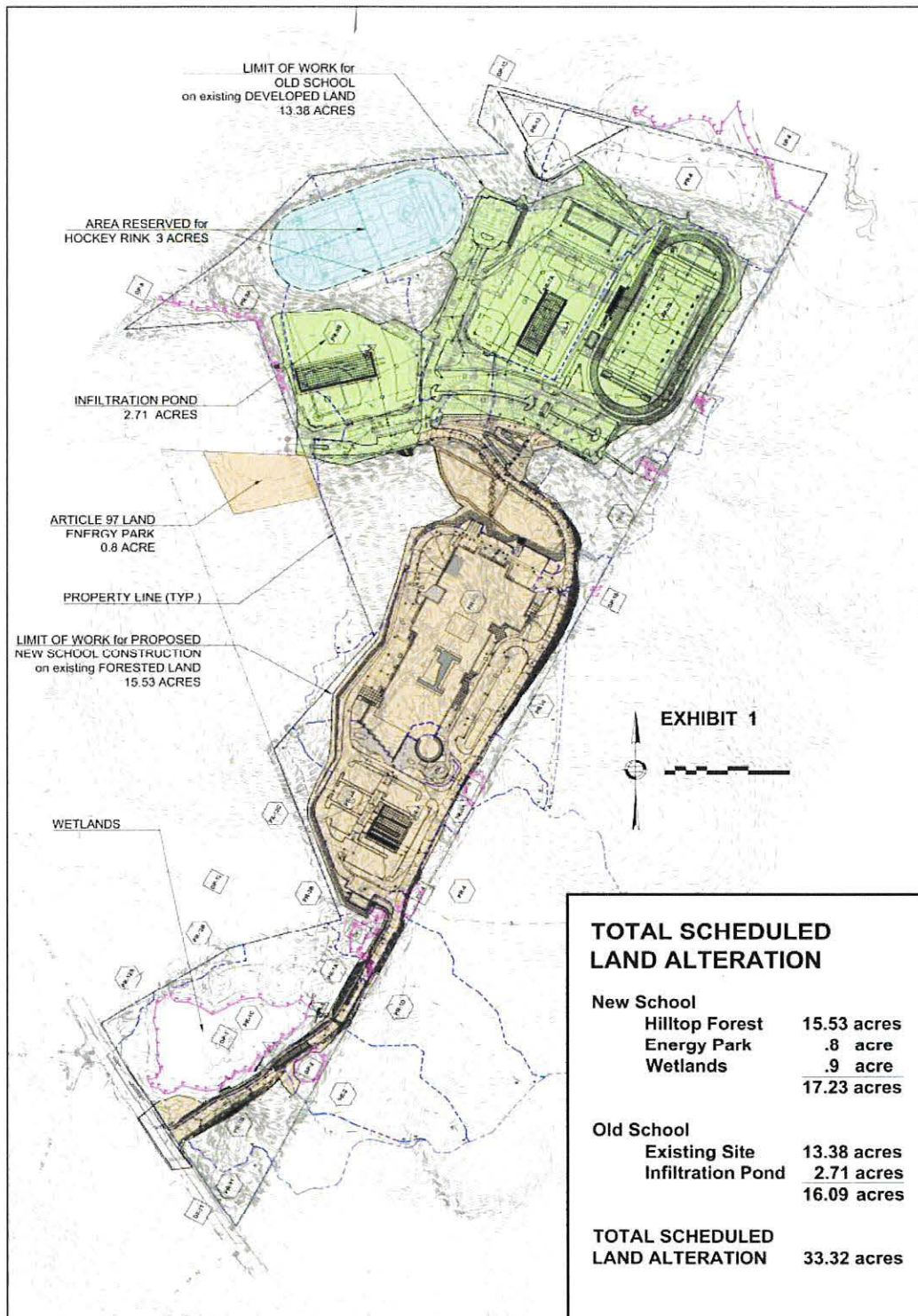
- The review threshold for land alteration of 25 acres will be exceeded given the extent of Scheduled Land Alteration at the project site is at least 29.7 acres, with another 3 acres for the future hockey rink.
- The review threshold for use of Article 97 land is exceeded given that Article 97 will be an integral part of this project for construction of the Energy Park housing infrastructure for the new school.
- The review threshold of 5 acres of new impervious surface is exceeded given there is no offset of similar use and character from creation of athletic fields or isolated plantings in parking lots that can possibly replace 10 acres of forest converted to impervious surface.
- Should you somehow find the documentation for exceedance of review thresholds to be inadequate, we provide further evidence that we meet the criteria for a Fail Safe review.

In closing, we respectfully request that you require full MEPA review of this Project, including an Environmental Impact Report, in consideration of the extensive documentation we have provided. Consistent with the authority granted you in 301 CMR 11.00, we ask that you use all feasible means to avoid Damage to the Environment of this historic, irreplaceable, and beloved natural resource of the Commonwealth. **Based on these factors, and to ensure that irreversible Damage to the Environment does not occur at the Project site, we call upon you to notify the Proponent that no work can commence on the Project site pending your review of the Project.**

Sincerely,

Christine L. Rioux, MS, PhD (on behalf of 10 Petitioners)

Attachment 1 - Total Land Alteration



Attachment 2 - Justification for Inclusion of Hockey Rink Acreage in Land Alteration and Impervious Surface Calculations

In their reply to our submission, the Proponents state "The hockey rink referenced in the Petition was an early design alternative that did not become part of the Project. Id. at 14. It is not part of the scope of work that was approved by the MSBA, is not being funded, and there is no present intention on the part of the District to construct a hockey rink."

Development of a hockey rink (or athletic facility) on the existing football field is an undeniable future plan for this site that has been repeatedly stated to MSBA.¹ The land on which this facility would be built, estimated as 3 acres, must be included in both the calculation of land alteration and impervious surface per MEPA restrictions to **segmentation** (301 CMR 11.01(2)). We have compiled an extensive historical archive which documents the intention to build a hockey rink on land within the ~60-acre project site. While it is not part of the scope of work that was approved by the MSBA, and is not being funded by MSBA, the future plan for the hockey rink had an undeniable influence on the selection of the hilltop site for the new school. NEMT Building Committee minutes and presentations leading up to the vote for the hilltop site (location C3) and documents submitted to MSBA show and state that the preference for C3 was to reserve the alternative school site (C2) for future recreational use. Our January 27, 2023 MEPA submission shows three such examples of presentations from 2020, 2021 and 2022 with the hockey rink within the 60 acre project site. There are many more examples.

If the land associated with the hockey rink is not counted as part of the land alteration and impervious surface estimates, it must be emphatically stated to MEPA that it will be restricted from such development.

¹-12/21/20 PMA Final Evaluation of Alternatives to MSBA Report <https://northeastbuildingproject.com/wp-content/uploads/sites/199/2021/01/3.3.3-Final-Evaluation-of-Alternatives-Narrative.pdf>

"The district gains additional athletic fields with this option and maintains the potential of reserving the current football field/ track (C2) for future development as a hockey rink."

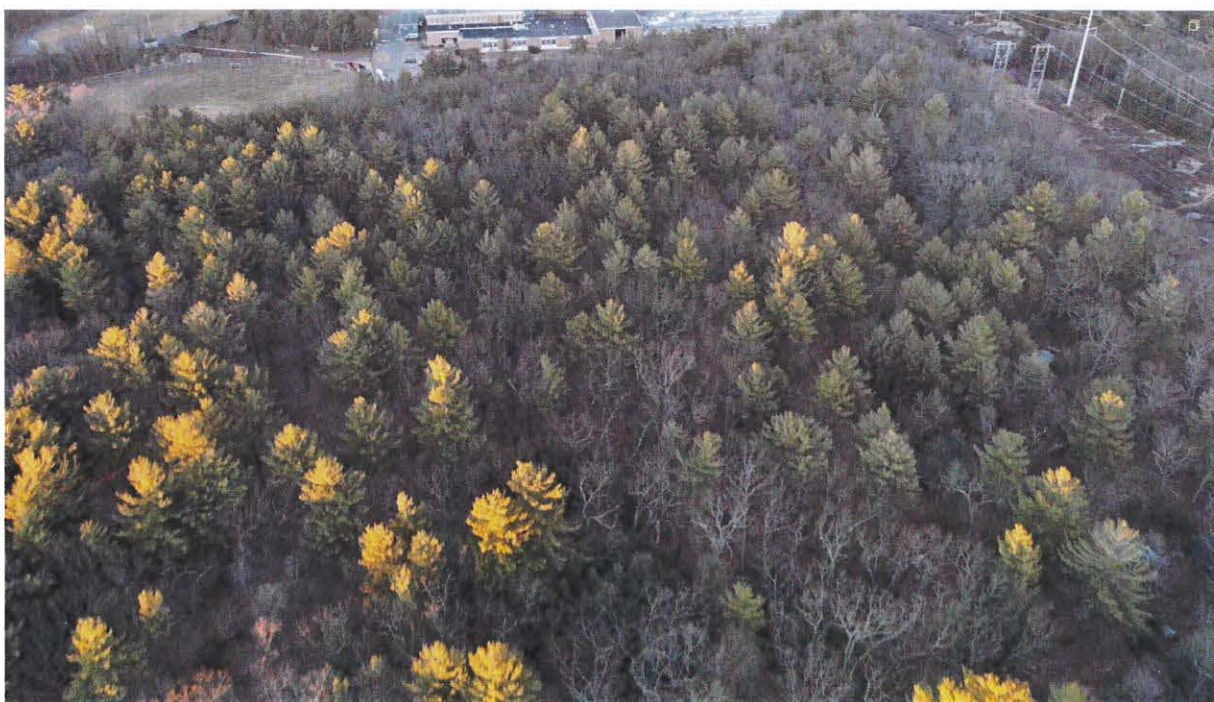
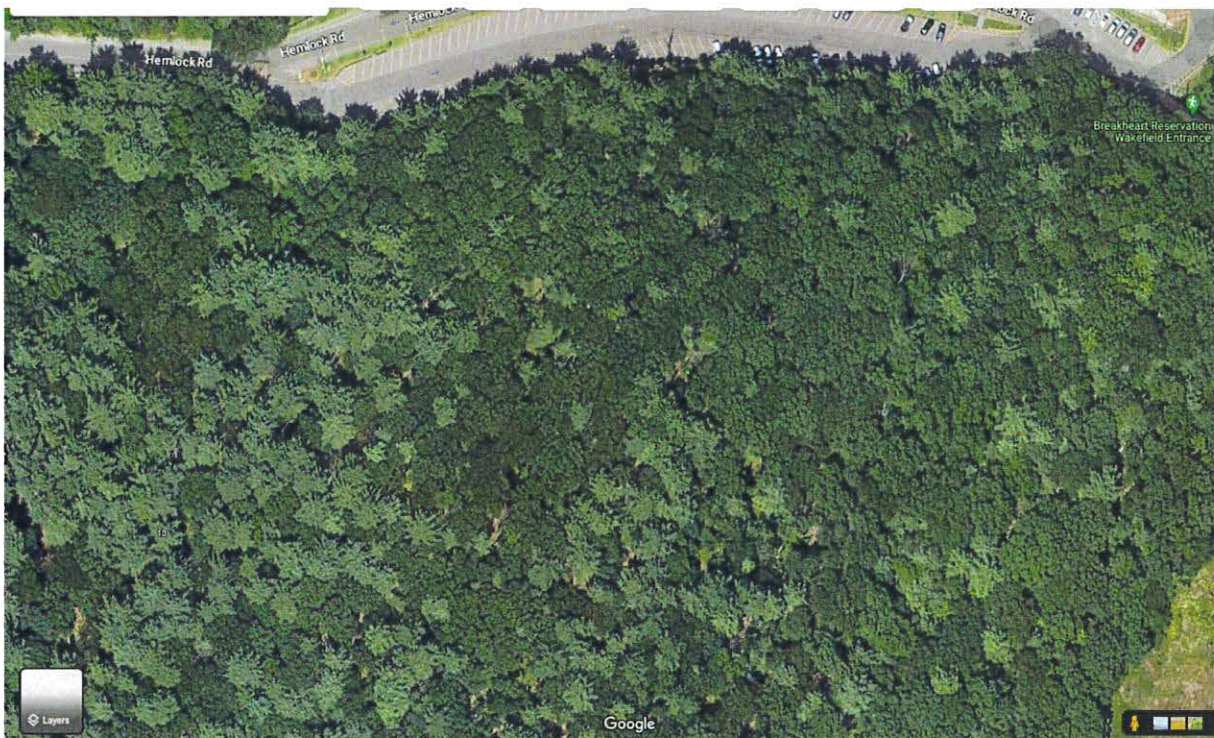
-12/23/20 https://northeastbuildingproject.com/wp-content/uploads/sites/199/2021/12/4.1.2-01b_Response-to-MSBA-PSR-Review.pdf
Page 11 MSBA Response to Comment -5i) The new football field and track is replacing the existing field and track that is inaccessible, in poor condition, and is being reserved for future recreational development (outside of this Project).

- 03/30/21 Meeting with the Wakefield Permanent Building Committee: OPM Kevin Nigro states:

"To coordinate some efforts with Steve Maio who's on our building committee ... we also decided to carve out a little piece of property for maybe a future project. The check and balance is that Steve Maio is on the building committee ... there's been some desire for the two entities to maybe collaborate on a project in the future that we've set aside again with input from Steve Maio." (Slide with future hockey being shown as he speaks.)

- 11/6/21 Wakefield Fall Town meeting. Superintendent DiBarri states: "Mr. Maio and I talk about what's been up there for 50 years and we haven't taken advantage of collaborating so in recent years the collaboration on fields between Wakefield and northeast is going to be enormous."

Attachment 3 - Aerial View of a part of the Core Forest Habitat



(Photos courtesy of citizen scientists)

Attachment 4 – Endangered Hentz’s Red-bellied Tiger Beetle photographed on the site of the Proposed New School (Hilltop site)



Attachment 4 A group of citizen scientists have documented an active population of Hentz’s Red-bellied Tiger Beetle (HRBTB) and submitted their observations to NHESP site and iNaturalist last summer. The Oak-Pine Forest at NEMT serves as a Priority Habitat for the HRBTB, a MESA listed threatened species endemic to the region.

- 1) An individual on a bedrock outcrop in the forest with mature pine trees in the background.
- 2) The bedrock outcrop where a population of HRBTB were photographed.
- 3) A close-up view of an individual with elytral maculations for background-matching camouflage
- 4) A close-up view of an HRBTB.

(Photos courtesy of citizen scientists)



Michael P. McCarthy, Esq. General Counsel
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March 16, 2023

Tori Kim
MEPA Director
Executive Office of Energy and
Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Re: Wakefield Municipal Light Department Energy Park, Hemlock Road, Wakefield MA

Dear Director Kim:

On behalf of the Wakefield Municipal Light & Gas Department ("WMGLD"), I take this opportunity to respond to certain representations contained correspondence to you dated March 13, 2023, from Ms. Christine Rioux ("Rioux Correspondence"), relating to what is referred to as the Northeast Metropolitan Regional Vocational High School ("NEMT") construction project (the "Project") located at 100 Hemlock Road, Wakefield, Massachusetts.

As it relates to the WMGLD, the Rioux Correspondence contains inaccuracies that we seek to correct.

Specifically, on page 2 of the Rioux Correspondence, the author states or implies that the “energy park” is a result of a “partnership” between the NEMT and WMGLD and the energy park is being built “in its proposed location because of the new vocational school.” The use of the word “partnership” by the WMGLD in this context refers to the willingness of the vocational school representatives to utilize an all-electric design rather than continuing, as present, to use natural gas as fuel. As such the WMGLD and NEMT are partners in energy conservation just as the WMGLD and Wakefield High School representatives are partnering to ensure that the new Wakefield High School, which was approved in a March 11, 2023, special election, will be all-electric. None of the referenced parties are project partners either in the new schools or the energy park.

In fact, assuming approval by the Massachusetts legislature under a pending home rule petition, the energy park will be built in the proposed location for the new Wakefield High School whether or not the NEMT is constructed.

Thank you for the opportunity to comment on this matter. Please feel free to reach out to the undersigned if we may of any assistance to you.

Very truly yours,

Michael P. McCarthy

Michael P. McCarthy, Esq.,
General Counsel



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Executive Office of Energy and Environmental Affairs
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March 23, 2023

Christine L. Rioux, MS, PhD
22 Woodland Rd
Wakefield MA 01880
Email: Christinerioux2017@gmail.com

Re: Northeast Metropolitan Regional Vocational Technical High School Project

Dear Ms. Rioux,

On behalf of Secretary Rebecca Tepper, I write to respond to the petition submitted by you on January 27, 2023 (the "Petition"),¹ on behalf of ten signatories including yourself, requesting that the Secretary require review of the above-referenced project (the "Project") under the Massachusetts Environmental Policy Act (MEPA) and implementing regulations at 301 CMR 11.00 et seq. Consistent with the fail-safe provisions at 301 CMR 11.04(2), the Petition was forwarded to the Proponent, the Northeast Metropolitan Regional Vocational High School District (the "Proponent" or "District"), and responses were received from the Proponent on March 3, 14, and 21, 2023. The Petition was also published in the February 8, 2023 Environmental Monitor for a 20-day public comment period, which was extended with the Proponent's consent until March 3, 2023. I received 278 public comments² on the Petition, and you provided supplemental information on March 13, 14, and 17, 2023.

¹ Your submission is entitled, "Petition for Fail-Safe Review and Project Changes that Exceed Review Thresholds," and was signed by ten individuals as follows: Christine L. Rioux; Linda Ireland; Karen Johnson; Paul Rybicki; Bob Brooks; Bronwyn Della-Volpe; Sasha Simone; Robin Bergman; Brian Thomson; and Lee Farrington.

² Public comments submitted through the MEPA public comments portal can be viewed at <https://eeaonline.eea.state.ma.us/EEA/PublicComment/Landing/>.

Background

The Project was the subject of a prior advisory ruling issued by this Office on May 26, 2022 (the “May 2022 ruling”), which found that MEPA review was not required at that time because, while “Agency Action” was required, the Project did not meet or exceed any MEPA review thresholds under 301 CMR 11.03. Your Petition, which is styled, “Petition for Fail-Safe Review and Project Changes that Exceed Review Thresholds,” now seeks review of the Project under the fail-safe provisions at 301 CMR 11.04, and also asserts that project changes made since the time of the May 2022 ruling implicate at least two MEPA review thresholds. These arguments are discussed below.

As summarized in the May 2022 ruling, the Project involves the replacement of the existing 1,256 student Northeast Metropolitan Regional Vocational High School with a new high school on the same 59-acre parcel of land. In anticipation of future student growth, the new high school will include space for 1,600 students. The Project has received funding approval from the Massachusetts School Building Authority (“MSBA”). Both the Petition and the prior request for advisory ruling, which was submitted by the Friends of Wakefield’s Northeast Metro Tech Forest, object to the location of the proposed new high school atop a hill that the Petition refers to as “an undeveloped hillside area,” “wooded with a significant amount of ledge outcroppings,” which will require “creation of a flat building pad through a mass tree-clearing and blasting operation in an early site enabling phase.”

As previously described, the site was chosen from among 30 options evaluated during a multi-year “MSBA Feasibility Study phase.” The selection process was evaluated and approved by the District’s Building Committee and the MSBA. The Proponent indicates that, on January 25, 2022, registered voters within the 12 sending communities of the District (Chelsea, Malden, Melrose, North Reading, Reading, Revere, Saugus, Stoneham, Wakefield, Winchester, Winthrop, and Woburn) elected to approve the borrowing of \$317,422,620 to pay the costs of designing, constructing, and furnishing the new school and related athletic facilities. The Proponent also executed a Project Funding Agreement (PFA) with MSBA on March 24, 2022, and a Notice of Intent was submitted to the Wakefield Conservation Commission on September 22, 2022. The Proponent indicates that construction will begin upon issuance of an Order of Conditions (OOC) by the Wakefield Conservation Commission.

Determination

Your Petition seeks a ruling that the Project is subject to review under the Massachusetts Environmental Policy Act (“MEPA”) and implementing regulations at 301 CMR 11.00 et seq.

MEPA Review Thresholds

MEPA review is required if there is “Agency Action” for a Project, and one or more review thresholds in 301 CMR 11.03 are triggered. See 301 CMR 11.01(2)(a)-(b). As indicated above, the May 2022 ruling found that “Agency Action” was required in the form of MSBA funding, but that no MEPA review thresholds were triggered. However, the ruling noted that, “if any thresholds (other than 301 CMR 11.0(3)(2)(b)2.) were to be met or exceeded due to project changes made at a future time, MEPA review would be required.”

The following review thresholds were analyzed in the May 2022 ruling:

- 11.0(3)(1)(b)2. *Creation of five or more acres of impervious area.*
- 11.03(6)(b)1. *Unless the Project consists solely of an internal or on-site roadway or is located entirely on the site of a non-roadway Project: a. construction of a New roadway one-quarter or more miles in length; or b. widening of an existing roadway by four or more feet for one-half or more miles.*
- 11.0(3)(1)(b)1. *Direct alteration of 25 or more acres of land, unless the Project is consistent with an approved conservation farm plan or forest cutting plan or other similar generally accepted agricultural or forestry practices.*

As discussed in the May 2022 ruling, the review threshold at 301 CMR 11.03(3)(2)(b)2., *Greater than two acres of disturbance of designated priority habitat, as defined in 321 CMR 10.02, that results in a take of a state-listed endangered or threatened species or species of special concern*, is inapplicable under Natural Heritage and Endangered Species Program (NHESP) regulations, which allow project proponents to seek an exemption from NHESP permitting if rare species mapping is revised after the project reaches certain permitting milestones. Here, the mapping was revised on August 1, 2021 to delineate portions of the site as habitat for the Hentz's Red-bellied Tiger Beetle, and the requisite milestones were reached as of that date. However, if MEPA review were required for other independent reasons, then this NHESP regulatory provision would not apply to exempt the Project.

The Petition argues that project changes have occurred since the May 2022 ruling, such that two MEPA review thresholds are now implicated (and, in turn, the rare species threshold at 301 CMR 11.03(3)(2)(b)2.):

- 11.0(3)(1)(b)1. *Direct alteration of 25 or more acres of land, unless the Project is consistent with an approved conservation farm plan or forest cutting plan or other similar generally accepted agricultural or forestry practices.*
- 11.0(3)(1)(b)3. *Disposition or change in use of land or an interest in land subject to Article 97 of the Amendments to the Constitution of the Commonwealth, unless the Secretary waives or modifies the replacement land requirement pursuant to M.G.L. c. 3, § 5A and its implementing regulations.*

a. Land Alteration

With respect to land alteration, the Petition provides a range of numbers associated with proposed work at the site of both the new and existing schools. In a "Final Reply" submitted on March 13, 2023, you provided a site plan that you indicate was prepared by a registered architect. According to this site plan, the total limit of work associated with the old school is reported to be 13.38 acres.³ You assert that the limit of work at the new school is 15.53 acres.⁴

³ The Proponent has confirmed that a 3-acre hockey rink included in the Petition is not proposed as part of this Project. You also assert that 2.71 acres associated with an "infiltration pond" should be included; however, this is a stormwater feature that will be installed underneath a baseball field, which will be restored to original conditions.

⁴ You also include the area associated with the Article 97 disposition for the energy park (0.8 acres) and additional wetland buffer zone areas that you assert will be impacted by stormwater runoff from the site (0.9 acres). However, the Article 97

The Proponent, for its part, acknowledges that minor design changes have occurred since the time of the May 2022 ruling, as a result of consultation with the Wakefield Conservation Commission. The Proponent indicates that the limit of work at the old school is 13.7 acres (no change from May 2022 ruling), and that the limit of work at the new school is now 14.05 acres (increased from 13.57 acres in the May 2022 ruling). In its March 21 response, the Proponent clarified that the total acreage at the new school includes an additional reduction in forest clearing by 0.35 acres.

Based on this information, the limit of work associated with the old school can be conservatively estimated to be 13.7 acres (higher of the Petition's and Proponent's numbers). As noted by the Proponent, the May 2022 ruling indicated that certain "like for like" replacements (e.g., parking replaced with parking) totaling 3.25 acres could be deducted, though the Proponent argues that other areas (such as landscaped areas to remain landscaped) could also qualify as "like for like" replacements. The Final Reply submitted by you acknowledges that 3.65 acres would qualify as a "Valid Area of Replacement of Similar [U]se and Character," which is higher than the deduction sought by the Proponent. Thus, based on the Proponent's (more conservative) numbers, total land alteration at the site of the old school is estimated to be 10.45 acres (13.7 acres minus 3.25 acres).

As for the new school, the Final Reply suggests that an area of about 1 acre will be altered by the "construction of ramps and sidewalks that will require extensive surface and subsurface disturbance and earth moving for the installation of steel beams to support [a] 1100 sq ft ramp." You indicate that this area was omitted from the Proponent's accounting in Attachment 4 of its March 13 letter. In its March 21 response, the Proponent indicates that its site plan, which is stamped by the District's registered professional engineers and landscape architects, is the official site plan for the Project submitted to the Wakefield Conservation Commission and the Zoning Board of Appeals. The Proponent reiterates that no work is proposed at the 1-acre area referenced in the Final Reply, as the elevated ramp and stair system proposed to connect the old and new schools is designed to leave trees and ledge outcroppings intact. As noted, the March 21 response indicates that forest clearing will be reduced by an additional 0.35 acres, bringing the total land alteration for the Project to 24.5 acres (14.05 acres at new school plus 10.45 acres at old school site).⁵

I acknowledge that this number is very close to the 25-acre land alteration threshold at 301 CMR 11.03(1)(b)1. The Proponent is advised that even minor refinements to the final design could trigger this threshold in the future, and may (yet again) raise questions about the need for MEPA review during subsequent permitting when additional Agency Actions may be required. The Proponent is strongly encouraged to continue to minimize land alteration for the Project, particularly in areas where additional trees could be preserved. I also note the Petition's argument that the MEPA Office should revisit its interpretation of the word "alteration," and construe it to include any change in the "physical condition of the land including, but not limited to, clearing, grubbing, excavation, filling, grading, surfacing, paving, compaction, stockpiling, and stabilizing." This issue could be addressed as part of future updates

parcel is not deemed a part of this Project for the reasons stated below; additionally, indirect impacts on areas outside the limit of work for a project, while relevant for assessing project impacts generally, are not considered when determining applicability of MEPA review thresholds.

⁵ I note that, with the 0.35-acre reduction, even the numbers in the Final Reply would show land alteration below 25 acres—i.e., 13.38 acres (old school) – 3.65 acres of "valid" deduction + 15.53 acres (new school) – 0.35 acres = 24.91 acres.

to MEPA regulations and policies. As with the May 2022 ruling, this determination shall apply only to the facts and circumstances of this Project.

b. Article 97

The Petition also notes that the Wakefield Municipal Gas and Light Department (WMGLD) has proposed construction of an “energy park” on land that is protected under article 97 of the amendments to the Massachusetts constitution (“Article 97”), and that the energy park will serve the Project at issue. The Petition argues that conversion of this Article 97 land triggers the MEPA review threshold at 301 CMR 11.0(3)(1)(b)3., and should be deemed to be part of the Project under anti-segmentation principles. MEPA regulations at 301 CMR 11.01(2)(c) seek to ensure that a project is not phased or segmented to evade, defer or curtail MEPA review. To that end, the Secretary must consider the entirety of a project, including any likely future expansion, and not separate phases or segments thereof, in determining whether a project is subject to MEPA jurisdiction or meets or exceeds any review thresholds.

Here, the Proponent argues that the energy park is a separate initiative by the WMGLD, and is not part of a common plan with the Project. The Proponent indicates that the energy park is intended to serve multiple customers, and that the Project does not depend on completion of the energy park as its energy needs can be met by other means. While the Proponent questions whether the energy park will be located on Article 97 land, comments from WMGLD confirm that the land to be used for the energy park was originally obtained for “park purposes” by the Town of Wakefield, and is therefore protected under Article 97. WMGLD supports the Proponent’s position that the energy park is a separate and independent undertaking from the Project, and that the Project does not depend on completion of the energy park. Based on this input, I find that the MEPA anti-segmentation provisions do not require treatment of the energy park and the Project as a common enterprise for purposes of determining the applicability of MEPA review thresholds.

Based on the foregoing, I find that the Project as revised does not meet or exceed any MEPA review thresholds. Accordingly, I must assess whether fail-safe review is warranted.

Fail-Safe Review

The fail-safe provisions at 301 CMR 11.04(1) state that “[u]pon written petition by . . . ten or more Persons, or at the initiative of the Secretary, the Secretary may require a Proponent to file an ENF or undergo other MEPA review for a proposed program, regulations, policy, or other Project that does not meet or exceed any review thresholds unless all Agency Actions for the Project have been taken, provided that the Secretary finds in the decision on the petition or initiative that:

- (a) the Project is subject to MEPA jurisdiction;
- (b) the Project has the potential to cause Damage to the Environment and the potential Damage to the Environment either:
 - 1. could not reasonably have been foreseen prior to or when 301 CMR 11.00 was promulgated; or
 - 2. would be caused by a circumstance or combination of circumstances that individually would not ordinarily cause Damage to the Environment; and
- (c) requiring the filing of an ENF and other compliance with MEPA and 301 CMR 11.00;

1. is essential to avoid or minimize Damage to the Environment; and
2. will not result in an undue hardship for the Proponent.”

I may invoke fail-safe review only if all of the requirements of 301 CMR 11.04(1)(a)-(c) are met.

a. MEPA Jurisdiction

As an initial matter, the Proponent asserts that MEPA jurisdiction no longer exists for the Project, as all Agency Actions have been taken. Specifically, the Proponent indicates that it has executed a Project Funding Agreement (PFA) with MSBA, which constitutes the final approval for the Project. MEPA regulations define Agency Action, “[i]n the case of a Project undertaken by a Person, [as] any formal and final action taken by an Agency in accordance with applicable statutes and regulations that grants a Permit, provides Financial Assistance, or closes a Land Transfer.” 301 CMR 11.02 (emphasis added). However, 301 CMR 11.12 also defines Agency responsibilities under MEPA, including an obligation, as a prerequisite to taking Agency Action, to “determine in a timely manner whether the Project requires MEPA review.” Id. 11.12(3)(a). The Proponent indicates that an assessment of MEPA review thresholds was performed during the feasibility study phase, though the PFA was ultimately signed on March 24, 2022, when a prior request for an advisory ruling as to the need for MEPA review was still pending. MEPA regulations provide that, “[i]f an Agency takes Agency Action without due compliance with MEPA and 301 CMR 11.00, the Secretary may thereafter require MEPA review, and may require the Agency to reconsider the Agency Action and any conditions thereof following completion of MEPA review.” 301 CMR 11.12(6).⁶

I need not reach the issue of whether Agency Action remains outstanding, since it appears likely that the Project will undergo additional permitting, including through the pending application for an OOC from the Wakefield Conservation Commission. While a local OOC does not qualify as Agency Action, an appeal of the OOC would result in a Superseding Order of Conditions from the Massachusetts Department of Environmental Protection (MassDEP), which is an Agency Action for MEPA purposes. The analysis below addresses whether the Project meets other applicable criteria for fail-safe review, even if Agency Action remains outstanding.

b. Damage to the Environment

To qualify for fail-safe review, the petitioner must satisfy the high standard set forth in 301 CMR 11.04(1)(b) to demonstrate that the Project has the potential to cause Damage to the Environment and that such potential: (i) could not reasonably have been foreseen prior to or when 301 CMR 11.00 was promulgated; or (ii) would be caused by a circumstance or combination of circumstances that individually would not ordinarily cause Damage to the Environment.

⁶ The Proponent’s response erroneously cites to a January 4, 2023 ruling on a petition for fail-safe review submitted for a different project (Malden artificial turf field), indicating that the ruling rejected the fail-safe petition because all Agency Actions had been taken. To the contrary, the ruling declined to reach the issue of whether Agency Actions (such as action by the Malden Redevelopment Authority) were still pending (see p. 3), since it was clear that MEPA review thresholds were exceeded; the project was deemed ineligible for fail-safe review on this basis (see p. 6).

MEPA regulations define “Damage to the Environment” to include a wide range of environmental destruction or impairment, but does not include “insignificant” damage.⁷ As a general matter, MEPA review thresholds identify “categories of Projects or aspects thereof of a nature, size or location that are likely, directly or indirectly, to cause [significant] Damage to the Environment.” 301 CMR 11.03. Thus, any project that meets or exceeds review thresholds is presumed likely to cause significant damage, and must undergo MEPA review. However, projects that do not exceed thresholds are not presumed likely to cause significant damage and are subject to fail-safe review only if I find that the conditions in 301 CMR 11.04(1)(b) are met.

As applied here, the Petition discusses a lengthy list of potential impacts from the Project, and argues that these impacts were not reasonably foreseen as of July 1, 1998.⁸ The listed impacts include construction period activity (tree removal and blasting), impacts to cultural sites, stormwater runoff, disturbance of rare species habitat and soils, wetlands and buffer zone impacts, water quality issues associated with stormwater runoff and construction period activity, increases in flooding and storm flows from new impervious surfaces, and reduction in groundwater levels associated with stormwater runoff. While I appreciate the thoughtful description of potential impacts and the concerns raised, the listed impacts do not differ materially from those associated with most new development projects. Indeed, MEPA review thresholds explicitly address most impacts—namely, land alteration and impervious area (301 CMR 11.03(1)), rare species (301 CMR 11.03(2)), wetlands (301 CMR 11.03(3)), surface and groundwater discharge (301 CMR 11.03(5)), and historical and archaeological resources (301 CMR 11.03(10)); in addition, other impacts such as stormwater runoff are routinely addressed as part of wetlands permitting. Thus, it cannot be said that these impacts were not reasonably foreseen at the time MEPA regulations were promulgated in 1998. The Petition does not argue, and I cannot find, that these impacts reflect any “circumstance or combination of circumstances” that individually would not cause Damage to the Environment.

As the Petition has not satisfied the criteria for fail-safe review under 301 CMR 11.04(1)(b), I find it unnecessary to determine whether requiring the filing of an ENF (i) is essential to avoid or minimize Damage to the Environment and (ii) will not result in an undue hardship for the Proponent under 301 CMR 11.04(1)(c). As noted above, however, the absence of MEPA review allowed an exemption to rare species permitting that otherwise would have applied after August 1, 2021. In its response, the Proponent commits to minimizing rare species impacts by preserving 1.7 acres of the site under a Conservation Restriction (CR) as habitat for the Hentz’s Red-bellied Tiger Beetle. The area of the CR is described as generally comprised of Oak-Pine forest and isolated wetland, and abuts an off-site utility corridor that contains ample exposed bedrock with full solar exposure and approximately 10 acres of high-quality Beetle habitat. The Proponent indicates that the adjacency of the proposed CR area to the abutting expanse of high-quality habitat will help ensure that the habitat protection measures

⁷ The full definition is as follows: “[a]ny destruction or impairment (not including insignificant damage or impairment), actual or probable, to any of the natural resources of the Commonwealth including, but not limited to, air pollution, GHG emissions, water pollution, improper sewage disposal, pesticide pollution, excessive noise, improper operation of dumping grounds, reduction of groundwater levels, impairment of water quality, increases in flooding or storm water flows, impairment and eutrophication of rivers, streams, flood plains, lakes, ponds or other surface or subsurface water resources, destruction of seashores, dunes, marine resources, underwater archaeological resources, wetlands, open spaces, natural areas, parks, or historic districts or sites.” 301 CMR 11.02.

⁸ Because the fail-safe standard in 301 CMR 11.04(1) was inserted through regulatory amendments made effective on July 1, 1998, I construe the standard as referring to impacts that could not reasonably have been foreseen prior to or on this date.

achieve maximum benefit for the species. In addition, the Proponent indicates that it is committed to establishing, through a newly created Natural and Environmental Science elective at the new vocational school, “a student driven and operated tree farm on District property that will plant and distribute trees to the member communities served by the District.” According to the Proponent, ten of the 12 member communities served by the District contain environmental justice populations, and the program will place special emphasis on plantings within dense urban neighborhoods of gateway member communities. The Proponent has also reached out to the Breakheart Reservation to support its efforts to regrow areas lost last summer to forest fires.

I acknowledge the numerous comments and correspondence that have been submitted, both in support of and against the Project. Many comments addressed the extent of forest clearing on the site. The Proponent indicates that it has taken all feasible measures to minimize the extent of forest clearing, including by reducing the new school building footprint and preserving significant portions of existing forested areas. In total, the Project site contains approximately 33.39 acres of forested area, of which approximately 19.22 acres (57.6%, or approximately 2,845 trees) will be preserved while 14.17 acres (42.4%, or approximately 2,097 trees) will be altered. As noted, the Proponent has committed to preserve an additional 0.35 acres of forested area, which is included in the 19.22-acre estimate above and equates to about 52 additional trees preserved. To mitigate the impacts of tree clearing, the Proponent intends to reuse larger trees in the 18”-26” diameter range that are suitable for repurposing. Current plans call for the District’s students to execute a Logs to Lumber Project, in which they will use a newly acquired sawmill to repurpose select trees into useable building lumber to create projects including benches, picnic tables, storage sheds, dugouts, concession stands and other structures. These projects will be located throughout the 12 member communities to the District.

* * * * *

Based on the foregoing, I find that MEPA review is not required for the Project because, while it may continue to require Agency Actions, it does not meet or exceed any MEPA review thresholds. I also find that fail-safe review is not warranted under 301 CMR 11.04.

If you have any questions regarding this determination, please contact the MEPA Office at MEPA@mass.gov.

Sincerely,

/s/ Tori T. Kim

Tori T. Kim

Assistant Secretary

cc: Adam Kahn, Foley Hoag LLP
Kathleen Brill, Foley Hoag LLP
Christine Nolan, General Counsel, MSBA