

**LAMPKELAW** LLC  
ATTORNEYS AT LAW

**JAMES B. LAMPKE, ESQ., OF COUNSEL**  
115 NORTH STREET, SUITE 3  
HINGHAM, MA 02043  
781-749-9922  
james.lampke@lampkelaw.com

**DANIEL I. LAMPKE, ESQ.**  
100 STATE STREET, SUITE 900  
BOSTON, MA 02109  
617-412-4099  
daniel.lampke@lampkelaw.com

May 3, 2020

Devens Enterprise Commission  
33 Andrews Parkway  
Devens., MA 01434  
Attn: Peter C. Lowitt, Land Use Administrator/Director  
Neil Angus, Principal Planner

Dear Peter and Neil,

I write to follow up on our discussions about ways that signatory evidence of decisions and approvals made by DEC can be more easily signed, especially given the present limitations on in-person meetings and travel.

This arises when DEC might approve a plan or some other decision and it requires the signatures of the Commission. I am not sure of the total extent of your signing practice, but do recall Peter saying that he was authorized to sign off on certain matters after the Board has signed off part of it, which appears to be part of the Level Two process.

There are a few options available. These generally include acting under statutory (including regulatory) authorization to delegate signature authority to someone, general authorization, and electronic signatures. Some of these options depend on the nature of the matter being approved.

While there is a general principle that a Board may delegate to someone (staff, a member, etc.) the authority to sign off on behalf of the Board once the decision has been made, that is subject to any particular laws setting forth a different process.

A. Statutory/regulatory Authorization-

The grant of authorization to someone to sign on behalf of a Board can, depending on the law, be a blanket authority to sign on behalf of the Board or to sign on behalf of the members of the Board- the difference being one is as agent for the Board and the other is pursuant to an authorization granted by each member.

For example, under the subdivision control law, plans and approvals are usually signed off by the Planning Board members. However, the law (G.L. c. 41, sections 81P and 81X) provides that a Planning Board (or a Board performing the functions and duties of a Planning Board, such as the Commission) can authorize a person to sign off on behalf of the majority of the Board that would usually sign off approvals on plans or certificates. To do so, a majority of the Planning Board must sign and transmit to the Registry a statement signed by a majority of the Board the name of the person so authorized. The form I have attached includes such an authorization.

In addition, your enabling law provides in Section 11.5(j) authority to delegate powers to the Land Use Administrator to administer the operation of DEC. Notably it provides that if there is not a clear By-Law or regulation for such action, it can be granted “by vote of seven members of the commission.” This further supports the view that the Commission can make a delegation of this type without there being a specific regulation.

#### B. Custom and Practice-

Similarly, other local agencies which the Commission acts as, such as a Zoning Board of Appeals, a Board of Health, and a Conservation Commission, may designate by vote a person to sign on its behalf. This would also need to be sent to the Registry. The form I have prepared would also cover this delegation.

#### C. Electronic Signatures-

Electronic signatures, although legal for about a decade, is fairly new in terms of use by local boards for its decisions and approvals. Authority for such use is found in G.L. c. 110G, the Uniform Electronic Transactions Act (UETA).

Some Registries will still require “wet” signatures on plans and other documents, thus limiting the utility of electronic signatures. The Land Court part of the Registry will not presently accept for registration documents with electronic signatures.

However, as greater use is being made of electronic signatures, Registries will likely change to be more accommodating to such signatures. Thus, on the form I prepared I included the Commission accepting the provisions of the UETA. You do not have to use it, but it is another option. I expect that its use will increase, particularly in business matters.

Use of the UETA is often done through a third party provider, such as Docu-Sign. Adobe programs have a feature for signatures. In some instances, it can be as simple as someone typing their name in a signature block and indicating that they are signing it under the UETA.

The Chief Title Examiner of the Land Court, who regulates standards for recording or register has issued a memo recently that it cannot be used for documents required to be registered, but is allowable for recorded documents.

If DEC wishes to actually utilize the UETA, that is something that can be looked into further in terms of which program is the best for DEC.

---

The various laws which pertain to DEC, principally its enabling law of c. 498 of the Acts of 1993, 974 CMR, its bylaws and regulations, address various types of approvals that are issued from DEC. These need to be read in conjunction with the statutes that pertain to the local boards the Commission has the authority to act as to ensure that any particular requirements are met when the Commission is acting as a local permitting authority.

Some of these specifically require a certain number of signatures affixed to the document evidencing approval. For example, under the Level Two permit process the approval must be evidenced by the signatures of at least 7 Commissioners. The form I prepared would authorize the Director to sign on behalf of the Commission. In the event it becomes necessary to have a document authorizing the Director to sign the individual names of the Commissioners, I have also included in the form authority for such.

Here are motions, which are also reflected in the attached form.

1. Motion: To authorize Peter C. Lowitt, Land Use Administrator/Director, to physically sign Devens Enterprise Commission documents on behalf of individual Devens Enterprise Commission members reflecting official action of the Devens Enterprise Commission.
2. Motion: To authorize Peter C. Lowitt, Land Use Administrator/Director, to physically sign Devens Enterprise Commission documents on behalf of the Devens Enterprise Commission reflecting official action of the Devens Enterprise Commission .
3. Motion: That the Devens Enterprise Commission recognizes, adopts, and accepts the provisions of G.L. c. 110G, "The Uniform Electronic Transactions Act" authorizing the use of electronic signatures on documents.
4. Motion: That the Devens Enterprise Commission, in accordance with G.L. c. 41, section 81P and section 81X, and any other authority, vote to authorize Peter C. Lowitt, Land Use Administrator/Director, to endorse plans, certificates, actions or other documents under the Subdivision Control Law reflecting official action of the Devens Enterprise Commission

When the Director is signing under the authority granted by the Commission, various statements of authority can be used.

If he is signing the individual names of the Commissioners, a satisfactory statement along the lines of this could be used- "I, Peter C. Lowitt , Land Use Administrator/Director of the Devens Enterprise Commission, pursuant to the authority granted to me by the members of the Commission as evidenced by a vote on file with the Registry of Deeds [insert Book and Page if Registry requires it recorded], affix their signatures to this document following the approval of the action set forth."

For those matters that do not require the individual signatures of the Commissioners, the evidence of approval can be stated along the lines of "I, Peter C. Lowitt , Land Use Administrator/Director of the Devens Enterprise Commission, pursuant to the authority granted to me by the Commission as evidenced by a vote on file with the Registry of Deeds [insert Book and Page if Registry requires it recorded], issue this document on its behalf following the approval of the action set forth."

Authorization for someone to sign on behalf of the Commission is contemplated by the various DEC laws. Chapter 498 of the Acts of 1993 allows DEC to adopt regulations (albeit under G.L. c. 30A) and requires a hearing for regulations. Section 11.5 also appears to contemplate DEC taking normal local government actions. For example, Section 11.5(a) provides DEC can exercise typical local government rights; Section 11.5(i) provides DEC can adopt rules,

regulations, and bylaws; Section 11.5(j) specifically provides DEC can employ a Land Use Administrator and “delegate certain powers” to the Land Use Administrator by a vote of seven Commissioners.

I note that the By-laws (Chapter II.E.2 and 3) allow the Commission, *by regulation*, to delegate to the Land Use Administrator authority to sign certain documents for purposes of reflecting the approval of the Commission. This would suggest that a regulation authorizing the Land Use Administrator to sign those documents must be done by a regulation. Adopting a regulation can be a time consuming process and certainly does not help in the present situation.

Given the situation, and the common practice amongst local governmental entities to authorize staff to sign certain documents as well as the process noted above (especially Section 11.5(j) of c. 498 of the Acts of 1993), the Commission could so authorize staff. The signing of the document by someone is akin to a ministerial act. The substantive act is what was voted and approved by the Commission. The signing of the document, once the action has been approved, is more ministerial.

At some point you might want to review the pertinent laws regarding DEC and see if any need to be updated or otherwise changed. The references to delegation by regulation should be considered for a possible clarification, as it seems onerous to interpret it to mean that a delegation of authority to sign documents must be done by a specific regulation.

I trust that this addresses your inquiry and is helpful to you. The issue of handling the public’s business remotely, which relates to the subject of this memo, is fast paced and often changing.

If you have further questions, etc., please do not hesitate to contact me.

Thank you for the opportunity to be of service.

Very truly yours,  
Jim  
James B. Lampke  
c- 617-285-4561  
JBL/1  
Encl.