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January 29, 2007

CERTIFICATE OF THE SECRETARY OF ENVIRONMENTAL AFFAIRS
ON THE
EXPANDED ENVIRONMENTAL NOTIFICATION FORM

PROJECT NAME : Taunton River Pilot Wetlands Mitigation Bank
PROJECT MUNICIPALITY : Hanson
PROJECT WATERSHED : Taunton
EOEA NUMBER : 13916
PROJECT PROPONENT : BlueWave Capital, LLC
DATE NOTICED IN MONITOR : November 22, 2006

Pursuant to the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-62H) and Section 11.03 of the MEPA regulations (301 CMR 11.00), I hereby determine that this project **requires** the preparation of a mandatory Environmental Impact Report (EIR).

As described in the Expanded Environmental Notification Form (EENF), the project consists of a pilot wetlands mitigation bank in the Taunton River Watershed. The proposed pilot wetlands mitigation bank (the Bank) has been established as directed by Section 89 of Chapter 291 of the Massachusetts Acts of 2004, enacted on August 10, 2004. The Bank project site is approximately 16.2 acres in area, located in the Town of Hanson, within the Burrage Pond Wildlife Management Area, located off Hawks Avenue. A wetlands mitigation bank is a wetlands restoration, creation or enhancement project that is undertaken in order to compensate for losses to wetlands resources in a defined geographic area, in this case the Taunton River watershed, by providing compensatory mitigation for adverse impacts to wetlands that are permitted by local, state or federal regulatory agencies. The bank sells "credits" created through the bank's restoration efforts and the purchasers use these credits to comply with permit requirements and offset impacts to wetlands. Credits may also be purchased as part of a response to enforcement actions taken by local, state or federal regulators.

The EENF states that the purpose of the Bank is to replace wetland functions that will be unavoidably lost as a result of activities authorized under the Clean Water Act and/or Massachusetts Wetlands Protection Act (WPA) or activities that are the subject of an

enforcement action. Furthermore, the proponent has stated that the goals of the Bank are to “achieve greater efficiency in wetlands permitting, enhance environmental outcomes associated with wetlands enforcement options and provide improvement in multiple functions and values attributable to wetlands in the Taunton River watershed.”

The Bank will be comprised of 16.2 acres within the larger 1700 acre Burrage Pond Wildlife Management Area, owned and operated by the Massachusetts Division of Fisheries and Wildlife. The Bank site presently consists of abandoned cranberry bogs, sparsely vegetated uplands, manmade channels and marginal wetlands, as well as more valuable emergent and wooded wetlands that will not be disturbed by the proposed work. Upon completion of the project, approximately 9.3 acres of disturbed upland area are expected to become wetland, and 16.1 acres of disturbed wetland area (abandoned cranberry bogs and marginal vegetated wetlands likely created during cranberry bog operations) are intended to be enhanced. The creation and enhancement of Bank wetlands will result in the alteration of 25 acres of land, the alteration of 700,700 square feet (sf) of Bordering Vegetated Wetlands (BVW), and the alteration of 14,400 linear feet of bank (13,040 of which is bog canal).

This project is subject to a mandatory EIR pursuant to Section 11.03(3)(a)(1)(a) of the MEPA regulations because it requires a state permit and consists of alteration of one or more acres of BVW. The project also exceeds various ENF thresholds associated with the alteration of inland bank (Section 11.03(3)(b)(1)(b)), direct alteration of 25 or more acres of land (Section 11.03(b)(1)), and the potential taking of an endangered or threatened species or species of special concern as mapped under the Massachusetts Endangered Species Act (MESA) regulations (Section 11.03(2)(b)(2)). The project will require numerous State, Federal and local permits including: an United States Army Corps of Engineers (U.S. ACOE) review of Prospectus for Wetlands Bank, a U.S. ACOE Section 404 Permit, a National Pollutant Discharge Elimination System (NPDES) Construction General Permit from the United States Environmental Protection Agency (U.S. EPA), a 401 Water Quality Certification (401 WQC) from the Massachusetts Department of Environmental Protection (MassDEP), and an Order of Conditions from the Hanson Conservation Commission, and in the case of an appeal, a Superseding Order of Conditions from MassDEP. The project also requires review of Restoration and Monitoring Plans under Chapter 291 of the Acts of 2004 and Agreement among the Bank Sponsor, EOE and EOT under Chapter 291 of the Acts of 2004.

The proponent has indicated that it is presently not seeking financial assistance from the Commonwealth for the project. Additionally, while the Bank will not require a land transfer, due to its placement on a State owned property managed by a State agency MEPA jurisdiction will be broad. However, given the nature of the project, the primary focus of the Single EIR scope will remain on wetlands impacts.

Special Review Procedure

Pursuant to Section 11.09 of the MEPA regulations, a Certificate establishing a Special Review Procedure (SRP) for this project was issued on November 24, 2006. This SRP was issued to provide an opportunity for coordinated review and to consolidate the MEPA review with other environmental or development review agencies.¹ In accordance with the SRP, I am issuing this Certificate on the EENF with a scope for a Single Environmental Impact Report (Single EIR). The proponent should prepare a Single EIR in fulfillment of the requirements of Section 11.03 of the MEPA regulations.

SCOPE

General

The Single EIR should follow the general guidance for outline and content contained in section 11.07 of the MEPA regulations, as modified by this Certificate, and in accordance with the Special Review Procedure established for the project. The Bank is proposed as a pilot project to assist in the assessment of wetlands banking as an effective regulatory tool to mitigate environmental impacts associated with certain types of construction activities. Therefore, I encourage the proponent to consider the data gathering goals of this pilot project when preparing the Single EIR and strive to create objective and methodologically sound evaluation criteria and monitoring programs.

The Bank Sponsor has indicated that many of the documents required for the creation and permitting of the Bank, including a Restoration Plan, Monitoring Plan, financing agreements, a Prospectus and a Mitigation Banking Instrument, overlap with topic areas that should be addressed within the MEPA review process. The Certificate establishing a Special Review Procedure for this project allows administrative flexibility to accommodate these materials. Therefore, the proponent may include excerpts or entire reports from other concurrent permitting processes, so long as they address the specific scope areas outlined within this Certificate.

Project Description and Permitting

The Single EIR should include a detailed description of the proposed project and identify anticipated project phases. The Single EIR should provide clear baseline data to document existing conditions related to wetland resource areas (including potential vernal pools), wildlife

¹ The term "coordinated review" as used in this Certificate and in the MEPA regulations refers to the practice of allowing a single set of documents to serve simultaneously for more than one environmental review process, concurrent with that conducted under MEPA. In common usage, the practice is sometimes referred to as "joint review," although this term is misleading since federal and state agencies retain independent authority to judge the adequacy of the information submitted pursuant to their respective statutory and regulatory responsibilities.

habitat, hydrology, soils, vegetation (including invasive species), and flood storage. I encourage the proponent to work with members of its Mitigation Banking Team, the Department of Fish and Game (DFG), MassDEP, and other interested parties to establish a suitable baseline documentation methodology. Consideration should be given to the establishment of “control” areas within the Bank project site to allow for further comparison of the pilot Bank’s success. The Single EIR should clarify between wetland enhancement and restoration and clearly depict each area on supporting plans. Furthermore, the Single EIR should present proposed conditions, with a detailed discussion of each category investigated as part of the baseline study, to assist in the evaluation of the Bank for comparative purposes.

I request that the proponent review the 1995 EOE report, *Wetlands Mitigation Banking in Massachusetts*, and provide a summary of how the proposed pilot Bank may be consistent or inconsistent with the 1995 report. This exercise will provide a mechanism by which to assess the consistency of the proposed project with policy initiatives.

The Single EIR should briefly describe each state permit required for the project, and should demonstrate that the project meets any applicable performance standards.

Alternatives

The EIR should analyze the following alternatives:

- No-Build Alternative (i.e. baseline data); and
- Preferred Alternative as proposed by the proponent and modified by comments on the ENF.

Additionally, the proponent must present in the Single EIR information that documents the process by which EOE, the Bank Sponsor and the Wetlands Mitigation Banking Review Team (MBRT) considered alternative sites for the Bank and selected the Burrage Pond site. Further consideration should be given as to why this particular area within the 1700-acre Burrage Pond Wildlife Management Area was selected. This documentation should include, but not be limited to, site selection criteria, the source or justification of such selection criteria, and graphics depicting the location of alternative sites.

The Single EIR should identify the impacts for each alternative on land alteration (including earth removal), wetland resource areas, drainage, hydrology, wildlife habitat, and vegetation. These data, along with a supporting narrative, should provide a comparative analysis that clearly shows the differences between the environmental impacts associated with each of the alternatives.

Section 89(g) of Chapter 291 requires that the Executive Office of Transportation (EOT) play a significant role in the process by inventorying, within 30 days of the effective date of the Act, anticipated wetlands impacts in the Taunton River Watershed associated with future

transportation, construction repair and maintenance projects funded under Chapter 291 and other public works projects. Given that the stated purpose of the Bank is to assist in the mitigation of transportation related projects, this report is a critical component to the assessment of the Bank and its role in wetlands management within the Commonwealth. The proponent must work with EOT to ensure that this report is completed in accordance with the Act and included in the Single EIR.

Land Alteration

The project will alter 25 acres of land within the Burrage Pond Wildlife Management Area. No impervious surfaces are proposed, as access to the Bank project site will be maintained via the use of the existing cart paths. The Single EIR should discuss the removal of certain existing cart paths that act like dams under existing conditions and how their removal may influence groundwater. Also, the Single EIR should outline what types of materials will be imported or exported offsite and the suitability of these materials to meet wetlands restoration or enhancement criteria.

Wetlands

The proposed project will alter approximately 700,700 sf of BVW and 14,400 linear feet of inland bank. As presented in the EENF, upon completion of the project approximately 9.3 acres of disturbed upland area will be converted to wetland, and 16.1 acres of disturbed wetland area are intended to be enhanced beyond existing conditions. I encourage the proponent to consider the unique opportunity to further enhance and diversify the wetlands Bank through additional analysis of the preferred alternative. This analysis may include modifications to the Atlantic White Cedar swamp plant community, the prevalence of red maples, and additional species diversity and density throughout the Bank.

Each wetland resource area and riverfront area within the Bank project site should be characterized according to 310 CMR 10.00 and summarized in the Single EIR. Additionally, the Single EIR should discuss the significance of the wetland resources on site, including: public and private water supply; riverfront areas; flood control; storm damage prevention; fisheries; shellfish; and wildlife habitat, both under existing conditions and in the proposed conditions to assist in the determination of the Bank's ability to meet the project's success criteria.

The proponent should include in the Single EIR revised wetlands replication plans that, at a minimum, includes: replication location(s) delineated on plans, elevations, typical cross sections, test pits or soil boring logs, groundwater elevations, the hydrology of areas to be altered and replicated, list of wetlands plant species of areas to be altered and the proposed wetland replication species, planned construction sequence, and a discussion of the required performance standards and monitoring. Given the nature of the project, these plans may be incorporated into the Proposed Conditions plans.

I encourage the proponent to address in the Single EIR concerns raised regarding the utilization of wetlands enhancement (as proposed under the pilot Bank) as effective mitigation for wetlands loss and how such a use relates to the Wetlands Protection Act.

The Single EIR should address the concerns raised by MassDEP regarding pre and post development hydrology of the Bank project site. As noted at the site consultation session, the abandoned cranberry bogs are intersected with numerous culverts, drainage ditches, weirs and other flow controlling structures. The Single EIR should discuss existing flows within this water management system, how flows will be altered or managed upon completion of the Bank, and potential impacts to wetlands and groundwater. Additionally, as requested by MassDEP, the proponent should re-examine the proposed relocation of the intermittent stream that presently flows through Area B of the Bank and present conclusions of this assessment in the Single EIR.

MassDEP and several interested parties have expressed concerns related to the potential impact of the Bank to the Stump Brook area and Monponsett Pond, which serves as a drinking water reservoir for the City of Brockton. The Single EIR should investigate how altered hydrology may impact, positively or negatively, this water supply and adjacent designated Outstanding Resource Waters. Also, given the proposal to maintain some adjacent cranberry bogs in their present state, the Single EIR should assess potential groundwater depression areas within these bogs and propose monitoring and mitigation measures.

The Single EIR should outline what types of projects are eligible for participation in the Bank, how the Bank will relate to the Commonwealth's "No Net Loss" policy on wetlands, and mechanisms that may be employed to ensure that mitigation areas will be equal to the value and function of the altered wetlands outside of the Bank.

Stormwater

The proposed project will require extensive earth movement and the creation of wetlands. The Single EIR should outline erosion and sedimentation control measures to be utilized in accordance with a Stormwater Pollution Prevention Plan as part of the NPDES construction general permit. These measures should address erosion and sedimentation controls to be implemented during the construction period and throughout the life of the Bank.

Rare Species Habitat

The Division of Fisheries and Wildlife, Natural Heritage and Endangered Species Program (NHESP) has indicated in their EENF comment letter that the proposed project site is mapped as Priority and Estimated habitat for the Eastern Box Turtle, a state-listed rare species. As part of the Notice of Intent process filed in accordance with the WPA to the Hanson Conservation Commission by the proponent, NHESP has requested additional information. This

information, as outlined in the EENF comment letter, should be included in the Single EIR. Additionally, in accordance with anticipated filings by the proponent under the MESA, the proponent should work with NHESP to prepare a plan to protect Eastern Box Turtles from direct harm during construction, and a plan to maintain upland turtle nesting and early successional habitat. To the extent feasible, this information should be included in the Single EIR, with the understanding that additional information will be provided during the Environmental Review process associated with MESA.

Bank Operation and Management

Numerous comment letters noted concern or uncertainty as to how the Bank would operate in accordance with the Wetlands Protection Act Regulations, local wetland Bylaws, and the role of Conservation Commissions with regards to allocation of Bank credits. The Single EIR should outline and clarify the role of each State agency and local Conservation Commission with regards to establishment and ongoing operation of the Bank. Limits of agency and commission jurisdiction and discretion should be addressed to allow each entity to thoroughly evaluate the viability of the Bank. The Single EIR should clarify the duties, responsibilities and liabilities of each component of the public/private partnership associated with the Bank, including the continuing role of Division of Fisheries and Wildlife. Additionally, I request that a clear purpose and need statement be presented within the Single EIR, as the various documents included within the EENF had slight modifications within each, potentially leading to confusion amongst stakeholders.

The Single EIR should clarify the mechanisms in place through baseline testing, construction techniques, financial commitments, and monitoring to support the proposed selling of Bank credits prior to the completion of Bank construction. Additionally, the Single EIR must include drafts of the Chapter 291 Agreement and the Federal Mitigation Banking Instrument. I encourage the proponent to include an estimate of the dollar value of bank construction, maintenance costs, and the proposed performance bond to assist in the confirmation of the financial viability of the project.

Monitoring

Clear criteria for success of restoration and enhancement activities must be established prior to beginning work. The Single EIR should address concerns related to the strengthening of success criteria for species diversity and habitat function. The Single EIR should demonstrate how success criteria were established, describe discrepancies (if any) of criteria to be applied to wetlands creation versus wetlands enhancement areas, and discuss how criteria will be compared to baseline data to be gathered. The success criteria should outline how they will achieve actual wetland functionality and value improvements beyond existing conditions. Based upon these criteria, the Single EIR should present a modified monitoring plan outlining frequency, evaluation areas, methodology, and other monitoring plan components that effectively meet the

goals of a pilot project with regards to objective and scientific data gathering.

The Single EIR should evaluate opportunities to establish a more rigorous invasive species eradication program prior to Bank construction and address how the presence of invasive species relates to the success criteria proposed for the Bank.

Finally, the Single EIR should outline how project oversight of monitoring results will be established, the availability of data to local officials and interested parties, the future role of the MBRT or other advisory committee, and avenues for ongoing public participation and project evaluation. I encourage the proponent to define commitments to public participation and ongoing project evaluation as within the Single EIR.

Construction Period

The Single EIR should include a detailed construction sequencing schedule outlining project phasing, anticipated construction methodology, and potential temporary impact as a result of construction activities. The Single EIR should note the temporary location of earth stockpiles during the construction period. Additionally, the Single EIR should discuss how ongoing use of the Burrage Pond Wildlife Management Area will interact with the various phases of Bank construction and operation.

Section 61 Findings

This chapter should also include draft Section 61 Findings for each state agency that will issue permits for the project. The draft Section 61 Findings should contain clear commitments to implement mitigation measures, estimate the individual costs of each proposed measure, identify the parties responsible for implementation, and a schedule for implementation.

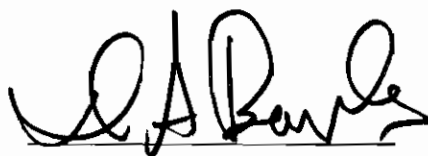
Comments/Circulation

The Single EIR should contain a copy of this Certificate and a copy of each comment letter received. I would like to note the volume of thoughtful comments received from a variety of state agencies, interest groups, local Conservation Commissions and citizens. The Single EIR should respond fully to each substantive comment received to the extent that it is within MEPA jurisdiction. The Single EIR should present additional technical analyses and/or narrative as necessary to respond to the concerns raised.

The proponent should circulate the Single EIR to those parties who commented on the EENF, to any state agencies from which the proponent will seek permits or approvals, and to any parties specified in section 11.16 of the MEPA regulations. The proponent should make hard copies of the Single EIR available to interested parties. A copy of the Single EIR should be made available for review at the Hanson Public Library.

January 29, 2007

Date



Ian A. Bowles

Comments Received:

12/14/2006 Taunton River Watershed Campaign
 12/21/2006 Sarah Hewins, Carver Conservation Agent
 12/26/2006 Robert I. Goldman
 12/26/2007 Kathryn P. Webers
 12/27/2006 Halifax Conservation Commission
 01/02/2007 Lorrie Hall
 01/02/2007 Division of Fisheries of Wildlife – Natural Heritage and Endangered Species Program
 01/02/2007 Priscilla Chapman
 01/04/2007 Old Colony Planning Council
 01/11/2007 Norton Conservation Commission
 01/12/2007 The Nature Conservancy
 01/16/2007 Kingston Conservation Commission
 01/16/2007 New England Public Employees for Environmental Responsibility (PEER)
 01/16/2007 Taunton River Watershed Campaign (2nd letter)
 01/16/2007 Massachusetts Association of Conservation Commissions
 01/16/2007 Senator Robert S. Creedon, Jr., 2nd Plymouth and Bristol District
 01/16/2007 Massachusetts Department of Environmental Protection – Boston
 01/16/2007 Taunton River Watershed Alliance, Inc.
 01/16/2007 Hanson Conservation Commission
 01/16/2007 MassAudubon
 01/16/2007 Letter signed by 14 organizations including:
 Mass Audubon
 Charles River Watershed Association
 Environmental League of Massachusetts
 Green Berkshires, Inc.
 Jones River Watershed Association
 Massachusetts Association of Conservation Commissions

EOEA#13916

EENF Certificate

January 22, 2007

Massachusetts Sierra Club
MASSPIRG
Merrimack River Watershed Council
Neponset River Watershed Association
New England PEER
Taunton Watershed Campaign
Taunton River Watershed Alliance
Watershed Action Alliance of Southeastern Massachusetts
United States Environmental Protection Agency

01/25/2007

IAB/HSJ/hsj