



# *The Commonwealth of Massachusetts*

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February 15, 2007

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## RECORD OF DECISION PHASE I WAIVER

PROJECT NAME : Area 5 Sewers/Comprehensive Wastewater  
Facilities Plan  
PROJECT MUNICIPALITY : Barnstable  
PROJECT WATERSHED : Cape Cod  
EOEA NUMBER : 6553  
PROJECT PROPONENT : Town of Barnstable  
DATE NOTICED IN MONITOR : October 25, 2006

Pursuant to the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-62H) and Section 11.10 of the MEPA regulations (301 CMR 11.00), I hereby **grant** a Phase I Waiver to allow portions of the proponent's Wastewater Facilities Plan listed below to proceed to permitting and construction while the Phase III - Final Wastewater Facilities Plan/FEIR is being prepared.

### PROJECT HISTORY

As described in the original September 1997 Environmental Notification Form (ENF), the project involved the sewerage of Area 5 of the Town of Barnstable. The Secretary's Certificate on the ENF authorized the installation of the proposed sewers while the proponent prepared an EIR to address the need for a Sewer Master Plan including options for improving the Hyannis Water Pollution Control Facility (WPCF). The Certificate also required the Town to limit connections to only those sites with documented failing on-site septic systems until the MEPA process was completed. A scope for an EIR was established in the ENF Certificate issued June 1987.

A Notice of Project Change (NPC) was filed in March, 1996 that proposed to expand the project to include a comprehensive Town-wide Wastewater Facilities Plan (WWFP) designed to quantify the Town's long-term wastewater treatment and water supply protection needs, and identify alternative approaches for meeting those needs. A Special Review Procedure was established for this project, consisting of a Phase I - Needs Report, Phase II – Screening of Alternatives (Interim Report of the Wastewater Facilities Plan), and Phase III - Draft and Final Wastewater Facilities Plan/EIRs. The Secretary's Certificate on the NPC (April, 1996), adopted the Town's proposed scope for a Wastewater Facilities Plan/Environmental Impact Report (WWFP/EIR) and provided for the establishment of a Citizens Advisory Committee (CAC) to provide input into the plan's development.

A second Notice of Project Change (NPC2) was filed in May, 2003, that proposed to proceed with portions of the Scope for the Phase III – DEIR to provide, in the near term, sewerage and advanced nitrogen removal for those Areas of Concern (AOCs) located in close proximity to the Hyannis WPCF. As described in the 2<sup>nd</sup> NPC, the Town proposed to wait until the Massachusetts Estuaries Project was concluded in order to develop a nitrogen loading limits for determining appropriate treatment and discharge options for sewage flows from those AOCs located in the western and southwestern sections of Barnstable.

In February 2005, a third Notice of Project Change (NPC3) was filed with the MEPA Office that proposed to proceed with the construction of interim improvements to the Hyannis WPCF that would enable the town to increase the wastewater flow capacity of the WPCF from 2.7 mgd to 4.2 mgd. Specifically, the proposed improvements to the WPCF include the addition of a third aeration tank, replacement of the existing grit removal system, and installation of a Supervisory Control and data Acquisition (SCADA) system. The proposed facility modifications will result in approximately 6,000 square foot (sf) of land alteration and approximately 8,000 sf of new impervious surface area.

The Town of Barnstable filed a fourth Notice of Project Change (4<sup>th</sup> NPC) on October 25, 2006 and proposed a number of comprehensive sewer construction activities in advance of the proponent's completion and submittal of the Draft and Final Wastewater Facilities Plan/EIR including; 1) construction of an 18" effluent force main within the Route 132 right-of-way from the Hyannis WPCF to the proponent's proposed effluent disposal site (McManus site) located near Exit 6 off Route 6, and construction of a sewer main from the Cape Cod Community College to the Route 132 effluent force main; 2) construction of the proposed McManus effluent disposal facility; and, 3) construction of two sewer extensions to limited areas in Hyannis (North Street, Pleasant Street). The proposed force main construction was designed by the Town to convey 1.3 mgd of treated wastewater effluent from the Hyannis WPCF to a new McManus effluent disposal site. The proponent has worked closely with DEP, MHD and others to coordinate its proposed effluent force main construction with the construction of the Route 132 Reconstruction Project (EOEA #13526). A Secretary's Certificate on the Route 132 Reconstruction Project was issued in June 2005 and determined that no further MEPA review was required.

The Area 5 Sewers/Wastewater Facilities Plan project is undergoing review pursuant to Section 11.03 (5)(a)(3) and (5)(b)(3)(a) of the MEPA regulations, because the project will likely involve the construction of sewer mains ten or more miles in length and the construction of one or more new sewer mains that will result in the expansion in the flow to a wastewater treatment facility by 10 percent of existing capacity, respectively. The project will require an Order of Conditions from the Barnstable Conservation Commission; a Construction Permit from the Massachusetts Highway Department (MHD); and a 401 Water Quality Certification and Sewer Extension Permit from the Department of Environmental Protection (DEP). Because the project is receiving financial assistance from the Commonwealth, MEPA jurisdiction extends to all aspects of the project that may produce significant Damage to the Environment. The project is also subject to Joint Review with the Cape Cod Commission (CCC) under the Development of Regional Impact (DRI) process. The Town continues to work closely with CCC and DEP.

#### NOTICE OF PROJECT CHANGE (5<sup>TH</sup> NPC) / PHASE I WAIVER REQUEST

As described in this fifth Notice of Project Change/Phase I Waiver Request (5<sup>th</sup> NPC), and additional information provided by the Town, the Town of Barnstable is now proposing additional sewer construction activities in advance of the Town's completion and submittal of the Phase III - Final Wastewater Facilities Plan/FEIR involving the construction of a new Main Street subsurface sewer pump station, to be located within a 1.3-acre parcel of property (725 Main Street) in Barnstable, to accommodate existing and projected future wastewater flows. The work proposed in this NPC also includes the replacement of 1.6 miles of existing force main within existing Town road right-of-ways to convey wastewater flows from the Old Colony Road pump station to the Hyannis WPCF. According to the proponent, this easement area could accommodate the construction of a 1,700 sf underground sewer pump station (2,100 gallons per minute (gpm) capacity, an above-ground 1 story 500 sf generator building, a 1,700 lf site drive from Dumont Drive, and related grading and landscape improvements including 100 lf of walkway along the site drive, 200 lf of wall along walkways, and 230 lf of fencing. The proposed sewer pump station project will result in permanent impacts to approximately 7,000 sf of wetland buffer area.

#### 725 Main Street

The proponent has provided additional information to the MEPA Office indicating that the 725 Main Street site was acquired in August 2002 for the purposes described in the Cape Cod Land Bank Acquisitions Program documentation, including the protection of public drinking water supplies, open space, and conservation land, the creation of walking trails and bicycling trails, and the creation of recreational areas. As described by the Town, along with the purchase of the 1.3-acre 725 Main Street parcel in August 2002, the Town of Barnstable also acquired an access easement (1,836.3 sf) and sewer easement (14,998.7 sf) specifically for the location of a future underground sewer pump station ("easement area").

A number of commenters have questioned the consistency of the Town's proposed use of a portion of the 725 Main Street parcel for constructing a municipal sewer pump station with the use conditions and restrictions established for the parcel pursuant to the Cape Cod Land Bank Acquisitions Program (Chapter 293 Act of 1998, and Chapter 127 Act of 1999). Based on a review of the information provided in the NPC submittal and additional information provided by the proponent to the MEPA Office, it appears that the location of the proposed underground sewer pump station at the 725 Main street location is consistent with the intended uses and activities described by the use easement documentation.

#### Article 97/Open Space

EOEA's Article 97 Land Disposition Policy bespeaks the high value placed upon the preservation of existing protected open space lands, and requires a demonstration that a proponent has explored all feasible options to avoid the Article 97 disposition. The goal of this policy is to ensure no net loss of Article 97 lands and interests in lands under the ownership and control of the Commonwealth and its political subdivisions. The proponent will need to propose adequate mitigation for any proposed use of Article 97 lands, and interests in lands, that are determined to be not in compliance with the intended Article 97 purposes and interests in land outlined in the Cape Cod Land Bank Acquisition Program.

#### Phase I Waiver Request:

Section 11.11 of the MEPA regulations provides that the Secretary may waive any provision or requirement of 301 CMR 11.00 not specifically required by MEPA, and may impose appropriate and relevant conditions or restrictions, provided that the Secretary finds that strict compliance with the provision or requirement would: (a) result in an undue hardship for the proponent, unless based on delay in compliance by the proponent; and (b) not serve to avoid or minimize Damage to the Environment. In the case of a partial waiver of a mandatory EIR review threshold that will allow the proponent to proceed with phase one of the project prior to preparing an EIR, the Secretary, at a minimum, must base this finding on a determination that:

1. the potential impacts of phase one of the project, taken alone, are insignificant;
2. ample and unconstrained infrastructure facilities and services exist to support phase one of the project;
3. the project is severable, such that phase one does not require the implementation of any other future phase of the project or restrict the means by which potential environmental impacts from any other phase of the project may be avoided, minimized or mitigated; and,
4. the agency action on phase one will contain terms such as a condition or restriction in a permit, contract or other relevant document approving or allowing the agency action, or other evidence satisfactory to the Secretary, so as to ensure due compliance with MEPA and 301 CMR 11.00 prior to commencement of any other phase of the project.

## Findings

I have carefully reviewed the ENF and supporting documentation, written comments and comments received at the scoping session.

1. According to the comments received on the DROD, the proposed Main Street pump station site (367 Main Street, Hyannis MA) was acquired by the Town of Barnstable in August 2002, for the purposes and interests in land outlined in the Cape Cod Land Bank Acquisitions Program (Chapter 293 Act of 1998, and Chapter 127 Act of 1999) including the protection of public drinking water supplies, open space, and conservation land, the creation of walking trails and bicycling trails, and the creation of recreational areas.

As described in previous Certificates issued on this project, Article 97 of the Massachusetts Constitution recognizes the high value placed upon the preservation of existing open space lands throughout the Commonwealth. To further Massachusetts' open space goals, the EOEI Article 97 Land Disposition Policy calls for a no net loss of Article 97 lands and interests in lands under the ownership and control of the Commonwealth and its political subdivisions, and requires proponents to demonstrate that a proponent has explored alternatives to avoid and/or minimize the Article 97 disposition. As a condition of my granting the Phase I Waiver, I am requiring the proponent to commit to provide adequate mitigation for any proposed use of Article 97 lands, and interests in lands, that are not in compliance with the intended Article 97 purposes and interests in land outlined in the Cape Cod Land Bank Acquisition Program.

2. According to the information contained in the NPC/Phase I Waiver Request, the proposed construction of the new Main Street pump station and the replacement of existing force main will not impact rare species habitat. The project has been designed to meet DEP's Stormwater Management Policy standards and practices. The Town has also agreed to employ appropriate erosion and sedimentation control measures during project construction. I therefore find that the potential environmental impacts associated with the proposed project change are insignificant.
3. The project will require a Sewer Extension Permit from the Department of Environmental Protection (MassDEP), and may require a 401 Water Quality Certification from MassDEP and EPA. The project may also require an Order of Conditions from the Barnstable Conservation Commission. I anticipate that MassDEP's permit review will contain terms such as a condition or restriction so as to ensure due compliance with MEPA and 301 CMR 11.00 prior to commencement of any other phase of the project. The proposed project change must comply with the National Pollutant Discharge Elimination System (NPDES) General Permit for stormwater discharges from a construction site of over one acre.

Based on these findings, it is my judgment that the phase one waiver request does have merit, does meet the tests established in 301 CMR 11.11, and will serve to advance the interests of the Massachusetts Environmental Policy Act. Therefore, I grant the Phase I Waiver request subject to the aforementioned findings and conditions.

February 15, 2007

Date



Ian A. Bowles, Secretary

Comments received on the DROD:

|          |  |
|----------|--|
| 01/02/07 | James M. Walsh   |
| 01/09/07 | Gary Lopez and others (15 signatures)                  |
| 01/24/07 | John Julius  |
| 02/09/07 | <b>Town of Barnstable</b> – Department of Public Works |
| 02/12/07 | Town of Barnstable – Office of Town Attorney           |
| 02/13/07 | Town of Barnstable – Office of Town Attorney           |

ROD 5<sup>th</sup> NPC #6553  
IAB/NCZ/ncz