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March 13, 2009

CERTIFICATE OF THE SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS
ON THE
ENVIRONMENTAL NOTIFICATION FORM

PROJECT NAME : Lot 2B Liberty Street
PROJECT MUNICIPALITY : Brockton
PROJECT WATERSHED : Taunton River
EEA NUMBER : 14368
PROJECT PROPONENT : R.J. Messina, Inc.
DATE NOTICED IN MONITOR : February 11, 2009

Pursuant to the Massachusetts Environmental Policy Act (M.G. L. c. 30, ss. 61-62I) and Section 11.06 of the MEPA regulations (301 CMR 11.00), I hereby determine that this project **does not require** the preparation of an Environmental Impact Report (EIR).

As described in the Environmental Notification Form (ENF), the project includes the construction of a commercial building of 6,250 square feet (sf), a 38-space parking lot and associated utilities. The development will occur mostly in an existing gravel construction storage area and will also require filling of an isolated wetland of 9,451.5 sf which was created from historical sand and gravel harvesting. The project site (Lot 2B) consists of 6.7 acres including 3.4 acres of upland and 3.3 acres of wetland.

Coweset Brook splits the site into two parts: eastern and western. A 30-foot wide sewer easement running along the east bank of the brook separates the bordering vegetated wetland and the upland. The protected resource areas including Coweset Brook and its bordering vegetated wetlands were delineated for the site and approved on February 8, 2007. Under the existing

condition, the area to the west of the sewer easement is undeveloped woods, and consists of mostly wetlands except for some small upland area at the southwest corner. To the east of the sewer easement, most of the land is upland except for two isolated wetlands associated with historical gravel harvesting. The first of the two isolated wetlands is approximately 9,451.5 sf (in the central north), and the other is 28,445.6 sf (of which 3521.6 sf are off site). The upland area is occupied with about 41,000 sf of gravel parking and storage area, 11,000 sf of partly paved driveway, and 5,456 sf of detention/infiltration basin. The materials currently stored there include concrete forms, bricks, concrete and PVC pipes, metal, and construction debris. Construction equipment including trucks, and excavators, and backhoes are also parked in the upland area.

Jurisdiction

The project is undergoing review pursuant to Sections 11.03(3)(b)(1)(d) of the MEPA regulations because the project requires a State agency action and will alter 5,000 or more square feet of isolated vegetated wetlands. The project will require a Section 401 Water Quality Certificate (401 WQC) from the Massachusetts Department of Environmental Protection (MassDEP). The project will require a Section 404 Programmatic General Permit from the U.S. Army Corps of Engineers. The project also requires an Order of Conditions from the Brockton Conservation Commission.

Because the Proponent is not seeking financial assistance from the Commonwealth for the project, MEPA jurisdiction extends to those aspects of the project that are within the subject matter of required or potentially required state permits and which may cause Damage to the Environment as defined in the MEPA regulations. In this case, MEPA jurisdiction exists over wetlands and waterways.

Wetlands

The ENF included a project narrative and plans detailing the existing and proposed conditions and potential impacts to wetland resource areas. The proponent proposes to fill approximately 9,451.54 sf of Isolated Vegetated Wetlands (IVW) and replicate 10,009 sf which yields a replication ratio of 1.1 to 1. The replication area is a wooded upland peninsula on the west bank of Coweaset Brook. The proponent proposes that grading of the replicated wetland will go around 10 large red maple trees, resulting in 3 small wooded upland islands in the wetlands. In the center of the replication area, a small vernal pool is devised. The replicated wetlands will connect to the bordering vegetated wetlands at wetland flags at the southern edge and in the middle.

I remind the proponent that pursuant to 314 CMR 9.00, a 401 Water Quality Certificate is required for this project. The ENF's alternatives section was limited only to the mitigation strategy for filling IVW. An alternatives analysis must be submitted with the 401 Water Quality Certificate's application that demonstrates measures taken to avoid, minimize and mitigate for the placement of fill. In accordance with 314 CMR 9.06(1), "No discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not

have other significant adverse environmental consequences.” In addition, “An alternative is practicable if it is available and capable of being done after taking into consideration costs, existing technology, and logistics in light of overall project purposes.” The proponent must investigate project alternatives that would avoid or minimize the impact to IVW during the permitting process.

If the project proceeds as described in the ENF following the required alternatives analysis, I remind the proponent that 310 CMR 10.55(4)(b)1-7 provides performance standards to ensure that replication areas will function in a manner similar to areas that are filled. MassDEP also recommends that the proponent review the MassDEP’s Inland Wetlands Replication Guidance. Comments received from MassDEP include recommendations to be pursued during the project permitting process. The U.S. Environmental Protection Agency has also provided detailed comments that the proponent should consider during the permitting process.

Flood Zone

The project involves activities within a 100-year floodplain as delineated on the current effective Flood Insurance Rate Map (FIRM) for Brockton, dated December 26, 1980. The Department of Conservation and Recreation’s (DCR) Flood Hazard Management Program (FHMP), under agreement with the Federal Emergency Management Agency (FEMA), is the state coordinating agency for the National Flood Insurance Program (NFIP). Communities such as Brockton that participate in the NFIP are required by FEMA, as a condition of their participation, to regulate development within the 100-year floodplain in a manner that meets or exceeds the minimum standards established by FEMA. Brockton has a zoning ordinance that includes a Floodplain District section which has been accepted by FEMA as meeting their requirements under the NFIP.

The proposed project site is located partially within a zone A as delineated on Brockton's FIRM. This necessitates compliance with several state and local measures related to floodplain development. DCR’s FHMP comment letter notes several state permitting requirements that the project will need to comply with and additionally indicates that projects within the 100-year floodplain which involve any federal action must comply with federal Executive Order 11988, Floodplain Management. This executive order requires an eight-step decision-making process which includes analyses of alternatives, avoiding impacts when possible, and minimizing impacts when avoidance is not possible. Because the project requires an U.S. Army Corps of Engineers Programmatic General Permit, Executive Order 11988 is applicable.

Stormwater

The ENF outlines stormwater management Best Management Practices (BMPs) and an Operations and Maintenance Program. Clean stormwater roof runoff from buildings will be infiltrated into the ground. I encourage the proponent to comply with the recently updated MassDEP stormwater management regulations (promulgated in January 2008), to the maximum extent practicable.

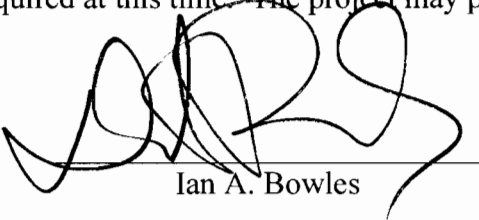
Construction Period Impacts

The proponent should take measures to reduce potential demolition and construction period impacts (including but not limited to noise, vibration, dust, and traffic flow disruptions). The proponent must comply with MassDEP's Solid Waste and Air Quality Control regulations during construction. I encourage the proponent to incorporate construction waste recycling activities as a sustainable measure for the project. The proponent should consult with MassDEP for appropriate standards and guidelines for managing construction waste.

I encourage the proponent to mitigate the construction period impacts of diesel emissions to the maximum extent feasible. This mitigation may be achieved through participation in the MassDEP Diesel Retrofit Program. The proponent should work with MassDEP staff to implement construction-period diesel emission mitigation, which could include the installation of after-engine emission controls such as oxidation catalysts or diesel particulate filters. I remind the proponent that off-road equipment engines must use low sulfur diesel (LSD) fuel as of July 2007, as required by a 2004 regulation issued by the U.S. EPA. I encourage the proponent to further mitigate construction period air quality impacts through the use of ultra low sulfur diesel (ULSD) fuel in off-road engines, which contains even lower sulfur content than LSD.

Based on the information in the ENF and after consultation with relevant public agencies, I find that no further MEPA review is required at this time. The project may proceed to State permitting.

March 13, 2009
Date


Ian A. Bowles

Comments received:

- 03/03/2009 U.S. Environmental Protection Agency
- 03/03/2009 Massachusetts Department of Environmental Protection - SERO
- 03/03/2009 Department of Conservation and Recreation

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