



The Commonwealth of Massachusetts

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November 30, 2005

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DRAFT RECORD OF DECISION

PROJECT NAME	: Erickson Bogs
PROJECT MUNICIPALITY	: Middleborough
PROJECT WATERSHED	: Buzzards Bay
EOEA NUMBER	: 13660
PROJECT PROPONENT	: Erickson Bogs c/o Peter Paquin
DATE NOTICED IN MONITOR	: October 24, 2005

Pursuant to the Massachusetts Environmental Policy Act (MEPA) (G.L.c.30, ss. 61-62H) and Section 11.11 of the MEPA regulations (301 CMR 11.00), I have reviewed this project and propose to grant a waiver from the requirement to prepare a mandatory Environmental Impact Report (EIR).

Project Description

As described in the Environmental Notification Form (ENF), the project consists of the restoration of 500,940 square feet (sf) of Bordering Vegetated Wetlands (BVW) to rectify impacts from cranberry bog expansion. Erickson Bogs consists of 54.50 acres of existing cranberry bogs in production and permitting of water withdrawal volumes associated with the existing acreage located in the Buzzards Bay Basin.

The proponent presently holds a Water Management Act (WMA) registration for 25.5 acres of bog but has built an additional 29 acres of bog. The additional acreage, subtracting the acreage to be returned to uncultivated wetlands, needs a WMA permit. The proponent needs to obtain a WMA Permit to irrigate existing cranberry bogs off Beach and Pine Streets in Middleboro. All withdrawals will originate at surface waters owned and operated by the proponent. The project will require water withdrawal permitting of 0.26 million gallons per day (mgd) of water associated with the cultivation of cranberries.

The Department of Environmental Protection (DEP) has conducted an enforcement action to address Wetlands Act and WMA violations. The project is being proposed as part of an

Administrative Consent Order (ACO) issued by DEP. The ACO requires the proponent to restore the majority of the wetland acreage altered and includes some minor replication.

DEP has received the WMA permit application and will act on the application after the wetlands issues are adequately addressed.

Categorical Inclusion

The project is included for the preparation of a mandatory EIR pursuant to Section 11.03(3)(1) of the MEPA regulations because it altered one or more acres of BVW.

Jurisdiction

The project will require a Water Management Act Permit from DEP. The proponent signed the ACO with DEP to bring its current operations into compliance with the Water Management Act. It will also need a Water Withdrawal Permit from DEP. The project must comply with the National Pollutant Discharge Elimination System (NPDES) General Permit for stormwater discharges from a construction site. It may need a Programmatic General Permit from the U.S. Army Corps of Engineers. Because the proponent is not seeking financial assistance from the Commonwealth, MEPA jurisdiction is limited to the environmental impacts related to water, wetlands, and drainage.

Waiver Request

The proponent originally submitted an Environmental Notification Form (ENF) on October 24, 2005 without a request for a waiver of a mandatory EIR. On November 18, 2005, the proponent requested a waiver from the requirement for the preparation of an EIR with an amended ENF. The proponent also requested an extension of the Public Comment period to end on November 23, 2005 with a Decision date extension to November 30, 2005. The proponent has prepared a proposal detailing the corrective measures it will undertake to comply with the ACO.

Criteria for Waiver

Section 11.11 of the MEPA Regulations provides that a waiver may be granted upon a finding that strict compliance with the regulations will result in undue hardship and will not serve to minimize or avoid damage to the environment. In the case of categorically included projects, this finding shall be based on one or more of the following circumstances: 1) the project is likely to cause no damage to the environment; and 2) ample and unconstrained infrastructure exists to support the project. The terms agreed to as a condition of the waiver will bring about benefits in excess of those that could be achieved in the absence of a waiver.

Findings

Based upon the information submitted by the proponent and after consultation with DEP, I find that:

1. The project will improve the environment by restoring past wetland alterations. The proponent will remove bogs from active cranberry production. It will restore approximately 500,940 sf of BVW.
2. The proponent has the resources and knowledge to provide a successful replication/restoration with DEP's supervision.
3. The proponent has conducted numerous test excavations to establish the historic wetlands line. The ACO signed by the proponent and DEP contains milestones to ensure the restoration work proceeds in a timely and successful manner.
4. The proponent has applied for a Water Management Act Permit and is working closely with DEP.

Based on these findings, it is my judgment that the waiver request has merit and meets the tests established in Section 11.11. DEP has sufficient permitting authority to ensure that the proponent complies with the findings of this Certificate. Therefore, I propose to grant the waiver requested for this wetlands restoration and water withdrawal project, subject to the above findings. This Draft Record of Decision shall be published in the next issue of the *Environmental Monitor* for a fourteen-day comment period, after which I shall reconsider, modify, or confirm the waiver.

November 30, 2005

Date

Stephen R. Pritchard

Comments received:

- 11/25/05 Department of Environmental Protection, SERO (1st Comment received)
- 11/29/05 Department of Environmental Protection, SERO (2nd Comment received)

SRP/ACC/acc