



The Commonwealth of Massachusetts

Executive Office of Environmental Affairs

100 Cambridge Street, Suite 900

Boston, MA 02114-2524

MITT ROMNEY
GOVERNOR

KERRY HEALEY
LIEUTENANT GOVERNOR

STEPHEN R. PRITCHARD
SECRETARY

Tel. (617) 626-1000
Fax. (617) 626-1181
<http://www.mass.gov/envir>

February 24, 2006

FINAL 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 : November 22, 2005

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 - Draft and Final Wastewater Facilities Plan/EIR 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 2nd 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.

A third Notice of Project Change (NPC3) was filed in February 2005 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 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.

Fourth Notice of Project Change (4th NPC) / Phase I Waiver Request

As described in the fourth Notice of Project Change (4th)/Phase I Waiver Request, the Town is now proposing a number of comprehensive sewer construction activities in advance of the Town's completion and submittal of the Phase III - Draft and Final Wastewater Facilities Plan/EIR including; 1) construction of an 18 inch effluent force main within the Route 132 right-of-way from the Hyannis WPCF to the Town'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).

Effluent Force Main/ Route 132 Roadway Reconstruction Project Coordination

The Town proposes to construct 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 to construct a sewer main from the Cape Cod Community College to the Route 132 effluent force main. The proposed force main construction has been 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 Town 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). As described by the Town, the Route 132 Reconstruction Project involves widening and safety improvements to Route 132 from the Route 6 Interchange No. 6 to the Bearses Way interchange. A Secretary's Certificate on the Route 132 Reconstruction Project was issued in June, 2005 and determined that no further MEPA review was required.

Wastewater Discharge/Disposal Locations – McManus site

The Town has completed a number of groundwater modeling studies and evaluations to evaluate potential groundwater impacts from various potential wastewater discharge sites located in the eastern half of Barnstable. The Town has identified four sites (the McManus Site – Site B, the Airport Site – Site C, the Cape Cod Community College Site – Site D, and the Lorusso Site – Site E) as suitable for the discharge/disposal of treated effluent from its Hyannis WPCF. The Town-owned McManus site, involves the use of approximately 44 acres of forested Article 97 land for the construction and operation of a new 1.3 mgd subsurface wastewater disposal facility. The McManus site is located at the intersection of the Route 6 Mid-Cape Highway and Route 132, and abuts the western boundary of the Town-owned Barnstable Golf Course.

Additional Sewering

The NPC/Phase I Waiver Request describes the need to construct two additional sewer extensions in Hyannis (North Street, Pleasant Street) due to the occurrence of failing septic systems in these areas.

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 information contained in the NPC/Phase I Waiver Request, the proposed construction of the effluent force main within the Route 132 roadway, the construction of a sewer main from the Cape Cod Community College to the Route 132 effluent force main, construction of the McManus effluent disposal facility, and sewerage of limited areas in Barnstable including Pleasant Street and North Street will not impact rare species habitat or wetlands resource areas, nor is any work proposed within the 100-foot buffer zone of bordering vegetated wetlands (BVW). As described by the Town, 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 construction of the Route 132 effluent force main, and the sewerage of Pleasant Street and North Street are insignificant.

2. As described in the NPC/Phase I Waiver Request, the 44-acre McManus site has been selected to accommodate the proposed groundwater disposal of 1.3 mgd of wastewater flow. According to the comments received from the CCC and others, the proposed new effluent discharge of 1.3 mgd at the McManus site will cause changes to existing aquifer flow systems, and may result in potential nutrient (nitrogen, phosphorous) loading impacts to downgradient public water supplies and Lake Wequaquet. The information provided in the NPC indicates that an effluent discharge of 0.5 mgd will maintain current groundwater flow systems, and not impact downgradient public water supplies and Lake Wequaquet. CCC has requested that as a condition of the Phase I Waiver, the Town conduct additional groundwater modeling evaluations to demonstrate the feasibility of the proponent's McManus 1.3 mgd effluent discharge proposal.

I adopt these comments as my own, and condition my approval of the Town's Phase I Waiver Request to allow the Town to proceed to the design and permitting for the construction of a portion of the McManus site, as described below, to accept 0.5 mgd of treated wastewater effluent from the Hyannis WPCF until the Town can complete additional groundwater evaluations to satisfactorily demonstrate the feasibility of the Town's 1.3 mgd effluent discharge proposal.

3. The McManus site was acquired in March, 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. The construction of the proposed effluent disposal facility will involve clearing and grading most of the 44 acre site, construction of subsurface infiltration trenches and supporting infrastructure, including a small pump station building, parking area and driveway, the restoration/re-vegetation of the site's surface area for open grassland meadow habitat, and the construction of approximately seven active recreational playing fields and two basketball courts.

The Town has provided additional information to the MEPA Office that indicates that along with the purchase of the 44-acre McManus site land area in March 2002, the Town of Barnstable also acquired a use easement associated with 6.9 acres of the McManus site specifically for use as a groundwater discharge facility ("easement area"). According to the Town, this easement area could accommodate the construction of a groundwater discharge facility to accept 0.5 mgd of treated wastewater effluent from the Hyannis WPCF.

I have reviewed the information provided in the NPC4 submittal and additional information provided by the proponent pertaining to the 6.9-acre easement area, and find that the Town's proposed use of the 6.9-acre easement area located within the McManus site for the disposal of treated wastewater effluent appears to be consistent with the intended uses and activities described by the use easement documentation.

As a condition of my granting the Phase I Waiver, I am requiring the Town to provide additional information in any subsequent filings for this project to demonstrate the consistency of the proposed use of the remainder 37.1 acres of the McManus site for wastewater effluent disposal with the intended Article 97 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). The Town will need to demonstrate that the proposed use of the entire 44-acre McManus site represents the minimum acreage necessary for the project. The Town will need to supplement the alternatives analysis provided in the NPC4 submittal to include a discussion of wastewater effluent disposal alternatives that incorporates the use of the McManus site at less than 1.3 mgd and 44 acres, and use of the Cape Cod Community College Site (Site D) as an additional effluent disposal site. The Town will need to propose 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.

The proponent's mitigation plan will need to discuss the value of the proposed mitigation in terms of the resources it provides and the opportunities for open space protection, and active and/or passive recreation it affords. The Town may consider publicly accessible grassland habitat and recreational fields developed as part of project, and public access to the remaining forested open spaces, if any, as possible compensation or mitigation for the project's impacts. I ask that the Town consult with EOE staff, CCC and DEP to provide advice to the Town on feasible mitigation alternatives.

4. The project will require a 401 Water Quality Certification and Sewer Extension Permit from the Department of Environmental Protection (DEP). I anticipate that DEP'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.

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 24, 2006

Date



Stephen R. Pritchard, Secretary

Comments received on the Draft Record of Decision:

02/03/06 Town of Barnstable, Department of Public Works

FROD #6553
SRP/NCZ/ncz