



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>

June 30, 2006

CERTIFICATE OF THE SECRETARY OF ENVIRONMENTAL AFFAIRS
ON THE
NOTICE OF PROJECT CHANGE

PROJECT NAME : Filling of Existing Boat Slip
PROJECT MUNICIPALITY : New Bedford
PROJECT WATERSHED : Buzzards Bay
EOEA NUMBER : 13067
PROJECT PROPONENT : NSTAR
DATE NOTICED IN MONITOR : May 24, 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 determine that this project **does not require** preparation of an Environmental Impact Report (EIR).

The Notice of Project Change (NPC) describes a change to mitigation previously proposed for the above referenced project. The original project is a remediation project located in New Bedford Harbor within the Designated Port Area (DPA). The site is a boat slip adjacent to property owned and operated by NSTAR. The remediation is proposed to fulfill NSTAR's requirements under the Massachusetts Contingency Plan (MCP). The sediment within the boat slip is contaminated with a layer of pure phase coal tar. As part of its requirements under the MCP, the proponent has conducted an extensive evaluation of alternatives ranging from containing sediments on site with a concrete cap to complete excavation of the tar layer and contaminated sediment with off site incineration. Six alternatives were analyzed in depth for consistency with the requirements of the MCP. The preferred alternative, filling of the boat slip, will provide a permanent solution and adequately protect the risk to public health and the environment of New Bedford Harbor.

The original mitigation commitment associated with this project consisted of provision of shellfish seed to the City of New Bedford for establishment of a shellfish bed within New Bedford. The restoration of a degraded site in New Bedford Harbor has been proposed to fulfill requirements for additional mitigation identified by the New Bedford Conservation Commission during local permitting. Also, the project also is intended to fulfill US Army Corps of Engineers (ACOE) requirements for mitigation of impacts associated with the State Pier Dredging Project (EOEA #12655). This dredging project was conducted by the New Bedford Harbor Development Commission (NBHDC) and included dredging of 50,000 cubic yards (cy) of sediment.

The restoration site is located in New Bedford Harbor and is owned by the City of New Bedford. It is located to the north and west of the municipal boat ramp and parking lot at the end of Gifford Street, east of an existing boatyard and another lot owned by the City, south of a fish processing facility and west of New Bedford Harbor. The site has been degraded and altered significantly from past activities including illegal dumping and use as an off-road bicycle course. In addition, it has been colonized by the invasive species *Phragmites australis*.

The project consists of clean-up of the 60,500 sf site including creation of approximately 28,500 sf of Salt Marsh. Clean, excavated material will be mounded in three locations to create berms (from elevation 3.0' and 4.0' to elevation 12.0' and 13.0'). The berms along the perimeter of the salt marsh will be planted with coastal vegetation. The berm in the southeast corner of the site will create a recreational overlook and is intended to meet the public access requirements of the Chapter 91 program. In addition, the project includes creation of a gravel driveway and associated stormwater swale that will provide a connection from Gifford Street to an undeveloped lot owned by the City of New Bedford.

Because the project is intended to restore degraded wetland areas, its construction necessarily includes wetland alterations. These alterations include excavation of approximately 9,806 square feet of Bordering Vegetated Wetland (BVW),¹ 4,100 square feet of Salt Marsh, 3,454 square feet of Land Containing Shellfish and 6,800 square feet of Coastal Beach.

The original project is undergoing MEPA review pursuant to Section 11.03 (3)(b)(6) because it requires a state permit and consists of construction of a solid fill structure of 1,000 or more square feet base area within flowed tidelands. The project and the proposed mitigation require a Chapter 91 license and a 401 Water Quality Certification from the Department of Environmental Protection (DEP). The projects also require Orders of Conditions from the New Bedford Conservation Commission (issued on July 29th, 2005, and April 4th, 2006, respectively).

The proponent has met with DEP, ACOE, the Division of Marine Fisheries (DMF) and other interested parties to discuss restoration plans and solicit input. Some changes (such as design of a stormwater swale) have been incorporated into the plans as a result of these meetings. DEP has indicated that it previously expressed concern about the amount, type of material, consistency and height of the proposed berms. DEP continues to express concern about this and the need to minimize impacts to wetland resources areas. I encourage the proponent and the City

¹ The ENF indicated that the project would alter approximately 3,500 feet of BVW; however, DEP comments indicate that the Order of Conditions identified 9,806 sf of alterations to BVW.

of New Bedford to maximize the restoration potential of this project by restoring additional areas adjacent to the salt marsh as BVW.

The NPC indicates that the gravel driveway will provide access from Lot 45, which is owned by the City, to the public boat ramp but it does not provide any information on associated development. The driveway ends on a wetland line and it appears that a wetland crossing would be required to complete a connection to the adjacent property. DEP has expressed concerns with direct and indirect wetlands impacts associated with construction of this driveway.

If the proponent chooses to pursue construction of the driveway as part of this project, it should provide information on any associated development, including construction of connecting access drives, in the form of a Notice of Project Change (NPC) to ensure these impacts are reviewed and addressed consistent with the anti-segmentation provisions of the MEPA regulations. These provisions ensure that projects, including any future expansion, are reviewed in their entirety. Proponents cannot evade, defer or curtail MEPA review by segmenting one project into smaller ones that, individually, do not meet or exceed MEPA thresholds. In determining whether work or activities constitute one project, the Secretary must consider whether the work or activities comprise a common plan or independent undertakings, regardless of whether there is more than one proponent, the timing of work and activities, and whether the environmental impacts caused by the work or activities are separable or cumulative. DEP has indicated that an alternatives analysis will be required during the 401 Water Quality Certificate process. This information will help DEP determine whether impacts have been adequately avoided and minimized.

DEP has indicated that the proponent must submit additional information during permitting to enable DEP to determine whether the proposed public access elements of the plan are consistent with Chapter 91 standards. The proponent should submit plans to DEP that identify public walkways, benches, lighting, trash facilities and general landscape treatment.

Based on the information in the NPC and after consultation with relevant public agencies, I find that the potential impacts of the project are not significant enough to warrant the preparation of an Environmental Impact Report (EIR). Outstanding issues can be adequately addressed during the permitting process.

June 30, 2006

Date


Stephen R. Pritchard

Comments received:

6/23/06 Department of Environmental Protection/Southeast Regional Office (DEP SERO)

SRP/CDB/cdb