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July 10, 2009

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

PROJECT NAME : First Herring Brook Pedestrian Bridge
PROJECT MUNICIPALITY : Scituate
PROJECT WATERSHED : Dorchester Bay
EEA NUMBER : 14405R
PROJECT PROPONENT : Town of Scituate
DATE NOTICED IN MONITOR : June 10, 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 involves the construction of an 80 foot (ft) long aluminum pedestrian and bicycle bridge spanning the First Herring Brook in Scituate and two 182.5 ft long timber approach ways supported by steel helical anchor piles leading to the bridge. The pedestrian and bicycle bridge will be supported on each end by four timber piles with a concrete pile cap. A rip-rap revetment is proposed to be placed along the existing bank adjacent to the bridge abutments as bank and abutment protection. The 8 ft wide approach walkways will incorporate fiberglass/plastic grating to ensure adequate sunlight penetration below and the aluminum bridge will also incorporate a type of grating system for sunlight penetration. The pedestrian and bicycle bridge will allow for a 7 foot vertical clearance from Mean High Water to allow for vessel passage along the First Herring Brook. This will

allow the approximately 16 ft boat presently docked at the only recreational pier and float system upstream of the proposed bridge, and other future vessels, to access navigable waters.

Jurisdiction

The project is undergoing MEPA review pursuant to Section 11.03(3)(b)(1)(a), Section 11.03(3)(b)(1)(b) and Section 11.03(3)(b)(1)(c) of the MEPA regulations because the project requires a State Agency Action and will result in the alteration of a Coastal Bank, the alteration of 500 or more linear feet of bank along a fish run, and the alteration of 1,000 or more square feet (sf) of salt marsh. The project will require a Chapter 91 (c.91) License and Section 401 Water Quality Certificate (401 WQC) from the Massachusetts Department of Environmental Protection (MassDEP). The project may be subject to Coastal Zone Management (CZM) federal consistency review. The project will require a U.S. Coast Guard Bridge Permit. The project will also require an Order of Conditions from the Scituate Conservation Commission (and, on appeal only, a Superceding Order of Conditions from MassDEP).

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 that may cause Damage to the Environment as defined in the MEPA regulations. In this case, MEPA jurisdiction exists over wetlands, waterways, and tidelands.

Review of the ENF

Site Location

The project site is an abandoned railroad bed adjacent to salt marsh and coastal features along the First Herring Brook in Scituate, Massachusetts. The proposed walkway and pedestrian/bicycle bridge will be an extension of the Driftway Trail System extending from New Driftway Road adjacent to 32 New Driftway Road. The First Herring Brook empties into the North River and is 2.51 Nautical miles from Massachusetts Bay. The abandoned railroad bed has no visual signs of the previous railway bridge structure other than placed fill, stone rip rap, remnants of a timber retaining wall and ten deteriorated timber piles along the bank of the brook. Both banks were armored with stone rip rap at the base of the timber retaining walls. The tidal range of the First Herring Brook at this site is approximately ten feet making it a dynamic waterway.

Wetlands, Waterways and Tidelands

Coastal wetland resources on the project site include Coastal Bank, Salt Marshes, Fish Runs and Land Subject to Coastal Storm Flowage (LSCSF). Inland wetland resource areas at the project site include Land under Water and Riverfront Area. The fill that was originally placed on the salt marsh to create the railroad bed functions as Coastal Bank under the state regulations. The Coastal Bank is significant to storm damage prevention and flood control because it provides a vertical buffer to storm waters. As part of the project approximately 95 linear feet of Coastal Bank will be stabilized with rip-rap to further prevent storm water damage. The coastal

bank is primarily peat and does not provide sediment to coastal beaches, coastal dunes, or barrier beaches. Approximately 1,220 square feet of rip-rap revetment will line the bridge abutment.

The entire site, including entire 3,520 square feet of the walkway and pedestrian bridge, is located in Land Subject to Coastal Storm Flowage. The approach ways to the pedestrian bridge will be constructed above a total of 2,453 square feet of salt marsh. The approach way will incorporate a grated decking system to promote sunlight penetration. In addition, the protected Riverfront Area extends 200 ft from the top of the Coastal Bank. Therefore, the installation of the approach ways will impact approximately 2,920 square feet of Riverfront Area.

The Wetlands Protection Act Regulations at 310 CMR 10.32(4) state that small projects within a salt marsh such as an elevated walkway may be permitted provided that it has no adverse effects other than the blocking of sunlight. However, MassDEP has stated in its comment that the project as designed does not meet this criteria and the resulting loss of salt marsh would require a variance under the Wetlands Protection Act. In order to receive a variance, the proponent is required to demonstrate that there is an overriding public interest in the project, that no other reasonable alternative exists, and that mitigation efforts will be undertaken to minimize project impacts (310 CMR 10.05(a)). Historically, wetland variances have only been issued in rare and unusual circumstances to protect public health, public safety or for environmental improvements. In order to obtain a variance, the proponent must identify specifically what public interest is being served by the project and why that interest should be considered an overriding public interest comparable to the standards set forth in previous variance decisions. Otherwise the project must be redesigned to eliminate impacts to salt marsh. MassDEP has provided comments that include specific revisions to the bridge design that the proponent may wish to consider in order to reduce impacts to salt marsh.

The current design width, approach angles, and corresponding approach lengths have been developed to be consistent with the Americans with Disability Act (ADA) access requirements. However, it was noted at the site visit that the existing rail bed path to the project site does not meet ADA access guidelines. As part of the overall access plan, the proponent should consider if ADA access is feasible along the whole rail bed. If not, a redesigned structure of reduced scope and scale that reduces potential impacts to adjacent resources should be considered. In addition, the proposed elevated boardwalk approach structures are large and encroach upon wetland resources. The proponent should consult with CZM and MassDEP and other relevant local agencies to evaluate, refine and potentially reduce the overall size of the approach structures as detailed in both CZM's and MassDEP's comment letters.

The ENF indicated that both banks of the First Herring Brook will be armored by stone revetment approximately 60 ft by 20 ft in dimension. As proposed, the revetments will be placed on intertidal area adjacent to the edge of the marsh. The proponent should consult with CZM and MassDEP to reevaluate the need for the proposed revetment. According to comments from CZM, elimination of this design element will reduce impacts to benthic intertidal areas.

As part of the state permitting process, the proponent should also develop a comprehensive plan that describes how public access will be provided, controlled, and

maintained along the entirety of the historic rail bed in order to ensure that the increase in pedestrian and bicycle access provided by the bridge component of this access project will not result in adverse impacts to resource areas.

Construction Period Impacts

The Herring Brook contains a fish run that is significant to the protection of marine fisheries. During construction, erosion control/sedimentation measures such as the placement of straw bales and a silt curtain, will be undertaken to minimize temporary impacts to water quality. In-water work will be carried out during the time of year that will not interfere with passage, spawning and juvenile development habitat for American eels (*Anguilla rostrata*), rainbow smelt (*Osmerus mordax*) and alewife (*Alosa pseudoharengus*), as designated by the Division of Marine Fisheries. This time-of-year (TOY) restriction on all in-the-water and silt producing work will be required from March 1st through May 31st of any year, and will minimize the potential impacts of turbidity from in-water activities on biological resources. The proponent should consult with Division of Marine Fisheries and other relevant local agencies such as the North and South Rivers Watershed Association prior to construction to ensure the protection of sensitive marine resources.

Pedestrian Amenities and Safety

In order to maximize the public benefits associated with the project I encourage the proponent to note and consider the specific comments submitted by WalkBoston regarding pedestrian amenities and safety in its design and construction of this project. In addition, I have received comments from several concerned citizens concerning the long term maintenance of this public area. I therefore encourage the Town to develop an operation and maintenance plan that will provide for proper upkeep of the bridge and pathway to ensure protection of public safety and of the nearby environmentally sensitive resources.


Public Benefit

Pursuant to 301 CMR 13.02, I am declining to require an additional Public Benefit Review for the project. Furthermore, as a water-dependent project, it is presumed that this project will provide adequate public benefit in accordance with 301 CMR 13.04. I am satisfied that the project's impacts to tideland resources can be adequately addressed during the permitting process.

Conclusion

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.

July 10, 2009
Date



Ian A. Bowles

Comments received:

05/07/2009 Town of Scituate, Planning Board
05/18/2009 WalkBoston
05/22/2009 Mike Higgins
06/24/2009 North and South Rivers Watershed Association
06/24/2009 Town of Scituate, Board of Selectmen
06/24/2009 Kathy Donahue
06/25/2009 Susan Daileader
06/25/2009 Michael Collins
06/30/2009 Massachusetts Department of Environmental Protection
06/30/2009 Massachusetts Coastal Zone Management
06/30/2009 Division of Marine Fisheries

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