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August 21, 2009

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

PROJECT NAME : Town of Norwell Cemetery
PROJECT MUNICIPALITY : Norwell
PROJECT WATERSHED : South Coastal
EEA NUMBER : 14455
PROJECT PROPONENT : Town of Norwell
DATE NOTICED IN MONITOR : July 22, 2009

Pursuant to the Massachusetts Environmental Policy Act (MEPA) (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).

Project Description

As described in the Environmental Notification Form (ENF), the project consists of the construction of a town cemetery on 43 acres of town-owned land located off Stetson Shrine Lane in Norwell. The project proposes to construct the town cemetery including an internal roadway and stormwater management basins in three phases over a 50-year period. The project site contains mapped habitat for species of special concern according to the Division of Fisheries and Wildlife Natural Heritage and Endangered Species Program (NHESP). As mitigation for impacts to mapped habitat, the Proponent is proposing to execute a 30.3-acre conservation restriction (CR) adjacent to the proposed cemetery. All proposed work activities are located greater than 100 feet from any wetland resource areas.

According to the ENF, estimated environmental impacts associated with the project include 12.13 acres of land alteration, 1.73 acres of new impervious area, and a "take" of Eastern Box Turtle (*Terrapine carolina*) habitat as defined by the Massachusetts Endangered Species Act (MESA, M.G.L.c.131A) and implementing regulations (321 CMR 10.00). Permanent site

alteration includes approximately 10.43 acres of forested upland. Temporary site alteration includes approximately 1.7 acres comprising either restored field habitat conditions or stormwater drainage basins.

Jurisdiction and Permitting

The project is undergoing review pursuant to Section 11.03(2)(b)(2) of the MEPA regulations because it requires a State Agency Action and it will result in the disturbance of greater than two acres of designated priority habitat that results in a “take” of a state-listed endangered or threatened species or species of special concern. The project must obtain a Conservation and Management Permit in accordance with MESA from NHESP. The project will also require a National Pollutant Discharge Elimination System (NPDES) Construction General Permit from the United States Environmental Protection Agency (U.S. EPA).

The Proponent is not seeking financial assistance from the Commonwealth. Therefore, MEPA jurisdiction is limited to those aspects of the project within the subject matter of required or potentially required state permits with the potential to cause Damage to the Environment as defined in the MEPA regulations. In this case, MEPA jurisdiction extends solely to impacts to rare species.

Review of the ENF

In 1984, the Town of Norwell voted unanimously to make 121 acres of the 144 acres of Town-owned land at Stetson Meadows, conservation land, under MGL Chapter 40, Section 8C. This conservation land has since been maintained by the Town of Norwell Conservation Commission. In addition, 20 acres of the 144 acres of Town-owned land was given to the Town of Norwell Recreation Commission, which was later conveyed to the Town of Norwell Cemetery Committee in exchange for a 20-acre parcel located off site. The Cemetery Committee is proposing to construct the town cemetery on the 20 acres at Stetson Meadows that was originally given to the Recreation Commission and is now in the possession of the Cemetery Committee.

According to the comments provided by NHESP, it appears that the project will likely qualify for the issuance of a MESA Conservation and Management Permit (C&M Permit) for impacts to the Eastern Box Turtle. The C&M Permit must demonstrate that the project has avoided, minimized, and mitigated impacts to State-listed Species consistent with the following performance standards:

- a) The Proponent has already assessed alternatives to both temporary and permanent impacts to State-listed Species;
- b) An insignificant portion of the local population would be impacted by the project; and
- c) The Proponent agrees to carry out a conservation and management plan that provides a long-term Net Benefit to the conservation of the state-listed species impacted (321 CMR 10.23).

I encourage the Proponent to continue to work closely with NHESP to ensure that impacts to state-listed species are avoided and minimized to the maximum extent feasible, and

that appropriate mitigation is provided. To move forward with MESA permitting, the Proponent shall submit all required materials pursuant to 321 CMR 10.23 including, but not limited to, a phased turtle mortality avoidance plan for work within the active and inactive seasons, a draft CR document, a draft CR meets and bounds plan, and an onsite mowing/vegetation management and operation plan.

To achieve the necessary long-term Net Benefit, the Proponent is pursuing an on-site CR. NHESP notes that although the exact configuration of the CR has not been finalized, it is confident that a suitable parcel with sufficient habitat can be identified. According to the ENF, as part of the 30.3 acres proposed for placement under a CR, the Proponent is intending to make use of 23 acres of the 121 acres maintained by the Conservation Commission. I acknowledge the comments from municipal officials, advocacy organizations, and members of the public indicating that the land proposed for a CR is already protected for conservation purposes and commenters question whether the Proponent can use this land for state-listed species mitigation. I note that there is some question as to the legal status of the land and whether it is protected by Article 97 of Amendments to the Constitution of the Commonwealth. I expect that NHESP will consult with the Executive Office of Environmental Affairs (EEA) Department of Conservation Services regarding the status of the land proposed to be placed under a CR. As noted in its comment letter, NHESP will require that the Proponent provide deeds and other information to clarify land ownership, protection status, and the legal ability of the Proponent to place a CR on the property. In reviewing the Proponent's application, I ask that NHESP consider the comments I have received on the ENF.

If NHESP, as the permitting agency with the authority to review and condition the proposed project, determines that the land identified in the ENF as proposed to be placed under a CR is not adequate to mitigate impacts to rare species (either because the land is already legally protected, or otherwise) the Proponent will be required to identify an alternative parcel that is acceptable to NHESP. Should material changes to the project take place during the NHESP permitting process, the Proponent is reminded that a Notice of Project (NPC) in accordance with 301 CMR 11.10 may be required.

Furthermore, though they are beyond the scope of MEPA jurisdiction for the project, I also recommend that the Proponent consider the comments I have received from the Massachusetts Historical Commission and the Norwell Historical Commission concerning potential impacts to historical and archaeological resources.

Finally, I note the concerns raised by commenters regarding the Proponent's evaluation of the site to determine its suitability for the proposed cemetery development. Specifically, the comments question:

- the depiction of the proposed CR in creating over 70% of permanently protected land;
- the presence of developable land off site for the proposed cemetery;
- the project's limited wetland resource area delineation and the lack of review or approval of resource area boundaries by the Conservation Commission;
- the design of the stormwater drainage basins;
- the vehicular traffic estimates at full project build-out;

- the information presented in the groundwater investigations conducted;
- the presence of any significant historic or archaeological resources on the site;
- the project's consistency with current municipal land use and open space plans; and
- the project's consistency with the 2007 Town Meeting design mandate.

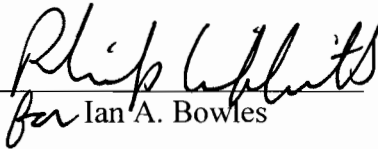
I encourage the Proponent to consider and incorporate these comments into the planning of the project. I ask that the Proponent work with Town of Norwell officials to continue efforts to avoid, minimize and mitigate environmental impacts associated with the project.

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. I am confident that any remaining issues related to the identification of mitigation for impacts to rare species can be adequately addressed by NHESP during the permitting process. The project may proceed to state permitting.

August 21, 2009

Date


for Ian A. Bowles

Comments received:

07/27/2009	Massachusetts Historical Commission
08/10/2009	Town of Norwell Conservation Commission
08/10/2009	Geoff Gordon
08/11/2009	Natural Heritage and Endangered Species Program
08/11/2009	Massachusetts Department of Environmental Protection – SERO
08/11/2009	Town of Norwell Planning Board
08/11/2009	Town of Norwell Historical Commission
08/11/2009	The North & South Rivers Watershed Association Inc.
08/11/2009	Steve Ivas, Ivas Environmental
08/11/2009	Michele Simoneaux
08/11/2009	Deborah Lenahan
08/11/2009	Jason Burtner and Jennifer A. DeLucia Burtner
08/11/2009	Rebecca Lambert
08/11/2009	Cary Wolinsky

IAB/PPP/ppp