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August 28, 2009

PUBLIC BENEFITS DETERMINATION  
OF THE SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS

PROJECT NAME : West Island Beach Salt Marsh Restoration Project  
PROJECT MUNICIPALITY : Fairhaven  
PROJECT WATERSHED : Buzzards Bay  
EOEEA NUMBER : 14432  
PROJECT PROPONENT : Fairhaven Public Works Department  
DATE NOTICED IN MONITOR : June 24, 2009

Consistent with the provisions of *An Act Relative to Licensing Requirements for Certain Tidelands*, I hereby determine that the above-referenced project will have a public benefit. This determination accompanies a Final Record of Decision (FROD) that was issued on August 28, 2009.

Project Description

As described in the Expanded Environmental Notification Form (EENF), the project consists of restoration of approximately 6.5 acres of salt marsh near West Island Beach in Fairhaven. The project includes the replacement of an undersized 15-inch diameter culvert under Fir Street with a 3-foot by 5-foot box culvert to improve tidal flushing to the upper reaches of the marsh. The primary project goal is to enhance marsh health through increased tidal flushing without negatively impacting abutting residential. The project site is located adjacent to the Massachusetts Department of Conservation and Recreation's (DCR) West Island State Reservation.

Estimated project impacts include five square feet (sf) of permanent alteration and 108 sf of temporary impact to BVW, 135 sf of permanent alteration and 110 sf of temporary impact to salt marsh and 4,530 sf of temporary impact to Land Subject to Coastal Storm Flowage (LSCSF). Restoration of tidal hydrology is anticipated to impact approximately 283,000 sf (6.5 acres) of salt marsh.

It should be noted that MEPA typically uses the definition of “alter” for wetlands from the Massachusetts Department of Environmental Protection’s (MassDEP) Section 401 Water Quality regulations, and that definition only contemplates direct impacts from fill, etc. In contrast, the definition of “alter” from the Massachusetts Wetlands Protection Act (WPA) covers indirect alterations from hydrologic changes, such as those anticipated for this wetlands restoration project. Generally speaking, MEPA would not consider these indirect alterations, as defined in the WPA, when determining whether a project exceeds a mandatory EIR threshold, since the WPA is enforced through an Order of Conditions issued by the local permitting authority. However, since the Order of Conditions was appealed, and subsequently a Superseding Order of Conditions must be issued by MassDEP, MEPA’s definition of alter follows those of the WPA, and thus the restoration of tidal hydrology to approximately 6.5 acres of salt marsh exceeds a Mandatory EIR threshold.

### Public Benefit Determination

Consistent with the provisions of *An Act Relative to Licensing Requirements for Certain Tidelands* (2007 Mass. Acts ch. 168, sec.8) (the Act), which was enacted on November 15, 2007, and corresponding regulations at 301 CMR 13.00, I must issue a Public Benefit Determination (PBD) for this project.

The legislation states the following regarding the Public Benefits Determination:

“In making said public benefit determination, the secretary shall consider the purpose and effect of the development; the impact on abutters and the surrounding community; enhancement to the property; benefits to the public trust rights in tidelands or other associated rights, including, but not limited to, benefits provided through previously obtained municipal permits; community activities on the development site; environmental protection and preservation; public health and safety; and the general welfare; provided further, that the secretary shall also consider the differences between tidelands, landlocked tidelands and great pond lands when assessing the public benefit and shall consider the practical impact of the public benefit on the development.”

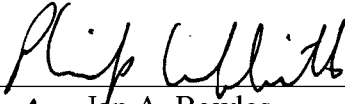
To support the PBD, I have reviewed the EENF and comments received on the EENF. This PBD has been issued in accordance with 301 CMR 13.03(1)(d), as the project will require a c.91 License. As a water-dependent project, it is presumed that this project will provide adequate public benefit in accordance with 301 CMR 13.04. Therefore, I am satisfied that the project provides adequate public benefits and that any impacts to tideland resources can be adequately addressed during the permitting process.

Conclusion

Based on the foregoing, I hereby determine that the project will have a positive public benefit. To meet the public publication requirements of the legislation, this Determination will be published in the next edition of the Environmental Monitor on September 9, 2009.

August 28, 2009

Date

  
for Ian A. Bowles

IAB/HSJ/hsj