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September 7, 2006

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

PROJECT NAME: Cassilis Farm Fire Pond  
PROJECT MUNICIPALITY: New Marlborough  
PROJECT WATERSHED: Housatonic  
EEA NUMBER: 14078  
PROJECT PROPONENT: Jane Carpenter  
DATE NOTICED IN MONITOR: August 8, 2007

Pursuant to the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-62H) 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). While no further MEPA review is warranted for the project, I note that there are significant unresolved issues related to existing conditions, project design and mitigation that must be resolved during the permitting process.

Project Description

As described in the Environmental Notification Form (ENF), the project involves the excavation and grading of wetlands to create a fire pond at a residential property on Hartsville/New Marlborough Road (Route 57) in New Marlborough. The 12-acre property currently supports a large main house, barns and sheds. A fire hydrant and access drive will be installed at the pond for use by the local Fire Department. The project site is located in a tributary intermittent stream and wetlands associated with the Konkapot River. According to an architect's rendering of the pond, a gazebo, stone steps and other landscaped amenities will be placed around the pond, and a water fountain will be installed in the pond for aeration.

### Jurisdiction

The project is undergoing review pursuant to Section 11.03(3)(b)(1)(d) of the MEPA regulations because it requires state permits and will result in the alteration of greater than 5,000 square feet (sf) of Bordering Vegetated Wetlands (BVW). The project requires a Programmatic General Permit (PGP) from the U.S. Army Corps of Engineers (ACOE) pursuant to Section 404 of the Clean Water Act (CWA); a 401 Water Quality Certificate from the Department of Environmental Protection (MassDEP); and an Order of Conditions from the New Marlborough Conservation Commission.

The Proponent filed a Notice of Intent (NOI) for the project with the New Marlborough Conservation Commission under the Limited Project provisions of the Wetlands Protection Act (310 CMR 10.53(3)(g)). An Order of Conditions (OOC) for the project was issued on September 26, 2006 (DEP #237-0142). The Proponent has also received a Category 2 Programmatic General Permit (PGP) from the USACE (NAE-2006-1970).

The proponent is not seeking financial assistance from the Commonwealth for the project. Therefore, MEPA jurisdiction is limited to the subject matter of required state permits. In this case, MEPA jurisdiction extends to wetlands.

### Review of the ENF

The Proponent proposes to excavate and grade wetlands and adjacent stream to create deeper pond habitat. Estimates of potential wetland impacts are unclear in the ENF and there are several conflicting site plans in the ENF. The project will result in the creation of 14,213 sf of Land Under Water (LUW) to form the pond. The pond is anticipated to hold 700,000 gallons of water which will be generated both by groundwater inflow and surface water runoff. The existing intermittent stream will flow through the pond and will exit the pond through the existing stream channel and culvert. The pond's outlet will be reconstructed to include stabilization fabric, cobble rip-rap and stone dike dams to slow water velocity.

According to the NOI and OOC which were submitted with the ENF, 8,490 sf of BVW will be impacted as a result of the project. The Proponent will replicate 8,490 sf of BVW on site. No details related to wetland replication were submitted. 261 linear feet (lf) of Bank will be impacted as a result of the project. 665 lf of new Bank will be created during the construction of the pond.

The Proponent states in the ENF that no alternatives exist to the proposed project. A perennial stream located on the site north on the main house was considered as a potential pond source. This alternative was dismissed when it was determined that the existing septic and future septic reserve occupies the land on both sides of the stream.

The ENF provided data from groundwater monitoring wells but did not provide flow data nor discuss what percentages of groundwater and surface flow will contribute to the pond's

water levels. The ENF did not provide hydrologic data to demonstrate that the pond level can be maintained or to demonstrate that groundwater quality will not be impacted by surface water inflow. The ENF did not consider how the creation of the pond and possible drawdown for fire protection will affect groundwater and surface water flows at the site and downstream. The Proponent stated during the MEPA site visit for the project that if the pond was not able to hold water as expected, a clay liner might be installed. This contingency plan was not outlined in the ENF or the NOI and the Proponent has not considered the potential impacts of the liner on the hydrology of the surrounding area.

The ENF did not provide a description of proposed construction activities or phasing. At the MEPA site visit held for the project the Proponent indicated that the pond would be dug using an excavator. Numerous access points to the proposed pond area are proposed. The New Marlborough Conservation Commission did not consider temporary impacts during their review of the NOI. The Proponent should quantify construction-period resource area impacts during the 401 WQC permitting process. As there is no reference to "temporary disturbance" in the General Performance Standards for BVW at 310 CMR 10.55(4), any construction period impacts should be added to permanent impacts in the WQC application. Measures should be implemented during construction to ensure that adverse impacts to resource areas are minimized.

As noted during the MEPA site visit, the site currently hosts several invasive plant species. The Proponent should implement recommendations provided by the Berkshire Regional Planning Commission (BRPC) to prevent the spreading of invasive species during construction. The Proponent should also commit to monitoring and controlling invasive species recolonization once construction is complete. BRPC notes that several non-native and one banned invasive species are listed on the proposed planting plan. The ENF also states that indigenous fish may be introduced to the pond, however a list of potential fish species is not given. The Proponent should consult with the Massachusetts Division of Fisheries and Wildlife prior to releasing any fish or aquatic species into the pond.

Site plans submitted with the ENF did not show the location of the fire hydrant nor the driveway/pullover where fire trucks will enter to withdraw water. Route 57 in the vicinity of the project site is maintained by the Town of New Marlborough, so a Massachusetts Highway Department Access permit is not required for entrance and egress from the proposed drive. Several significant trees will need to be removed to construct the access drive.

### Conclusion

The impacts of the project within MEPA jurisdiction do not warrant the preparation of an EIR. I conclude that no further MEPA review is required. I expect that MassDEP will thoroughly review the potential impacts of the project and issues that arose during the MEPA review of the project during the 401 WQC permitting process.

September 7, 2007

Date



Ian A. Bowles

Comments received:

8/28/2007 Department of Environmental Protection, Western Regional Office  
9/5/2007 Berkshire Regional Planning Commission

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