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October 17, 2008

DRAFT RECORD OF DECISION

PROJECT NAME : Billerica Comprehensive Wastewater Management Plan
PROJECT MUNICIPALITY : Billerica
PROJECT WATERSHED : Sudbury, Assabet, Concord
EOEA NUMBER : 14283
PROJECT PROPONENT : Town of Billerica, Department of Public Works
DATE NOTICED IN MONITOR : July 23, 2008

Pursuant to the Massachusetts Environmental Policy Act (MEPA) (G.L.c.30, ss. 61-62I) and Section 11.11 of the MEPA regulations (301 CMR 11.00), I have reviewed the Expanded Environmental Notification Form (ENF) and hereby **propose to grant** a waiver that will allow the proponent to proceed with Phase 1 of the project prior to preparing a mandatory Environmental Impact Report (EIR) for the entire project.

Project Description

The Town of Billerica is developing a Comprehensive Wastewater Management Plan/Environmental Impact Report (CWMP/EIR) to address the short-term and long-term issues relating to the Town's wastewater treatment and disposal needs. The goal of the CWMP/EIR is to examine the full range of Billerica's wastewater management needs, and identify environmentally sustainable treatment and disposal alternatives that respond to the community's needs, and meet water quality and public health standards. The result will be a comprehensive plan outlining how the Town of Billerica will treat and dispose of its sanitary sewage for the next 20 years.

The proponent has requested a Special Review Procedure and a Phase I Waiver to construct a portion of the proposed sewer project, described in the ENF as Contract 34B East Billerica, prior to completion of the overall environmental review for the wastewater management planning process.

Permitting/Jurisdiction

This project is subject to the Mandatory EIR provisions of the MEPA regulations Section 11.03 (5)(a)(3) since it will likely involve construction of more than ten miles of new sewers and may exceed other Mandatory EIR thresholds. The project will require several permits from the Department of Environmental Protection (MassDEP) for sewer extensions as well as compliance with revised water quality discharge limits specified in the federal National Pollutant Discharge Elimination System (NPDES) permits issued by the U.S. Environmental Protection Agency (EPA). The project will require an Order of Conditions from the Billerica Conservation Commission; a 401 Water Quality Certification from MassDEP; and possibly a Groundwater Discharge Permit from MassDEP. The project may also require approval of the Water Resources Commission (WRC) under the Interbasin Transfer Act (ITC). Because the proponent is seeking financial assistance from the Commonwealth for the project, MEPA jurisdiction extends to all aspects of the project that may cause significant Damage to the Environment. Because the proponent is seeking financial assistance from the Commonwealth for the project, MEPA jurisdiction extends to all aspects of the project that may cause significant Damage to the Environment, as defined in the MEPA regulations. The Phase 1 Waiver project will require a sewer extension permit from MassDEP, an Order of Conditions from the Billerica Conservation Commission and review by the Massachusetts Historical Commission (MHC).

Waiver Request

The Town has requested a waiver that will allow the proponent to proceed with Phase 1 of the project prior to preparing a mandatory Environmental Impact Report (EIR) for the entire project. According to the ENF, the Contract 34B East Billerica portion of the project will involve the construction of approximately five miles of sewer to serve approximately 300 existing residences and a small number of commercial businesses and proposed upgrades to the Shawsheen River pump station. The proposed sewerage of the East Billerica portion of the project is expected to generate a wastewater flow of approximately 114,000 gallons per day (gpd). The ENF submitted in conjunction with this request identifies the environmental impacts of the project and describes measures to be undertaken by the Town to avoid, minimize and mitigate project impacts.

Criteria for a Phase 1 Waiver

The MEPA regulations at 301 CMR 11.11(1) state that I may waive any provision or requirement in 301 CMR 11.00 not specifically required by MEPA and may impose appropriate and relevant conditions or restrictions, provided that I find that strict compliance with the provision or requirement would:

- (a) result in an undue hardship for the Proponent, unless based on delay in compliance by the Proponent; and,

(b) not serve to avoid or minimize Damage to the Environment.

The MEPA regulations at 301 CMR 11.11(4) state that, in the case of a partial waiver of a mandatory EIR review threshold that will allow the proponent to proceed with Phase 1 of the project prior to preparing an EIR, I shall base the finding required in accordance with 301 CMR 11.11(1)(b) on a determination that:

- (a) the potential environmental impacts of Phase 1, taken alone, are insignificant;
- (b) ample and unconstrained infrastructure facilities and services exist to support Phase 1;
- (c) the project is severable, such that Phase 1 does not require the implementation of any other future phase of the project or restrict the means by which potential environmental impacts from any other phase of the project may be avoided, minimized or mitigated; and,
- (d) the agency action(s) on Phase 1 will contain terms such as a condition or restriction, so as to ensure due compliance with MEPA and 301 CMR 11.00 prior to commencement of any other phase of the project.

Findings

Based upon the information submitted by the proponent and after consultation with the state permitting agencies, I find that the Town's Phase 1 Waiver Request has merit and that the Town has demonstrated that the proposed project meets the standards for all waivers at 301 CMR 11.11(1). I find that strict compliance with the requirement to submit a mandatory EIR prior to completion of Phase 1 of the project would result in an undue hardship for the Town because the ENF proposes measures to avoid and minimize Damage to the Environment. Therefore, the requirement for completion of an EIR prior to Phase 1 is not necessary and would not serve to avoid or minimize Damage to the Environment. In accordance with 301 CMR 11.11(4), the latter finding is based on my determination that:

- (a) the potential environmental impacts of Phase 1, taken alone, are insignificant.

The project will involve the construction of approximately five miles of new sewers to be located within existing roadway right-of-ways. A small section of new sewer will involve directional drilling to cross the Middlesex Canal but will not result in any impacts to resource areas. The Town has proposed to employ horizontal directional drilling technology (HDD) to avoid impacts to the canal during construction of the Phase 1 Waiver sewer project. MHC has requested that the Town provide MHC with the additional information listed below, for Contract 34B to determine the project's impacts to historic and archaeological resources in the project area.

As a condition of the Phase 1 Waiver, the Town must provide MHC with the additional information requested by MHC in its comment letter. MHC's review of this additional information will provide sufficient opportunities to address any outstanding information requests or the development of additional, specific mitigation.

- (b) ample and unconstrained infrastructure facilities and services exist to support Phase 1.

The additional Phase 1 wastewater flows (114,000 gpd) will be conveyed from the East Billerica project area to the Letchworth Avenue Wastewater Treatment Facility (Letchworth WWTF) via force main and gravity sewers and two existing pump stations (Brown Street, Rogers Street). All force mains and gravity sewers have adequate capacity to convey the additional wastewater flows to the Letchworth WWTF. The Letchworth WWTF has a design capacity of 5.4 million gallons per day (MGD) and is currently treating 4.31 MGD. The Letchworth WWTF has adequate capacity to treat and dispose the additional wastewater flows anticipated from the Phase I project.

As a condition of the Phase 1 Waiver, the Town must complete upgrades to the Brown Street, Rogers Street pump stations, concurrently with construction of the Contract 34B project to ensure that these pump stations will have sufficient capacity to accommodate the additional wastewater flows from the Contract 34B project.

While I am not requiring further specific environmental review of this portion of the project, I expect that the growth management impacts and projected build-out flows from the Contract 34B East Billerica will be included in the analyses that are prepared during the overall environmental review.

- (c) the project is severable, such that Phase 1 does not require the implementation of any other future phase of the project or restrict the means by which potential environmental impacts from any other phase of the project may be avoided, minimized or mitigated.

Phase 1 is a self-contained project that is not dependent upon completion of the full-build of the project. Its impacts can be permitted and mitigated separately from the full-build of the project.

- (d) the agency action(s) on Phase 1 will contain terms such as a condition or restriction, so as to ensure due compliance with MEPA and 301 CMR 11.00 prior to commencement of any other phase of the project.

The ENF has provided sufficient information to demonstrate that the project can adequately meet the performance standards and requirements of required state permits.

The permitting process can contain conditions to ensure that the Phase 1 project complies with MEPA and its implementing regulations. As a condition of the Phase 1 Waiver, the proponent must prepare draft Section 61 Findings outlining all the proposed mitigation measures associated with Phase 1 for consideration during permitting.

Conclusion

I have determined that this waiver request has merit, and **propose to grant** the waiver requested for this project, which will allow the proponent to proceed with Phase 1 of the project prior to preparing a mandatory EIR for the entire project, subject to the above findings and conditions. I am issuing this Draft Record of Decision (DROD), which will be published in the next edition of the Environmental Monitor on October 22, 2008 in accordance with 301 CMR 11.15(2), which begins the public comment period. The public comment period lasts for 14 days and will end on November 11, 2008. Based on written comments received concerning the DROD, I shall issue a Final Record of Decision within seven days after the close of the public comment period, in accordance with 301 CMR 11.15(6).

October 17, 2008

Date

Ian A. Bowles, Secretary

Comments Received:

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| 08/06/08 | Massachusetts Historical Commission (MHC) |
| 10/02/08 | MA Department of Environmental Protection (MassDEP) – NERO |
| 09/05/08 | Water Resources Commission (WRC) |
| 09/15/08 | Natural Heritage and Endangered Species Program (NHESP) |
| 10/1/2008 | Northern Middlesex Council of Governments (NMCOG) |

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DROD #14283