



*The Commonwealth of Massachusetts*

*Executive Office of Environmental Affairs*

*251 Causeway Street, Suite 900*

*Boston, MA 02114-2119*

11/23/02

JANE SWIFT  
GOVERNOR

BOB DURAND  
SECRETARY

Tel. (617) 626-1000

Fax (617) 626-1181

<http://www.magnet.state.ma.us/envir>

**November 22, 2002**

**DRAFT RECORD OF DECISION  
PHASE I WAIVER**

<b>PROJECT NAME</b>	<b>: New Tyngsborough Bridge and Approaches</b>
<b>PROJECT MUNICIPALITY</b>	<b>: Tyngsborough</b>
<b>PROJECT WATERSHED</b>	<b>: Merrimack River</b>
<b>EOEA NUMBER</b>	<b>: 12890</b>
<b>PROJECT PROPONENT</b>	<b>: Massachusetts Highway Department</b>
<b>DATE NOTICED IN MONITOR</b>	<b>: October 9, 2002</b>

As Secretary of Environmental Affairs, I have reviewed this project pursuant to the Massachusetts Environmental Policy Act (M.G.L. c.30, ss. 61-62H) and Section 11.11 of the MEPA regulations (301 CMR 11.00), and hereby **propose to grant a waiver** (as defined below), allowing Phase I of the above project to proceed, pending the preparation of an Environmental Impact Report (EIR) for the entire project. In a separate certificate, also issued today, I have issued a scope for the EIR.

**Introduction**

The Tyngsborough Bridge, built in 1932, provides the only crossing of the Merrimack River to connect the east and west portions of the Town of Tyngsborough. It serves as a vital link for the residents of Tyngsborough and the surrounding towns of the Merrimack Valley. According to the ENF, increased traffic congestion on and around the bridge, resulting from increased growth and development in Tyngsborough and the Merrimack Valley region, has resulted in significant traffic delays for commuters, residents and public health and safety officials. This project has the potential to cause two sets of benefits. First, it is intended to reduce commuter and resident traffic congestion on the existing Tyngsborough Bridge and adjacent bridge access roads. Second, it should address existing public safety concerns for unimpeded local travel throughout the town for police, fire, and medical emergencies.



### **Project Description**

According to the ENF, the proposed project involves the construction of a second new bridge crossing of the Merrimack River, and structural roadway improvements to both the eastern and western approaches to the existing Tyngsborough Bridge. As described in the ENF, each of the two proposed bridge crossing alternatives (Alternative 14, and Alternative 5/6) involve the construction of a 4-lane bridge crossing the Merrimack River with shoulders, median barriers, sidewalk, and access roads.

Alternative 14 is located north of the existing Tyngsborough Bridge and proposes to connect with the Pheasant Lane Mall access road and the Route 3 Interchange (Exit 36) on the west side of the Merrimack River, and with Frost Road (Rt 3A) on the east side of the river. This alternative would attract 24,950 average daily trips (ADT) in the 2020 design year. Alternative 5/6 is located south of the existing bridge and would connect with Westford Road and the Route 3 Interchange (Exit 35) on the west side of the Merrimack River and with the proposed realignment of Pawtucket Boulevard on the eastern side of the river. Alternative 5/6 is expected to attract 23,550 ADT in the 2020 design year.

The proponent has filed an Expanded ENF and is requesting a Phase I Waiver for improvements to the existing Tyngsborough Bridge's eastern and western approaches. According to the ENF, the realignment of Pawtucket Boulevard on the east side of the existing Tyngsborough Bridge, and the widening of the Middlesex Avenue/Kendall Road intersection on the bridge's west side, would alleviate major existing traffic problems in and around the existing bridge. This work is described as needed short-range improvements and severable from the proposed new bridge crossing. As a result, these Phase I improvements are being proposed whether or not a second bridge is constructed.

Improvements to the existing bridge's eastern approach include the relocation of Pawtucket Boulevard, realignment of the Pawtucket Boulevard/Sherburne Avenue intersection and the Pawtucket Boulevard/Frost Road intersection, intersection signalization, lighting and landscaping. Proposed roadway improvements on the west side of the existing bridge include the realignment of the Middlesex Avenue /Westford Road intersection and the Middlesex Avenue/Kendall Road intersection, widening of portions of Middlesex Avenue, widening of the existing bridge span over the railroad, lighting and landscaping.

The Phase I improvements would total approximately 3,700 linear feet of new roadway, and will result in the creation of approximately 3.8 acres of impervious roadway surface. According to the information provided in the ENF, no wetland resource areas will be impacted by the Phase I program.

### Jurisdiction

The project is undergoing review pursuant to sections 11.03 (1)(b)(2), 11.03(3)(b)(1)(d) and 11.03(6)(b)(1)(a) of the MEPA regulations, because the project will likely involve; the creation of five or more acres of impervious surface, the alteration of 5,000 or more square feet of bordering vegetated wetlands, and the construction of a New roadway one quarter or more miles in length, respectively. The project will require a Chapter 91 License, an Air Quality Permit, and a 401 Water Quality Certification from DEP, a 404 Programmatic General Permit from the Army Corps of Engineers (ACOE), and a U.S. Coast Guard Bridge Permit. The project will require an Order of Conditions from the Tyngsborough Conservation Commission (and hence a Superseding Order of Conditions from DEP if the local Order were appealed). It must also comply with the National Pollution Discharge and Elimination System (NPDES) General Permit for the Discharge of Stormwater Associated with Construction Activities. The Massachusetts Historical Commission (MHC) will review the project for compliance with the applicable federal and state laws regarding historic and archaeological resources. The Massachusetts Heritage and Endangered Species Program (NHESP) will review the project for compliance with the applicable state laws regarding the location and protection of rare species habitat in the project area.

Because the project involves financial assistance from a state agency, MEPA jurisdiction is broad, and is conferred over any aspect of the project with the potential to cause significant Damage to the Environment.

### Phase I Waiver Request

The proponent has requested that I waive the mandatory requirement to prepare an Environmental Impact Report for Phase I of this project. The waiver request was presented within the ENF and supporting documents and was discussed at a public consultation meeting held on October 22, 2002.

Section 11.11 of the MEPA regulations provides that the Secretary may waive any provision or requirement of 301 CMR 11.00 not specifically required by MEPA, and may impose appropriate and relevant conditions or restrictions, provided that the proponent has submitted an Expanded ENF, and that the Secretary finds 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.

In the case of a partial waiver of a mandatory EIR review threshold, that will allow the proponent to proceed with phase one of the project prior to preparing an EIR, the Secretary, at a minimum, must base this finding on a determination that:

- (a) the potential impacts of phase one, taken alone, are insignificant;
- (b) ample and unconstrained infrastructure facilities and services exist to support phase one;
- (c) the project is severable, such that phase one does not require the implementation of any other future phases 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 on phase one will contain terms such as a condition or restriction in a permit, contract or other relevant document approving or allowing the agency action, or other evidence satisfactory to the Secretary, so as to ensure due compliance with MEPA and 301 CMR 11.00 prior to commencement of any other phase of the project.

### Findings

I have carefully reviewed the ENF and supporting documentation, written comments and comments received at the scoping session. I make the following findings:

1. It would constitute an undue hardship and not serve to avoid or minimize damage to the environment to deny the Phase I Waiver. I particularly acknowledge the significant contribution that phase one will make on the needs of transportation and public safety throughout Tyngsborough.
2. The potential impacts of phase one, taken alone, are insignificant. Phase one involves the construction of approximately 3,800 linear feet of new roadway, and will result in the creation of approximately 3.7 acres of impervious surface area. These impact levels are well below the EIR threshold, and can be accommodated by existing public infrastructure. I therefore find that the potential environmental impacts of the project are insignificant.
3. Ample and unconstrained infrastructure facilities and services exist to support phase one. The work proposed in Phase I could be constructed under existing traffic flows. New storm drainage lines will connect to existing city facilities with adequate capacity. Traffic mitigation commitments relative to phase one are detailed in the ENF.

4. The project is severable, such that the proposed Phase I work 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.
5. Any agency action on phase one will contain terms such as a condition or restriction in a permit, contract or other relevant document approving or allowing the agency action, or other evidence satisfactory to the Secretary, so as to ensure due compliance with MEPA and 301 CMR 11.00 prior to commencement of any other phase of the project.

Based on these findings, it is my judgment that the waiver request has merit, meets the tests established in 301 CMR 11.11, and will serve to advance the interests of the Massachusetts Environmental Policy Act. Therefore, I propose to grant the Phase I waiver subject to the aforementioned findings and conditions.

A Draft Record of Decision (DROD) will be published in the next issue of the *Environmental Monitor*, dated December 11, 2002, and I will receive comments on the DROD until December 26, 2002, after which date I will confirm, modify, or reconsider the waiver.

November 22, 2002

Date

\_\_\_\_\_  
Bob Durand

Comments received:

10/04/02	Stephen E. Wooster
10/28/02	Christopher Smallis
10/29/02	Massachusetts Highway Department (MHD)
10/29/02	Town of Tyngsborough, Conservation Commission
10/29/02	Massachusetts Historical Commission (MHC)
10/30/02	Northern Middlesex Council of Governments (NMCOG)
10/30/02	Department Of Environmental Protection-Boston
11/07/02	Earth Tech

12890 drod  
BD/NCZ/ncz