

# ENF Environmental Notification Form

<i>For Office Use Only</i> Executive Office of Environmental Affairs	
EOEA No.:	<u>13194</u>
MEPA Analyst:	<u>DEIRDRE BUCKLEY</u>
Phone:	617-626- <u>1044</u>

The information requested on this form must be completed to begin MEPA Review in accordance with the provisions of the Massachusetts Environmental Policy Act, 301 CMR 11.00.

Project Name: <b>CAPOLUPO FAMILY HOME</b>		
Street: <b>FERRY LOTS LANE</b>		
Municipality: <b>SALISBURY</b>	Watershed: <b>MERRIMAC RIVER</b>	
Universal Tranverse Mercator Coordinates:	Latitude: <b>N42 49.9'</b> Longitude: <b>W70 53.09</b>	
Estimated commencement date: <b>JUNE 2004</b>	Estimated completion date: <b>JULY 2005</b>	
Approximate cost: <b>475,000</b>	Status of project design: <b>90</b>	%complete
Proponent: <b>PHILIP CAPOLUPO</b>		
Street: <b>6 KNOBB HILL</b>		
Municipality: <b>BYFIELD</b>	State: <b>MA</b>	Zip Code: <b>01922</b>
Name of Contact Person From Whom Copies of this ENF May Be Obtained: <b>ERIC BOTTERMAN, P.E.</b>		
Firm/Agency: <b>MILLENNIUM ENGINEERING</b>	Street: <b>62 ELM STREET</b>	
Municipality: <b>SALISBURY</b>	State: <b>MA</b>	Zip Code: <b>01952</b>
Phone: <b>978 463 8980</b>	Fax: <b>978 499 0029</b>	E-mail:

- Does this project meet or exceed a mandatory EIR threshold (see 301 CMR 11.03)?  
 Yes  No
- Has this project been filed with MEPA before?  
 Yes (EOEA No. \_\_\_\_\_)  No
- Has any project on this site been filed with MEPA before?  
 Yes (EOEA No. \_\_\_\_\_)  No
- Is this an Expanded ENF (see 301 CMR 11.05(7)) requesting:
- a Single EIR? (see 301 CMR 11.06(8))  Yes  No
  - a Special Review Procedure? (see 301 CMR 11.09)  Yes  No
  - a Waiver of mandatory EIR? (see 301 CMR 11.11)  Yes  No
  - a Phase I Waiver? (see 301 CMR 11.11)  Yes  No

Identify any financial assistance or land transfer from an agency of the Commonwealth, including the agency name and the amount of funding or land area (in acres): NONE

Are you requesting coordinated review with any other federal, state, regional, or local agency?  
 Yes (Specify \_\_\_\_\_)  No

List Local or Federal Permits and Approvals:  
 Superseding Order of Conditions (DEP # 65-380) & COE Permit #199903022

Which ENF or EIR review threshold(s) does the project meet or exceed (see 301 CMR 11.03):

- |                                 |  |  |
|---------------------------------|--|--|
| <input type="checkbox"/> Land   | <input checked="" type="checkbox"/> Rare Species | <input type="checkbox"/> Wetlands, Waterways, & Tidelands      |
| <input type="checkbox"/> Water  | <input type="checkbox"/> Wastewater              | <input type="checkbox"/> Transportation                        |
| <input type="checkbox"/> Energy | <input type="checkbox"/> Air                     | <input type="checkbox"/> Solid & Hazardous Waste               |
| <input type="checkbox"/> ACEC   | <input type="checkbox"/> Regulations             | <input type="checkbox"/> Historical & Archaeological Resources |

Summary of Project Size & Environmental Impacts	Existing	Change	Total	State Permits & Approvals
<b>LAND</b>				<input checked="" type="checkbox"/> Order of Conditions <input checked="" type="checkbox"/> Superseding Order of Conditions <input type="checkbox"/> Chapter 91 License <input type="checkbox"/> 401 Water Quality Certification <input type="checkbox"/> MHD or MDC Access Permit <input type="checkbox"/> Water Management Act Permit <input type="checkbox"/> New Source Approval <input type="checkbox"/> DEP or MWRA Sewer Connection/ Extension Permit <input type="checkbox"/> Other Permits (including Legislative Approvals) – Specify:
Total site acreage	27.4			
New acres of land altered		0.76		
Acres of impervious area	0	0.43	0.43	
Square feet of new bordering vegetated wetlands alteration		1477		
Square feet of new other wetland alteration		1477		
Acres of new non-water dependent use of tidelands or waterways				
<b>STRUCTURES</b>				
Gross square footage	0	7494	7494	
Number of housing units	0	1	1	
Maximum height (in feet)		35	35	
<b>TRANSPORTATION</b>				
Vehicle trips per day	0	10	10	
Parking spaces	0	3	3	
<b>WATER/WASTEWATER</b>				
Gallons/day (GPD) of water use		440	440	
GPD water withdrawal		440	440	
GPD wastewater generation/ treatment		440	440	
Length of water/sewer mains (in miles)				

**CONSERVATION LAND:** Will the project involve the conversion of public parkland or other Article 97 public natural resources to any purpose not in accordance with Article 97?

Yes (Specify \_\_\_\_\_)  No

Will it involve the release of any conservation restriction, preservation restriction, agricultural preservation restriction, or watershed preservation restriction?

Yes (Specify \_\_\_\_\_)  No

\* Whether or not, project meets or exceeds Rare Species threshold is to be determined by the Secretary.

**RARE SPECIES:** Does the project site include Estimated Habitat of Rare Species, Vernal Pools, Priority Sites of Rare Species, or Exemplary Natural Communities  Yes (Specify Estimated Bald eagle Habitat)  No

**HISTORICAL/ARCHAEOLOGICAL RESOURCES:** Does the project site include any structure, site or district listed in the State Register of Historic Place or the inventory of Historic and Archaeological Assets of the Commonwealth?

Yes (Specify MHC site # 19-ES-279 [Buswell Site])  No

If yes, does the project involve any demolition or destruction of any listed or inventoried historic or archaeological resources?

Yes (Specify NONE PROPOSED AS PART OF PROJECT)  No

**AREAS OF CRITICAL ENVIRONMENTAL CONCERN:** Is the project in or adjacent to an Area of Critical Environmental Concern?

Yes (Specify \_\_\_\_\_)  No

**PROJECT DESCRIPTION:** The project description should include (a) a description of the project site, (b) a description of both on-site and off-site alternatives and the impacts associated with each alternative, and (c) potential on-site and off-site mitigation measures for each alternative (*You may attach one additional page, if necessary.*) **SITE DESCRIPTION:** The property consists of twenty seven-acres of which over 18 is upland. The property contains a combination of wetlands and uplands with over thirteen hundred linear feet of frontage on Back River. Access to the site is from Elm Street to Mudnock Road to Ferry Lots Lane. Seven to eight hundred feet from Mudnock Road, Ferry Lots Lane becomes a partially improved wood road that runs in a southwesterly direction through uplands. Approximately twenty eight hundred feet from the improved part of the roadway, the road splits to the Southeast where it enters the property of the applicant. Approximately ninety feet from the split, the topography slopes down to a narrow band of wetland vegetation classified as Bordering Vegetated Wetland [BVW], before rising again forty feet distant. This area of BVW [Area A on Plan Sheet I] connects to a marsh on the east and an inland wetland to the west. Found in the approximate center of the BVW area was a narrow swale connecting the western resource area to the marsh on the east. Across this area of BVW, the woods road traverses through upland for another two hundred feet where the topography again slopes down to another area classified as BVW [AREA B]. Area B consists of freshwater type vegetation amidst ruts & ridges adjoining salt marsh vegetation to the Southwest. Once crossed, the wood road rises from the resource area and continues through a large upland island to the river. Existing vegetation is typically that of second growth forest with most trees appearing to be a maximum of twenty to thirty years in age. One hundred and ninety feet from the crossing is the location of a proposed waste disposal system, with the dwelling one hundred forty feet to the South. There has been no dispute regarding the site delineation since the original Notice of Intent filing of November 1999.

**PROJECT PROPOSAL:** The proposed project includes construction of a single family home and improvement of the existing unpaved wood road. A portion of the project abuts Back River (cutoff of the Merrimac River) in the vicinity of Carr Island between Salisbury and Newburyport. The proposed house is to be situated along the river, but outside of the protected 200-foot Riverfront Area. Improvements for access will necessitate two small wetland crossings (Areas A & B). The crossings will result in the alteration of approximately 1477 square feet (SF) of BVW along the existing dirt road. As required by the Wetlands Protection Act Regulations, 1500 SF of BVW replication is proposed in another location.

The two small areas of BVW proposed to be altered occur within a large corridor of Estimated Bald Eagle habitat, which runs along both sides of the Merrimac River for its entire length within the Commonwealth. At the direction of the Department of Environmental Protection (DEP), this Environmental Notification Form is being filed for a determination by the Secretary of Environmental Affairs as to whether the proposed alteration of 1477 SF of BVW in the *estimated* habitat of the Bald Eagle constitutes a "take" triggering MEPA review under 301 CMR 11.03(2) and whether preparation of an Environmental Impact Report is required. It is the opinion of the Applicant and his representatives that the Applicant's proposed wetland alteration will not result in a "take" as that term is defined in the Massachusetts Endangered Species Act. The site does not have trees of sufficient height or cover to provide nesting or breeding habitat. In addition, Back River freezes solid during normal winter conditions and does not provide feeding habitat for the

eagle's preferred food source (large fish), which is available all winter up-river in the vicinity of Chain Bridge.

**PROJECT HISTORY:** The proponent of the project purchased the property solely for the construction of one single-family house to be occupied by he and his family. In November of 1999, a Notice of Intent [NOI] was filed to construct a house, barn and to improve the existing woods road. The NOI proposed the construction of the house, within the outer riparian zone of the Riverfront Area and two wetland crossings (A&B – see Plan Sheet II). Crossing A required the placement of a culvert and B to be spanned by means of a 65-foot bridge. At the time of NOI submittal, a copy was furnished the Natural Heritage Program; however, a communication from that agency indicated, they had not received a Plan of the project. Therefore, a second package was forwarded by Priority Mail and received by them on November 23, 1999. The original NOI proposed replication for all BVW and Flood Zone alterations (4000 square feet) as compensation for a proposed alteration of 3130 square feet (SF). In December 1999, the local Conservation Commission approved the project, as proposed. In addition, in December 1999, an application was filed with the Corps of Engineers for the alteration of Federal wetlands. After meetings on site with the COE, the bridge design was modified to decrease filling. The COE issued a permit for the project in March 2000. On December 31, 1999 (39 days after notification—not in compliance with regulation), the Program issued a letter to the Salisbury Conservation Commission ordering denial of the project [Exhibit 1]. Subsequently, the Order of Conditions was appealed by the DEP on January 7, 2000, based on the project's ability to comply with the Wetland's Act requirements for work within a specified habitat area [Exhibit 2]

The proponent in response to the appeal had the project Plans revised by his engineers to meet the Department's concerns. An amendment to the Order of Conditions was submitted in May 2000. Changes to the project were the relocation of the house outside of the Riverfront zone and extension of the bridge to 90 feet. The increase in bridge length decreased the originally proposed wetland alteration to 1477 SF (77 at bridge and 1400 at Area A); therefore, as a part of the amendment, the replication was also decreased (4000 to 1500 SF). The amendment was approved and a Superseding Order of Conditions issued by the Department in June 2000. Although the project proponent conceded to the major issues of the DEP and Program, the new Order restricted future use of his twenty seven acre parcel (see Exhibit 3); therefore, an Adjudicatory Hearing was requested. The ALJ found that the two crossings provide limited feeding & shelter habitat (see Decision – Exhibit 4) and so ordered the applicant to file an Environmental Notification Form.

**PROJECT ALTERNATIVES: OFFSITE ALT. 1:** The applicant purchased the property for the sole purpose of constructing a single family home with river frontage, and to eventually use the frontage for water access. Economically, there is no practical off site alternative. River front property (when available) in this section of Massachusetts is expensive with small parcels in the quarter million to half million-dollar range. To abandon his purchase and construct a home elsewhere on the river could cost the project proponent as much as a million dollars (loss, plus purchase); which is not economically viable. In addition, the applicant would encounter similar issues, in that the whole river is classified as *estimated habitat*.

**ALT. 2: Relocate house position away from estimated habitat area.** In response to requests from the Department and Program, the house was relocated to a position outside the Riverfront Area and bridge extended to minimize habitat alterations. All of the subject property falls within the Estimated Habitat Zone. It is, therefore, impossible to move the dwelling completely out of the habitat area. *Alternative 2 is complied with.* Impacts are decreased (3130 SF alteration to 1477 SF) with full mitigation proposed within Areas C/D.

**ALT 3: Construct dwelling elsewhere on the property,** such that no resource alteration would be required. For any construction to proceed on the proponent's property, an alteration at A will still be required. The proposed crossing at Area A is actually on the property of Stevens, the abutting landowner. Mr. Capolupo's property line is forty to ninety feet South of crossing A. From our site review, it appears that this is the narrowest point of access to the uplands on the Capolupo property. Regardless of a building location on the parcel, there will be no change to the impact for the alteration at Area A: 1400 SF will be altered with replication of 1500 +/- proposed to the Southwest side. In addition, it should be noted that much of the property upland consists of ledge, and the only area found to meet State requirements for installation of a waste disposal system is that proposed.

**ALT. 4: No Build.** The "no build" alternative would result in the removal of the property value. All nineteen acres of upland would be inaccessible to the owner and of minimal, if any, value to, and, therefore constitute a "taking".