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October 11, 2019

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

PROJECT NAME : Silverman Bank Stabilization Project
PROJECT MUNICIPALITY : Egremont
PROJECT WATERSHED : Housatonic River
EEA NUMBER : 16089
PROJECT PROPONENT : Bertram Silverman and Alice Kessler Harris
DATE NOTICED IN MONITOR : September 11, 2019

Pursuant to the Massachusetts Environmental Policy Act (MEPA; M.G. L. c. 30, ss. 61-62I) and Section 11.06 of the MEPA regulations (301 CMR 11.00), I hereby determine that this project **does not require** an Environmental Impact Report (EIR).

Project Description

As described in the Environmental Notification Form (ENF), the project involves the stabilization of a 42-foot (ft) long section of the bank of Karner Brook. The bank is eroded to the extent that it is nearly vertical with exposed soil and rocks. The project includes the placement of two- to three-ft diameter boulders embedded in crushed stone at the base of the bank to match the toe of slope on either side of the eroded section; placement of soil to create a vegetated shelf above the toe; and reconstruction of a dry laid stone wall on the shelf up to the top of bank. The materials and dimensions of the stone wall will match adjacent sections of the wall. The height of the bank stabilization structure will be approximately 10 ft from the toe of slope to the top of the bank. An existing roof drain at the top of the wall will be extended to discharge onto stone splash guards.

Construction will take place over a period of 10 days. A sandbag cofferdam will be placed in the stream parallel to the bank to create dry working conditions. A long-reach excavator positioned at the top of the bank will be used to construct the project.

Project Site

The site is a 1.8-acre lot in southern Egremont. It is located in a rural area with farms, undeveloped land and low-density residential uses. Karner Brook forms the southern boundary of the property. The site includes a single-family house located less than 10 ft away from the top of the bank.

Karner Brook is a tributary to a public water supply and is designated as a Class A Outstanding Resource Water (ORW) pursuant to the Massachusetts Surface Water Quality Standards at 314 CMR 4.00. The site is located within the Karner Brook Watershed Area of Critical Environmental Concern (ACEC). According to the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps (FIRM) (No. 2500220007B, effective June 15, 1982), the 100-year floodplain is confined within the banks of Karner Brook with a Base Flood Elevation (BFE) of 823 ft NGVD 1929.

Environmental Impacts and Mitigation

Environmental impacts associated with the project include direct alteration of 42 linear feet (lf) of Bank, 4,953 sf of Riverfront Area and 168 sf of Land under Water (LUW).¹ Measures to avoid, minimize and mitigate Damage to the Environment include revegetating the bank and constructing the project behind the temporary cofferdam to minimize turbidity.

Permitting and Jurisdiction

This project is subject to MEPA review and preparation of an ENF pursuant to 301 CMR 11.03(11)(b) because it requires an Agency Action and is located within a designated ACEC. The project requires a Section 401 Water Quality Certificate (WQC) from the Massachusetts Department of Environmental Protection (MassDEP).

The project requires an Order of Conditions (OOC) from the Egremont Conservation Commission (and, if the OOC is appealed, a Superseding Order of Conditions (SOC) from MassDEP). It requires the submittal of a Self-Verification Notification (SVN) to the Army Corps of Engineers (ACOE) for approval pursuant to the General Permits for Massachusetts and Section 10 of the Rivers and Harbors Act.

The project is not receiving Financial Assistance from the Commonwealth. Therefore, MEPA jurisdiction is limited to those aspects of the project that are within the subject matter of any required or potentially required Agency Actions and that may cause Damage to the Environment, as defined in the MEPA regulations.

¹ Materials submitted with the ENF indicated that the project would alter 200 sf of Bordering Vegetated Wetland (BVW). During the review period, the Proponent clarified that the project will impact vegetated portions of the Bank, but not any BVW. During permitting process, MassDEP should confirm impacts to resource areas and require any necessary mitigation.

Review of the ENF

The ENF provided a description of existing and proposed conditions, project plans, and identified measures to avoid, minimize and mitigate project impacts.

The ENF reviewed a No Build and four structural alternatives to the Preferred Alternative. The No Build alternative would minimize impacts associated with construction, but would not address erosion and sedimentation of the bank, which would continue and could cause the house to collapse.

The ENF reviewed four structural alternatives for stabilizing the bank that would use different materials, including a concrete retaining wall, sheet piling, gabion baskets and rip rap. These alternatives are feasible, would have similar construction impacts as the Preferred Alternative and would protect the eroded section of the bank. Compared to the Preferred Alternative, these alternatives would have greater long-term impacts on wetland resources by causing erosion along other parts of the stream bank and channel and would result in a loss of habitat associated with a vegetated bank.

The Preferred Alternative has been designed to recreate the condition of the bank prior to becoming eroded. To minimize impacts to LUW, the base of the proposed bank will not extend further into the stream than adjacent sections of the stream bank and will be constructed using rock of similar size and shape to that which occurs naturally in the stream. The Preferred Alternative includes a planted shelf that will provide riparian habitat. Impacts to water quality during construction will be minimized by establishing dry work conditions. The Proponent made changes to the design in response to comments provided by MassDEP at a site visit it conducted. The Proponent will strategically relocate native boulders in the stream to support bank and channel stabilization, minimize the use of hard materials on the bank and revise the planting plan to include more native wetland species.

I encourage the Proponent to design the project to be resilient to the effects of climate change. The region's climate is expected to experience higher temperatures and more frequent and intense storms. The Northeast Climate Science Center at the University of Massachusetts at Amherst has developed projections of changes in temperature, precipitation and sea level rise for each river basin in Massachusetts. This data is available through the Climate Change Clearinghouse for the Commonwealth at www.resilientMA.org. By the end of the century, average annual precipitation in the Housatonic River Basin is expected to increase by up to 7.7 inches, with increased precipitation in the winter and spring and greater frequency of intense rainfall.

Conclusion

Based on a review of the ENF and comments received, and in consultation with State Agencies, I have determined that the project does not require an EIR. The ENF has sufficiently defined the nature and general elements of the project for the purposes of MEPA review and demonstrated that the project's environmental impacts will be avoided, minimized and/or mitigated to the extent practicable. The project may proceed to permitting.

K. Theoharides

October 11, 2019

Date

Kathleen A. Theoharides

Comments received:

10/01/2019 Massachusetts Department of Environmental Protection (MassDEP)- Western Regional Office (WERO)

KAT/AJS/ajs



Department of Environmental Protection

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October 1, 2019

Kathleen A. Theoharides, Secretary
Executive Office of Energy & Environmental Affairs
Massachusetts Environmental Policy Act Office
Alex Strycky, EEA No. 16089
100 Cambridge Street, 9th Floor
Boston, MA 02114-2524

Re: Silverman and Harris
Egremont ENF

Dear Secretary Theoharides,

The Massachusetts Department of Environmental Protection (MassDEP), Western Regional Office (WERO) appreciates the opportunity to comment on the Environmental Notification Form (ENF) and supplemental information submitted for the proposed stabilization of eroded area of the Bank of Karner Brook and associated embankment up to the existing structure located on this property at 74 Jug End Road in Egremont, MA (EEA #16089).

I. Project Description

The project which encompasses 1.8 acres, centers around stream bed improvements to prevent erosion and to correct changes to the riverbank resulting from bank erosion. The purpose of the project is to stabilize the stream bank and embankment of the Karner Brook. Proposed stabilization techniques include use of rock toe reinforcement; followed by a planting strip moving up on the embankment; to a dry lain stone wall to match existing stone walls located upstream and downstream of the area of proposed work. The total length of Bank planned for disturbance is not to exceed 42 feet. Work will commence at the toe of the existing original bank and extend to the top of the embankment in close proximity to the existing single family home. The project is proposed by Bertram Silverman and Alice K. Harris (the Proponents). Karner Brook is an Outstanding Resource Water. The applicable MassDEP regulatory and permitting considerations regarding wetlands, waterways, air pollution, solid waste, hazardous waste and waste site cleanup are discussed.

Environmental impacts associated with this project include:

- 42 lf Bank temporary
- 2,550 sf Riverfront Area temporary
- 200 sf new bordering vegetated wetland
- 4,953 sf of new, other wetland alteration

II. Required Mass DEP Permits and/or Applicable Regulations

Wetlands

310 CMR 10.000

Water Quality Certificate

314 CMR 9.00

Waterways

310 CMR 9.00

Air Pollution

310 CMR 7.00

Solid Waste

310 CMR 16.00

Hazardous Waste

310 CMR 30.00

Bureau of Waste Site Cleanup

310 CMR 40.000

III. Permit Discussion

Bureau of Water Resources

Wetlands

Based on the information provided, this project is subject to the Wetlands Protection Act and the associated regulations. The site appears to contain Riverfront Area, Bank and Land Under Water Bodies and Waterways. The applicant submitted a Notice of Intent to the Egremont Conservation Commission on July 29, 2019, and MassDEP issued a file number and comments regarding the work. Interested parties may review the file number comments online: <https://eeaonline.eea.state.ma.us/Portal/#!/search/wire>

401 Water Quality Certification

As proposed, this project will require a 401-water quality certification (WQC). Under these regulations, impacts are to be avoided, minimized and mitigated; the proponent is required to provide sufficient information to adequately describe cumulative impacts to "Waters of the United States within the Commonwealth" (Bordering and Isolated Vegetated Wetlands and Land Under Water). The proposed work is located within the Karner Brook Area of Critical Environmental Concern (ACEC) and this area is located within an Outstanding Resource Water. The 401 WQC application was received by MassDEP (postmarked) September 3, 2019. Additional information has been requested by MassDEP. The Proponent's MEPA submittal does not accurately quantify impacts to wetland resources. Impacts will be clarified during permitting of the 401 WQC.

Bureau of Air and Waste

Air Quality

Construction and Demolition Activities

The construction and demolition activity must conform to current Air Pollution Control Regulations. The proponent should implement measures to alleviate dust, noise, and odor nuisance conditions that may occur during the construction and demolition activities. Such measures must comply with the MassDEP's Bureau of Waste Prevention (BWP) Regulations 310 CMR 7.01, 7.09, and 7.10.

Construction Equipment

MassDEP recommends that the project proponent participate in the MassDEP Diesel Retrofit Program. All non-road engines shall be operated using only ultra low sulfur diesel (ULSD) with a sulfur content of 15 ppm pursuant to 40 CFR 80.510.

Solid Waste

The proponent shall properly manage and dispose of all solid waste generated by this proposed project pursuant to 310 CMR 16.00 and 310 CMR 19.000, including the regulations at 310 CMR 19.017 (waste ban).

The Beneficial Use Determination (BUD) regulations at 310 CMR 19.060 establish levels of assessment for four categories of beneficial use. Similarly, the fee regulations at 310 CMR 4.00, et seq. were amended. These amended regulations would be applicable to reuse of any materials generated by this project that would otherwise be considered solid waste. The project proponent should be advised that construction/demolition activity at the site must comply with both Solid Waste and Air Quality Control regulations. The appropriate Solid Waste provisions addressing this include M.G.L. Chapter 40, Section 54.

Hazardous Waste

If any hazardous waste, including waste oil, is generated at the site, the proponent must ensure that such generation is properly registered with the Department and managed in accordance with 310 CMR 30.00

Bureau of Waste Site Clean Up

Massachusetts Contingency Plan (MCP)

The Massachusetts Contingency Plan (MCP) and regulation 310 CMR 40.0000 governs the cleanup of confirmed oil and hazardous material releases in Massachusetts. The site, 74 Jug End Road, has no reported releases of oil/hazardous material. If oil/hazardous material contamination is encountered, or a release occurs during construction activities, a Licensed Site Professional (LSP) must be retained to manage the contaminated media in compliance with the provisions of the MCP.

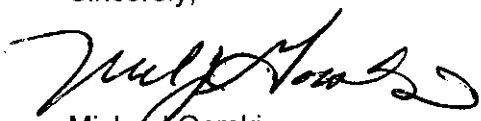
Spills Prevention

A spills contingency plan addressing prevention and management of potential releases of oil and/or hazardous materials from pre- and post-construction activities should be presented to workers at the site and enforced. The plan should include but not be limited to, refueling of machinery, storage of fuels, and potential future on-site activity releases.

IV. Other Comments/Guidance

MassDEP staff is available for discussions as the project progresses. If you have any questions regarding this comment letter please do not hesitate to contact Kathleen Fournier at (413) 755-2267.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Gorski", written in a cursive style.

Michael Gorski
Regional Director

cc: MEPA File