



The Commonwealth of Massachusetts
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Charles D. Baker
GOVERNOR

Karyn E. Polito
LIEUTENANT GOVERNOR

Kathleen A. Theoharides
SECRETARY

Tel: (617) 626-1000
Fax: (617) 626-1081
<http://www.mass.gov/eea>

July 10, 2020

FINAL RECORD OF DECISION

PROJECT NAME : Tidal Restoration of Georges Pond & Native Habitat Restoration
PROJECT MUNICIPALITY : Dartmouth
PROJECT WATERSHED : Buzzards Bay
EEA NUMBER : 16193
PROJECT PROPONENT : Massachusetts Department of Conservation and Recreation
DATE NOTICED IN MONITOR : June 24, 2020

Pursuant to the Massachusetts Environmental Policy Act (MEPA; M.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 (EENF) and hereby **grant a Waiver** from the categorical requirement to prepare an Environmental Impact Report (EIR).

Project Description

As described in the EENF, the project consists of tidal restoration and habitat management within Demarest Lloyd State Park in Dartmouth. The Massachusetts Department of Conservation and Recreation (DCR) proposes to restore tidal flows and habitat for native and threatened species in and around Georges Pond, a tidal estuary. The first part of the project (Part 1 Tidal Restoration) would increase the capacity of existing culverts to allow improved tidal flushing of Georges Pond via Giles Brook and restore stream flow within the system. The second part of the project (Part 2 Habitat Management) involves a controlled burn of 5.2 acres of land to restore and maintain native habitat for the protection of rare species. Culvert replacement work is anticipated to increase tidal flushing to enhance the intertidal marsh areas around the fringe of the pond; it would also improve water quality, increase habitat value for shellfish, waterfowl and shorebirds and enhance fishing and other recreational opportunities.

The Tidal Restoration component of the project will involve replacement of existing dual four-foot diameter concrete culverts under the park access road to allow Giles Creek to flush Georges Pond

with a single eight-foot wide, seven-foot high and 40-foot long concrete box culvert that will provide an increased hydraulic opening size and flushing capacity. This work also involves the selective removal of large stones (one to two-foot diameter) within the stream channel that are remnants of a relic stream crossing further downstream of the culverts to further improve tidal flushing. Culvert removal and replacement will occur in the dry, while stone removal will occur down to the approximate adjacent elevation of the Giles Creek stream bed over a multi-year period based on monitoring of changes in water velocity. Associated appurtenances such as a sidewalk, road grading, guard rail installation, and water main maintenance will also occur.

The Habitat Management component of the project will involve conducting a series of controlled burns in four sub-areas on approximately 5.2 acres of Demarest Lloyd State Park to the eastern side of Georges Pond, which has historically served as native habitat for threatened species. The controlled burns will be conducted for each proposed burn sub-area separately to allow for the safe and proper completion of the overall controlled burn area in accordance with the MassWildlife Prescribed Fire Handbook. These controlled burns also have the potential to restore habitat suitability for an endangered species, the Crested Fringed Orchid (*Platanthera cristata*).

Project Site

The 200-acre Demarest Lloyd State Park is a public recreation area located on Buzzards Bay in Dartmouth and is managed by DCR. The park includes an approximately 1,800-foot long saltwater beach, restroom and shower facilities, a boat ramp, picnic sites, hiking trails and parking for approximately 300 vehicles. An approximately 2,500-foot paved access roadway connects the main parking area to Barney's Joy Road. Georges Pond is a tidal estuary located within Demarest Lloyd State Park, situated at the upstream (inland) terminus of the southern fork of Giles Creek, which connects the pond to Slocums River. Tidal water that enters and exists from the pond and creek system must flow over a former (relic) crossing and through existing dual four-foot diameter culverts, which are significantly shoaled, spanning below the existing park access road. The relic stream crossing consists mainly of medium to large sized boulders which project one to two inches above the surrounding stream bed grades and is located approximately 250 feet down-gradient of the existing culverts. The combination of the former crossing and existing culverts restrict the tidal exchange between Giles Creek and Georges Pond. In addition, the park access road is prone to erosion during storm events that raise the water surface elevation at or above the roadway elevation.

Approximately 5.25 acres of land, generally above mean high tide level, on the eastern side of Georges Pond has historically served as habitat for certain rare species and primarily consists of Bordering Vegetated Wetlands (BVW), Barrier Beach, Salt Marsh and Land Subject to Coastal Storm Flowage (LSCSF). Over time this native habitat has undergone changes that have resulted in an increase of invasive species and the need for habitat management actions to maintain the native habitat for the threatened species.

Wetland resource areas within the vicinity of the project include Bank, BVW, Riverfront Area (RFA), Salt Marsh, Land Under Salt Pond (LUSP), Land Containing Shellfish (LCS), Coastal Beach, Barrier Beach, and LSCSF. The project site is located in *Priority* and *Estimated Habitat* as mapped by the Division of Fisheries and Wildlife's (DFW) Natural Heritage and Endangered Species Program (NHESP). According to Massachusetts Division of Marine Fisheries (DMF), the Slocum River system

provides habitat for several diadromous fish species. Specifically, Slocum River provides fish passage and spawning habitat for alewife (*Alosa pseudoharengus*), blueback herring (*Alosa aestivalis*), white perch (*Morone americana*), and rainbow smelt (*Osmerus mordax*), and nursery and foraging habitat for American eel (*Anguilla rostrata*). Of these species, the Giles Creek and Georges Pond project site provides habitat primarily for American eels. Salt marsh provides a variety of ecosystem services, including habitat and energy sources for many fish and invertebrate species. According to the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Map (FIRM), the entire project area is located within Zone VE with Base Flood Elevations (BFE) of 18 and 19 feet NAVD88.¹

Environmental Impacts and Mitigation

Potential environmental impacts are associated with the alteration of wetland resources, a necessary component of a salt marsh restoration project. The project will directly alter the following wetland resource areas: Coastal Beach, Barrier Beach, Salt Marsh, LUSP, LCS, LSCSF, BVW, and RFA. Impacts are identified in the Wetlands, Waterways, and Water Quality section of the Certificate on the EENF. It will involve dredging of up to 60 cubic (cy) of sediment.

The project is an ecological restoration project designed to benefit and restore the natural environment by removing restrictions to tidal flow in Georges Pond and restoring ecological processes to maintain the health and resiliency of coastal resources within the system. Measures to avoid and minimize impacts during and after the construction period include: restoration of 9.42 acres of Salt Marsh, 6.07 acres of LUSP and 6.07 acres of LCS that have been impacted by the constriction at the existing culverts; restoration of 5.2 acres of native habitat; adherence to time-of-year (TOY) restrictions for all work as required by regulatory agencies; installation and maintenance of erosion and sedimentation controls in all construction and staging areas; reuse of dredged material as fill between the new concrete wing walls of the proposed culvert; use of temporary water control systems during construction to maintain tidal flow; development of an overall project monitoring plan prior to permitting to document restoration efforts and efficacy; and implementation of construction period best management practices (BMPs).

Jurisdiction and Permitting

The project is subject to MEPA review and preparation of a mandatory EIR pursuant to 301 CMR 11.03(3)(a)(1)(a) and 301 CMR 11.03(3)(a)(1)(b) because it requires State Agency Actions and involves alteration of one or more acres of Salt Marsh or BVW and alteration of ten or more acres of any other wetlands. The project also exceeds the following review thresholds: 301 CMR 11.03(3)(b)(1)(a), alteration of Barrier Beach; and 301 CMR 11.03(3)(b)(1)(e), new fill or structure or expansion of existing fill or structure, except pile-supported structure, in a velocity zone or regulatory floodway. The project requires a Chapter 91 (c. 91) License and 401 Water Quality Certification (WQC) from the Massachusetts Department of Environmental Protection (MassDEP).

The project is eligible to receive an Ecological Restoration Limited Project Order of Conditions from the Dartmouth Conservation Commission (or in the case of an appeal, a Superseding Order of

¹ All elevations referenced in this Certificate are based on North American Vertical Datum of 1988 (NAVD88) unless otherwise specified.

Conditions from MassDEP), authorization under the General Permits for Massachusetts from the U.S. Army Corps of Engineers (ACOE), National Pollution Discharge Elimination System (NPDES) Construction General Permit (CGP) from the U.S. Environmental Protection Agency, and Federal Consistency Review through the Massachusetts Office of Coastal Zone Management (CZM).

The project is proposed and funded by DCR with additional funding and technical assistance from the Massachusetts Division of Ecological Restoration (DER). Therefore, MEPA jurisdiction is broad in scope and extends to all aspects of the project that may cause Damage to the Environment, as defined in the MEPA regulations.

Waiver Request

In accordance with Section 11.05(7) of the MEPA regulations, the Proponent submitted an EENF with a request that I waive the requirement for a mandatory EIR. The EENF identifies the project's consistency with the criteria for a Waiver and was subject to an extended comment period pursuant to Section 11.06(1) of the MEPA regulations. The Waiver request was discussed at the remote MEPA site visit for the project. I have reviewed the EENF and the Waiver request and I hereby find that the project meets the standards for a Waiver at 301 CMR 11.11. Comments from MassDEP, CZM, DMF, and DER identify strong support for the project and waiver request and do not identify additional alternatives or mitigation measures that warrant additional analysis through an EIR. The local, state, and federal permits required for this project will result in additional review from regulators and opportunities for public review and comment.

Standards for All Waivers

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.

Determinations for an EIR Waiver

The MEPA regulations at 301 CMR 11.11(3) state that, in the case of a Waiver of a mandatory EIR review threshold, I shall at a minimum base the finding required in accordance with 301 CMR 11.11(1)(b) stated above on a determination that:

- (a) The project is likely to cause no Damage to the Environment; and,
- (b) Ample and unconstrained infrastructure facilities and services exist to support those aspects of the project within subject matter jurisdiction.

Findings

Based on the EENF, supplemental information and consultation with State Agencies, I find that the Waiver request has merit and that DCR has demonstrated that the project meets the standards for all waivers at 301 CMR 11.11(1). I find that strict compliance with the requirement to prepare a Mandatory EIR for the project would result in undue hardship by delaying completion of an environmental restoration project and would not avoid or minimize Damage to the Environment, as DCR has adequately analyzed project alternatives, and comment letters do not identify alternatives or mitigation measures that warrant additional analysis through an EIR. Furthermore, the restoration project will reduce the ongoing degradation of existing natural resources, restore native salt marsh habitat, and increase marsh resilience to sea level rise. State Agency comments note that the permitting process will support resolution of any remaining issues and the majority of comments fully support the EIR Waiver request.

I also find that compliance with the requirement to prepare an EIR for the project would not serve to avoid or minimize Damage to the Environment. In accordance with 301 CMR 11.11(3), this finding is based on my determination that:

1. The project is not likely to cause Damage to the Environment. The project will employ the following mitigation measures to ensure the impacts of the project are avoided, minimized and mitigated:
 - DCR will obtain an Ecological Restoration Limited Project Order of Conditions from the Dartmouth Conservation Commission, and a c.91 License/Permit and 401 WQC from MassDEP, and will comply with all conditions of these permits;
 - Work will be conducted in accordance with any TOY restrictions identified by NHESP and DMF to avoid habitat impacts including measures to protect turtles during construction;
 - DCR will submit an open burn plan to the Dartmouth Fire Department and MassDEP for review and approval, which will include implementation of mitigation measures;
 - DCR will monitor conditions post-construction to gauge the efficacy of restoration efforts;
 - installation and maintenance of erosion and sedimentation controls in all construction and staging areas;
 - Staging and maintenance of construction vehicles and equipment in a designated area outside of wetland resource areas to prevent leakage of fuel or other fluids;
 - implementation of an operation and maintenance (O&M) plan;
 - implementation of an overall monitoring plan for the project; and
 - implementation of a post construction invasive species prevention and control plan.

The Dartmouth Conservation Commission will review the project to determine its consistency with the Ecological Restoration Limited Project provisions of the Wetlands Protection Act (WPA), the Wetlands Regulations (310 CMR 10.00), and associated performance standards. MassDEP will review the project to determine its consistency with the 401 WQC Regulations (314 CMR 9.00) and c. 91 Waterways Regulations (310 CMR 9.00). The c.91 authorization from MassDEP will include conditions maintaining appropriate public navigation access. DCR should continue to work collaboratively with project partners and State Agencies during the permitting process to further refine project mitigation measures and the design approach.

I expect that DCR will work with NHESP to understand the movement of saltwater in greater detail and explore ways to protect freshwater-obligate rare plant species while increasing tidal exchange within Georges Pond, and verify whether possible historic ditching between Georges Pond and the wetlands to the east will allow direct flow of saltwater into these areas once increased flows occur.

2. Ample and unconstrained infrastructure facilities and services exist to support those aspects of the project within subject matter jurisdiction:
 - The project does not require any infrastructure or services to accomplish its overall goal of habitat restoration. Therefore, this criterion has been met.

Conclusion

Based on these findings, I have determined that the Waiver request has merit. A Draft Record of Decision (DROD) was issued on June 12, 2020 and was published in the *Environmental Monitor* on June 24, 2020 in accordance with 301 CMR 11.15(2), which began the public comment period. The 14-day public comment period concluded on July 8, 2020. Accordingly, I hereby **grant a Waiver** from the requirement to prepare a mandatory EIR.

July 10, 2020

Date



Kathleen A. Theoharides

Comments received on DROD:

None

KAT/PPP/ppp