



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

Deval L. Patrick
GOVERNOR

Timothy P. Murray
LIEUTENANT
GOVERNOR

Ian A. Bowles
SECRETARY

Tel: (617) 626-1000
Fax: (617) 626-1181
<http://www.mass.gov/envir>

April 10, 2009

DRAFT RECORD OF DECISION

PROJECT NAME : One North Shore Road
PROJECT MUNICIPALITY : Revere
PROJECT WATERSHED : North Coastal
EEA NUMBER : 13728R
PROJECT PROPONENT : Jay Epsimos
DATE NOTICED IN MONITOR : March 11, 2009

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 Notice of Project Change (NPC) and request for a Phase I Waiver and hereby propose to grant a waiver that will allow the proponent to proceed with what is described further herein as Phase I of the project prior to preparing an Environmental Impact Report (EIR).

Project Description

On March 2, 2009, the proponent submitted an NPC and a request for a Phase I Waiver. The proponent is proposing to construct the revetment repairs as Phase I at this time in order to address the stability of the coastal bank and authorize historically unlicensed fill. The revetment repair plans have been revised since the 2007 Environmental Notification Form (ENF) to avoid the expansion of the revetment into the intertidal area and to maintain a proper slope for the revetment. The proponent has reduced Land Subject to Coastal Storm Flowage (LSCSF) impacts from 2,200 square feet (sf) to 1,700 sf. The existing slope will be cut back to create a 1.5 to 1 vertical to horizontal slope. A six-inch layer of crushed stone and a two-foot thick layer of armoring stone will cover the slope. Large stones will be placed at the toe of the existing seawall. Approximately 186 cubic yards (cy) of dredged material will be removed in Land Under Water (LUW). The project will remove approximately 1,730 cubic yards (cy) of existing fill material

that is located below the high tide line. In addition to the revetment repairs, approximately 2,650 sf of existing impervious surface landward of the revetment will be removed and loomed and seeded. The proposed rehabilitation of the revetment has been designed to comply with the slope requirements of the existing Chapter 91 License for the site.

As described in the NPC, Phase I would be able to proceed prior to the submission of the EIR. Delaying Phase I of the project until the EIR has been completed will result in the continued failure of the revetment and the presence of stone debris material within the intertidal zone. The proponent is prepared to undertake the construction of the revetment repairs as soon as it has received its permits. The proponent has estimated that Phase I of the project will remove approximately 1,730 cubic yards of unlicensed fill material from the intertidal zone.

Project History

In 2007, an ENF was submitted for the One North Shore Road project. I issued a Certificate on this ENF requiring an EIR on March 8, 2007. The project consisted of the redevelopment of the 2.4 acre site. It included the construction of 65 residential units in a ten-story building. The project would provide the associated parking on the first two floors of the building. It also would include: walkways; landscaping; seawall reconstruction/repair; and associated utilities with an improved stormwater management system. The site is comprised of 0.94 acres of historically filled tidelands. It is classified by the Natural Heritage and Endangered Species Program (NHESP) as Priority Habitat and Estimated Habitat for the Common Tern. The project required work within several wetlands resource areas that included Riverfront Area (RA); Barrier Beach; Coastal Bank; LSCSF; and Land Containing Shellfish (LCS). The site contains an existing two-story building with twelve residential units, a restaurant and banquet hall, a swimming pool, surface parking, and a seawall.

MEPA Jurisdiction

The proponent had submitted an ENF pursuant to Section 11.03(3)(b)(5) of the MEPA regulations because it required a state permit and consisted of a non-water dependent use of tidelands. The project required a Chapter 91 License and a 401 Water Quality Certificate from the Department of Environmental Protection (MassDEP). It required an Access Permit from the Massachusetts Highway Department (MassHighway). The project may require a temporary construction easement from the Department of Conservation and Recreation (DCR) for the southern end of the revetment. It may also require an 8(m) Permit from the Massachusetts Water Resources Authority to protect existing water infrastructure and Federal Consistency Review by the Massachusetts Coastal Zone Management (MCZM) Office. The project required a Category 2, Section 404 permit from the U.S. Army Corps of Engineers. The project will have to comply with the U.S. Environmental Protection Agency's National Pollutant Discharge Elimination System (NPDES) General Permit for stormwater discharges. An amended Order of Conditions

will be required from the Revere Conservation Commission (RCC) for work within resource areas and buffer zones. Because the proponent is not seeking financial assistance from the Commonwealth for the project, MEPA jurisdiction extended to those aspects of the project that may cause Damage to the Environment, as defined in the MEPA regulations and that are within the subject matter of required or potentially required state permits. In this case, MEPA jurisdiction extended to land alteration, tidelands, wetlands, stormwater, wastewater, and traffic/transportation.

Summary of Potential Environmental Impacts

The impacts associated with the repairs include approximately 285 linear feet of armored Coastal Bank, 1,700 sf of LSCSF, 800 sf of Land Under Water (LUW), and 4,200 sf of RA.

Summary of Proposed Mitigation Measures

The proponent has estimated that the proposed Phase I project will remove approximately 1,730 cubic yards of unlicensed fill material from the intertidal zone. It will reduce the impacts to LSCSF from 2,200 sf to 1,700 sf. The existing slope will be cut back to create a 1.5 to 1.0 vertical to horizontal slope. A six-inch layer of crushed stone and a two-foot thick layer of armoring stone will cover the slope. Large stones will be placed at the toe of the existing seawall. The proponent will remove approximately 2,650 sf of existing impervious surface that is landward of the revetment. It will loam and seed this area. In addition to the repairs, the work will include the removal of the stone debris that has fallen into the intertidal area from the failed sections of the revetment.

Waiver Request

The proponent has requested a waiver that will allow the proponent to proceed with Phase I of the project prior to preparing an Environmental Impact Report (EIR) for the entire project. An NPC was submitted in conjunction with this request that identifies the environmental impacts of the project change and describes the measures to be undertaken by the proponent to avoid, minimize and mitigate project impacts. As proposed, the project would include the design and construction of the revetment repairs outlined in the NPC.

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 a Phase I Waiver

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

- (a) the potential environmental impacts of Phase I, taken alone, are insignificant;
- (b) ample and unconstrained infrastructure facilities and services exist to support Phase I;
- (c) the project is severable, such that Phase I 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 I 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, the supplemental information provided by the proponent, and after consultation with the state permitting agencies, I find that the Waiver Request has merit and that the proponent 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 an EIR prior to completion of Phase I of the project would result in undue hardship for the proponent 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:

1. The proponent has developed this project change as part of its effort to revise the project to comply with the permitting regulations and guidelines of MassDEP and MCZM. Phase I will remove about 1,730 cubic yards of existing fill material in the intertidal area. It will also remove approximately 2,650 sf of existing impervious surface landward of the revetment. The project will be designed to comply with the slope requirements of the existing Chapter 91 License for the site. Therefore, to not allow the proponent to realize the economy of undertaking these above changes sooner may cause undue hardship later.
2. The Phase I project will reduce the amount of stone debris in the waters of the Saugus River and the intertidal area. The proponent will implement Best Management Practices (BMPs) during construction. It will provide for a regular inspection and maintenance program and a sweeping program for paved areas. Negative impacts to rare or endangered species are not anticipated. The short-term impacts from construction activities for Phase I will be temporary. Short-term construction noise and dust are expected in the areas where the project is proposed. The proponent's contractors will be required to utilize

proper engine maintenance and engine mufflers to reduce noise and pollution. It will cover soil stockpiles and wet disturbed soil areas to reduce dust. No traffic disruptions are anticipated during construction. The proponent will develop a Traffic Control Plan to identify measures to mitigate traffic impacts during the project permitting process.

3. In response to the Secretary's Certificate of March 8, 2007, on the ENF, the proponent has submitted the NPC to present its proposed revetment repairs. The revetment repairs include a more responsive project that addresses the concerns of the permitting agencies. The proponent has committed to construct the revetment repairs as soon as it has received its permits. This NPC would also remove about 1,730 cubic yards of unlicensed fill material from the intertidal zone.
4. Ample and unconstrained infrastructure exists. The proponent will be working from its property into the intertidal zone. The proponent must obtain temporary construction easements from its abutter to the north and its abutter on the south, DCR. Phase I will require permits from MassDEP for repairing the revetment within tidelands.
5. The project is severable. Once the revetment repairs are complete, none of the Phase I project would rely on the construction of future phases or eliminate any possible abatement alternatives for the drainage areas included in future phases of the project.
6. The proponent has agreed to abide by a time-of-year restriction between February 15th and June 30th for work below the high tide line in order to minimize adverse impacts to Winter Flounder. MassDEP will condition its approvals to compliance with the MEPA Certificate.

Conclusion

I have determined that this waiver request has merit, and am issuing this DROD, which will be published in the next edition of the *Environmental Monitor* on April 22, 2009 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 May 6, 2009. 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). I hereby propose to grant the waiver requested for this project, which will allow the proponent to proceed with Phase I of the project prior to preparing an EIR for the entire project, subject to the above findings and conditions.

April 10, 2009

Date

Ian A. Bowles

Comments received:

BSC Group, 3/11/09

BSC Group, 3/13/09

BSC Group, 3/16/09

U.S. Environmental Protection Agency, 3/25/09

Massachusetts Water Resources Authority, 3/31/09

Massachusetts Department of Environmental Protection/Northeast Regional Office, 3/31/09

Massachusetts Executive Office of Transportation, 3/31/09

13728Rdod

IAB/WTG