



The Commonwealth of Massachusetts

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May 26, 2006

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

PROJECT NAME	: Eel Pond Restoration & Improvements
PROJECT MUNICIPALITY	: Mattapoisett
PROJECT WATERSHED	: Buzzards Bay
EOEA NUMBER	: 13782
PROJECT PROPONENT	: Town of Mattapoisett
DATE NOTICED IN MONITOR	: April 26, 2006

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

As described in the Environmental Notification Form (ENF), the project involves three phases. The first phase includes the dredging of the East Channel to Eel Pond. This would involve dredging approximately 9,700 cubic yards from the channel and removing the restriction at its mouth. The second phase of the project includes the installation of a new 24-foot by 8-foot culvert. This enlarged culvert will improve flushing during all tidal conditions, which may reduce future breaches in the barrier beach. Opening of the new culvert would be followed by the third phase which entails closing the West Channel and filling in the contours of the adjacent barrier beach with approximately 9,700 cubic yards of compatible materials.

There is also a 12-inch diameter force main running the entire length of the barrier beach which carries the Town's wastewater to the Fairhaven Wastewater Treatment Facility. The present expansion and migration of the West Channel of Eel Pond has resulted in the sewer line

having less than 18 inches of cover at the deepest part of the channel. The Town of Mattapoisett is concerned that if a significant coastal storm strikes the sewer line may become exposed and damaged, resulting in the entire flow of untreated wastewater being discharged to Buzzards Bay for a significant period of time.

The project is undergoing review pursuant to Section 11.03 (2)(b)1, (3)(b)1. a, 11.03(3)(b)1. c and 11.03(3)(b) 5 of the MEPA regulations because the project may have the potential to "take" an endangered or threatened species or species of special concern; requires the alteration of coastal dune, barrier beach or coastal bank; alters 1,000 or more square feet (sf) of salt marsh or outstanding resource water; and requires a Chapter 91 Permit for a New or existing unlicensed non-water dependent use of waterways or tidelands. The project will also require a Section 401 Water Quality Certificate and a Chapter 91 License from the Department of Environmental Protection (DEP), a possible Federal Consistency Review by the Massachusetts' Office of Coastal Zone Management (CZM), and a U.S. Army Corp of Engineers 404 Wetlands Permit. The project will also require an Order of Conditions from the Mattapoisett Conservation Commission (and hence a Superseding Order from DEP if the local Order is appealed). MEPA jurisdiction extends to issues related to wetlands, water quality, and tidelands.

I acknowledge the thoughtful comments provided by DEP, CZM, the Division of Fisheries & Wildlife's Natural Heritage and Endangered Species Program (NHESP) and the Division of Marine Fisheries (DMF) regarding the project's potential environmental impacts. I note in particular the concerns of CZM and DEP regarding the dredging of the East Channel where approximately 4,900 sf of salt marsh will be affected. The proponent should consider implementing alternatives that avoid or minimize this area of salt marsh impact. If avoidance or minimization is not possible, the proponent should investigate the feasibility of physically moving as much of the salt marsh as possible to nearby locations that are likely to sustain its presence as described in CZM's comment letter. I also note that although the Wetlands Protection Act Regulations at 310 CMR 10.32(5) encourages the restoration, rehabilitation and/or creation of salt marsh, DEP does not encourage dredging within this resource area of the Commonwealth. This work as currently proposed does not appear to meet performance standards found at 310 CMR 10.32(3), which prohibit destruction of salt marsh.

During the permitting process, the proponent must submit more detailed information and plans of wetland resource area delineations, the various proposed activities, and any impacts to wetland resource areas than what was provided in the ENF. Impacts to each resource area should be quantified and fully described. The proponent will be required to demonstrate that the various activities proposed meet performance standards for all affected wetland resource areas. In addition, CZM has expressed concerns, and I concur, regarding the lack of information provided in the ENF on the compatibility of sediments which will be used for nourishment of the nearby barrier beach and for filling of the West Channel. The proponent should consult with both DEP and CZM to resolve the issues raised in their comment letters.

A Chapter 91 Waterways License application will be required for any proposed dredging, filling (including beach nourishment), or structure located below Mean or Ordinary High Water. I remind the proponent that historic documentation including, but not limited to, any licenses, contract plans, acts of the Legislature, permits associated with the sewer line, railroad and existing culvert must be provided during the permitting process. In addition, pursuant to the Waterways Regulations at 310 CMR 9.32 (Categorical Restrictions on Fill and Structures), the proponent will be required to demonstrate that reasonable measures have been taken to minimize the proposed fill within the flowed tidelands of the West Channel entrance.

NHESP has determined that the project may be located within the habitat of the Diamondback Terrapin, which is listed as "threatened" and protected pursuant to the Massachusetts Endangered Species Act (321 CMR 10.00). The project has the potential to result in a "take" of the Diamondback Terrapin. The proponent has submitted an Endangered Species Habitat Assessment (ESHA) to NHESP and has also included this document as part of the ENF. I strongly encourage the permitting agencies to consider adopting the recommendation included in the ESHA, or others suggested by NHESP regarding protection of this threatened species, as conditions to their permits.

The ENF contains a copy of a letter from Division of Marine Fisheries (DMF) that discusses the results of a shellfish survey conducted at the project site. The survey results show the presence of both American Oysters and Quahogs in the area to be dredged. DMF's comment letter recommends that both of these shellfish resources be moved prior to dredging. I strongly encourage the proponent to review all comments on the ENF, and to work with the commenters to resolve any concerns.

The ENF contains sufficient information to understand the impacts of the project, and to demonstrate that the impacts of the project do not warrant the preparation of an EIR. The project will result in substantial environmental benefits by allowing a more natural tidal and salinity regime within a currently degraded area. The ENF has examined several project alternatives. I find that the proponent's preferred alternative generally minimizes environmental impacts to wetlands and tidelands. The proponent can resolve any remaining issues during the permitting process. No further MEPA review is required.

May 26, 2006

Date


Stephen R. Pritchard

EOEA#13782

ENF Certificate

05/26/06

Comments received:

05/12/06 Division of Fisheries & Wildlife, NHESP
05/16/06 Division of Marine Fisheries
05/17/06 Office of Coastal Zone Management
05/24/06 Department of Environmental Protection, SERO

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