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May 29, 2009

DRAFT RECORD OF DECISION

PROJECT NAME : I-93/Route 110/Route 113 Interchange Reconfiguration  
and Reconstruction Project  
PROJECT MUNICIPALITY : Methuen  
PROJECT WATERSHED : Merrimack  
EOEA NUMBER : 14279  
PROJECT PROPONENT : Massachusetts Highway Department  
DATE NOTICED IN MONITOR : April 22, 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 this Notice of Project Change (NPC) and request for a Phase I Waiver and hereby propose to grant a waiver that will allow the Massachusetts Highway Department (MassHighway) to proceed with the construction of two short-term roadway improvement projects prior to preparing the Draft Environmental Impact Report (DEIR).

NPC Project Change Description

As described in the NPC submittal, MassHighway is proposing to proceed with the construction of two of the ten "Short-Term Improvements" described in its previously reviewed ENF submittal for the Interstate 93 (I-93)/Route 110/Route 113 Interchange Reconfiguration and Reconstruction Project prior to submitting its DEIR. Specifically, MassHighway has completed design and engineering plans and proposes to proceed with the construction of the I-93 Interchange/Exit 46 Northbound Bypass Lane project and the Route 110/Riverside Drive Traffic Signal project.

Exit 46 Northbound Bypass Lane

This short-term project involves the construction of a 12-foot wide and 1,700 linear feet (lf) northbound bypass lane from the I-93 Exit 46 northbound off ramp to a point approximately 260 feet west of Heather Drive by widening the existing I-93 Exit 46 northbound off ramp by 20 feet. Bypass lane traffic will be temporarily separated from rotary traffic by jersey barriers.

Route 110/Riverside Drive Traffic Signal

MassHighway is also proposing to construct a new traffic signal and sidewalks at the Route 110/Riverside Drive intersection. This short-term project will not result in any impacts to wetlands resource areas.

Previous MEPA Review

Based on the recommendations of its May 2008 Methuen Rotary Study, MassHighway is proposing to redesign and reconstruct the I-93/Route 110/Route 113 interchange (Methuen Rotary Project) to increase mobility, reduce congestion, and improve safety and air quality. As described by MassHighway, the project is consistent with the long-term improvement recommendations of the Methuen Rotary Study, undertaken by MassHighway with input from the Study Advisory Committee (SAC), to evaluate and address transportation issues at the I-93/Route 110/Route 113 interchange and surrounding arterials in the City of Methuen. The proposed project is not intended to increase roadway capacity. The project involves the construction of a series of short-term improvements and a long-term interchange reconfiguration alternative (Alternative 3A) to provide needed short-term temporary relief and a permanent structural solution for the Methuen Rotary study area. The project consists of the construction of the following short-term and long-term permanent improvements:

Short-term Improvements

- Clear growth on northwest quadrant to improve sight lines for vehicles exiting the rotary;
- Install warning signs for westbound vehicles exiting the rotary;
- Install traffic safety signs along Route 113 west of the rotary;
- Install a flashing warning light at bottom of southbound off-ramp;
- Install additional lighting as needed at the rotary and within the rotary area;
- Reapply striping and pavement markings through the rotary and its approaches;
- Install advance signage at all rotary approaches;
- Construct a roadway widening to accommodate rotary by-pass lanes on three rotary approaches;
- Construct a realignment of the westbound exit from the rotary; and,
- Construct new signalization at existing rotary intersections.

Permanent Improvements – Alternative 3A (Partial Cloverleaf)

- removal of the existing rotary configuration;
- construction of a partial cloverleaf (two loops) interchange to accommodate westbound Route 110/113 to southbound I-93 on-ramp, and I-93 northbound off-ramp to westbound Routes 110/113;
- widening and re-alignment of western portion of Route 113 and eastern portion of Route 110 to provide continuous through-movements for Routes 113 and 110;
- construct improved signage and public transit information;
- construct improved pedestrian/bicycle amenities;
- conduct a Type I Noise Analysis consistent with FHWA Highway Traffic Noise Abatement Policy as well as MassHighway Type I Noise Policy. If noise impacts are identified (per policy) mitigation in the form of noise barriers will be considered; and,
- transit enhancements and improvements.

MEPA Jurisdiction and Required Permits

The project is undergoing review and requires preparation of a mandatory EIR pursuant to Section 11.03(3)(a)(2), and of the MEPA Regulations because it will require a Variance in accordance with the Wetlands Protection Act (WPA). The project is also undergoing review pursuant to Sections 11.03(1)(b)(2), 11.03(3)(b)(1)(d), 11.03(6)(b)(1)(b) and 11.03(6)(b)(2)(a) of the MEPA Regulations because: it will result in the creation of five or more acres of impervious surface area; the alteration of 5,000 or more square feet (sf) of bordering vegetated wetlands (BVW); widen an existing roadway for one-half or more miles; and alter terrain ten or more feet from the existing roadway for one-half or more miles. The project will require a Section 401 Water Quality Certificate from the Department of Environmental Protection (MassDEP). The project must obtain an Order of Conditions from the Methuen Conservation Commission or if the Order is appealed, a Superseding Order of Conditions from MassDEP. The project will require a Variance from MassDEP's Wetlands Regulations and a Construction Dewatering Permit, a Notice of Construction & Demolition, and a Notice Regarding Demolition and Construction from MassDEP. It must comply with the National Pollution Discharge Elimination System (NPDES) General Permit from the United States Environmental Protection Agency (U.S. EPA) for stormwater discharges from a construction site of over one acre. MassHighway may be required to prepare a blast design plan pursuant to the Board of Fire Protection Regulations (577 CMR 13.09) for the proposed construction of roads, semi-direct ramps and replacement bridges within the project area.

Because the project proponent is a state agency and the project involves state funding, MEPA jurisdiction is broad and extends to all aspects of the project that may cause Damage to the Environment as defined in the MEPA regulations.

Summary of Potential Environmental Impacts of Phase I Short-term Improvements

The majority of all proposed construction work associated with the two proposed short-term improvement projects will be within the right-of-way of the state roadway layout. MassHighway has estimated that the proposed Exit 46 Northbound Bypass Lane project will result in the creation of approximately 20,000 sf of additional impervious surface area and will impact approximately 7,835 square feet (sf) of buffer zone areas to wetland resource areas. The new Route 110/Riverside Drive Traffic Signal project will not result in any impacts to wetlands resource areas.

The stormwater management system for the bypass lane project is being proposed under the Redevelopment Standard 7 of MassDEP's Stormwater Management Regulations, which applies to maintenance and improvement projects, including roadway widening of less than a single lane width. As currently designed, all drainage areas within the project corridor will be served by deep sump catch basins and conveyed to the existing stormwater management system with eventual discharge directly to the Merrimack River. In its comments on the NPC/Phase I Waiver Request, MassDEP has indicated that the proposed stormwater management system design for the Exit 46 Northbound Bypass Lane project will need to be modified to fully comply with MassDEP's Stormwater Management Regulations. MassDEP has requested that revised information be submitted to the MassDEP staff in Boston and NERO for review prior to final design and construction. MassHighway should continue to consult with the MassDEP in the final design and construction of the proposed Exit 46 Northbound Bypass Lane project to ensure that all applicable standards have been met.. The DROD contains conditions to ensure that the stormwater impacts from the proposed Exit 46 Northbound Bypass Lane project is designed in full compliance with MassDEP's Stormwater Management Regulations.

Waiver Request

On April 22, 2009, MassHighway requested that I grant a waiver to allow the construction of these two short-term roadway improvement projects to proceed in advance of completion of the DEIR. The waiver request was submitted with the NPC. The NPC identified the environmental impacts of these two projects, and it described the measures to be undertaken by the proponent to avoid, minimize and mitigate the project impacts.

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 1 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 1 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 1, taken alone, are insignificant;
- (b) ample and unconstrained infrastructure facilities and services exist to support Phase 1;
- (c) the project is severable, such that Phase 1 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 1 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 MassHighway, and after consultation with the state permitting agencies, I find that the Waiver Request has merit and that MassHighway 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 1 of the project would result in undue hardship for MassHighway 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 potential environmental impacts of Phase I, taken alone, are insignificant:
  - The Phase I Waiver activities are comprised of two short-term roadway improvement projects that do not independently meet or exceed MEPA review thresholds for a mandatory EIR.
  - proposed Exit 46 Northbound Bypass Lane project will result in the creation of approximately 20,000 sf of additional impervious surface area and will impact approximately 7,835 square feet (sf) of buffer zone areas to wetland resource areas. The new Route 110/Riverside Drive Traffic Signal project will not result in any impacts to wetlands resource areas.
  - The short-term impacts from construction activities for the Phase I short-term improvement projects will be temporary. Short-term construction noise and dust are expected in the areas where the project is proposed. MassHighway's contractors will be required to utilize proper engine maintenance and engine mufflers to reduce noise and pollution. MassHighway will implement Best Management Practices to control construction period dust. Traffic disruptions are anticipated during construction, but the area of disturbance will be reduced to the extent possible. MassHighway will need to develop a Traffic Control Plan to identify measures to mitigate traffic impacts during the project permitting process.
  
2. Ample and unconstrained infrastructure facilities and services exist to support Phase I:
  - Ample and unconstrained infrastructure exists. MassHighway will be working within the right-of-way of the state roadway layout.
  - Phase I will not result in degradation of the Level of Service at adjacent roadway intersections.
  - Infrastructure improvements will include a public roadway and improved stormwater management best management practices (BMPs).
  
3. 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.
  - Construction of the Phase I elements will not limit the construction of additional proposed short-term and permanent rotary and roadway improvements and proposed mitigation measures.
  - Phase I elements will increase mobility, reduce congestion, and improve safety and air quality irrespective of the construction of subsequent phases of the project.

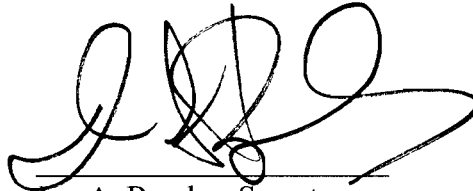
4. The Agency Action on Phase I will contain terms such as a condition or restriction in a Permit, contract or other relevant document approving or allowing the Agency Action, or other evidence satisfactory to the Secretary, so as to ensure due compliance with MEPA and 301 CMR 11.00 prior to Commencement of any other phase of the Project:
  - MassDEP has indicated that the proposed stormwater management system design for the Exit 46 Northbound Bypass Lane project will need to be modified to fully comply with MassDEP's Stormwater Management Regulations. As a condition of my approval of this Phase I Waiver Request, I am requiring that the MassHighway's stormwater management design for the proposed Exit 46 Northbound Bypass Lane project be designed in full compliance with MassDEP's Stormwater Management Regulations.
  - As described in the Secretary's Certificate on the ENF issued for this project on August 8, 2008, MassHighway must demonstrate in the DEIR the project's consistency with the analysis and mitigation provisions required as part of the EEA's GHG Emissions Policy and Protocol (GHG). The NPC indicated that the proposed short-term improvement projects have been designed to reduce congestion, and improve safety and air quality and will not result in the increased emissions of Greenhouse Gases (GHG) and therefore falls within the de minimis exception of the policy. MassHighway is not required to prepare an analysis of GHG emissions or identify measures to mitigate GHG emissions for the proposed short-term improvement projects.
  - MassHighway will comply with the above findings, and it will provide a copy of this Certificate and the Certificates issued for the ENF and Notice of Project Change (NPC) in any/all future filings and submittals to the MEPA Office for this project.

### 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 June 10, 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 April 24, 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 the proposed Short-term Improvements of the project prior to preparing a DEIR for the entire project, subject to the above findings and conditions.

May 29, 2009  
Date



Ian A. Bowles, Secretary

Comments received:

- 05/22/09 Massachusetts Department of Environmental Protection (MassDEP) – NERO
- 05/26/09 Northern Middlesex Council of Governments (NMCOG)
- 05/07/09 Natural Heritage and Endangered Species Program (NHESP)

DROD #14279  
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