



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>

July 31, 2009

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

PROJECT NAME : West Island Beach Salt Marsh Restoration Project
PROJECT MUNICIPALITY : Fairhaven
PROJECT WATERSHED : Buzzards Bay
EOEA NUMBER : 14432
PROJECT PROPONENT : Fairhaven Public Works Development
DATE NOTICED IN MONITOR : June 24, 2009

Pursuant to the Massachusetts Environmental Policy Act (M.G.L. c. 30, ss. 61-62I) and Sections 11.06 and 11.11 of the MEPA Regulations (301 CMR 11.00), I have reviewed this project and hereby determine that it **does not require** further MEPA review. In a separate Draft Record of Decision also issued today, I have proposed to grant a Waiver from the requirement to prepare a Mandatory Environmental Impact Report (EIR) for the project. This Certificate sets forth the issues that must be addressed by the Proponent during permitting and discusses recommendations that were submitted on the project during the MEPA comment period.

Project Description

As described in the Expanded Environmental Notification Form (EENF), the project consists of restoration of approximately 6.5 acres of salt marsh near West Island Beach in Fairhaven. The project includes the replacement of an undersized 15-inch diameter culvert under Fir Street with a 3-foot by 5-foot box culvert to improve tidal flushing to the upper reaches of the marsh. The primary project goal is to enhance marsh health through increased tidal flushing without negatively impacting abutting residential. The project site is located adjacent to the

Massachusetts Department of Conservation and Recreation's (DCR) West Island State Reservation.

Estimated project impacts include five square feet (sf) of permanent alteration and 108 sf of temporary impact to BVW, 135 sf of permanent alteration and 110 sf of temporary impact to salt marsh and 4,530 sf of temporary impact to Land Subject to Coastal Storm Flowage (LSCSF). Restoration of tidal hydrology is anticipated to impact approximately 283,000 sf (6.5 acres) of salt marsh.

It should be noted that MEPA typically uses the definition of "alter" for wetlands from the Massachusetts Department of Environmental Protection's (MassDEP) Section 401 Water Quality regulations, and that definition only contemplates direct impacts from fill, etc. In contrast, the definition of "alter" from the Massachusetts Wetlands Protection Act (WPA) covers indirect alterations from hydrologic changes, such as those anticipated for this wetlands restoration project. Generally speaking, MEPA would not consider these indirect alterations, as defined in the WPA, when determining whether a project exceeds a mandatory EIR threshold, since the WPA is enforced through an Order of Conditions issued by the local permitting authority. However, since the Order of Conditions was appealed, and subsequently a Superseding Order of Conditions must be issued by MassDEP, MEPA's definition of alter follows those of the WPA, and thus the restoration of tidal hydrology to approximately 6.5 acres of salt marsh exceeds a Mandatory EIR threshold.

Jurisdiction

The project is undergoing MEPA review pursuant to Section 11.03 (3)(a)(1)(a) because it requires a state permit and consists of alteration of one or more acres of salt marsh. The project will require a Superseding Order of Conditions, a Chapter 91 (c.91) License, and a Section 401 Water Quality Certificate (WQC) from MassDEP, a Section 404 Programmatic General Permit (PGP Category II) from the U.S. Army Corps of Engineers (ACOE), and may require a federal consistency review statement from the Massachusetts Office of Coastal Zone Management (CZM).

The project is being funded by the New Bedford Harbor Trustees Council. Because State funding is involved, MEPA jurisdiction for this project is broad and extends to all aspects of the project that are likely, directly or indirectly, to cause Damage to the Environment, as defined in the MEPA regulations.

Review of the EENF

Wetlands, Waterways and Tidelands

The project's primary goal is to restore tidal flow to a 6.5-acre salt marsh through the replacement of a restrictive 15-inch diameter culvert with a 3-foot by 5-foot box culvert. By replacing the culvert, tidal height is expected to increase slightly (0.2 feet) allowing for inundation of the lower areas of the salt marsh, including those dominated by the invasive species *Phragmites australis*. Additionally, the new box culvert will allow for the draining of freshwater from the marsh.

To assist in project design, the Proponent gathered numerous data including, tidal range collection, topographic base mapping, construction survey, HEC-RAS analysis, geotechnical investigations, utilities research, wetland resource area delineation, vegetation cover type mapping, replacement culvert sizing selection, and impact analysis of the proposed tidal restoration. The hydrologic studies demonstrate that based upon the preferred alternative design, there will be no increases in the extent of flooding on nearby properties and there will be no alteration to the wooded wetland.

The project contemplated two design alternatives, a 3-foot by 3-foot box culvert replacement and a 3-foot by 5-foot box culvert replacement. The 3-foot by 5-foot box culvert was determined to be the preferred alternative as this design provides: a larger culvert opening compared to existing conditions; would result in an increased peak tidal flow (20 cubic feet per second); would be less susceptible to clogging; would allow free passage of marine life, sediment and debris upstream of the crossing; and may reduce scour protection measures due to lower velocity.

I note that MassDEP has issued a Superseding Order of Conditions (DEP File No. SE23-1049) in advance of the completion of MEPA review. In light of the comments received during the MEPA review process, I have determined that it is not necessary for MassDEP to reconsider the issuance of this permit or any of its association permit conditions in accordance with 301 CMR 11.12(6).

Reporting/Monitoring

Pre-construction monitoring has been undertaken to establish project baselines and includes tide heights, vegetation plots and transects. The Proponent has indicated in the EENF that a post-construction monitoring program will be implemented in accordance with the Superseding Order of Conditions and will continue for at least three years post-construction document attainment of habitat restoration goals, identify the limits and extent of invasive plant populations, and identify measures to improve the efficiency, reduce cost, or improve effectiveness of future projects.

In addition, the Proponent has prepared a Habitat Management Plan in accordance with the Massachusetts Endangered Species Act (MESA) as a condition of an exemption under

MESA. The Natural Heritage and Endangered Species Program (NHESP) has issued a letter indicating that the project will have “no adverse impact” on Priority or Estimated Habitat and confirming the project exemption.

Public Benefit Review

I have concluded that this water-dependent project will provide adequate public benefit in accordance with 301 CMR 13.04(1). A Public Benefit Determination (PBD) will be issued within 30 days of the issuance of the Final Record of Decision (FROD) approving the request for a waiver from the preparation of a mandatory EIR. If the FROD rescinds the waiver, the PBD will be issued within 30 days of the issuance of a Certificate on the Final EIR.

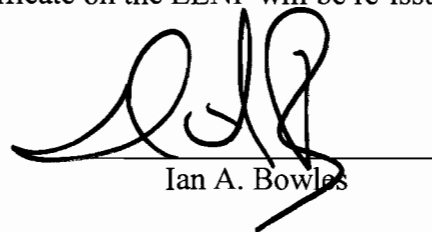
Conclusion

Based on a review of the information provided by the Proponent and after consultation with the relevant public agencies, I find that the potential impacts of this project do not warrant further MEPA review. Outstanding issues may be addressed during the permitting process.

I have also issued today a Draft Record of Decision (DROD) proposing to grant a Waiver from the requirement to prepare an EIR for the project. The DROD will be published in the next edition of the Environmental Monitor on August 12, 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 August 26, 2009. Based on written comments received concerning the DROD, I shall issue a Final Record of Decision or a Scope within seven days after the close of the public comment period, in accordance with 301 CMR 11.15(6). If the Full Waiver is not approved based on comments received on the DROD, then this Certificate on the EENF will be re-issued with a Scope for an EIR.

July 31, 2009

Date



Ian A. Bowles

Comments Received:

07/08/2009 Office of Coastal Zone Management
07/08/2009 Division of Marine Fisheries
07/08/2009 United States Environmental Protection Agency
07/10/2009 Town of Fairhaven Board of Public Works
07/17/2009 Massachusetts Department of Environmental Protection - Boston
07/23/2009 The Coalition for Buzzards Bay
07/24/2009 Board of Underwater Archaeological Resources
07/24/2009 Department of Conservation and Recreation

IAB/HSJ/hsj