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November 8, 2007

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

PROJECT NAME : 61 Fordham Way
PROJECT MUNICIPALITY : Newbury
PROJECT WATERSHED : Merrimack
EOEA NUMBER : 14112
PROJECT PROPONENT : Gary A. Taber
DATE NOTICED IN MONITOR : October 9, 2007

Pursuant to the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-62H) and Section 11.03 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) and in supplemental materials provided on October 31, 2007, the project consists of the construction of a 2-story structure, removal of an unauthorized retaining wall and removal of unauthorized gravel fill at 61 Fordham Way in Newbury. The proponent proposes to re-vegetate up to 2,615 square feet of the site as mitigation for the proposed project and previously unauthorized activities. The structure will consist of a 2-car garage on the first floor and an office on the second floor. It includes a 4 foot (ft) by 16 ft covered entry and a 4 ft by 4 ft entry deck that will extend to the deck on the existing house. As designed, the garage/office has a 624 sf footprint and will be constructed on pilings a minimum of 2 feet (ft) above existing grade. Re-vegetation of the site will consist of planting of native species within portions of the former crushed stone driveway and replacement of ornamental and non-native plantings with native species. In addition, approximately 800 sf of an existing 1,600 sf sparsely vegetated area will be enhanced with additional plantings.

The 15,159 sf site is located on Plum Island, which is a designated barrier beach. The site is bounded by residences to the east, south and west and by Fordham Street to the north. Approximately 46 % percent of the lot is vegetated with a combination of beach grass, ornamental plantings and trees. It includes a 35 ft by 66 ft single family home and associated decks, driveway and walkways. The driveway and walkways at 61 Fordham Way extend onto the lot to the west (identified as Lot #100 on the project plans) which is also owned by the proponent. This lot contains a single family home and a garage/office. The proponent indicated at the site visit held on October 23, 2007, that they rent the house on the adjoining property and reserve the garage/office for their own use.

The project is undergoing MEPA review pursuant to Section 11.03 (3)(b)(1)(a) because it requires a state permit and consists of alteration to a coastal dune and a barrier beach. The project requires a Superseding Order of Conditions (SOC) from the Department of Environmental Protection (MassDEP). The proponent is not seeking financial assistance from the Commonwealth for the project, therefore MEPA jurisdiction extends to those aspects of the project that may cause significant Damage to the Environment and that are within the subject matter of required or potentially required state permits. These include wetlands and coastal resources.

An Order of Conditions (OOC) was issued by the Newbury Conservation Commission on July 19, 2007 for the project (identified as a garage office). The OOC authorized 1,600 sf of alteration to coastal dune and barrier beach. MassDEP issued a Notice of Intervention/Request for Information/Site Inspection on August 2, 2007. The letter indicates that the basis for intervention is that the project and the OOC do not contribute to the protection of the interests identified in the Wetlands Protection Act and that the OOC is inconsistent with the wetlands regulations (310 CMR 10.00). Specifically, it indicates that the proposed garage and a 24 ft by 16 ft ramp do not meet the definition of an accessory project as defined in the regulations.

The original proposal included in the ENF indicates that the proposed project would alter approximately 2,064 sf of coastal dune. (It does not include the 24 ft by 16 ft ramp which was eliminated from the design). The supplemental materials provided by the proponent propose to reduce the footprint of the driveway from the previously identified 1,200 sf to no more than 480 sf for a total impact of 1,344 sf. As noticed previously, the project will re-vegetate 2,615 sf of the site and enhance 800 sf of an existing 1,600 sf vegetated area. The information provided during review of the ENF indicates that the proponent completed more than 3,000 sf of unauthorized alteration, including installation of a 30-foot retaining wall. In addition, the supplemental materials indicate that a mitigation planting plan and a description of the slope treatment following removal of the retaining wall will be provided to MassDEP.

Comments from MassDEP¹ are consistent with the concerns identified in the Notice of Intervention and indicate that the proposed work and loss of vegetation will contribute to the destabilization of the dune. The stability and volume of sand in coastal dunes on barrier beaches is critical to preserving their ability to provide storm damage protection and flood control. Development of solid structures, roadways, and paved parking on dunes interferes with and

¹ Supplemental materials were provided to MEPA and MassDEP after the close of the comment period; therefore, these comments do not reflect the additional information provided.

diminishes essential dune functions. MassDEP has expressed concern with impacts of construction activities, stormwater and long-term loss of vegetation. In addition, these comments question whether the project meets the regulatory definition of a small, accessory structure. Finally, the comments indicate that additional information must be provided including the following: a revised site plan; an alternatives analysis to examine ways to minimize disturbance to vegetation, such as reducing the footprint of the project; a detailed planting plan that provides 1:1 mitigation; identification of unauthorized work; and a construction management plan that addresses the treatment of the dune when the retaining wall is removed.

Comments from the Division of Fisheries and Wildlife's (DFW) Natural Heritage and Endangered Species Program (NHESP) indicate that the project, as currently proposed, would not adversely affect the actual Resource Area Habitat of state-protected rare wildlife species and would not result in a prohibited take of state-listed rare species. These comments note that any changes to the proposed project or any additional work beyond that shown on the site plan may require an additional filing with the NHESP pursuant to the Massachusetts Endangered Species Act (MESA). Comments from the Department of Conservation and Recreation (DCR) indicate that, contrary to the information provided in the ENF, the project is not within the Great Marsh Area of Critical Environmental Concern (ACEC).

The review of the ENF has served to adequately disclose the potential impacts and mitigation associated with this project. Based on the information in the ENF (and supplemental materials) and after consultation with relevant public agencies, I find that the potential impacts of the project are not significant enough to warrant the preparation of an EIR. Comments from MassDEP identify significant concerns with the project and identify the additional information and analysis needed to evaluate the permissibility of the project; however, I am confident that these issues can be adequately addressed through the permitting process. No further MEPA review is required.

November 8, 2007

Date



Ian A. Bowles

Comments received:

10/29/07	Department of Environmental Protection (MassDEP)/Northeast Regional Office (NERO)
10/29/07	Department of Conservation and Recreation (DCR)
10/17/07	Division of Fisheries and Wildlife (DFW)/Natural Heritage and Endangered Species Program (NHESP)

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