



The Commonwealth of Massachusetts
Executive Office of Environmental Affairs
 251 Causeway Street, Suite 900
 Boston, MA 02114-2119

JANE SWIFT
GOVERNOR

BOB DURAND
SECRETARY

Tel. (617) 626-1000

Fax (617) 626-1181

<http://www.magnet.state.ma.us/envir>

November 8, 2002

DRAFT RECORD OF DECISION

PROJECT NAME : Ballard Street Salt Marsh and Flood Improvement Project
 PROJECT MUNICIPALITY : Saugus
 PROJECT WATERSHED : North Coastal
 EOEА NUMBER : 12889
 PROJECT PROPONENT : Town of Saugus
 DATE NOTICED IN MONITOR : October 9, 2002

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 have reviewed this project and **propose to grant a Phase I Waiver** to allow Phase I of the project (as described in the Environmental Notification Form (ENF)) to proceed to the state permitting agencies prior to completion of the Environmental Impact Report (EIR). By a separate certificate, I will issue the scope for the EIR.

Project Description

As described in the ENF, the purpose of this project is to restore tidal flow and flushing within 22.5 acres of former and existing degraded salt marshes south of Ballard Street, within the Rumney Marshes Area of Critical Environmental Concern (ACEC). Also, the project will provide additional flood storage and storm damage prevention for an abutting low-lying East Saugus residential neighborhood. The Ballard Street salt marsh area has been degraded by numerous roads, development, inadequate culverts and non-functional tide gates, and the presence of the I-95 berm. The salt marsh is dominated by common reed (*Phragmites Australis*).



The project is proposed in three phases. Phase I involves the installation of a Self Regulating Tide Gate (SRTG) and box culvert across an unnamed tidal creek upstream of the existing poorly functioning tide gate. Phase 2 consists of creation of a flood storage area between the abandoned I-95 berm and Eastern Avenue and construction a new culvert under Eastern Avenue. Phase 3 consists of unblocking a culvert under Bristow Street, removing the leaky flap gate at Ballard Street and restoring tidal flow to Ballard Street Marshes, east and west of I-95. The proponent has requested a Phase I waiver to commence construction of the SRTG and culvert prior to preparation of the Environmental Impact Report.

Jurisdiction

The project will require a Section 401 Water Quality Certificate, a National Pollutant Discharge Elimination System (NPDES) General Construction Permit, a MA Surface Water Discharge Permit and a Chapter 91 License from the Department of Environmental Protection (DEP), Coastal Zone consistency review, and an access and construction permit from the MDC. The project will also require an Order of Conditions from the Saugus Conservation Commission (and hence a Superseding Order from DEP if the Local Order is appealed). Because the project may involve state funding, MEPA jurisdiction extends to all aspects of the project that may have significant environmental impact.

The project is included for the preparation of a mandatory EIR pursuant to Section 11.03(3)(a)(1)(a) and 11.03(3)(a)(2) of the MEPA regulations because more than one acre of salt marsh and Bordering Vegetated Wetlands (BVW) will be altered and more than five thousand square feet of BVW will be altered, and because it requires a variance in accordance with the Wetlands Protection Act.

Waiver Request

With submission of the ENF, the proponent requested that I grant a waiver to allow Phase I of the project to proceed in advance of the completion of the EIR. The waiver request was discussed at the consultation/scoping session that was held on October 24, 2002. As proposed, Phase I consists of installation of a Self Regulating Tide Gate (SRTG) and culvert across an unnamed tidal creek adjacent Ballard Street.

Criteria for a Phase I Waiver

Section 11.11 of the MEPA Regulations provides that the Secretary may waive any provision or requirement of 301 CMR 11.00 not specifically required by MEPA, and may impose appropriate and relevant conditions or restrictions, provided that the Secretary finds 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.

In the case of a partial waiver of a mandatory EIR review threshold that would allow the proponent to proceed to phase one of the project prior to preparing an EIR, this finding shall be based on one or more of the following circumstances: 1) the potential environmental impacts of phase one, taken alone, are insignificant; 2) ample and unconstrained infrastructure facilities and services exist to support phase one; 3) the Project is severable, such that phase one 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 4) the Agency Action on phase one 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.

Findings

Based upon the record before me, including the information submitted by the proponent, and after consultation with the relevant state agencies, I find that :

- 1) Delay in implementing Phase I would not serve to avoid or minimize Damage to the Environment.
- 2) The analysis of potential impacts for Phase I is adequate and demonstrate that the environmental impacts of phase one, taken alone, are insignificant. The proponent has demonstrated that any impacts will be addressed through proper mitigation.
- 3) The proponent has committed, in the ENF, to mitigate any construction impacts to the tidal creek, adjacent banks and other resource areas during installation of the SRTG and culvert. Prior to the work, construction barriers, including staked hay bales and silt fencing, will be placed

and maintained to delineate the limit of work and to prevent sediment from entering the waterway or resource areas during construction. Stabilization of exposed soils will be undertaken by establishing plant species suitable to site conditions.

- 4) The proposed project is consistent with state agency policies that encourage the restoration of salt marsh. This project is included in the May 2002 Massachusetts Wetlands Restoration Program's Salt Marsh Restoration Plan for the Rumney Marshes ACEC as a top priority. This project is also consistent with many CZM Program Policies. The comments received have been largely supportive of the project as a whole. The United States Environmental Protection Agency (EPA), the Department of Environmental Management/ACEC Program, the Metropolitan Area Planning Council (MAPC), and the Saugus River Watershed Council specifically indicated their support of the Phase I waiver request.
- 5) Ample and unconstrained infrastructure, facilities and services exist to support Phase I. MDC land adjacent Ballard Street and the I95 berm can be used for construction staging. The proponent is seeking a construction and access permit from the MDC for use of the land for this purpose.
- 6) Phase I is severable from the rest of the project. Phase I activities do not require, presume, or unduly restrict any action relative to the remainder of the project; however, it is the proponent's intent to complete Phase II and Phase III to realize the full benefits of salt marsh restoration.
- 7) Agency action on Phase I will ensure compliance with MEPA and 301 CMR 11.00 prior to commencement of any other phase of the project. Installation of the SRTG and culvert will require an Order of Conditions from the Saugus Conservation Commission, a Chapter 91 license and a Water Quality Certification under Section 401 of the federal Clean Water Act.

Based on these findings, it is my judgment that the waiver request has merit and meets the tests established in Section 11.11. Therefore, I propose to grant the Phase I waiver request. This Draft Record of Decision shall be published in the next issue of the *Environmental Monitor* for a fourteen-day comment period, after which I shall reconsider, modify, or confirm the

waiver.

November 8, 2002

Date

Bob Durand

Comments received:

10/14/02 U.S. Environmental Protection Agency
10/28/02 Coastal Zone Management Office
10/29/02 Department of Environmental Management/ACEC Program
10/29/02 Department of Environmental Protection NERO
10/29/02 Division of Marine Fisheries
10/25/02 Massachusetts Highway Department
10/04/02 Massachusetts Historical Commission
10/17/02 The City of Revere, Ma/Department of Planning and
Community Development
10/23/02 Massachusetts Audubon Society
10/29/02 Saugus River Watershed Council

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