



The Commonwealth of Massachusetts

Executive Office of Environmental Affairs

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March 8, 2007

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GOVERNOR

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Ian A. Bowles
SECRETARY

DRAFT RECORD OF DECISION

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PROJECT NAME : Upper Shawme Lake Dam Rehabilitation Project
PROJECT MUNICIPALITY : Water Street - Sandwich
PROJECT WATERSHED : Mill Creek/Cape Cod
EOEA NUMBER : 13945
PROJECT PROPONENT : Town of Sandwich
DATE NOTICED IN MONITOR : January 9, 2007

Pursuant to the Massachusetts Environmental Policy Act (MEPA)(G. L. c. 30, ss. 61-62H) and Section 11.11 of the MEPA regulations (301 CMR 11.00), I have reviewed this project and propose to grant a waiver from the requirement to prepare a mandatory Environmental Impact Report (EIR).

Project Description

As described in the Environmental Notification Form (ENF), the proposed project consists of the rehabilitation of the existing earthen dam structure with a footprint of approximately 7,700 square feet (sf). The project includes a new earth embankment dam with a footprint of about 12,500 sf with internal drains, a 3:1 slope on either face of the dam, a 12-foot crest width, a concrete drop spillway, and a new pre-fabricated fish ladder. The Department of Conservation and Recreation (DCR) Office of Dam Safety has listed the existing dam as "unsafe".

Categorical Inclusion

The project is included for the preparation of a mandatory EIR pursuant to Section 11.03(3)(a)(4) of the MEPA regulations for the structural alteration of an existing dam that causes an expansion of 20 percent.

Jurisdiction

The project will require a 253 Permit/Dam License from the Department of Conservation and Recreation (DCR). It will require a 401 Water Quality Certificate and a Chapter 91

Waterways License from the Department of Environmental Protection (MassDEP). The project may need to comply with the National Pollutant Discharge Elimination System (NPDES) General Permit for stormwater discharges from a construction site. A Massachusetts Endangered Species Act (MESA) Permit may be required for impacts to box turtle habitat from the Natural Heritage and Endangered Species Program (NHESP) for construction of an access road to the work area. The project may need to obtain Federal Consistency Review from the Coastal Zone Management (CZM) Office. An Individual Permit will be required from the U.S. Army Corps of Engineers. On October 26, 2006, the proponent received an Order of Conditions from the Sandwich Conservation Commission (SCC) for impacts to wetland resource areas and buffer zones as a "limited" project. Because the proponent is seeking financial assistance from the Commonwealth for the project (DCR's Office of Dam Safety), MEPA jurisdiction extends to all aspects of the project that may have significant environmental impacts.

Waiver Request

On February 1, 2007, the proponent requested a waiver from the requirement for the preparation of an EIR. The waiver request has been sent to the ENF distribution list.

Criteria for Waiver

Section 11.11 of the MEPA regulations provides that a waiver may be granted upon a finding that strict compliance with the regulations will result in undue hardship and will not serve to minimize or avoid damage to the environment. In the case of categorically included projects, this finding shall be based on the following circumstances: 1) the project is likely to cause no damage to the environment; and 2) ample and unconstrained infrastructure exists to support the project. The terms agreed to as a condition of the waiver will bring about benefits in excess of those that could be achieved in the absence of a waiver.

Findings

Based upon the information submitted by the proponent and after consultation with MassDEP and DCR, I find that:

1. The project will improve the environment by reconstructing the existing unsafe dam. The project increases the footprint of the dam by about 4,800 sf to meet current design standards. The existing dam represents a risk to the public welfare and has the potential to cause loss of life in the event of a dam failure. With the proposed project, 20.7 acres of additional aquatic habitat will be restored for migratory fish species by the installation of a new pre-fabricated fish ladder. The project will replicate 2,900 sf of Bordering Vegetated Wetland (BVW) or at a ratio of 1:1. It is estimated to temporarily impact approximately 82,300 sf of Land Under Water (LUW), which will be returned to its existing state upon completion of the project. The project will be

completed within four months. It is scheduled to start in September of 2007 to minimize environmental impacts.

2. The proponent's on-site wetlands restoration is estimated to cost approximately \$32,000. The proponent has the resources and knowledge to provide a successful replication/restoration with MassDEP's supervision.
3. The proponent has committed to undertake an intensive (locational) archaeological survey for the project as requested by the Massachusetts Historical Commission (MHC).
4. A wildlife biologist with Eastern Box Turtle experience will be hired by the proponent to create a barrier plan ensuring that the turtles remain outside the work zone. The wildlife biologist will train construction personnel to recognize and safely remove Eastern Box Turtles from the work zone. The proponent will minimize the extent of the clearing for the access roadway to the maximum extent practicable by using turnouts. It has committed to work with the Massachusetts Division of Marine Fisheries to ensure that there are adequate water levels for any existing anadromous/diadromous fish passage.
5. The proponent will develop an erosion and sediment control plan. The quality of stormwater runoff generated by the project during construction will be improved by the use of staked hay bales and silt fencing as stipulated in the Order of Conditions.

Based on these findings, it is my judgment that the waiver request has merit and meets the tests established in Section 11.11. MassDEP and DCR have sufficient permitting authority to ensure that the proponent complies with the findings of this Certificate. Therefore, I propose to grant the waiver requested for this dam reconstruction project, subject to the above findings. 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.

March 8, 2007

Date

Ian A. Bowles

cc: Sharon Stone, MassDEP/SERO

Comments received:

McMahon Assoc., 1/11/07

DCR, 1/16/07

MassWildlife, 1/19/07

MHC, 1/23/07

EOEA #13945

DRAFT Record of Decision

March 8, 2007

MHC, 1/23/07

DCR, 1/24/07

MassDEP/SERO, 1/26/07

MassDEP/SERO, 1/29/07

CCC, 1/29/07

MA Div. of Marine Fisheries, 1/29/07

McMahon Assoc., 2/1/07

McMahon Assoc., 2/1/07

McMahon Assoc., 2/6/07

MassDEP/SERO, 2/9/07

McMahon Assoc., 2/20/07

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IAB/WG/wg