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January 20, 2012

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

PROJECT NAME : Dwelling on Open-Pile Foundation
PROJECT MUNICIPALITY : Wareham
PROJECT WATERSHED : Buzzards Bay
EEA NUMBER : 14837
PROJECT PROPONENT : Jeffrey and Thomas Boardman
DATE NOTICED IN MONITOR : 12/21/2011

Pursuant to the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-62I) and Section 11.06 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).

Project Description

The proposed project consists of demolition of an existing unlicensed residential structure and construction of a new house, deck and replacement seawall/bulkhead on a 0.04 acre project site fronting Broad Cove in the Town of Wareham. The project will result in alteration of Coastal Bank (33 linear feet), Coastal Beach (5 square feet (sf)), and Land Subject to Coastal Storm Flowage (1,022 sf including house, deck, and wall). The height of the existing dwelling is 18 feet. The proposed height of the new dwelling is 35 feet. The proposed reconstruction will reduce the overall amount of building footprint located within tidelands.

Permits and Jurisdiction

The project is undergoing review under MEPA because it requires a State Agency Action and exceeds a MEPA review threshold. The project requires a Chapter 91 License from the Massachusetts Department of Environmental Protection (MassDEP) and is under review

pursuant to Section 11.03(3)(b)(5) of the MEPA regulations because it involves a non water-dependent use of waterways or tideland. The project received an Order of Conditions from the Wareham Conservation Commission on October 6, 2011. The Order was not appealed.

The project is not seeking or receiving financial assistance from the Commonwealth. Therefore, MEPA jurisdiction is limited to those aspects of the project that are within the subject matter of any required or potentially required state permits and that may cause Damage to the Environment as defined in the MEPA regulations. Because the project requires a Chapter 91 License, MEPA jurisdiction is effectively equivalent to broad scope jurisdiction.

Review of the Environmental Notification Form (ENF)

As described in the ENF, the project involves demolition of an existing unlicensed dwelling and a licensed seawall, followed by construction of a new dwelling and a concrete block seawall. The footprint of the existing non water-dependent building located on or over flowed and filled Commonwealth tidelands is 832 square feet (sf), which includes a portion of the existing dwelling and deck. The proposed structure will be constructed on an open pile foundation and moved farther away from the water, which will reduce the amount of structure within tidelands from 832 sf to 635 sf and reduce the number of pilings within tidelands from fourteen to eight. Currently, the fourteen pilings are located within flowed tidelands. The project as proposed in the ENF would result in four piles located in flowed tidelands and four in filled tidelands.

The project site lies within mapped shellfish habitat for American oyster (*Crassostrea virginica*) bay scallop (*Argopecten irradians*), soft shell clam (*Mya arenaria*) and quahog (*Mercenaria mercenaria*). This habitat is protected under the Wetlands Protection Act (310 CMR 10.34). As recommended by the Division of Marine Fisheries in its comment letter, all work should be performed from the upland side of the project site to avoid impacts to the intertidal area and shellfish habitat.

The existing concrete seawall/bulkhead on the project site is disintegrating and the Proponent proposes replacement with a new pre-fabricated concrete block wall. The ENF indicates that the wall will not extend beyond the footprint of the existing wall and will be connected on each end to existing walls. The existing rip-rap toe protection will be reset as part of the seawall reconstruction. As noted in the ENF, the existing seawall, rip-rap and historic fill were previously licensed under Chapter 91 (1901 Harbor and Land Commissioners license #2440).

The proposed use of the reconstructed building as a single-family residence is a non-water-dependent use, partially located over filled and flowed private tidelands. The reconstructed seawall provides protection for an existing structure and is a water-dependent use. Since there is a mix of water-dependent and non-water-dependent uses, MassDEP will process the application as a non water-dependent use project in accordance with 310 CMR 9.12(1). A variance from the Waterways regulations is required due to the prohibition of non-water-dependent use over flowed tidelands (310 CMR 9.32). The Proponent has provided supplemental information to MassDEP indicating that the project is likely to be eligible for a variance in accordance with 310

CMR 9.21 to avoid substantial hardship for the continuation of any pre-1984 use or structure, provided that documentation supports that there is no substantial structural alteration proposed as part of the construction. The Proponent should revise the license application plans to MassDEP to show the footprint and cross-section of both the existing and proposed building and deck to verify the amount of structures to be located in tidelands. The Proponent should submit additional information to MassDEP, as requested in its comment letter, to prove that the residential use of the site has been continuous since at least January 1, 1984.

The Massachusetts Board of Underwater Archaeological Resources (BUAR) has reviewed the ENF for the project and indicates in its comment letter that the project is unlikely to impact submerged cultural resources. However, as noted in the Board's letter, the area may be generally archaeologically sensitive. If submerged cultural resources are encountered during the course of the project, the Proponent should take steps to limit adverse effects and notify the Board, as well as other appropriate agencies, immediately in accordance with the Board's Policy Guidance for the Discovery of Unanticipated Archaeological Resources (updated 9/28/06).

Mitigation

The Proponent should consult with MassDEP to discuss mitigation plans. Adequate compensation comparable to similar variance decisions must be discussed and agreed upon during the license application review process. The Proponent should consider improvements to public access at and adjacent to the project site as well as enhancements to the public's enjoyment of the water, and consider working with the Town of Wareham to provide constructive improvements needed on adjacent publicly-owned waterfront parcels.

The project as described in the ENF appears to block public access in the intertidal zone. The Proponent should provide additional information to MassDEP to demonstrate that the public can walk under the building with a five-foot clearance at mean high water for the full length of the waterfront, that an upland detour around the structure(s) will be provided, or the Proponent should consider a financial contribution of \$120.00 per linear foot of obstruction, as is the case in similar variance decisions.

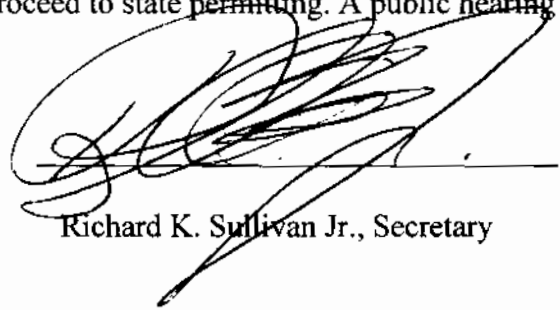
The standards of 310 CMR 9.51 are designed to ensure that, within 100 feet of the shoreline, the capacity of tidelands will be conserved to be used for water-dependent purposes. The proposed residential use within 100 feet of the shoreline does not meet this standard. In cases where full compliance is not possible, MassDEP will require equitable financial compensation for the proposed use as a condition of the variance. As outlined in its comment letter, past precedents have used a benchmark of \$5.00 per square foot for occupation of flowed private tidelands. This figure can also be used as guidance in considering mitigation measures in the public realm adjacent to the site. The site is not immediately adjacent to a public way providing access directly to the shore so MassDEP will seek input from the Wareham Conservation Commission, Harbormaster's Office, and/or Planning Board for possible improvements to public access preferably in the immediate vicinity of the East River Waterfront. This compensation would ideally be directed into a fund in the community dedicated to improving public access and the water-related interests of the public.

Conclusion

The ENF has sufficiently defined the nature and general elements of the project for the purposes of MEPA review. The Proponent should provide supplemental information to MassDEP to address the variance standards, including mitigation commitments, as outlined in the MassDEP comment letter. MassDEP should also consider the comment letters from the Division of Marine Fisheries and BUAR during the licensing process. Based on review of the ENF and comments received, and in consultation with state agencies, I have determined that no further MEPA review is required. The project may proceed to state permitting. A public hearing in Wareham will be scheduled for the project.

January 20, 2012

DATE



Richard K. Sullivan Jr., Secretary

Comments Received:

12/23/2011 Massachusetts Board of Underwater Archaeological Resources
01/10/2012 Massachusetts Division of Marine Fisheries
01/13/2012 Massachusetts Department of Environmental Protection

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