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May 7, 2010

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

PROJECT NAME : Green River Bank Stabilization
PROJECT MUNICIPALITY : Great Barrington
PROJECT WATERSHED : Housatonic
EEA NUMBER : 14569
PROJECT PROPONENT : George Beebe, Riverhill Farms
DATE NOTICED IN MONITOR : April 7, 2010

Pursuant to the Massachusetts Environmental Policy Act (MEPA) (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). However, the project as proposed in the Environmental Notification Form (ENF) may not be permissible as currently designed. Therefore, if the project undergoes material changes as a result of efforts to meet permitting requirements, the Proponent may need to submit a Notice of Project Change (NPC).

Project Description

As described in the Environmental Notification Form (ENF), the project consists of stabilizing 600 linear feet (lf) of bank along the Green River in Great Barrington. The project proposes to stabilize the bank using blocky rock and willow live stakes to address erosion that has migrated into an active corn field resulting in a loss of approximately two acres of prime agricultural land. Compensatory storage for the loss of floodplain is proposed by excavating 15,042 square feet (sf) of land along a meander in the river. The project site contains mapped habitat for rare or endangered species according to the Division of Fisheries and Wildlife Natural Heritage and Endangered Species Program (NHESP).

Anticipated environmental impacts associated with the project include 0.48 acres of new impervious area, alteration of 600 lf of Bank, 5,400 sf of Land Under Water (LUW), 20,743 sf of Bordering Land Subject to Flooding (BLSF), and 26,143 sf of Riverfront Area, and may result in a "take" of the Wood Turtle as defined by the Massachusetts Endangered Species Act (MESA, M.G.L.c.131A).

Jurisdiction and Permitting

The project is undergoing review pursuant to Sections 11.03(3)(b)(1)(b) and 11.03(3)(b)(1)(f) of the MEPA regulations because it requires a State Agency Action and it will result in the alteration of 500 or more linear feet of Inland Bank and one-half or more acres of other wetlands (LUW, BLSF, and Riverfront Area). The project requires: review under MESA by NHESP; an Order of Conditions from the Great Barrington Conservation Commission (and, on appeal only, a Superseding Order of Conditions (SOC) from the Massachusetts Department of Environmental Protection (MassDEP)); a Section 401 Water Quality Certificate (401 WQC) and a Chapter 91 License from MassDEP; and an Individual Section 404 Permit from the United States Army Corps of Engineers (ACOE). The project may require a National Pollutant Discharge Elimination System (NPDES) Construction General Permit (CGP) from the United States Environmental Protection Agency (USEPA), including a Stormwater Pollution Prevention Plan (SWPPP), for construction activities which disturb one acre or more of land. In addition, projects within the 100-year floodplain which involve federal action must comply with federal Executive Order 11988, Floodplain Management.

Because the Proponent is not seeking financial assistance from the Commonwealth for the project, MEPA jurisdiction is limited to those aspects of the project that may cause Damage to the Environment as defined in the MEPA regulations and that are within the subject matter of required or potentially required state permits. In this case, MEPA jurisdiction extends to rare species, wetlands and waterways.

Review of the ENF

According to comments from NHESP, the proposed project is located within the actual Resource Area habitat of the Wood Turtle, a species of Special Concern pursuant to MESA and its implementing regulations at 321 CMR 10.00. The Proponent has been in consultations with NHESP regarding project design and impacts to the Wood Turtle and its habitat. NHESP has determined that the proposed bank stabilization and construction of compensatory storage will result in adverse effects to the habitat of the Wood Turtle. In its comments, NHESP has requested that the Proponent complete a Wood Turtle survey and habitat assessment, and consider design changes that would reduce habitat impacts. Revisions to the proposed bank stabilization may include:

- Moving or eliminating the proposed compensatory flood storage area;
- Reductions in the amount of required rip-rap by utilizing bioengineering;
- Lowering and/or eliminating the “levy” in sections of the stabilization;
- Additional planting of soil appropriate, fast growing, native woody and herbaceous cover; and
- Enlargement of the proposed vegetated buffer.

The Proponent should continue consultations with NHESP to determine if the project may be redesigned to avoid a “take”. If this is not possible, the project will be required to meet the performance standards for a Conservation and Management Permit under MESA (321 CMR 10.23). I refer the Proponent to the NHESP comment letter for additional guidance on the permit requirements including the development and implementation of a Wood Turtle mitigation plan.

The Green River is a significant coldwater fisheries resource. I note the comments from the fisheries section of NHESP which question the likelihood of success of the proposed remedy for resolving the erosion issue and reiterate employing bioengineering techniques and soft structures in areas that are in immediate need of protection. Comments also highlighted the importance of extending the riparian vegetation well beyond the current area as an added measure of protection to the stream bank and fish habitat. The Proponent should ensure that Best Management Practices (BMPs) for erosion and sedimentation control are implemented to avoid and minimize adverse impacts to fisheries resources. If the project results in alteration of streambed, the existing grade should be maintained, as recommended by NHESP.

The project is subject to the Wetlands Protection Act (WPA) and associated regulations. As noted in its comment letter, MassDEP has submitted comments on the Notice of Intent (NOI) for the project to the Great Barrington Conservation Commission (GBCC). The project requires an Order of Conditions from GBCC. MassDEP notes that GBCC does have discretion regarding the requirement for compensatory storage for filling in floodplain. If appropriate, the Proponent should submit supplemental plans to the NOI which identify the location and volume of fill proposed within BLSF. I note the Proponent's request that the requirement for compensatory storage be waived.

MassDEP also notes that the proposed project does not meet the General Performance Standards set forth in the WPA regulations referencing *Estimated Habitats of Rare Wildlife* (310 CMR 10.59). The regulations state that if a proposed project is found by the issuing authority to alter a resource area which is part of the habitat of a state-listed species, such project shall not be permitted to have any short or long term adverse effects on the habitat of the local population of that species. The Proponent will therefore need to examine alternatives as outlined in MassDEP's comment letter.

The Proponent has filed a 401 WQC permit application for the project. The Proponent should consult with MassDEP regarding the 401 WQC permit process. The Proponent will be required to provide sufficient information to adequately describe cumulative impacts to BVW and LUW and demonstrate how impacts will be avoided, minimized and mitigated. As noted elsewhere, design modifications to the proposed project that comply with MESA, WPA and Chapter 91 will also require submission to MassDEP.

The Proponent has submitted a Chapter 91 Request for Determination of Applicability (RDA) to MassDEP. Comments from MassDEP indicate that the project may be required to file a Chapter 91 License application because the proposed bank stabilization material extends into the Green River to an extent that reduces the navigability of the river. The Proponent should consider alternatives to the proposed project that do not affect the navigability of the river. The Proponent should consult with MassDEP regarding the Chapter 91 permit process.

Comments from USEPA indicate that subsequent to a review of the Proponent's Category 2 permit application to the ACOE, it is their recommendation that the Proponent be required to submit an Individual Section 404 Permit to ACOE. The Individual Section 404 Permit review would require additional alternatives to be considered that reduced impacts to the aquatic ecosystem.

According to the Department of Agricultural Resources (DAR) approximately 350 acres of the farm is placed under an Agricultural Preservation Restriction (APR). The proposed installation of block rock or an acceptable substitute material would not require prior approval by DAR, however the excavation required for the compensatory storage would require both approval by DAR as well as issuance of a Certificate of Approval. DAR has indicated that it will proceed with the Certificate of Approval upon resolution of the issues surrounding the compensatory storage.

The Proponent should prepare a Spills Contingency Plan for all heavy equipment that is enforced and presented to workers onsite. The plan should address potential releases during pre- and post-construction activities and included but not be limited to, refueling of machinery and storage of fuels.

Comments from the Board of Underwater Archaeological Resources (the Board) indicate that the project is unlikely to impact submerged cultural resources. However, it is possible that there are submerged cultural resources in the project area. If heretofore-unknown 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, in accordance with the Board's *Policy Guidance for the Discovery of Unanticipated Archaeological Resources* (updated 9/28/06).

Conclusion

Although the impacts of the project within MEPA jurisdiction do not warrant the preparation of an EIR, the project, as currently proposed, may not be permissible under the regulations for WPA, MESA, 401 WQC and Chapter 91 without certain design modifications. Project changes may therefore be required in order to obtain the necessary state permits. If the Proponent chooses to redesign the project to meet permitting requirements, a NPC may be required in accordance with 301 CMR 11.10. The Proponent should consult with the MEPA Office prior to the filing of a NPC. In the event that the Proponent is able to obtain the required permits to allow the project presented in the ENF to proceed, MassDEP and NHESP have sufficient permitting authority to address any potential environmental impacts. I conclude that no further MEPA review is required at this time.

May 7, 2010

Date



Ian A. Bowles

Comments received:

04/14/2010	Massachusetts Board of Underwater Archaeological Resources
04/26/2010	Massachusetts Department of Environmental Protection – SERO
04/27/2010	Natural Heritage and Endangered Species Program
04/27/2010	Massachusetts Department of Agricultural Resources
04/27/2010	Berkshire Regional Planning Commission
04/27/2010	James Toth
05/05/2010	United States Environmental Protection Agency

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