



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

Southeast Regional Office • 20 Riverside Drive, Lakeville MA 02347 • 508-946-2700

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March 31, 2016

Mathew A. Beaton,
Secretary of Environment and Energy
Executive Office of Environmental Affairs
ATTN: MEPA Office
100 Cambridge Street, Suite 900
Boston, MA 02114

RE: ENF Review EOEEA #15481-
CHILMARK.Mill Brook Headwaters
Restoration Project at Old Farm Road

Dear Secretary Beaton,

The Southeast Regional Office of the Department of Environmental Protection (MassDEP) has reviewed the Environmental Notification Form (ENF) for the proposed Mill Brook Headwaters Restoration Project at Old Farm Road, Chilmark, Massachusetts (EOEEA #15481). The project proponent provides the following information for the project:

The proponent proposes to replace two existing side-by-side 12-inch CWP culverts. The culverts will be replaced with a 6 by 8 by 20-foot pre-cast concrete box culvert. The culvert replacement will result in increased drainage of the upstream impoundment, restored ecological functions including fish and wildlife passage, and reliable vehicle access across Mill Brook. The proposed Project will involve work within regulated resources areas including Land Under Waterbodies and Waterways, Inland Bank, Bordering Vegetated Wetlands, and Riverfront Area. These resource areas and associated buffer zones are regulated under the Massachusetts Wetlands Protection Act and the Town of Chilmark Wetlands Protection Bylaw and implementing Rules and Regulations. The Project is filed as a Limited Project under the provisions at 310 CMR 10.53(4), and short-term resource area impacts will be avoided and minimized to the extent practicable. The overall goal of the project is to improve and restore the stream ecosystem, aquatic habitat and surrounding wetland ecosystems in the Mill Brook watershed. The medium- to long-term benefits to these resource areas from the Project will be substantial.

Which MEPA review threshold(s) does the project meet or exceed (see 301 CMR 11.03)?
11.03(3)(b)1.f. alteration of one half or more acres of any other wetlands

Which State Agency Permits will the project require?
DEP Notice of Intent – Order of Conditions, DEP Ch. 91 License

Wetlands and Waterways

The Waterways Program has reviewed the ENF, which indicates a Chapter 91 License is required for this project, and agrees relative to the proposed activities. The Waterways Program has performed a cursory review of its database and has not found any prior Chapter 91 authorizations for the existing culverts.

However, the ENF does not provide sufficient information for the Waterways Program to definitely if any area is outside of Chapter 91 geographical jurisdiction. The one area in question is immediately down gradient of the twin 12-inch culverts at Old Farm Road where it bisects Mill Brook, which is shown as perennial on the USGS quadrangle maps. Therefore, the Waterways Program considers the project within a Geographic Area Subject to Jurisdiction pursuant to 310 CMR 9.04(1)(e). If the Proponent chooses to receive a formal decision, then it is recommended that they file a Request for Determination of Applicability according to 310 CMR 9.06.

The submission of the application plans should clearly indicate Chapter 91 jurisdiction by showing the natural annual high water or Ordinary High Water (OHW) lines. In addition, post culvert replacement jurisdictional lines should be estimated on the plans.

The Waterways Program has determined the work as a water-dependent use project in accordance with 310 CMR 9.12.

The Waterways Program believes any outstanding issues can be resolved through the Licensing process.

The Wetlands Program has determined that the project meets the definition of an Ecological Restoration Project as defined at 310 CMR 10.04, and therefore should be permitted by a Restoration Order of Conditions. The applicant is advised to review the eligibility criteria at 310 CMR 10.13. In addition, a 401 Water Quality Certification may be required if dredging more than 100 cubic yards per 310 CMR 9.04.

The Wetlands Program strongly supports the goals of the culvert replacement project to increase ecological functions by enhancing fish and wildlife passage.

Drinking Water Program Comments:

During MassDEP's review of this ENF it was brought to the Department's attention that there may be a Public Water Supply in the vicinity of the project under review. On March 30, 2016, the Department received a faxed letter from Frank H. Dunkl, President of Mill Brook Springs in Chilmark, expressing concern that the project under review could negatively impact the source of his former groundwater bottling operation. MassDEP records show that the source of the former bottling operation was delisted as a Massachusetts Public Water Supply in 2001. Mr. Dunkl contends that the delisting was done in error and that, in fact, the source of the former bottling operation should have been re-categorized as an INACTIVE Public Water Supply, not delisted.

In view of this new information and prior to making a final determination to reclassify Millbrook Springs as an INACTIVE SOURCE, the Department requires more time to review its records. Therefore, if a decision is made in favor of Millbrook Springs request, the proponent of this project should know that the Department would have an unfavorable view of any project that poses a threat to water quality because inactive sources are protected under 310 CMR 22.00. The Department is requesting the Proponent to provide supplement information determining if the Project will have any potential threat to water quality and/or quantity to the Millbrook Springs.

Bureau of Waste Site Cleanup

Based upon the information provided, the Bureau of Waste Site Cleanup (BWSC) searched its databases for disposal sites and release notifications that have occurred at or might impact the proposed project area. A disposal site is a location where there has been a release to the environment of oil and/or hazardous material that is regulated under M.G.L. c. 21E, and the Massachusetts Contingency Plan [MCP – 310 CMR 40.0000].

There are no listed MCP disposal sites located at or in the vicinity of the proposed project area that might impact the site. Interested parties may view a map showing the location of BWSC disposal sites using the MassGIS data viewer (Oliver) at: http://maps.massgis.state.ma.us/map_ol/oliver.php Under “Available Data Layers” select “Regulated Areas”, and then “DEP Tier Classified 21E Sites”. The compliance status and report submittals for specific MCP disposal sites may be viewed using the BWSC Waste Sites/Reportable Release Lookup at: <http://public.dep.state.ma.us/SearchableSites2/Search.aspx>

The Project Proponent is advised that if oil and/or hazardous material are identified during the implementation of this project, notification pursuant to the Massachusetts Contingency Plan (310 CMR 40.0000) must be made to MassDEP, if necessary. A Licensed Site Professional (LSP) should be retained to determine if notification is required and, if need be, to render appropriate opinions. The LSP may evaluate whether risk reduction measures are necessary if contamination is present. The BWSC may be contacted for guidance if questions arise regarding cleanup.

Air Quality

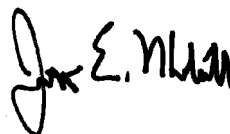
Construction and operation activities shall not cause or contribute to a condition of air pollution due to dust, odor or noise. To determine the appropriate requirements please refer to:

- 310 CMR 7.09 Dust, Odor, Construction, and Demolition
- 310 CMR 7.10 Noise

Proposed s.61 Findings

The “Certificate of the Secretary of Energy and Environmental Affairs on the Environmental Notification Form” may indicate that this project requires further MEPA review and the preparation of an Environmental Impact Report. Pursuant to MEPA Regulations 301 CMR 11.12(5)(d), the Proponent will prepare Proposed Section 61 Findings to be included in the EIR in a separate chapter updating and summarizing proposed mitigation measures. In accordance with 301 CMR 11.07(6)(k), this chapter should also include separate updated draft Section 61 Findings for each State agency that will issue permits for the project. The draft Section 61 Findings should contain clear commitments to implement mitigation measures, estimate the individual costs of each proposed measure, identify the parties responsible for implementation, and contain a schedule for implementation.

Very truly yours,



Jonathan E. Hobill,
Regional Engineer,
Bureau of Water Resources

JH/GZ

Cc: DEP/SERO

ATTN: Millie Garcia-Serrano, Regional Director
David Johnston, Deputy Regional Director, BWR
Maria Pinaud, Deputy Regional Director, BAW
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