

310 CMR 10.23 reads, in turn,

Mean High Water Line means the line where the arithmetic mean of the high water heights observed over a specific 19-year metonic cycle (the National Tidal Datum Epoch) meets the shore and shall be determined using hydrographic survey data of the National Ocean Survey of the U.S. Department of Commerce.

Without having conducted such an analysis, the Applicant cannot know where Mean Annual High Water begins, and cannot therefore know the location of Riverfront Area. (Neither can MEPA know this information.) I am not aware of any document or report furnished to the Conservation Commission that includes the proper arithmetic analysis.

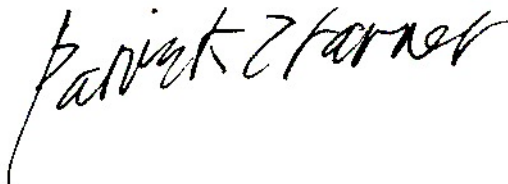
Riverfront Area as shown on the Plan cannot be considered accurate unless the applicant has fully complied with the provisions of 310 CMR 10.23. Without an accurate determination, MEPA cannot make an accurate assessment of impacts to Riverfront by MEPA. The area mapped as Riverfront may be far more extensive than indicated.

Summary

Information provided in the SSFEIR is inadequate to assess actual wetland impacts. The SSFEIR does not properly indicate MHW. The applicant must prove to the Commission that the “*arithmetic mean of the high water heights*” has been determined. Therefore, the extent of Riverfront is unknown. Nor does the SSFEIR show an approved and accurate BLSF. The extent of impacts to BLSF (as well as BVW) remains unknown.

My opinion is that the Applicant continues to represent its project to MEPA with incomplete, inaccurate and/or insufficient information. Without such data MEPA cannot properly assess proposed project wetland impacts. As noted above, *projected impacts to wetland resources are speculative and without Conservation Commission confirmation. The magnitude and extent of wetland impacts remains a matter of conjecture.*

Very truly yours,

A handwritten signature in black ink that reads "Patrick C. Garner". The signature is written in a cursive style with a long, sweeping underline that extends to the left.

Patrick C. Garner
Wetland Scientist, Hydrologist

Copy:
McGregor & Associates, PC
15 Court Square, Suite 500
Boston, MA 02108

Bordering Land Subject to Flooding (BLSF)

Initial project mapping showed no BLSF. Then a revised project mapping indicated BLSF (see Plan entitled, “Plan to Accompany Request for Determination of Applicability,” by Silva Engineering Associates, dated 7/24/07). Now, a year later, the applicant states that no BLSF exists (see page A-1 110, SSFEIR)—that the area is instead Land Subject to Coastal Storm Flowage (LSCSF).

Yet the SSFEIR actively discusses projected impacts to BLSF (see page 19). Wetland Crossing 2 (see page 71, SSFEIR) identifies BLSF as associated with Rattlesnake Creek—an area that will be crossed by the project sewer extension.

The extent and location of BLSF have not been reviewed or approved by the Conservation Commission. BLSF is defined under 310 CMR 10.57(2)(a). Based on the regulations, BLSF is the “*estimated maximum lateral extent of flood water which will theoretically result from the statistical 100-year frequency storm.*” That area is shown as well on FEMA/FIRM mapping, in this case as Zone A or A2.

An accurate determination of the extent and location of BLSF is critical. The proposed project, as shown on the SSFEIR, clearly impacts BLSF. Yet in the absence of an accurate and approved determination, local authorities cannot assess actual impacts to BLSF. MEPA itself cannot assess the impacts to this lost resource area without an approved resource area determination, which to this date still does not exist for the BLSF on this site.

Further, BVW exists in the area of this same crossing. The project does not indicate any mitigation whatsoever for lost BVW or BLSF. The SSFEIR maps do not propose or discuss mitigation. The SSFEIR does not include any tables of impacts versus quantities of mitigation.

Mean High Water

An apparent Mean High Water (MHW) line is now shown on the Plan, although none of the Conservation or SSFEIR maps specifically identify the MHW line by point number, arithmetic calculation or precise delineation—the line can only be determined by graphic inference. Coastal bank (apparently shown on the Plan as “Edge of Assonet River (Tidal)” and graphically shown as the beginning of the 200-foot resource area) and Mean Annual High Water (MHW) are not the same under the WPA, nor are they coincident.

Defining MHW using the precise methodology found in the WPA is critical because the 200-foot Riverfront Area begins at the MHW line, and not at “bank” or any other edge.

To my knowledge the Commission never approved the specific location of the 200-foot Riverfront Area, nor was it marked physically. The project Order of Resource Area Determination (ORAD) makes no reference to MHW or Riverfront. For the Commission to do so, it must have found that the Applicant meets the conditions of 310 CMR 10.58(2)(a)2c. That section of the Wetland Protection Act reads,

In tidal rivers, the mean annual high-water line is coincident with the mean high water line determined under 310 CMR 10.23.

October 10 2008

Sec. Ian Bowles
Executive Office of Energy & Environmental Affairs
Attn: MEPA Office
100 Cambridge Street, Suite 900
Boston, MA 02114

**Subject: Second Supplemental Final Environmental Impact Report (SSFEIR),
Payne's Crossing (EOEEA No. 01982)
Property off S. Main Street/Route 79 (KGI Properties, LLC)
Freetown, MA**

Dear Sec. Bowles:

On behalf of Brian and Anne Dunning, Gary and Linda Fernandes, Tom Vivieros, all residents of Narrows Road, Assonet, and on behalf of the Assonet Bay Action Committee, my firm has reviewed the 9/2/08 SSFEIR for compliance with the provisions of the Wetland Protection Act. We have worked from the following documents:

- The Applicant's 9/2/08 SSFEIR, Volumes 1 and 2
- Plan entitled, "Plan to Accompany Request for Determination of Applicability," by Silva Engineering Associates, dated 7/24/07 (the Plan)
- Order of Resource Area Delineation dated 4/9/07, attached to the RDA
- Order of Conditions dated 4/11/05, also attached to the RDA
- FEMA Mapping, Panel 15 of 30
- The Applicant's EIR
- The Applicant's 11/27/07 NPC and Supplemental Attachment to the NPC

Overview

On August 13 2007, and on December 28 2007, my firm wrote MEPA on behalf of the above parties. We identified wetland resource areas missing from the Applicant's project mapping. Areas identified as missing or improperly indicated were Bordering Land Subject to Flooding (BLSF) and the Mean High Water line (MHW) of the Assonet River (which is *critical* as the MHW line defines the beginning of the project Riverfront Area).

To date impacts to BLSF remain unknown. To date a definitive location for the MHW remains undetermined. The applicant has filed no Notice of Intent for the project. Therefore, *projected impacts to protected wetland resources are purely speculative and without Conservation Commission confirmation. Wetland impacts cannot be properly assessed. Their magnitude and extent is a matter of conjecture.*