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February 24, 2006

CERTIFICATE OF THE SECRETARY OF ENVIRONMENTAL AFFAIRS
ON THE
DRAFT ENVIRONMENTAL IMPACT REPORT

PROJECT NAME: Gilden Dam Breaching
PROJECT LOCATION: Williamstown
EOEA NUMBER: 13639
PROJECT PROPONENT: Lillian Gilden
DATE NOTICED IN MONITOR: December 21, 2005

As Secretary of Environmental Affairs, I hereby determine that the Draft Environmental Impact Report (DEIR) submitted on the above project **does not adequately and properly comply** with the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-62H) and with its implementing regulations (301 CMR 11.00). Therefore, the proponent must submit a Supplemental DEIR in accordance with Section 11.08 (8)(b)(3) of the MEPA regulations.

According to the DEIR, the project proposes the breaching of a 400-foot long beaver dam on the West Branch of the Green River. The project site is an 88-acre parcel located on the east side of Route 43 in Williamstown, MA. The majority of the proponent's parcel is situated on land east of the West Branch of the Green River. After purchase of the property in the late 1970s, the proponent constructed a gravel driveway through a right-of-way access and a timber bridge across the river. Approximately ten years ago the bridge collapsed and beavers began to occupy the site. As a result of the dam created by the beavers, the proponent cannot safely access the upland portion of the property. The estimated size of the wetland created as a result of the beaver dam is 21 acres.

In the DEIR, the proponent proposes to remove the beaver dam gradually by installing a fence line of heavy gauge wire fencing downstream of the dam with silt fence along the fence. As the dam is removed approximately 6 feet at a time the fence will be cleaned of any sediments released from behind the dam. All work will be performed by hand. The proposed fencing will retain sediment on the subject property and minimize the potential for downstream

sedimentation. Although not discussed in the Environmental Notification Form (ENF) submitted for the project or in the DEIR, the proponent also plans to construct a new road or bridge across the river once the dam has been breached in order to provide access to the upland portion of the property.

Jurisdiction

This project is subject to review and the preparation of a Mandatory Environmental Impact Report (EIR) under Section 11.03 (3)(a)(1)(a) of the MEPA regulations because the project will result in the alteration of more than one acre of Bordering Vegetated Wetlands (BVW). The project will require an Individual Permit from the U.S. Army Corps of Engineers (U.S. ACOE) pursuant to Section 404 of the Clean Water Act (CWA). The project requires a 401 Water Quality Certification (WQC) from the Department of Environmental Protection (DEP) and an Order of Conditions (OOC) from the Williamstown Conservation Commission. The proponent is not seeking financial assistance for the project from the Commonwealth and therefore MEPA jurisdiction is limited to the subject matter of required state permits. In this case MEPA jurisdiction applies to wetlands.

The proponent has submitted its application for the 401 Water Quality Certificate to DEP. DEP's Western Regional Office (WERO) has issued a Statement of Technical Deficiency on the proponent's 401 WQC application, thereby stopping the Department's review of the project until the application is complete. The proponent should note that DEP cannot issue the WQC until MEPA review is complete, and that the ACOE cannot issue the Individual Permit for the project until DEP has issued the WQC.

The OOC was issued to the proponent on May 31, 2005 (DEP #343-448) and has not been appealed. However, the Notice of Intent submitted to the Williamstown Conservation Commission described only the breaching of the dam, and did not present plans for the design and construction of an access road or bridge. Therefore the OOC may need to be amended, or a new Notice of Intent may be required.

The proponent filed an ENF for the project in September, 2005 with a request for a full waiver from the requirement to prepare an EIR. In a Certificate issued by the Secretary of Environmental Affairs on October 31, 2005, the proponent's request for a waiver was denied. The Certificate on the ENF set forth the scope for the Draft and Final EIR.

The Draft Environmental Impact Report (DEIR) has not sufficiently addressed several issues critical to understanding the project design and how the project meets state regulatory requirements. The need to consider alternatives, document impacts, and demonstrate that the project design avoids, minimizes and mitigates Damage to the Environment is necessary to comply with MGL c. 30, §§ 61-62H and the MEPA Regulations (301 CMR 11.00). As described below, the Supplemental DEIR must address outstanding issues related to design alternatives for the entire project and a comparative evaluation of associated impacts before the project moves to a Final EIR.

Much of the scope for the Supplemental DEIR was discussed at a January 31, 2006 meeting attended by the proponent and staff from MEPA, DEP and the ACOE, and I thank

everyone involved for their efforts to develop a technical and environmentally sensitive approach to this complex project.

SCOPE

General

The Supplemental DEIR should contain a copy of this Certificate and a copy of any comments received. The Supplemental DEIR should respond to the comments received, to the extent that the comments are within MEPA subject matter jurisdiction. The Supplemental DEIR should present additional narrative and/or technical analysis as necessary to respond to the concerns raised. In this instance, the proponent should use the Supplemental DEIR as an opportunity to respond to DEP's Statement of Technical Deficiency on the Water Quality Certificate application.

The Supplemental DEIR should be circulated in compliance with Section 11.16 of the MEPA regulations and copies should also be sent to the list of "comments received" below and to Williamstown officials. A copy of the Supplemental DEIR should be made available for public review at the Williamstown Public Library.

Project Description and Permitting

To avoid anti-segmentation provisions in the MEPA regulations at 301 CMR 11.01(2)(c) and in the Water Quality regulations at 314 CMR 9.02, the Supplemental DEIR should include a thorough description of the project, including a detailed description of construction methods to remove the dam or release the impoundment, and a detailed description of how the proponent intends to construct an access way over the West Branch of the Green River. The proponent should outline in detail direct and indirect impacts associated with the release of the dam, and any potential impacts that could result from the construction of the access road/bridge.

The Supplemental DEIR should include a description of each state and federal permit or agency action required, and should demonstrate that the project meets applicable performance standards. This section of the Supplemental DEIR should provide an update on the proponent's Water Quality Certificate application; the potential need for a new or amended Order of Conditions; and any potential permits required for construction of the access road. Both DEP and the ACOE have indicated that they cannot issue required permits for just the breaching of the dam, and that the proponent must provide a full description of all phases of the project before proceeding.

The construction of a bridge over the West Branch of the Green River may require a Chapter 91 Waterways License from DEP. The proponent should request a determination from the Waterways program, and discuss the outcome of this consultation in the Supplemental DEIR. If a Chapter 91 License is required, the proponent should discuss how the project will meet the performance standards of the waterways regulations.

Alternatives

MEPA, DEP and the ACOE all require a more comprehensive alternatives as part of the project review than has been prepared by the proponent to date. All 401 activities are subject to an alternatives analysis as part of DEP's certification review process. No discharge will be permitted if there is a practicable alternative that would have less adverse impact on the aquatic ecosystem. DEP has voiced concerns about the proponent's proposed method of releasing the dam in terms of downstream impacts caused by the velocity of flow. The proponent should investigate alternative methods of drawing down the water below the area proposed for providing access that would minimize impacts. The alternatives analysis should also consider reuse of the old bridge abutments.

The alternatives analysis should include options for lowering the water level behind the dam; alternatives to breaching the dam; address access road and river crossing design requirements and options; construction methodology; and solutions to comply with the anti-degradation provisions at 314 CMR 4.00 for temporary and permanent site stabilization of BVW and Land Under Water. Successfully screened alternatives should be presented with adequate cross-sectional diagrams and site plans. All practicable existing technologies and methodologies should be examined, and those alternatives identified as impracticable should be supported by sufficient and specific evidence.

Wetlands

The ENF stated that the project would result in the following impacts: 938,267 square feet of permanent impacts to BVW, 938,267 square feet of permanent impacts to Land under Water, and 60,000 square feet of permanent impacts to Riverfront Area. The boundaries of wetlands on plans submitted with the ENF and the DEIR were determined using aerial photographs and topographic maps. The wetlands on the project site must be formally delineated in the field for the purposes of MEPA review and for the Water Quality Certificate application review, so that the full extent of impacts to resource areas can be determined. Guidance on delineating bordering vegetated wetlands in accordance with the Wetlands Protection Act is available here: <http://www.mass.gov/dep/water/laws/bvwmanua.pdf>. The proponent should also refer to DEP's Statement of Technical Deficiency for guidance on revisions that need to be made to site plans submitted with the Supplemental DEIR.

The Supplemental DEIR should include plans that clearly delineate all applicable resource area boundaries including riverfront areas, buffer zones, bank, 100-year flood elevations, any priority and/or estimated habitat, wetland replication areas, waterways and ponds. The Supplemental DEIR should address jurisdictional wetlands in accordance with the Massachusetts Wetlands Protection Act and the Army Corps of Engineers definition of "Waters of the United States".

The EIR should quantify the project's estimated impact on each resource area. It should describe the nature of all likely impacts that cannot be avoided, including crossings, grading, and construction-related disturbances and whether they are temporary or permanent in nature. On the revised site plans, all proposed alteration of jurisdictional resource areas should be individually noted. Each distinct area of loss should be numbered on the plans. A table should be created listing each area of proposed alteration off each type of resource area, expressed in square feet.

The Supplemental DEIR should also present a description of any long-term anticipated impacts of the project on the hydrology of jurisdictional resource areas in the vicinity of the project. The proponent should address if the proposed activities related to the breaching of the dam and the construction of the access way will create ponding, re-directed flow patterns, flow impediments, etc. The proponent should discuss how adverse impacts will be avoided, minimized or mitigated if impacts to wetlands and hydrology are anticipated in jurisdictional resource areas not proposed to be filled.

The project has received an OOC from the Williamstown Conservation Commission for the proposed removal of the dam. Based on changes to the project resulting from the inclusion of the access road/bridge in the project description, a new OOC or amended OOC might be required. The proponent should consult with the Williamstown Conservation Commission on this requirement, and should discuss permitting under the WPA for the entire project in the Supplemental DEIR.

Based upon a determination of impacts from the entire project, the proponent will be required to develop a mitigation plan for loss of wetland resource areas. The proponent should refer to DEP's Massachusetts Inland Wetland Replication Guidelines and the Statement of Technical Deficiency on the 401 application for guidance on required wetlands replication/restoration. The proponent should consult with wetlands staff at DEP's WERO with regard to specific replication guidelines for this project. The results of this consultation should be presented in the Supplemental DEIR.

Mitigation

The Supplemental DEIR should include a separate chapter on mitigation measures. This chapter on mitigation should include a proposed Section 61 Finding for DEP. The proposed Section 61 Finding should contain a clear commitment to mitigation, an estimate of the individual costs of the proposed mitigation and the identification of the parties responsible for implementing the mitigation. A schedule for the implementation of mitigation should also be included.

February 24, 2006
Date


Stephen R. Pritchard, Secretary

Comments received:

1/20/2006 Department of Environmental Protection, Western Regional Office
2/21/2006 Department of Environmental Protection, Western Regional Office

SRP/BA/ba