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May 1, 2009

DRAFT RECORD OF DECISION

PROJECT NAME: Town Brook Dam Removal – Plymco and Off-Billington Street
PROJECT MUNICIPALITY: Plymouth
PROJECT WATERSHED: Town Brook
EEA NUMBER: 14392
PROJECT PROPONENT: Town of Plymouth
DATE NOTICED IN MONITOR: March 25, 2009

Pursuant to the Massachusetts Environmental Policy Act (M.G.L.c.30, ss. 61-62 I) and Section 11.11 of the MEPA Regulations (301 CMR 11.00), I have reviewed this project and hereby **propose to grant a waiver** from the categorical requirement to prepare an Environmental Impact Report (EIR). In a separate Certificate also issued today, I have set forth the outstanding issues related to the project that can be addressed by permitting agencies.

Project Description

According to the EENF, the proposed project will restore fish passage from the Off-Billington Street Dam to the Billington Sea. Project elements include the following: removal of the Off-Billington Street dam; excavation of a channel, approximately 600 feet long, through the impounded sediment behind the dam; replacement of the existing bridge at the Off-Billington Street dam to provide enough width for bankfull flow to pass unobstructed with a riparian shelf; removal of approximately 150 feet of culvert and daylight channel through reach; and the removal of the Plymco dam.

Overall project goals include the elimination of a barrier to anadromous species movement; the reestablishment of the river's natural flow regime; improvement of water quality, sediment dynamics, and water temperature for coldwater species; and restoration of the natural clean gravel and cobble streambed.

Jurisdiction

The project is subject to the preparation of a mandatory EIR pursuant to Section 11.03(3)(a)(4) of the MEPA regulations because it will result in a decrease in impoundment capacity of an existing dam. The project will require a Programmatic General Permit from the U.S. Army Corps of Engineers (ACOE) pursuant to Section 404 of the Clean Water Act; a Chapter 253 Dam Safety from the Department of Conservation and Recreation (DCR) Office of Dam Safety (ODS); and a 401 Water Quality Certificate and a Chapter 91 Permit from the Department of Environmental Protection (MassDEP). The project may require an Order of Conditions from the Plymouth Conservation Commission for impacts to wetland resource areas (river and wetlands restoration) as a potentially "limited" project.

Because Commonwealth funds will be utilized for this project, MEPA jurisdiction is broad and extends to all aspects of the project that are likely, directly or indirectly, to cause Damage to the Environment as defined by the MEPA regulations.

Waiver Request

The Proponent submitted an Expanded Environmental Notification Form (EENF) for the project with a request for a waiver from the requirement for the preparation of an EIR. The Proponent provided information in the EENF that justified the request for a full waiver of an EIR and described how the project proposes to meet the waiver criteria outlined in 301 CMR 11.11.

Standards for All Waivers

The MEPA regulations at 301 CMR 11.11(1) state that I may waive any provision or requirement in 301 CMR 11.00 not specifically required by MEPA and may impose appropriate and relevant conditions or restrictions, provided that I find that strict compliance with the provision or requirement would:

- (a) Result in an undue hardship for the Proponent, unless based on delay in compliance by the Proponent; and,
- (b) Not serve to avoid or minimize Damage to the Environment.

Determinations for an EIR Waiver

The MEPA regulations at 301 CMR 11.11(3) state that, in the case of a waiver of a mandatory EIR review threshold, I shall at a minimum base the finding required in accordance with 301 CMR 11.11(1)(b) stated above on a determination that:

- (a) The project is likely to cause no Damage to the Environment; and,
- (b) Ample and unconstrained infrastructure facilities and services exist to support those aspects of the project within subject matter jurisdiction.

Findings

Based upon the information submitted by the Proponent and after consultation with the relevant state agencies, I find that the waiver request has merit and that the Proponent has demonstrated that the proposed project meets the standards for all waivers at 301 CMR 11.11(1). I find that strict compliance with the requirement to prepare a Mandatory EIR for the project would result in undue hardship for the Proponent. The dams no longer serve the functional purposes they were constructed for, and are falling into disrepair. They inhibit anadromous fish passage of resident species to upstream habitat and breeding areas, and pose safety hazards to downstream population if left in place without maintenance. Dam removal was found to provide the most efficient fish passage and the most complete restoration of riverine functions and values to their natural condition at both dam locations. This alternative provides fish passage, as well as passage of all riverine species and life stages; increases habitat connectivity, and sediment and nutrient transport; and improves water quality in the impoundments.

I also find that compliance with the requirement to prepare an EIR for the project would not serve to avoid or minimize Damage to the Environment. In accordance with 301 CMR 11.11(3), this finding is based on my determination that:

1. The project is not likely to cause Damage to the Environment:

- The project will have an overall positive impact on the environment. Benefits of full dam removal include: improved water quality, elimination of a thermal pollution source, natural sediment transport, flood plain connectivity, aquatic species passage, creation of juvenile fish habitat, and elimination of a potential environmental and public safety risk.
- The existing dam presently provides minimal impoundment of water due to the build-up of sediment behind the structure. Heavy sedimentation inside the slow-moving waters of the impoundments has perpetuated a transition to emergent marsh systems with low dissolved oxygen and high water temperatures. The existing impoundments have limited quality emergent marsh zones, and support only warm-water fish. These fish species are not found in cold-water riverine environments, which is the natural condition for this reach of Town Brook.
- The Proponent has gathered extensive amounts of field data, collected fish samples, prepared hydrologic and hydraulic models, and performed sediment management analyses to support the design of a project that minimizes impacts to wetland resource areas and enhances habitat restoration efforts.
- The project will result in the temporary alteration of Bank, Land Under Water (LUW), Bordering Vegetated Wetlands (BVW), Bordering Land Subject to Flooding (BLSF), and Riverfront Area. Approximately 8,500 cubic yards of material will be dredged in conjunction with the dam removal. Estimated wetland resource area impacts include: an increase of 219 linear feet (lf) of impact to Bank; 42,690 square feet (sf) of temporary impact to BVW; a permanent impact increase of 21,000 sf to Riverfront Area; a permanent decrease of 89,210 sf of LUW; and a permanent decrease by 117,500 sf to BLSF.

- The project will result in the lowering the 100-year flood level in the vicinity of the project site. The Proponent will submit its hydraulic analysis to the Federal Emergency Management Agency (FEMA) upon completion of the project for use in future floodplain map revisions.
 - During the construction period, the Proponent will utilize Best Management Practices (BMPs) to limit impacts to wetland resource areas, habitat, and rare species. The project will be completed during low flow periods in late summer, (August and September), to minimize impacts to spawning fish species. Demolition and construction activities will comply with both MassDEP Solid Waste and Air Quality control regulations. The project will not use hay bales for erosion control measures.
 - The Proponent will establish a comprehensive monitoring program.
2. Ample and unconstrained infrastructure facilities and services exist to support those aspects of the project within subject matter jurisdiction:
- The project consists of a dam removal that will be supported by existing infrastructure facilities or services. The EENF has demonstrated that the potential impacts due to dam and sediment removal will be mitigated through design efforts.
 - Access to the project site will be provided via existing roads adjacent to the work area. Staging areas will be accommodated on adjacent properties.

Conclusion

Based on these findings, I have determined that this waiver request has merit, and am issuing this Draft Record of Decision (DROD), which will be published in the next edition of the Environmental Monitor on May 6, 2009 in accordance with 301 CMR 11.15(2), which begins the public comment period. The public comment period lasts for 14 days and will end on May 20, 2009. Based on written comments received concerning the DROD, I shall issue a Final Record of Decision (FROD) or a Scope within seven days after the close of the public comment period, in accordance with 301 CMR 11.15(6).

May 1, 2009

Date

Ian A. Bowles, Secretary

Comments received:

04/24/09	President of the Senate Therese Murray, State Representative Vinny deMacedo, State Representative Thomas Calter
04/06/09	Massachusetts Historical Commission
04/24/09	Department of Conservation and Recreation
04/24/09	Division of Marine Fisheries

04/24/09 Department of Environmental Protection-SERO
04/28/09 U.S. EPA

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