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May 16, 2008

DRAFT RECORD OF DECISION

PROJECT NAME : Eel River Headwaters Restoration Project  
PROJECT MUNICIPALITY : Long Pond Road - Plymouth  
PROJECT WATERSHED : South Coastal  
EOEA NUMBER : 14220  
PROJECT PROPONENT : **Town of Plymouth, Public Works, Environmental  
Management Division**  
DATE NOTICED IN MONITOR : April 9, 2008

Pursuant to the Massachusetts Environmental Policy Act (MEPA) (G.L.c.30, ss. 61-62H) and Section 11.11 of the MEPA regulations (301 CMR 11.00), I have reviewed this project and propose to grant a waiver from the requirement to prepare a mandatory Environmental Impact Report (EIR).

Project Description

As described in the Environmental Notification Form (ENF), the proposed project consists of the restoration of the Eel River by reconfiguring the existing dam for fish passage, creating 7,600 linear feet (lf) of natural stream and fish habitat, restoring 38 acres of former cranberry bogs to their natural conditions with native vegetation, creating 7 acres of Riverfront Area, and improving overall watershed hydrology. The proponent will sequence construction in the following way: construct the improvements in Bogs 4 through 7; construct improvements to Bogs 1 through 3 and install new culverts under Long Pond Road and The Nature Conservancy (TNC) driveway; and reconfigure the dam and restore Sawmill Pond. The project includes the removal of 6800 cubic yards (cy) of impounded sediments from Sawmill Pond. It also includes the excavation of approximately 30,000 cy of material from the cranberry bogs. The sediment and the excavated material will be dewatered and used as fill in former sand borrow areas within the project site. Samples of the sediments and excavated material will be analyzed for contaminants. Any contaminated soil will be properly disposed of. The project will create an additional two acres of wetlands. The proponent will construct a new naturalized river system similar to historical conditions. The bogs will be regraded to a series of sloped peat lands; each

drained by a meandering segment of the restored Eel River. The bog restoration will include the planting of White Cedars and Red Maples to eventually create a functioning swamp/wetland. The project site is approximately 159 acres.

### Categorical Inclusion

The project is included for the preparation of a mandatory EIR pursuant to Section 11.03(3)(a)(1)(a) of the MEPA regulations because it alters one or more acres of Bordering Vegetated Wetlands (BVW).

### Jurisdiction

The project will require a Section 401 Water Quality Certificate, a Demolition Letter for dam removal, and a Chapter 91 Waterways Permit for dredge removal from the Department of Environmental Protection (MassDEP). The proponent will consult with the Natural Heritage and Endangered Species Program (NHESP) under the Massachusetts Endangered Species Act regarding the measures necessary to avoid a "Take" of rare species during restoration activities. It will also consult with the Massachusetts Historical Commission (MHC) regarding historical and archaeological resources impacted by the project. The project may require a Section 10 Permit and a Section 404 Authorization from the U.S. Army Corps of Engineers. It may need to comply with the National Pollutant Discharge Elimination System (NPDES) General Permit for stormwater discharges from a construction site. The project will require an Order of Conditions from the Plymouth Conservation Commission as a "limited" project (river and wetlands restoration). Because Commonwealth funds will be utilized for the project, MEPA jurisdiction extends to all aspects of the project that may have significant environmental impacts.

### Waiver Request

On March 31, 2008, the proponent requested a waiver from the requirement for the preparation of an EIR. The waiver request was discussed at the consultation/scoping session, which was held on April 24, 2008.

### Criteria for Waiver

Section 11.11 of the MEPA Regulations provides that a waiver may be granted upon a finding that strict compliance with the regulations will result in undue hardship and will not serve to minimize or avoid damage to the environment. In the case of categorically included projects, this finding shall be based on one or more of the following circumstances: 1) the project is likely to cause no damage to the environment; and 2) ample and unconstrained infrastructure exists to support the project. The terms agreed to as a condition of the waiver will bring about benefits in excess of those that could be achieved in the absence of a waiver.

## Findings

1. The proponent will improve the environment by restoring the Eel River and Sawmill Pond by reconstructing a natural river system and enhancing the wetlands associated with the river. By reconfiguring the existing seven cranberry bogs, removing portions of imported fill material, and reconstructing the river channel and floodplain from the existing network of unnatural drainage channels, a wetland and river system similar to historical conditions will be created at a cost of approximately \$1.8 million. The project will improve the river for fishery resources beyond the existing Sawmill Pond Dam, address water quality impairments, control invasive plant species, and establish rare wetland communities within the proposed wetlands restoration area.
2. The work will improve environmental conditions within the existing 38-acre bog area and expand the Riverfront Area (RA) by seven acres and the wetland areas by two acres. In order to implement the restoration project, the existing cranberry bogs will be altered. The project will replace the existing culverts under Long Pond Road with a new 10 x 6 ft box culvert and the culvert under The Nature Conservancy (TNC) driveway with an adequately sized box culvert, re-grade portions of the existing bogs to restore floodplain connectivity, and remove portions of the fill material imported onto the site during the former cranberry farming operations. The box culverts will include benches for wildlife passage and adequate openness to improve fish passage. The overall benefits to the functions and ecological condition of the Eel River and Sawmill Pond far outweigh impacts associated with construction disturbance and the conversion of degraded habitat.
3. The proponent will provide eighty percent total suspended solids removal and eliminate discharges to the Eel River at Long Pond Road via its proposed stormwater treatment swale and vegetated wetland constructed to treat and store roadway runoff.
4. The vegetation established within the restored wetland/swamp will consist of the planting of approximately 17,000 Atlantic White Cedar trees (3-4 feet height), bare root stock or peat plugs, and the seeding of species native to New England, such as White Cedar and Red Maple, as well as natural colonization from seed sources. Organic and sand material contained within the existing bogs will be utilized to restore landscape scars in the sand borrow pits on the project site. In addition, a portion of the planting material within the bogs can also be salvaged as plugs.
5. Further details on anadromous fish restoration opportunities, including additional coordination with the Division of Marine Fisheries and National Marine Fisheries Service, will be investigated during future design phases. The restoration site currently does not support an anadromous fish run, which if present would require time of year restrictions on in-water work.
6. The proponent will conduct a reconnaissance cultural resources survey to identify historic

properties and archaeologically sensitive areas impacted by the project.

7. The proponent will continue to work with the NHESP to avoid impacts on state-listed species and their habitat. It will follow the guidelines outlined in the drawdown section of the 2004 Eutrophication and Aquatic Plant Management Final Generic EIR to the greatest degree practicable during its proposed drawdown to minimize impacts on fisheries resources.
8. The proponent will provide a qualified inspector on-site during construction activities. The construction report will be prepared and include descriptions of the effectiveness of the erosion controls, maintenance performed on the erosion controls, problems encountered during construction, and the remedies enacted.
9. The proponent will power wash all vehicles used in the project work area that exhibit dirt or debris that could harbor the seed stocks of invasive species.
10. Any excess material (e.g. soil and/or spoil), which is to be removed from the site, will be disposed of in a legal manner.
11. The contractor will time work activity to avoid storms and other factors that could result in adverse impacts to the resource areas.
12. Any necessary servicing, fueling, or maintenance of construction equipment will occur on a confined pad to control any release of fluids.
13. The proponent's post-construction monitoring program will extend at least five growing seasons following construction completion. It will forward annual monitoring reports regarding wetland restoration to the Plymouth Conservation Commission, the Wetlands Restoration Program, and MassDEP on or before December 15<sup>th</sup> of years one, two, three and five.
14. The proponent has the resources and knowledge to successfully conduct the proposed restoration project with guidance from the MA Wetlands Restoration Program and the MA Riverways Program. It has committed to complete the above work by 2012. The proponent will apprise MassDEP, the MA Wetlands Restoration Program, and the MA Riverways Program of any changes in the construction schedule.

Based on these findings, it is my judgment that the waiver request has merit and meets the tests established in Section 11.11. MassDEP has sufficient permitting authority to ensure that the proponent complies with the findings of this Certificate. Therefore, I propose to grant the waiver requested for the Eel River Headwaters Restoration Project, subject to the above findings. This Draft Record of Decision shall be published in the next issue of the *Environmental Monitor*

for a fourteen-day comment period, after which I shall reconsider, modify, or confirm the waiver.

May 16, 2008

DATE

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Ian A. Bowles

Comments received:

MCZM, 4/10/08

MHC, 4/22/08

MA Division of Marine Fisheries, 4/25/08

Town of Plymouth, 5/6/08

MassWildlife, 5/6/08

MassDEP/SERO, 5/9/08

The Nature Conservancy, 5/9/08

MassDEP/SERO, 5/9/08

MA Riverways Program, 5/13/08

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IAB/WTG