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August 15, 2008

DRAFT RECORD OF DECISION

PROJECT NAME: Aquatic Habitat Restoration of Nashawannuck Pond
PROJECT MUNICIPALITY: Easthampton
PROJECT WATERSHED: Connecticut River
EEA NUMBER: 13959
PROJECT PROPONENT: City of Easthampton
DATE NOTICED IN MONITOR: July 9, 2008

Pursuant to the Massachusetts Environmental Policy Act (M.G.L. c. 30, ss. 61-62H) and Section 11.11 of the MEPA Regulations (301 CMR 11.00), I have reviewed the Notice of Project Change (NPC) submitted for 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

As described in a January 2007 Environmental Notification Form (ENF), the City of Easthampton proposes to restore the historic deepwater habitat of Nashawannuck Pond by dredging 55,000 +/- cubic yards (cy) of accumulated sediment. The approximately 37-acre Nashawannuck Pond was formed over 150 years ago by a dam near the confluence of Broad and White Brooks in Easthampton. Over the years, sedimentation from past agricultural and construction activities within the watershed has significantly degraded the pond's aquatic habitat. The purpose of the proposed project is to restore the aquatic habitat of Nashawannuck Pond by reducing excessive weed growth, which currently diminishes the quality of habitat for the pond's warm-water fishery. Specifically, the City seeks to:

1. Restore areas of open water aquatic habitat with a depth sufficient to discourage dense aquatic weed growth;
2. Enhance total aquatic habitat for finfish species;
3. Preserve habitat values for waterfowl; and,
4. Restore a balance between open water aquatic habitat, dense aquatic weed beds, and emergent wetlands.

The proposed methodology described in the ENF involved hydraulically dredging approximately 9.6 acres of the 37-acre pond by using a hydraulic dredge and a shoreline mechanical dewatering process, with sediment reuse at a nearby City-owned parcel of land. The Secretary's Certificate on the ENF (March 8, 2007) determined that the project did not require further MEPA review.

Project Change Description

Since the issuance of the Certificate on the ENF, the City has determined that the planned restoration method of hydraulic dredging and upland dewatering is no longer economically feasible. As outlined in the NPC, the City now proposes to conventionally excavate the pond following a complete pond drawdown. The same amount of sediment will be excavated (approximately 55,000 cy) and the size of the dredged area will remain the same. The limits of dredging will focus primarily upon the White Brook and Broad Brook cove areas and the northern and southern ends of the pond. While the size of the dredged area will remain the same, impacts to Land Under Water (LUW) will increase from approximately 9.6 acres to approximately 37 acres due to drawdown activities.

Jurisdiction

The project presented in the ENF was subject to review pursuant to Section 11.03(3)(b)(1)(f) and 11.03(3)(b)(3) of the MEPA regulations because it would have resulted in the alteration of more than ½ an acre of “any other wetlands” (9.6 +/- acres of Land Under Water) and because it proposed the dredging of 10,000 or more cy of material. The revised project proposed in the NPC is subject to review and the preparation of a Mandatory EIR pursuant to Section 11.03(3)(a)(1)(b) and 11.03(3)(b)(3) of the MEPA regulations because it will result in the alteration of more than ten acres of “any other wetlands” (37 +/- acres of Land Under Water) and because it proposes the dredging of 10,000 or more cy of material.

The project requires a National Pollutant Discharge Elimination System (NPDES) Construction Permit from the U.S. Environmental Protection Agency (EPA); a 401 Water Quality Certificate (WQC) from the Department of Environmental Protection (MassDEP); review from the Massachusetts Historical Commission (MHC); and an Order of Conditions from the Easthampton Conservation Commission.

The currently proposed dredging project will receive funding from a combination of federal, state and local sources. Under the Aquatic Ecosystem Restoration Program (Section 206 of the Federal Water Resources Act of 1996), the U.S. Army Corps of Engineers (ACOE) will provide approximately \$1.215 million in funding for the project. The Department of

Conservation and Recreation (DCR) and the City of Easthampton will fund the remainder of the project. Because the project involves financial assistance from the Commonwealth, MEPA jurisdiction extends to all aspects of the project that may cause significant Damage to the Environment as defined in the MEPA statute.

Waiver Request

The City has submitted the NPC to allow for public review of the proposed changes to the project as outlined above. In addition, the NPC contained a request for a waiver from the requirement for the preparation of an EIR.

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 City and after consultation with the relevant state agencies, I find that the waiver request has merit and that the City 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 City. The City has secured federal and City funding to pay for the project. A total of \$1.215 million in federal funding from the ACOE will be provided through Section 206 of the Water Resources Development Act of 1996. These federal funds must be obligated by September 2008 or they will be re-assigned to other projects. Denial of a waiver from the EIR requirement will result in an undue hardship for the City because the review timeline may jeopardize federal financial assistance for the project.

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 likely to cause no Damage to the Environment:
 - The project will have an overall positive impact on the environment. The project will improve the aquatic habitat of Nashawannuck Pond through the removal of invasive plants and the fine-grained nutrient-rich sediments that help to support them. The increase in open water column depth throughout the dredged pond will improve fishery habitat, which has suffered due to sediment infilling and excessive aquatic growth.
 - To mitigate any potential impacts of the pond drawdown, the City will install a temporary weir at the upstream side of the culvert connecting Nashawannuck Pond to the upgradient Rubber Thread Pond. The temporary weir will maintain water levels in Rubber Thread Pond throughout the project and will prevent sediment migration.
 - The City has consulted with the Division of Fisheries and Wildlife regarding measures to avoid and minimize impacts to the pond's fishery resources. The City will direct fish downstream through the open sluice gates of the pond's dam to avoid being impacted by the pond drawdown.
 - The City will implement sediment and erosion control measures to minimize construction period impacts. During excavation, the City will add an 18-inch layer of gravel to the pond bottom for vehicle traction. The City will install 12-inch thick crushed stone construction entrances at the project staging areas and sediment reuse area to prevent loose sediments from being deposited on area roadways.
 - The project requires a new Order of Conditions from the Easthampton Conservation Commission and a Water Quality Certificate from MassDEP. The City will be required to demonstrate during the local and state permitting processes that the project meets the required performance standards of applicable wetland regulations. Project design and implementation should follow guidance in the Dredging and Drawdown sections of the 2004 *Eutrophication and Aquatic Plant Management in Massachusetts Final Generic Environmental Impact Report*.

The dredged material will be beneficially reused as fill materials on a city-owned disposal site, which is categorized as a GW-1 groundwater area because it lies within a Zone II for a public water supply. As outlined in the ENF filing, laboratory testing conducted on three sediment samples from Nashawannuck Pond in 2002 detected metals, polynuclear aromatic hydrocarbons (PAHs), pesticides and extractable petroleum hydrocarbons (EPH) at concentrations below Massachusetts Contingency Plan (MCP) standards. The City should review any relevant local watershed protection ordinances that may affect the disposal of the sediment.

- According to the Massachusetts Historical Commission (MHC), a known Native American site (MHC site #19-HS-49) is located beside White Brook, immediately north of the proposed dewatering/disposal site area. The City has contracted with the Public Archaeology Laboratory, Inc. (PAL) to conduct a cultural resources reconnaissance survey and an intensive location archaeological survey for Nashawannuck Pond and its vicinity. The results of the survey have been submitted to MHC for review. The report recommends that no additional survey work is required for the project and makes the determination that the dredging project will not adversely impact historic or archaeological resources. MHC has concurred with this determination.

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 dredging project and does not require new or improved infrastructure facilities or services to support it.

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 August 27, 2008 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 September 10, 2008. 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). I hereby **propose to grant the waiver** requested for this project from the requirement to prepare a mandatory Environmental Impact Report (EIR), subject to the above findings and conditions.

August 15, 2008

Date

Ian A. Bowles

Comments received:

- 7/18/2008 Massachusetts Historical Commission
- 7/25/2008 Department of Environmental Protection, Western Regional Office
- 7/29/2008 Massachusetts Historical Commission
- 8/8/2008 Connecticut River Watershed Council

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