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April 10, 2009

CERTIFICATE OF THE SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS  
ON THE  
NOTICE OF PROJECT CHANGE

PROJECT NAME : Ashley Lake Dam Repair Project  
PROJECT MUNICIPALITY : Washington and Dalton  
PROJECT WATERSHED : Housatonic Watershed  
EEA NUMBER : 14295  
PROJECT PROPONENTS : City of Pittsfield  
DATE NOTICED IN MONITOR : March 11, 2009

Pursuant to the Massachusetts Environmental Policy Act (G.L. c. 30, ss. 61-62I) and Section 11.10 of the MEPA regulations (301 CMR 11.00), I have reviewed the Notice of Project Change (NPC) submitted on this project and hereby determine that it **does not require** the preparation of an Environmental Impact Report (EIR).

The original project as proposed in the Environmental Notification Form (ENF) consisted of repair of the Ashley Lake Dam wall, which requires a temporary drawdown of the lake to facilitate repair activities. The dam is classified as a High Hazard Potential by the Department of Conservation and Recreation (DCR) Office of Dam Safety (ODS). A Certificate on the ENF for the project, dated September 5, 2008, determined that the project did not require an EIR.

The proposed change to the project, as described in the NPC consists of an increase in permanent wetlands impacts and removal of the Lower Hathaway Dam on Hathaway Brook in Dalton, Massachusetts as mitigation for these impacts. Hathaway Reservoir was used as a water supply source between 1890 and the late 1950's. As noted in the NPC, the City of Pittsfield plans to remove the Upper Hathaway Dam as a separate project, which will be the subject of a separate MEPA filing. Removal of both dams is expected to improve connectivity within the sub-watershed and benefit aquatic habitat and fish populations. The future MEPA filing for the Upper Hathaway dam removal should address the cumulative impacts of both dam removals.

### Permitting and MEPA Jurisdiction

The project requires a Dam Repair Permit from DCR and a 401 Water Quality Certification (WQC) from the Massachusetts Department of Environmental Protection (MassDEP). The project is subject to review by the Division of Fisheries and Wildlife, Natural Heritage and Endangered Species Program (NHESP). NHESP has indicated that the project can be designed to avoid a "take" and will not require a Conservation and Management Permit.

The MassDEP 401 WQC will cover both the Ashley Lake dam repairs and the lower dam removal at Hathaway Brook. I refer the proponent to MassDEP's comment letter for guidance on the application process and protection of water quality and services during construction. MassDEP indicates that the Ashley Lake dam repair component of the project is exempt from the Wetlands Protection Act (WPA). The City of Pittsfield received a negative Determination of Applicability from the Washington Conservation Commission. However, the proponent will be required to file a Notice of Intent (NOI) with the Dalton Conservation Commission for the Lower Hathaway Dam removal. The proponent should consult with DCR to determine if a permit is required from the Office of Dam Safety for the removal of this dam.

A wetlands mitigation plan has been developed to meet the 401 WQC requirements. Details of the mitigation, including removal of the Lower Hathaway Dam, have been incorporated as part of an Administrative Consent Order (ACO) between MassDEP and the City of Pittsfield.

As noted in the Certificate on the ENF, the Ashley Lake dam repair portion of the project will impact more than 10 acres of Land Under Water; however, it is not subject to the requirements for a mandatory EIR because the drawdown is allowable under the current Water Management Act (WMA) registration. Based on review of the NPC and comments received, as well as consultations with state agencies, it appears that the Lower Hathaway Dam no longer impounds water. Sediment has built up behind the dam such that only a stream channel with no storage area remains. Therefore, removal of the lower dam does not meet the threshold for a mandatory EIR at Section 11.03(3)(a)(4). Because the proponent is not seeking state funding for the project, MEPA jurisdiction is limited to those aspects of the project that are within the subject matter of any required or potentially required state permits that may cause Damage to the Environment as defined in the MEPA regulations. In this case, MEPA jurisdiction extends to water quality, wetlands, and rare species.

### Project Impacts and Mitigation

The project as presented in the ENF involved 15,180 square feet (sf) of temporary impacts to Bordering Vegetated Wetlands (BVW). The NPC indicates an additional 3,655 sf of BVW impact associated with a 50-foot wide band downgradient of the dam wall. This area was proposed for clearing and restoration post-construction but will now be maintained under a routine mowing program, which is considered a permanent impact. Other impacts indicated as temporary in the ENF have been reclassified as permanent impacts. The NPC estimates the project's total BVW impacts at 18,835 sf, which includes 11,365 sf of permanent impacts and 7,470 sf associated with temporary equipment staging.

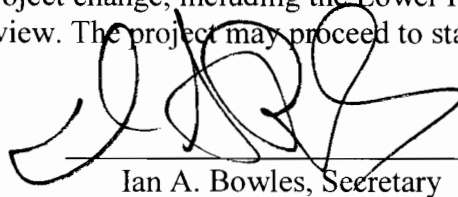
Removal of the Lower Hathaway Dam will impact 3,100 sf of Land Under Water (due to sediment excavation/grading to create the new stream slope), 200 linear feet of Bank (due to sediment excavation/grading to create new stream bed), and 1,900 sf of 100 Foot Buffer Zone and 200-Foot Riverfront Area (associated with fill and grading of the low flow channel that currently discharges from the existing lower dam).

The NPC notes that the project no longer includes widening of the access road, resulting in a reduction of 0.14 acres of land alteration at the Ashley Lake project site. Overall land alteration is estimated in the NPC at 3.33 acres of temporary impacts associated with upland staging and work areas at the Ashley Lake site and 0.005 acres of alteration associated with the Lower Hathaway Dam removal and impoundment area.

The City of Pittsfield has been in consultation with MassDEP and the NHESP to develop an appropriate wetlands mitigation plan. MassDEP has signed an ACO with the City, which requires removal of the Lower Hathaway Dam as mitigation for impacts associated with the Ashley Lake dam repairs. NHESP is highly supportive of the dam removal provided adequate care is taken to avoid downstream sedimentation.

Based on review of the NPC and comments received, and consultation with state agencies, I am satisfied that the proposed project change, including the Lower Hathaway Dam removal, does not require further MEPA review. The project may proceed to state permitting.

April 10, 2009  
DATE



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Ian A. Bowles, Secretary

Comments received:

3/30/09	Division of Fisheries and Wildlife, Natural Heritage and Endangered Species Program
3/31/09	Department of Environmental Protection, Western Regional Office
3/31/09	Berkshire Regional Planning Commission

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