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September 5, 2008

CERTIFICATE OF THE SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS  
ON THE  
ENVIRONMENTAL NOTIFICATION FORM

PROJECT NAME : Ashley Lake Dam Repair Project  
PROJECT MUNICIPALITY : Washington  
PROJECT WATERSHED : Housatonic Watershed  
EEA NUMBER : 14295  
PROJECT PROPONENTS : City of Pittsfield  
DATE NOTICED IN MONITOR : August 6, 2008

Pursuant to the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-62I) and Section 11.06 of the MEPA regulations (301 CMR 11.00), I hereby determine that this project **does not require** the preparation of an Environmental Impact Report (EIR).

As further detailed in the Environmental Notification Form (ENF), the proposed project consists 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). The OSD issued a Certificate of Non-Compliance and a Dam Safety Order to the City of Pittsfield (the proponent) on May 2, 2008. As further detailed in the DCR comment letter, the dam does not meet accepted dam safety standards and is a threat to life and property. The City is required to comply with dam safety regulations no later than December 12, 2009.

The project is undergoing environmental review pursuant to Section 11.03((3)(b)(1)(d) because it will involve alteration of 5,000 or more square feet of Bordering Vegetated Wetlands (BVW), and Section 11.03(3)(b)(1)(f) because it will involve alteration of one-half acre or more of other wetlands.

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). Based on comments from NHESP, it appears that the project can be designed to avoid a "take" and will not require a Conservation and Management Permit. MassDEP notes in its comment letter that the project, or portions of it, may be exempt from the Wetlands Protection Act and recommends that the proponent submit a Request for Determination of Applicability (RDA) to the Washington Conservation Commission. Based on consultations with MassDEP, it appears that an Order of Conditions may not be required and the proposed drawdown is allowed under the City of Pittsfield's existing Water Management Act (WMA) Registration. MassDEP has also indicated that the project is exempt from the requirement for a Chapter 91 License or Permit pursuant to 310 CMR 9.05 (3)(a) and (c) and 310 CMR 9.22 subpart (3)(a).

As detailed in the ENF, repair of the dam includes addition of a one-foot-thick face of concrete to the dam wall and a two-foot-thick face of concrete to the spillway, as well as repair of the gatehouse structure and overflow channel wall. The temporary drawdown of Ashley Lake will result in separation of the lake into two portions; a smaller portion near the dam wall and a larger portion south of the proposed work area. The smaller portion will be completely dewatered to facilitate repair activities. The proposed project start date is September 2008. Drawdown and dewatering activities and the bypass flow system are expected to be in place by late March 2009. The lake elevation will be lowered from elevation 1920 feet to elevation 1914 feet during the April- November 2009 construction period. The project will impact approximately 3.33 acres of upland area that will be used for staging (including one acre to be cleared), 15,180 square feet of BVW, 500 linear feet of Bank, and 124,700 square feet of Riverfront Area. The proposed lake drawdown will also impact Land Under Water (788,400 square feet).

Although the project will impact more than 10 acres of Land Under Water, it is not subject to the requirements for a mandatory EIR because the drawdown is allowable under the current WMA registration. MEPA jurisdiction is limited to the subject matter of state agency permits required. In this case, MEPA jurisdiction extends to water quality, wetlands, and rare species.

The ENF describes three alternatives considered: the no-action alternative (resulting in no repairs to the dam); repair of the existing dam (recommended); and replacement of the dam (associated with increased environmental impacts and cost). The preferred alternative will result in repair of structural deficiencies and abatement of a threat to public safety, and bring the dam into conformance with the Massachusetts Dam Safety Law (M.G. L. c253). The Office of Dam Safety supports the proposed project and will provide additional guidance to the City during the permitting process.

The proponent should consult with MassDEP and the Washington Conservation Commission regarding the 401 WQC and RDA filings, and to determine whether submission of a Notice of Intent (NOI) is required. I refer the proponent to MassDEP's comments for additional information. The project involves removal of sediments in the vicinity of the dam wall. As noted in the MassDEP comment letter, the City will be required to file a dredging project application for the 401 WQC with the MassDEP Boston Office and provide sufficient information to

adequately describe cumulative impacts to Waters of the United States within the Commonwealth (Bordering and Isolated Vegetated Wetlands and Land Under Water).

The City does not anticipate any interruptions of service or impact to water quality in the drinking water system as a result of the project. However, the City should keep the MassDEP informed of the work schedule, progress of work, and any anticipated interruptions of service. The City should require all contractors to prepare a spill prevention plan and use non-petroleum lubricants and fuels to the extent feasible, as recommended by MassDEP in its comment letter. Equipment should be refueled off-site as is reasonable and any refueling on-site should be outside of the reservoir and other wetland resource areas and conducted with a pumped system and spill containment readily available.

The Massachusetts Riverways program has provided comments on the ENF that should be considered by the City, MassDEP and DCR during project permitting. The Riverways Program, in its comment letter, suggests that a dam management plan be developed to replicate a more natural flow regime between the lake and reservoir. The City should contact the Riverways program to discuss dam management strategies for the Housatonic River watershed and opportunities for ecosystem enhancement. The City, and state agencies during permitting, should consider assigning a wildlife biologist or other qualified individual to monitor the project as recommended by the Riverways Program and the Berkshire Regional Planning Commission (BRPC). I ask that the proponent consult with BRPC and the Conservation Commission during the RDA process to address BRPC comments relating to potential wetlands impacts associated with the drawdown.

The project site is located within mapped Priority and Estimated Habitat for the Tule Bluet (*Enallagma carunculatum*) and Blue-spotted Salamander (*Ambystoma laterale*). The NHESP has also been notified of the presence of Jefferson Salamanders (*Ambystoma jeffersonianum*) northeast of Ashley Lake along Washington Road. These are listed as species of "Special Concern" and their habitats protected pursuant to the Massachusetts Endangered Species Act (MESA M.G.L. c. 131A) and its implementing regulations (321 CMR 10.00). The NHESP anticipates that impacts to Tule Bluet populations will be avoided through careful timing of the drawdown and refill of Ashley Lake, avoiding drastic fluctuations in water levels from July through September, and care in protecting water quality. The project will also avoid impacts to Jefferson Salamanders by locating the staging area southward of the access road, thereby increasing the distance between forest clearing and the salamanders. Based on the NHESP comment letter, no potential breeding area appears to be within the project limit-of-work and the drawdown is anticipated to avoid impacts to the more isolated wetlands typically used for breeding of Jefferson Salamanders.

Based on consultations with MassDEP, it appears that wetlands mitigation will not be required for the project. However, if wetlands mitigation is required, replication areas should be selected in consultation with NHESP and as recommended in its comment letter. I refer the City to NHESP recommendations on the use of native species, soils treatment and safety fencing, which should be incorporated in plans for site stabilization and restoration. As noted in the NHESP comment letter, the City must submit the routine/yearly operation and maintenance plan and vegetation management plan to NHESP for review pursuant to 321 CMR 10.18, or the City

may file the plans pursuant to 321 CMR 10.14(7) and 10.14(12) if the site qualifies as an existing utility right-of-way".

As further detailed in the NHESP comment letter, Ashley Brook is a significant coldwater resource and fisheries surveys have revealed six coldwater fish species in the area. The project should be designed to avoid and minimize adverse impacts to coldwater resources, which are highly susceptible to changes in water quality and/or quality such as siltation, water level fluctuations and alteration of the temperature regime. As recommended by NHESP, the City should follow the guidelines outlined in the Drawdown section of the 2004 Eutrophication and Aquatic Plant Management in Massachusetts Final Generic Environmental Impact Report, to the greatest degree practicable. To minimize potential impacts to the fisheries resources of the lake, the drawdown should be performed in a manner that allows maximum escapement of fish into Ashley Brook or into the area behind the exposed roadbed. Best Management Practices (BMPs) for erosion and sedimentation control must be adhered to for all phases of construction to minimize potential impacts to fisheries resources.

I have determined that the ENF has sufficiently defined the nature and general elements of the project, and proposed measures to avoid and minimize environmental impacts. I am satisfied that any outstanding issues can be adequately addressed during permitting. Based on review of the ENF and comments received, and consultation with state agencies, I have determined that that no further MEPA review is required for the proposed dam repair project. The project may proceed to state agency permitting. I expect that MassDEP and DCR will incorporate conditions, as appropriate, in any permits issued to address NHESP recommendations for protection of state-listed species and fisheries resources.

September 5, 2008

DATE



Ian A. Bowles, Secretary

Comments Received:

- 8/26/08 Department of Environmental Protection, Western Regional Office
- 8/26/08 Berkshire Regional Planning Commission
- 8/26/08 Department of Fish and Game, Riverways Program
- 8/27/08 Division of Fisheries and Wildlife, Natural Heritage and Endangered Species Program
- 8/28/08 Department of Conservation and Recreation

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