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October 26, 2006

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

PROJECT NAME: Weed It Now 2002  
PROJECT MUNICIPALITY: Egremont  
PROJECT WATERSHED: Housatonic  
EOEA NUMBER: 12747  
PROJECT PROPONENT: The Nature Conservancy  
DATE NOTICED IN MONITOR: September 26, 2006

Pursuant to the Massachusetts Environmental Policy Act (M. G. L. c. 30, ss. 61-62H) 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** further MEPA review.

### Project Description

As originally outlined in the Environmental Notification Form (ENF) submitted in April 2002, the project involves the control of invasive non-native vegetation within the Berkshire Taconic Plateau in Massachusetts, New York and Connecticut. The Weed It Now (WIN) project was funded by Congress through an amendment to the Agricultural Appropriations bill for 2002. The project involves a combination of cutting and chemical treatment to the invasive vegetation; a pre-treatment vegetation baseline study; and post-treatment monitoring. The project site in Massachusetts is located within the 1,118-acre Jug End Reservation in the Town of South Egremont. The Jug End Reservation is located within the Karner Brook Area of Critical Environmental Concern (ACEC).

According to the ENF, approximately 23 acres of vegetation management was to occur within the Buffer Zone to Fenton Brook, although no work was proposed within wetland resource areas other than Buffer Zone. The project proponent, The Nature Conservancy, has filed the NPC because it proposes to add an additional 150 acres to the project work area to the north of the site. In addition, the project's overall impacts to wetland resource areas have changed based on new delineation of wetland boundaries. According to the NPC, more detailed studies associated with the project's Notice of Intent indicated upward revisions to Resource Area delineation boundaries and downward revisions of aggregate invasive species control areas within these boundaries. Whereas the project outlined in the ENF proposed to impact 23.34 acres of Buffer Zone, the project will now impact 0.25 acres or 18,200 square feet of Bordering Vegetated Wetland (BVW); 30 linear feet of Inland Bank; and 6.9 acres or 300,000 sf of Riverfront Area.

### Jurisdiction

The project was subject to environmental review pursuant to Section 11.03(11)(b) of the MEPA regulations because the project site is located within an ACEC and requires a state agency action (a Special Use Permit from the landowner, the Department of Conservation and Recreation, formerly the Department of Environmental Management). The project also required an Order of Conditions from the Egremont Conservation Commission. The May 2002 Certificate on the ENF stated that MEPA jurisdiction extends to the subject matter of the Special Use Permit, which is sufficiently broad to confer MEPA jurisdiction over all of the aspects of the project that may have significant environmental impacts.

The Certificate on the ENF did not interpret the project as resulting in a direct alteration of land within the meaning of Section 11.03(1) of the MEPA regulations. The project involves cutting of vegetation followed by chemical treatment, or in some cases solely chemical treatment. The Certificate stated that the project does not result in a direct disturbance to the soil profile, and is thus (at most) an indirect alteration of land through the alteration of the vegetative community. The Certificate then stated that this interpretation should not be construed to apply in any way to the removal of vegetation from vegetated wetlands, and that Section 11.03(3) of the MEPA regulations considered the removal of vegetation from vegetated wetlands as an "alteration". The project will now result in the alteration of 18,200 sf of BVW, 30 linear feet of bank, and 6.9 acres of Riverfront Area. Therefore, the proposed work now exceeds the ENF thresholds at 301 CMR 11.03(3)(b)(1)(d) and 301 CMR 11.03(3)(b)(1)(f) for impacts to greater than 5,000 sf of BVW and greater than ½ an acre of "any other wetlands".

### Wetlands

The NPC adds 150 acres of land to the overall project and revises the impacted areas listed in the ENF by distinguishing between Riverfront, Inland Bank and Bordering Vegetated Wetland (BVW) rather than referring to Buffer Zone. The work is considered an "alteration" as per 301 CMR 11.03(3) but according to the wetland protection regulations, is considered an impairment (310 CMR 10.55(4)(a)), not a loss of wetlands (310 CMR 10.55(4)(b)).

According to MassDEP, there may be two Orders of Conditions (OOCs) for this work issued by the Egremont Conservation Commission that are still valid (DEP #153-154 and #153-150). Based on the information submitted in the NPC, MassDEP is unable to determine if the two existing OOCs include the additional work proposed to be conducted in jurisdictional resource areas. The proponent should confirm with MassDEP that the additional work is covered under the existing OOCs or should work with the Conservation Commission and MassDEP to revise the current OOCs or submit a new Notice of Intent. The proponent should note that OOC #153-154 prohibits spraying of herbicides along certain portions of Karner Brook.

Rare Species

Comments from NHESP indicate that the expanded work area is within the habitat of the Jefferson Salamander (*Ambystoma jerrersonianum*). Fenton Brook flows into the Jug End wetland complex that is habitat to a number of state-listed vertebrates, invertebrates, and plants. NHESP has stated its support for the WIN project and has worked closely with the proponent to minimize the project's impacts on state-listed species and to achieve positive conservation outcomes in the area. The proponent should continue to coordinate with NHESP and should contact NHESP staff regarding spring field surveys and herbicide setbacks.

Conclusion

Based on a review of the information provided in the NPC, and after consultation with the relevant public agencies, I find that the potential impacts of this project change do not warrant the preparation of an EIR. No further MEPA review is required at this time.

October 26, 2006

Date

  
Robert W. Golledge, Jr.

Comments Received:

- 10/12/2006 Division of Fisheries and Wildlife, Natural Heritage and Endangered Species Program
- 10/19/2006 Department of Environmental Protection, Western Regional Office

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