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October 31, 2008

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

PROJECT NAME: Windsor Reservoir Dam Reconstruction
PROJECT MUNICIPALITY: Windsor, Hinsdale, Dalton
PROJECT WATERSHED: Housatonic
EEA NUMBER: 14316
PROJECT PROPONENT: Dalton Fire District, Board of Water Commissioners
DATE NOTICED IN MONITOR: September 24, 2008

Pursuant to the Massachusetts Environmental Policy Act (M.G.L. c. 30, ss. 61-62 I) and Section 11.11 of the MEPA Regulations (301 CMR 11.00), I have reviewed this project and hereby determine that it **does not require** further MEPA review. In a separate Decision also issued today, I have proposed to grant a Waiver from the requirement to prepare a Mandatory Environmental Impact Report (EIR) for the project. This Certificate sets forth the issues that must be addressed by the Proponent during permitting and discusses recommendations that were submitted on the project during the MEPA comment period.

Project Description

The Windsor Dam serves as the impoundment for the Windsor Reservoir, located in the Towns of Windsor and Hinsdale with downstream discharge to Wahconah Falls located in the Town of Dalton. As described in the Expanded Environmental Notification Form (EENF), the project proposes the re-construction of the Windsor Dam, an existing stone masonry arch dam, located in the Town of Windsor and owned and operated by the Dalton Fire District through its Board of Water Commissioners.

The Windsor Dam is a 51-foot high, 245-foot long stone masonry and concrete structure constructed with a holding capacity of approximately 900-acre-feet in the mid-1800s to provide public water storage and supply water to the Dalton Water District. The reservoir is fed primarily from May Brook, Windsor Brook and Cady Brook. The dam is located in a rural area immediately upstream of residential and commercial zoned areas of the Town of Dalton.

The dam impoundment has been partially filled in with sediment. During major rainfall events, water flows directly on top of the impounded sediment and falls over the dam's spillway. In October 2005, the Department of Conservation and Recreation (DCR) Office of Dam Safety (ODS) determined the dam to be in an "Unsafe" condition and having a "High" hazard potential. The ODS ordered the Proponent to drain the impoundment to its low level outlet elevation. On April 25, 2008, DCR issued an Emergency Order citing the compromised integrity of the stone masonry and concrete spillway and impoundment structure and its determination that the dam posed a threat to public health and safety. The Dam Safety Order required the Proponent take actions make necessary emergency repairs to the impoundment to abate the threat to public safety.

Jurisdiction

The project is subject to the preparation of a mandatory EIR pursuant to Section 11.03(3)(a)(4) and 11.03(3)(b)(1)(d) of the MEPA regulations because it will result in an expansion of 20 percent in the impoundment capacity of an existing dam and because it will impact more than 5,000 square feet (sf) of bordering vegetated wetlands (BVW). The project will require a Programmatic General Permit from the U.S. Army Corps of Engineers (ACOE) pursuant to Section 404 of the Clean Water Act; a Chapter 253 Dam Safety Permit – Jurisdictional Determination review from DCR; a 401 Water Quality Certificate from the Department of Environmental Protection (MassDEP); and a Chapter 91 License review from MassDEP. The project is being undertaken pursuant to a Declaration of Emergency issued by ODS and is therefore exempt from the requirement to file a Notice of Intent prior to undertaking any work. The Proponent has requested a full waiver from the requirement for the preparation of an EIR to comply with outstanding Dam Safety Orders to address the condition of the structure in an expedient manner. DCR's ODS has indicated its support for the project and the Proponent's Waiver request in its comments on the EENF. Because the Proponent is seeking financial assistance for the project from the Commonwealth (\$2.5 million – Mass. Energy and Environmental Bond Bill), MEPA jurisdiction extends to all aspects of the project that may cause Damage to the Environment as defined in the MEPA regulations, including land alteration, wetlands, rare species, drainage and dam safety.

Review of the EENF

The Proponent proposes to demolish most of the existing stone masonry and concrete impoundment structure and to construct a new 64' tall and 122' long cement impoundment structure that meets current Massachusetts Dam Safety Standards pursuant to 302 CMR 10.00.

Prior to the start of construction, the impoundment area will be completely dewatered through the temporary division of the Windsor Dam Reservoir and May Brook using a temporary coffer dam approximately 50 feet upstream of the Reservoir. A temporary diversion pipe will be installed to divert May Brook from the coffer dam to the low-level outlet located on the north side of the existing dam that is to be incorporated into the new dam structure. Best Management Practices (BMPs) including hay bales and silt fences and erosion control blankets will be used to prevent the erosion and discharge of on-site sediment and debris to areas downstream of the project site.

The project will also involve the dredging of approximately 2,100 cubic yards of impounded sediment from the upstream side of the dam. Excavation of the sediment will take place “in the dry” in conjunction with the temporary stream channel diversion around the work site. The dredged sediment will be transported off-site to Holiday Farm in Dalton for dewatering and re-use in Holiday Farm’s ongoing composting activities. Demolition of the existing dam will include the existing spillway, north training wall and gatehouse. The existing south training wall and low-level outlet located on the north side of the dam will remain and will be incorporated as part of the new dam structure. Access to the project site will be provided via existing north and south access roads. The north access road is a 500 lf gravel road that will serve as the primary site accessway from Wahconah Falls Road in Windsor. The south access road, a 4,000 lf long improved cart path that originates off Adams Road in Hinsdale, will require grading and new crushed stone improvements to make serviceable for project construction activities.

Construction is planned to occur during the low-flow season during the early fall to mitigate adverse impacts to fisheries. The initial phases of construction including tree clearing, installation of erosion controls and cofferdam and partial demolition of the dam structure are anticipated to be completed before winter.

Wetlands

According to the information provided in the EENF, the new dam will have a larger structural footprint and will result in permanent impacts to approximately 5,200 sf of additional Land Under Water (LUW) wetlands, approximately 100 lf of Bank associated with a section of stream channel located immediately below the dam, and approximately 2,500 sf of Riverfront Area associated with the proposed tree and shrub clearing of the embankment adjacent to the downstream dam face.

The EENF includes a description of the Proponent’s Resource Area Mitigation Plan which identifies a number of proposed off-site mitigation commitments designed to mitigate the project’s impacts to environmental resource areas. According to the Proponent, the proposed mitigation commitments are consistent with the mitigation requirements established under the U.S. Army Corps of Engineers (ACOE) Programmatic General Permit provisions of Section 404 of the Clean Water Act and provisions of MassDEP’s 401 Water Quality Certification. MassDEP has indicated to the MEPA Office that it supports the Proponent’s request for an EIR waiver and that it will address any potential requirements for wetlands replication during the permitting process.

Rare Species & Fisheries

In their comments, the Natural Heritage and Endangered Species Program (NHESP) indicated that the Windsor Dam and portions of the Windsor Reservoir contain rare species habitat for the Wood Turtle (*Glyptemys insculpta*) and the Ocellated Darner (*Boyeria grafiana*). According to the NHESP, to avoid impacts to the Ocellated Darner, the project design must comply with the guidelines for impoundment draw-downs and refills contained in the 2004 Eutrophication and Aquatic Plant Management in Massachusetts Generic Environmental Impact Report. To avoid adverse impacts to Wood Turtles and the need for a Conservation and Management Permit, the Proponent must consult with NHESP to design and implement a Wood Turtle Protection Plan that will avoid impacts to the Wood Turtle from the proposed dam reconstruction activities and proposed off-site mitigation construction activities.

As discussed elsewhere in this Certificate, the Proponent is also proposing to remove the existing May Brook Dam structure located approximately 1,400 feet upstream of the Windsor Reservoir. May Brook is a quality coldwater fishery stream that originates in the Chalet Wildlife Management area and flows southwest into Windsor Reservoir. The Massachusetts Riverways program (MassRiverways) has provided comments on the EENF pertaining to Proponent's stream restoration design, post-construction monitoring and stream flow management that should be addressed by the Proponent and MassDEP during the permitting of the project. Specifically, MassRiverways has requested the Proponent identify a similar reach of river in the region to be used as a reference to compare to the Proponent's stream restoration design. The Proponent should consider incorporating longitudinal and cross-section surveys in the project's post-restoration monitoring plan to identify any potential river form changes. MassRiverways has also requested that the Proponent incorporate seasonally adequate flows to the Proponent's stream flow management plan for the Windsor Reservoir Dam and Wahconah Falls Brook. The Proponent should consult with the Division of Fisheries and Wildlife and MassRiverways during final project design of this mitigation commitment.

Mitigation

The Proponent has entered into a Consent Order with MassDEP which requires the Proponent to design and implement a Resource Area Mitigation Plan for project impacts. The EENF contains a description of the Proponent's Resource Area Mitigation Plan which identifies a number of off-site mitigation projects and activities including:

Removal of May Brook Dam and stream channel restoration

The removal of the May Brook Dam structure and restoration of approximately 200 lf of riffle pool stream channel located in the Town of Windsor will connect the upstream and downstream coldwater fisheries and allow for improved fish passage in this reach of May Brook. The Proponent asserts that the removal of May Brook Dam will result in an improvement to the May Brook ecosystem.

Enhancements riparian corridor sections of Wahconah Falls Brook

As described in the EENF, proposed riparian corridor enhancements will include mowing/cutting restrictions and/or planting of compatible native species trees and shrubs on privately-owned riparian corridor land areas located downstream of the Windsor Dam along sections of Wahconah Falls Brook in the Town of Dalton.

Base Streamflow Enhancements

As currently proposed, the new Windsor Reservoir Dam will contain a mid-level outlet which can be mechanically operated to mimic natural downstream base stream flow conditions in Wahconah Falls Brook. The Proponent proposes to work closely with the MassDFW to develop a plan for operating the new dam's outlets to maintain appropriate base streamflow conditions.

In their comments on the EENF, the Berkshire Regional Planning Commission (BRPC) has expressed concern with the lack of detailed information pertaining to the Proponent's Resource Area Mitigation Plan. The EENF does not include information to identify the exact sites proposed for riparian improvement projects along Wahconah Falls Brook. According to BRPC, additional information is needed to quantify the total area of mitigation proposed under the Proponent's Resource Area Mitigation Plan. The Proponent should note the comments received from BRPC regarding the Proponent's mitigation commitments.

As a condition of my issuance of this determination that this project does not require further MEPA review, I am requiring the Proponent to provide a copy of the final Resource Area Mitigation Plan to the MEPA Office for the project file. I encourage the Proponent to consult with the Conservation Commissions for the Towns of Dalton, Hinsdale and Windsor, and the BRPC during final project design.

Construction Period Impacts

The Proponent should evaluate construction period impacts, including erosion and sedimentation, air quality and solid waste disposal and commit to measures to minimize construction impacts. MassDEP has noted that demolition and construction activities must comply with both Solid Waste and Air Quality control regulations. The Proponent should carefully review MassDEP's comments and commit to ensure that the project is consistent with the applicable Solid Waste and Air Quality control regulations. I ask that the Proponent participate in MassDEP's Clean Air Construction Initiative (CACI) and the MassDEP Diesel Retrofit Program to mitigate the construction-period impacts of diesel emissions to the maximum extent feasible. The CACI program helps Proponents identify appropriate mitigation for minimizing air pollution from construction vehicles such as retrofit of construction equipment with particulate filters and oxidation catalysts and/or use of on-road low sulfur diesel (LSD) fuel. The Proponent should consult with MassDEP to develop appropriate construction-period diesel emission mitigation, which could include the installation of after-engine emission controls such as diesel oxidation catalysts (DOCs) or diesel particulate filters (DPFs).

For more information on these technologies, see: <http://www.epa.gov/otaq/retrofit/verif-list.htm>.


Conclusion

Based on a review of the information provided by the Proponent and after consultation with the relevant public agencies, I find that the potential impacts of this project do not warrant further MEPA review. Outstanding issues may be addressed during the permitting process.

I have also issued today a Draft Record of Decision (DROD) proposing to grant a Waiver from the requirement to prepare an EIR for the project. The DROD will be published in the next edition of the Environmental Monitor on November 10, 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 November 24, 2008. Based on written comments received concerning the DROD, I shall issue a Final Record of Decision or a Scope within seven days after the close of the public comment period, in accordance with 301 CMR 11.15(6). If the Full Waiver is not approved based on comments received on the DROD, then this Certificate on the EENF will be re-issued with a Scope for an EIR.

October 31, 2008

Date



Ian A. Bowles, Secretary

Comments received:

09/29/2008 State Representative Denis E. Guyer
10/16/2008 Tighe & Bond
10/20/2008 Berkshire Regional Planning Commission
10/21/2008 Representative John W. Olver
10/22/2008 Natural Heritage and Endangered Species Program (NHESP)
10/24/2008 Department of Conservation and Recreation (DCR)
10/24/2008 Department of Environmental Protection (MassDEP) – WERO
10/24/2008 MA Riverways Program

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