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December 17, 2008

DRAFT RECORD OF DECISION

PROJECT NAME:	North Hoosic River Restoration
PROJECT MUNICIPALITY:	Clarksburg
PROJECT WATERSHED:	Hudson
EEA NUMBER:	14337
PROJECT PROPONENT:	Riverways Program - Massachusetts Department of Fish and Game
DATE NOTICED IN MONITOR:	November 10, 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 **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

The project consists of the removal of the Briggsville (a/k/a Hewat) Dam on the North Branch of the Hoosic River in Clarksburg by the Riverways Program - Massachusetts Department of Fish and Game (Riverways Program). Briggsville Dam is a 15-foot high, 145-foot long broad crest weir dam. The dam owner was issued a Certificate of Non-Compliance and Dam Safety Order from the Department of Conservation and Recreation (DCR) Office of Dam Safety (ODS) in February 2008. The dam is classified as a "Significant Hazard Potential" by ODS and the owner has been informed that the dam does not meet accepted dam safety standards and is a potential threat to life and property downstream from the dam.

Removal of the dam would commence a proactive habitat restoration project to restore approximately 30 miles of headwater habitat, including benefit to a State-listed species of Special

Concern and improvement of habitat for native brook trout. Project partners include: the Hoosuck Chapter of Trout Unlimited, Cascade School Supplies, the Massachusetts Division of Fisheries and Wildlife, the United States Fish and Wildlife Service, the USDA-NRCS, the Town of Clarksburg, American Rivers, the Hoosic River Watershed Association, and the Massachusetts Corporate Wetlands Restoration Partnership – Procter & Gamble (Gillette) and National Grid. This project has been designated as a restoration *Priority Project* by the Riverways Program.

Under existing conditions, the impoundment capacity of the Briggsville Dam is severely limited due to the accumulation of sediment. The Riverways Program has indicated that the residence time of water entering the former impoundment and exiting the spillway is the same as if there were no dam present. Overall project goals include the elimination of a barrier to aquatic and riparian species movement, the reestablishment of the rivers natural flow regime, improvement of water quality, sediment dynamics, and water temperature for coldwater species, and restoration of the natural clean gravel and cobble streambed.

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 a decrease in 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; a 401 Water Quality Certificate from the Department of Environmental Protection (MassDEP); and a Chapter 91 License review from MassDEP. The project will also require an Order of Conditions from the Clarksburg Conservation Commission.

The Riverways Program is both a co-proponent of the project and providing partial funding for construction of the project. Therefore, MEPA jurisdiction for this project is broad and extends to all aspects of the project that are likely, directly or indirectly, to cause Damage to the Environment as defined by the MEPA regulations.

Waiver Request

The proponent submitted an Expanded Environmental Notification Form (EENF) for the project with a request for a waiver from the requirement for the preparation of an EIR. The Proponent provided supplemental information in a memorandum dated November 17, 2008 that clarified the request for a full waiver of an EIR and described how the project proposes to meet the wavier criteria outlined in 301 CMR 11.11. The waiver request was discussed at the consultation/scoping session for the project which was held on November 18, 2008.

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 Proponent and after consultation with the relevant state agencies, I find that the waiver request has merit and that the Proponent 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 Proponent. The project includes the restoration of headwater habitat for the North Branch of the Hoosic River and will involve the removal of a dam classified as a "Significant Hazard Potential" by ODS. The project has been proposed as a response to the issuance of a Certificate of Non-Compliance and Dam Safety Order issued to the dam owner by ODS under the authority of M.G. L. Chapter 253 Sections 44-48. Removal of the dam is an action that would bring the dam into compliance with dam safety regulations (302 CMR 10.00).

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 not likely to cause Damage to the Environment:

- The project will have an overall positive impact on the environment. Benefits of full dam removal include: improved water quality, elimination of a thermal pollution

source, natural sediment transport, flood plain connectivity, aquatic species passage, creation of juvenile fish habitat, rare species enhancement, inland bank restoration, creation of BVW, and elimination of a potential environmental and public safety risk (dam failure).

- The existing dam presently provides minimal impoundment of water due to the build-up of sediment behind the structure. The Riverways Program has indicated that the residence time of water entering the former impoundment and exiting the spillway is the same as if there were no dam present.
- The Proponent has gathered extensive amounts of field data, collected fish samples, prepared hydrologic and hydraulic models, and performed sediment management analyses to support the design of a project that minimizes impact to wetland resource areas and enhances habitat restoration efforts.
- The project will result in the temporary alteration of Bank, Land Under Water (LUW), Bordering Vegetated Wetlands (BVW), Bordering Land Subject to Flooding (BLSF), and Riverfront Area. Approximately 5,000 cubic yards of material will be dredged in conjunction with the dam removal. Estimated wetland resource area impacts include: 2,025 linear feet (lf) of temporary impact to Bank, to be replaced by an additional 1,062 lf of new bank; 26,572 square feet (sf) of permanent impact to BVW, which does not include an addition of 8,276 sf of newly created BVW from areas presently classified as LUW; 175,982 sf of temporary, construction-related impact to BLSF; and 118,483 sf of temporary, construction-related impact to Riverfront Area.
- The project will result in a net gain of approximately 20 percent in floodplain, thereby lowering the 100-year flood level in the vicinity of the project site. The Proponent will submit their hydraulic analysis to the Federal Emergency Management Agency (FEMA) upon completion of the project for their use in future floodplain map revisions.
- The project includes the use of Flow Constrictor/Step Pools (FC/SPs) to provide scour protection and meet fish passage goals.
- The project will improve habitat for the State-listed Longnose Sucker (*Catostomus catostomus*). The Proponent will consider the recommendations of the Division of Fisheries and Wildlife Natural Heritage and Endangered Species Program (NHESP) submitted in response to the EENF into the final project design. These recommendations pertain to the design of the side channel habitat, limiting the placement of stone grade control weirs, potential use of woody material complexes to enhance habitat diversity, time-of-year construction restrictions, and monitoring efforts. The Proponent will specifically address these recommendations with the NHESP during the approval process of the habitat management plan. This habitat management plan will be prepared in accordance with applicable guidelines and incorporate the recommendations presented in the NHESP comment letter on the EENF.
- The project includes design features to prevent scour at the Cross Road Bridge, ensure that the project will not create a barrier to migrating resident fishes, protect the retaining wall on river left, and use the minimum required in-river structures.
- The project incorporates grade control and habitat weirs, as well as habitat pools to facilitate grade changes along the river between the Cross Road Bridge and the area of

dam removal. Habitat pools have been proposed adjacent to the channel along the river right bank and have been modeled after the existing backwater pools in the impoundment.

- The Proponent has prepared a habitat restoration plan that consists of native species and bioengineering structures to facilitate habitat growth in the formerly impounded area.
- The project will include the construction of a revetment slope against the existing retaining wall to river left (the left-hand side of the river facing downstream) upstream of the dam to protect from scour and placement of larger cobbles removed from the streambed to armor the footings of the Cross Road Bridge.
- During the construction period the Proponent will utilize Best Management Practices (BMPs) to limit impact to wetland resource areas, habitat, and rare species. The project will be completed during low flow periods in late summer, August and September, to minimize impacts to spawning Longnose Suckers. Demolition and construction activities will comply with both MassDEP Solid Waste and Air Quality control regulations. The project will not use hay bales for erosion control measures.
- The Proponent will establish a comprehensive monitoring program that includes the following biological and physical monitoring variables: fish, macro-invertebrates, water temperature, longitudinal profiles, cross-sections, and photo points.

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 dam removal that will be supported by existing infrastructure facilities or services. The EENF has demonstrated that the potential impact to the Cross Road Bridge due to dam and sediment removal has been mitigated through design efforts and the placement of stone armor around newly exposed footings.

    - Access to the project site will be provided via existing roads adjacent to the work area. Staging areas will be accommodated on adjacent properties. An existing fire hydrant proximate to the outlet gear works for the dam will be removed and utility poles along the riverbank will be relocated as necessary.

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 December 24, 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 January 7, 2009. 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).

December 17, 2008
Date

Ian A. Bowles, Secretary

Comments received:

11/20/2008	Massachusetts Historical Commission
12/1/2008	Hoosic River Watershed Association
12/1/2008	Massachusetts Department of Environmental Protection – WERO
12/3/2008	Berkshire Regional Planning Commission
12/9/2008	American Rivers
12/10/2009	MassAudubon
12/10/2008	Town of Clarksburg
12/10/2008	Division of Fisheries and Wildlife – Natural Heritage and Endangered Species Program
12/12/2008	Department of Conservation and Recreation

IAB/HSJ/hsj