



The Commonwealth of Massachusetts

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September 9, 2002

DRAFT RECORD OF DECISION

PROJECT NAME : Mill Pond Dam Breaching Project
 PROJECT MUNICIPALITY : Hanover/Norwell
 PROJECT WATERSHED : South Coastal
 EOE NUMBER : 12849
 PROJECT PROPONENT : South Shore YMCA
 DATE NOTICED IN MONITOR : August 10, 2002

As Secretary of Environmental Affairs, I have reviewed this project pursuant to the Massachusetts Environmental Policy Act (M.G.L. c.30, ss. 61-62H) and Section 11.11 of the MEPA regulations (301 CMR 11.00), and hereby **propose to grant a waiver** (as defined below), allowing the project to proceed to the state permitting agencies without requiring the completion of an Environmental Impact Report (EIR).

Project Description

As described in the Environmental Notification Form (ENF), the proposed project involves the permanent breach of the Mill Pond Dam, which is located on Third Herring Brook in the towns of Norwell and Hanover. In February 2001, the proponent was issued emergency authorization by DEM to remove the dam's flashboards and lower the dam's water levels after a portion of the dam's concrete sluiceway collapsed. The collapse of the sluiceway and subsequent removal of flashboards transformed the Mill Pond from 4 acres of Land Under Water into a brook (Third Herring Brook) with approximately 4 acres of Bordering Vegetated Wetlands (BVW).

The proposed project includes the removal of an existing collapsed 6 foot wide concrete sluiceway, excavation of approximately 50 feet of existing earth embankments, and removal of approximately 30 cubic yards (cy) of sediment immediately upstream of the dam. The project has been designed to keep the height of the water upstream of the breach to less than 4 feet during the 100-year flood event, and to maintain a sufficient



amount of water needed to facilitate the development and maintenance of wetlands resource areas.

The project is subject to MEPA review and requires the preparation of an EIR pursuant to section 11.03 (3)(a)(4) of the MEPA regulations, because the project involves the structural alteration of an existing dam that causes a decrease in the impoundment capacity. The project will require a Chapter 91 Waiver and a 401 Water Quality Certification from DEP, a Chapter 253 Dam Safety Permit from DEM, and a General Program Category II Permit from the U.S. Army Corps of Engineers. The project will also require an Order of Conditions from the Hanover and Norwell Conservation Commissions (and hence a Superseding Order of Conditions from DEP if the local Orders were appealed).

Waiver Request

The proponent has requested that I waive the mandatory requirement to prepare an Environmental Impact Report for this project. The waiver request was presented within the Expanded ENF and supporting documents and was discussed at a public consultation meeting held on August 16, 2002.

Section 11.11 of the MEPA regulations provides that the Secretary may waive any provision or requirement of 301 CMR 11.00 not specifically required by MEPA, and may impose appropriate and relevant conditions or restrictions, provided that the Secretary finds 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.

In the case of a waiver of a mandatory EIR review threshold, the Secretary, at a minimum, must base this finding on a determination that: (a) the project is not likely to cause significant damage to the environment; and (b) ample and unconstrained infrastructure facilities and services exist to support the project. In addition, the proponent may demonstrate that additional conditions will be imposed that will cause environmental benefits in excess of those that would result in the absence of the waiver.

Findings

I have carefully reviewed the ENF and supporting documentation, written comments and comments received at the scoping session.

1. As described in the ENF, Orders of Conditions for the proposed breach of the Mill Pond Dam was issued by the Hanover and Norwell Conservation Commissions on

June 17, 2002. According to comments received from the Hanover Conservation Commission, no negative impacts to the wetlands resource area have been observed since the February 2001 removal of the dam's flashboards. A wet meadow now provides valuable habitat where the Mill Pond existed, and the Third Herring Brook has become reestablished in its original channel. Finally, according to the proponent, the project has been designed to support cold water fish migration, limit downstream sediment migration, and maintain sufficient water upstream of the proposed breach to facilitate the development and maintenance of wetlands plant species and wetland resource areas. I therefore find that the potential environmental impacts of the project are insignificant.

2. According to the comments received from the Water Superintendent for the Town of Norwell and the Hanover Conservation Commission, breaching the Mill Pond Dam has not resulted in significant impacts to the Norwell and Hanover public water supply wells located down stream of the dam, as the high groundwater levels in these areas are maintained by groundwater flows from surrounding hillsides and from water flowing in Third Herring Brook. I therefore find that ample and unconstrained infrastructure facilities and services exist to support the project.

3. According to comments received from the DEM's Riverways Program, the breach of the Mill Pond Dam is providing for the unobstructed natural movement of sediment, water, fish and wildlife through the Third Herring Brook stream/wetlands system. As described by the National Marine Fisheries Service (NOAA Fisheries), the breach of the Mill Pond dam will provide improved access for migrating alewives and blueback herring, and contribute to restoring the fisheries to the Third Herring Brook. During the MEPA site visit for this project, the proponent proposed to design and implement an active wetland seeding program within the BVW created by the proposed project. This would promote a variety of desired wetland herbaceous plants species and limit the advancement of invasive species such as the purple loosestrife. The proponent has further proposed to install 6 appropriately designed bird houses within the BVW created by the proposed project to promote the establishment of native birds to wetland habitat areas. I therefore find that the project will result in environmental benefits in excess of those that would result in the absence of the waiver.

Based on these findings, it is my judgment that the waiver request has merit, meets the tests established in 301 CMR 11.11, and will serve to advance the interests of the Massachusetts Environmental Policy Act. Therefore, I propose to grant the waiver subject to the aforementioned findings and conditions. This Draft Record of Decision (DROD) shall be published in the September 10, 2002 issue of the *Environmental Monitor* for a fourteen-day comment period, after which I shall reconsider, modify, or confirm the waiver.

September 9, 2002

Date

Bob Durand

Comments received:

8/20/02	MA Division Of Fisheries & Wildlife
8/26/02	Roger Frymire
8/27/02	The National Marine Fisheries Service (NOAA Fisheries)
8/27/02	David Clark
8/28/02	Town of Norwell, Planning Board
8/28/02	MA Department of Environmental Protection - SERO
8/29/02	South Shore YMCA
8/29/02	Massachusetts Riverways Program
8/30/02	Town of Norwell, Water Superintendent
8/30/02	Hanover Conservation Commission
9/04/02	Massachusetts Historical Commission
9/5/02	South Shore YMCA

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