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August 28, 2020

DRAFT RECORD OF DECISION

PROJECT NAME	: Watson Road Dam Removal
PROJECT MUNICIPALITY	: Hinsdale
PROJECT WATERSHED	: Housatonic
EEA NUMBER	: 16249
PROJECT PROPONENT	: Kimberley Wendling
DATE NOTICED IN MONITOR	: July 22, 2020

Pursuant to the Massachusetts Environmental Policy Act (MEPA; M.G.L.c.30, ss. 61-62I) and Sections 11.06 and 11.11 of the MEPA Regulations (301 CMR 11.00), I have reviewed the Expanded Environmental Notification Form (EENF) 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

As described in the EENF, the project consists of removal of portions of Watson Road dam in Hinsdale. The project is proposed to address structural deficiencies associated with the dam in response to a Dam Safety Order (February 22, 2008) and Certificate of Noncompliance (September 11, 2015) issued by the Massachusetts Department of Conservation (DCR) Office of Dam Safety (ODS). Deficiencies include beaver activity, poor condition of the dam crest and downstream masonry wall, and large trees on the dam crest, abutments and near the downstream toe. The project will permanently lower the dam crest by approximately two feet to make it a non-jurisdictional structure, restore flow and hydrologic and habitat connectivity benefitting fisheries and other aquatic organisms, remove maintenance requirements and costs, and eliminate owner liability associated with dam failure. The project will construct a new trapezoidal-shaped outlet through which runoff entering the pond will drain without significantly increasing downstream flood elevations.

The project will remove a portion of the dam to allow a channel to connect the upstream unnamed pond to the downstream watercourse. Work includes demolition of the stone masonry walls at the downstream face of the dam embankment; demolition of historic spillway concrete, masonry and piping features, conduits and other features; lowering the elevation of the remaining portion of the dam; installation of riprap aprons including reuse of stones from the masonry wall as riprap fill; removal of trees, stumps and root systems from the earthen embankment and abutments; excavation and regrading of the existing dam embankment; construction of new outlet channel; and restoration of the project site.

Dam removal will eliminate a public safety hazard, reduce maintenance requirements for the Proponent, remove a Significant Hazard Potential structure, restore natural river processes, improve habitat connectivity, and attenuate flood flow to protect downstream infrastructure.

Project Site

The 119.2-acre project site contains Watson Road Dam which is located north of Old Stagecoach Road on a tributary to the East Branch Housatonic River. Work will occur within 0.4 acres of the site (upstream and downstream of the dam). The dam is located at the south end of an unnamed pond which is surrounded by forested land. Watson Road Dam is an earthen dam with a vertical rubble masonry wall on its downstream face. It was constructed between 1960 and 1971 and provides no recreational or commercial value. It has a structural height of nine feet (a hydraulic height of six feet), dam crest length of 100 feet, and an average width of 40 feet. The impoundment has a normal pool storage of 42 acre-feet and a maximum pool storage of 81 acre-feet. The structural height is set by a berm on the upstream side of the crest which may be associated with long-term beaver activity. The original spillway and upstream end of the culvert are near the center of the crest and are no longer hydraulically connected to the pond. An original low-level outlet pipe is assumed to be inoperable. Discharge flows in a relatively stable channel through a breach in the beaver dam across the dam crest near the right end of the dam. Some ponding occurs near the center of the crest. It impounds approximately 13.17 acres of water surface area.

The dam is classified as an intermediate-sized, Significant Hazard structure in Poor condition by DCR ODS. Phase 1 Dam Inspections (2009, 2016, and 2017) identified the following deficiencies: trees and thick vegetation on the dam crest and within 20 feet of the downstream toe; no functional engineered spillway or low level outlet; observed discharge across the dam crest and behind the downstream wall; presence of a berm constructed by beavers along the upstream dam crest; missing or misaligned stones; and seepage at the downstream toe. ODS requires owners of dams in Poor condition to address identified deficiencies.

The outflow from Watson Pond Dam forms the headwater of an unnamed tributary to East Branch Housatonic River. Downstream of Watson Pond, the waterway flows south for 1,300 feet until it passes through a culvert beneath Old Stagecoach Road and then flows in the southwest direction for another 500 feet until it passes through a culvert beneath Old Dalton Road. From that point, the waterway flows in the west direction for another 2,600 feet until its confluence with East Branch Housatonic River.

Wetland resource areas present in the vicinity of the project site include Bordering Vegetated Wetlands (BVW), Bank, Land Under Water (LUW), Riverfront Area (RFA), and Bordering Land Subject to Flooding (BLSF). According to the EENF, there is no BLSF within the project limits of work.

Environmental Impacts and Mitigation Measures

The project will improve stream connectivity and fish passage, create riparian wetlands, and remove a deficient dam. Due to the nature of the project, permanent conversion of wetland resource areas is unavoidable. Potential environmental impacts associated with the project include alteration of 1,665 linear feet (lf) of Bank (permanent), 98 square feet (sf) of BVW (temporary), 358,948 sf of LUW (1,024 sf temporary and 357,924 sf permanent), and 13,130 sf of RFA (8,858 sf temporary and 4,272 sf permanent). The project will restore free flowing riverine conditions which will permanently convert some areas of LUW within the impoundment to approximately 355,154 sf (8.15 acres) of BVW.

Measures to avoid, minimize, and mitigate impacts include: creation of 8.15 acres of BVW (converted from LUW); bank stabilization and armoring to minimize erosion effects from increase in water velocity in this section of the river from lowering of surface waters in the existing impoundment following dam removal; monitoring and management of invasive plant species; revegetation of areas disturbed during construction with appropriate native seed mix; and implementation of construction period best management practices (BMPs).

Permitting and Jurisdiction

The project is subject to MEPA review and a mandatory EIR pursuant to 301 CMR 11.03(3)(a)(4) because it requires State Agency Actions and involves structural alteration of an existing dam that causes a decrease in impoundment capacity. The project also exceeds Environmental Notification Form (ENF) review thresholds at 301 CMR 11.03(3)(b)(1)(b), alteration of 500 or more lf of Bank and 301 CMR 11.03(3)(b)(1)(f), alteration of one-half or more acres of other wetlands. The project will require a Chapter 253 Dam Safety Permit from DCR ODS. It is subject to the MEPA Greenhouse Gas (GHG) Emissions Policy and Protocol (GHG Policy).

The project will require a Pre-Construction Notification General Permit for Massachusetts from the U.S. Army Corps of Engineers (ACOE) in accordance with Section 404 of the federal Clean Water Act; and a National Pollutant Discharge Elimination System (NPDES) construction permit from the U.S. Environmental Protection Agency (EPA). The Hinsdale Conservation Commission issued an Ecological Restoration Order of Conditions on November 19, 2019, which was not appealed.

Because the Proponent is not seeking Financial Assistance from the Commonwealth for the project, MEPA jurisdiction for any future reviews would extend to those aspects of the project that are within the subject matter of required or potentially required Agency Actions and that may cause Damage to the Environment as defined in the MEPA regulations.

Waiver Request

In accordance with Section 11.05(7) of the MEPA regulations, the Proponent submitted an EENF with a request that I waive the requirement for a mandatory EIR. The Proponent provided supplemental information on August 14, 2020 which identifies the project's consistency with the criteria for a Waiver. The EENF was subject to an extended comment period pursuant to Section 11.06(1) of the MEPA regulations. The Waiver request was discussed at the remote consultation session for the project.

I have reviewed the EENF and the Waiver request and I hereby find that the project meets the standards for a Waiver at 301 CMR 11.11. Comment letters do not identify additional alternatives or mitigation measures that warrant additional analysis through an EIR.

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 on the EENF, supplemental information and consultation with State Agencies, I find that the Waiver request has merit and that the Proponent has demonstrated that the 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 by delaying completion of an environmental restoration project and would not avoid or minimize Damage to the Environment, as the Proponent has adequately analyzed project alternatives, and comment letters do not identify alternatives or mitigation measures that warrant additional analysis through an EIR. Furthermore, the restoration project will partially restore natural riverine processes and improve stream connectivity to benefit fish and other aquatic organisms.

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 employ the following mitigation measures to ensure the impacts of the project are avoided, minimized and mitigated:

- the Proponent obtained an Ecological Restoration Limited Project Order of Conditions from the Hinsdale Conservation Commission and will comply with all conditions of these permits;
 - bank stabilization and armoring to minimize erosion effects from increase in water velocity in this section of the river from lowering of surface waters in the existing impoundment following partial dam removal;
 - monitoring and management of invasive species;
 - revegetation and restoration of areas disturbed during construction; and
 - implementation of construction period best management practices (BMPs).
2. Ample and unconstrained infrastructure facilities and services exist to support those aspects of the project within subject matter jurisdiction:
- The project does not require any infrastructure or services to accomplish its overall goal of ecological restoration. Therefore, this criterion has been met.

Conclusion

Based on these findings, I have determined that the 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 September 9, 2020 in accordance with 301 CMR 11.15(2), which begins the public comment period. The public comment period will last for 14 days and will end on September 23, 2020. Based on written comments received concerning the DROD, I will 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).

August 28, 2020

Date

Kathleen A. Theoharides

Comments received on EENF:

08/05/2020	Caleb Mitchell, Conservation Agent, Town of Hinsdale (updated comments 08/08/2020)
08/19/2020	Massachusetts Department of Environmental Protection (MassDEP) – Western Regional Office (WERO)
08/20/2020	Massachusetts Department of Conservation and Recreation (DCR)
08/21/2020	Berkshire Regional Planning Council (BRPC)
08/24/2020	Massachusetts Board of Underwater Archaeological Resources (BUAR)

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