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July 30, 2021

FINAL RECORD OF DECISION

PROJECT NAME : Abbey Brook Restoration Project  
PROJECT MUNICIPALITY : Chicopee  
PROJECT WATERSHED : Chicopee River  
EEA NUMBER : 16375  
PROJECT PROPONENT : City of Chicopee Department of Planning and  
Development/Conservation  
DATE NOTICED IN MONITOR : July 9, 2021

Pursuant to the Massachusetts Environmental Policy Act (MEPA; M.G.L.c.30, ss. 61-62I) and Section 11.11 of the MEPA Regulations (301 CMR 11.00), I have reviewed the Expanded Environmental Notification Form (EENF) for this project and hereby **grant a Waiver** from the categorical requirement to prepare an Environmental Impact Report (EIR).

Project Description

As described in the EENF, the project includes removal of the Lower Bemis Pond Dam, daylighting of Abbey Brook at the Chicopee Electric Light Department (CELD) property, replacement of the Front Street culvert, and removal of the Upper Bemis Pond Dam in Chicopee. The project is intended to restore natural flow of Abbey Brook, promote resiliency and provide ecological connectivity. Additional project goals include improving stormwater management, reducing bacterial impairment and improving water quality, providing more passive recreation amenities at Szot Park, and reducing overall maintenance demands for the Abbey Brook area of Szot Park. The project will include the following components:

- Removal of Lower Bemis Pond Dam, stormwater improvements, and park improvements. Removal of the Lower Bemis Pond Dam embankment and installation of a new culvert will partially restore Abbey Brook between the Front Street culvert and Upper Bemis Pond Dam while addressing public safety concerns associated with the Lower Bemis Pond Dam. This component will require temporary repairs to Upper Bemis Pond Dam as its hazard class is anticipated to increase following removal of Lower Bemis Pond Dam. The majority of the

current Lower Bemis Pond impoundment will include a stream transition adaptive management zone with some strategic armoring features to keep the stream from moving too far east into the park to protect existing infrastructure and park facilities. Stormwater improvements include installation of an offline bioretention basin, and proposed park improvements include construction of a walkway and viewing areas adjacent to Abbey Brook to promote public education and passive interaction with the site.

- Daylighting Abbey Brook at the CELD property. Abbey Brook is proposed to be daylighted through excavation of a channel and removal or filling of the existing 72-inch pipe that currently conveys Abbey Brook through the CELD property. This component will include realignment of existing underground utilities and relocation of a portion of the CELD parking area but will partially restore Abbey Brook between Front Street and the Chicopee River, improve stream connectivity and habitat, and reduce the potential of bank erosion/failure adjacent to the CELD property.
- Resizing the existing culvert at Front Street. This component includes removal of the existing undersized 42-inch culvert and replacement with a culvert that meets the Massachusetts River and Stream Crossing Standards (RSCS) to partially restore Abbey Brook at Front Street and also reduce the probability of Front Street overtopping during a flooding event.
- Removal of Upper Bemis Pond Dam. Removal of the Upper Bemis Pond Dam embankment and installation of a new pedestrian bridge with a walkway over the embankment adjacent to Abbey Brook will allow access to the park east and west of Abbey Brook and will complete the restoration of Abbey Brook in this section of Szot Park, resulting in an open Abbey Brook stream channel from Abbey Memorial Drive to the Chicopee River, with the exception of other road crossings that already meet the RSCS.

The project is proposed to be constructed in phases. Phase 1 includes removal of Lower Bemis Pond Dam. Phase 2A includes Daylighting Abbey Brook at the CELD property. Phase 2B includes Resizing the Existing Culvert at Front Street. Phase 3 includes Upper Dam Removal.

The project is being funded in part with grants from the Massachusetts Division of Ecological Restoration (DER) as a Provisional and Priority Status Project, the Executive Office of Energy and Environmental Affairs (EEA) Dam and Seawall Repair or Removal program, and Section 319 through the Massachusetts Department of Environmental Protection (MassDEP). The Department of Conservation and Recreation (DCR) Office of Dam Safety (ODS) has issued a Dam Safety Order for Lower Bemis Pond Dam requiring the City of Chicopee (City) to bring the dam into compliance. The City views this required dam safety work as providing an opportunity to comply with the Dam Safety Order, reduce bacterial impairment, improve stormwater management, and provide passive recreation amenities at Szot Memorial Park integrated with the Abbey Brook restoration.

### Project Site

The 17.8-acre project site is comprised of municipally owned land and private property comprised of Abbey Brook upstream and downstream of the Lower and Upper Bemis Pond Dams and includes a portion of the CELD property. The Upper and Lower Bemis Pond dams are located along a segment of Abbey Brook. Abbey Brook flows approximately 1.5 miles through Springfield and Chicopee, draining into the Chicopee River. The dams are found near the confluence of Abbey Brook and the Chicopee River within the Upper and Lower Bemis Ponds. Abbey Brook flows through the Bemis Pond impoundments created by Upper Bemis Pond Dam and Lower Bemis Pond Dam within

Frank J. Szot Memorial Park prior to flowing through a 42-inch culvert under Front Street, and then a 72-inch culvert through the CELD property that outfalls to the Chicopee River.

Szot Park is an open space and active recreation facility for Chicopee residents and visitors and is part of the Chicopee Parks system. Amenities at Szot Park include courts for basketball, bocce and tennis; fields for baseball/softball, football and soccer; a fountain, picnic facilities, play- and spray-grounds, and walking paths. The southern portion of Abbey Brook flows through the park. As Abbey Brook passes further north, closer to the park entrance and active recreational areas, the brook becomes impounded by two dams, Upper Bemis Pond Dam and Lower Bemis Pond Dam, which create two small, shallow impoundments.

Lower Bemis Pond Dam is classified by DCR as a Significant Hazard potential, intermediate-sized embankment dam that is currently rated in “poor” condition and needs significant repairs to address identified dam deficiencies. The DCR’s Office of Dam Safety (ODS) has issued a dam safety order for Lower Bemis Pond Dam requiring the City to bring the dam into compliance.

Upper Bemis Pond Dam is classified as a Low Hazard potential, intermediate-sized structure located upstream of Lower Bemis Pond Dam. The dam was rated in “fair” condition in 2011; however, additional deficiencies have since been observed, including erosion of the embankment along the water line on the upstream side of the dam, debris blockage of the erosion adjacent to the upstream spillway training walls, and debris blockage of the stoplogs within the dam’s outlet structure.

The Front Street culvert is a small, round culvert that carries Abbey Brook below Front Street. The culvert is 42-inches in diameter at the inlet, which is small relative to the size of the watershed, and has a failing upstream headwall and unknown condition in the interior. Abbey Brook is currently carried through the CELD property via the CELD culvert. The CELD culvert is 72-inches in diameter, has an inlet south of the CELD parking lot, and conveys flow northwest below the parking lot prior to discharge at the Chicopee River. The culvert is perched with shallow flow depth and no possibility for passage of aquatic organisms.

At one time, a single impoundment existed, with Lower Bemis Pond Dam being constructed in 1862. The Upper Bemis Pond Dam was constructed in its present form in 1954, resulting in two impoundments. The Lower Bemis Pond Dam was reconstructed into its present state in 1957. A collapsed portion of the CELD culvert was replaced in 2008.

Wetland resource areas in the vicinity of the project site include Land Under Water (LUW), Inland Bank, Bordering Vegetated Wetlands (BVW), Bordering Lands Subject to Flooding (BLSF), and Riverfront Area (RFA). Abbey Brook is a Category 5 waterbody requiring a Total Maximum Daily Load per the Massachusetts Year 2016 Integrated List of Waters and the draft Massachusetts 2018/2020 Integrated List of Waters due to *Escherichia Coli* bacteria and total suspended solids impairments. Bacteria source tracking performed by the Pioneer Valley Planning Commission (PVPC) identified fecal matter from geese on the lawns surrounding Bemis Pond as a significant bacteria source.

### Environmental Impacts and Mitigation

This is an ecological restoration project designed to increase the natural flow of Abbey Brook, provide ecological connectivity, improve stormwater management, reduce bacterial impairments, and improve water quality. The project also has climate resiliency benefits, as it will greatly reduce flooding

risks that currently exist for surrounding infrastructure and property. Due to the nature of the project in removing dam infrastructure and daylighting the brook, permanent conversion of wetland resource areas is unavoidable. Potential environmental impacts associated with the project include temporary and permanent wetland impacts including alteration of 1,200 linear feet (lf) (temporary) and 3,200 lf (permanent) of Bank; 40,300 square feet (sf) (temporary) and 147,300 sf (permanent) of LUW; 74,900 sf (temporary) and 67,800 sf (permanent) of BLSF; 90,800 sf (temporary) and 49,100 sf (permanent) of RFA; and 56,800 sf (temporary) of BVW. The project is anticipated to result in dredging of 16,000 cubic yards (cy) of material.

Measures to minimize construction period impacts include staging and maintenance of construction vehicles and equipment in designated areas, use of sedimentation and erosion control Best Management Practices (BMPs), and compliance with Time-of-Year (TOY) restrictions. All disturbed areas will be stabilized and/or vegetated. A post-restoration monitoring plan will be implemented.

### Jurisdiction and Permitting

The project is undergoing MEPA review and is subject to a mandatory EIR pursuant to 301 CMR 11.03(3)(a)(4) and 11.03(3)(a)(1)(a) of the MEPA regulations because it requires Agency Actions and will result in the structural alteration of an existing dam that causes any decrease in impoundment capacity and alteration of one or more acres of BVW. The project also exceeds ENF thresholds at 11.03(3)(b)(1)(b), 11.03(3)(b)(1)(d), 11.03(3)(b)(1)(f) and 11.03(3)(b)(3) because it involves the alteration of 500 or more lf of bank along a fish run or inland bank; alteration of 5,000 or more sf of bordering or isolated vegetated wetlands, alteration of one half or more acres of any other wetlands, and dredging of 10,000 or more cy of material. The project will require a Section 401 Water Quality Certificate (WQC) from MassDEP, a Chapter 253 Dam Safety Permit from DCR and a Special Use Permit from the Massachusetts Board of Underwater Archaeological Resources (BUAR).

The project will also require: an Order of Conditions from the Chicopee Conservation Commission, or in the case of an appeal, a Superseding Order of Conditions from MassDEP; submittal of a Pre-Construction Notification to the U.S. Army Corps of Engineers (ACOE) seeking authorization under the General Permits for Massachusetts in accordance with Section 404 of the Federal Clean Water Act; review by Massachusetts Historical Commission (MHC) acting as the State Historic Preservation Officer (SHPO) pursuant to Section 106 of the National Historic Preservation Act of 1966, as amended (36 CFR 800); and a National Pollutant Discharge Elimination System Construction General Permit (NPDES CGP) from the U.S. Environmental Protection Agency (EPA).

Funding will be provided from EEA (Dam and Seawall Repair and Removal Fund) and from DER. Therefore, MEPA jurisdiction is broad in scope and extends to all aspects of the project that may cause Damage to the Environment, as defined in the MEPA regulations.

### Request for EIR Waiver

The Proponent submitted an EENF with a request that I waive the requirement for the preparation of a mandatory EIR, or if the Waiver is not granted (301 CMR 11.11), allow a Single EIR to be prepared in lieu of the usual two-stage Draft and Final EIR process pursuant to Section 11.06(8) of the MEPA regulations.

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.

As stated in 301 CMR 11.11(3), in the case of a waiver of a mandatory EIR review threshold, the Secretary shall at a minimum base the finding required in accordance with 301 CMR 11.11(1)(b) 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 the Project (in the case of a Project undertaken by an Agency or involving Financial Assistance) or those aspects of the Project within subject matter jurisdiction (in the case of a Project undertaken by a Person and requiring one or more Permits or involving a Land Transfer but not involving Financial Assistance).

The Proponent may provide evidence satisfactory to the Secretary that the Agency Action on the Project will contain terms such as a condition or restriction that will cause benefits to environmental resources or quality or infrastructure facilities or services in excess of those that would result in the absence of the waiver.

### Findings

Based on the EENF, supplemental information and consultation with State Agencies, I find that the Waiver request has merit and that the City of Chicopee 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 City of Chicopee 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 reduce the ongoing degradation of existing natural resources and increase the project area's resilience to climate change. State Agency comments note that the permitting process will support resolution of any remaining issues and the majority of comments fully support the EIR Waiver request. 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:

- Obtaining a Section 401 WQC from MassDEP for the dredging of greater than 100 cy of material. The project will be designed and constructed in a manner consistent with applicable Water Quality Regulations (314 CMR 9.00);
- Obtaining an Order of Conditions from the Chicopee Conservation Commission outlining how the project will comply with the Ecological Restoration project provisions (310 CMR 10.53(4)) of the Massachusetts WPA;
- The project will require implementation of a Stormwater Pollution Prevention Plan (SWPPP) in accordance with the NPDES CGP.
- Maintaining stream flow during the removal process;
- Proper off-site disposal of dredged sediment and stabilization of remaining sediment;
- Implementation of erosion and sedimentation and slope stabilization controls; and,
- Tree protection measures and restoration of upland areas.

The Chicopee Conservation Commission will review the project to determine its consistency with the Wetlands Protection Act (WPA), the Wetlands Regulations (310 CMR 10.00), and associated performance standards. MassDEP will review the project to determine its consistency with the 401 WQC Regulations (314 CMR 9.00). An appropriate sediment management plan will be developed during MassDEP's 401 WQC permitting process. The City of Chicopee should continue to work collaboratively with project partners, State Agencies and private property owners during the permitting process to further refine project mitigation measures.

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 habitat restoration. Therefore, this criterion has been met.

### Conclusion

Based on these findings, I have determined that the Waiver request has merit. A Draft Record of Decision (DROD) was issued on July 2, 2021 and was published in the *Environmental Monitor* on July 9, 2021 in accordance with 301 CMR 11.15(2), which began the public comment period. The 14-day public comment period concluded on July 23, 2021. Accordingly, I hereby **grant a Waiver** from the requirement to prepare a mandatory EIR.

July 30, 2021

Date



Kathleen A. Theoharides

Comments received on DROD:

None

KAT/PPP/ppp