The Commonwealth of Massachusetts
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Charles D. Baker
GOVERNOR

Karyn E. Polito
LIEUTENANT GOVERNOR

Matthew A. Beaton
SECRETARY

Tel: (617) 626-1000
Fax: (617) 626-1181
http://www.mass.gov/envir

September 28, 2018

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

PROJECT NAME	: Elm Street Dam Removal
PROJECT MUNICIPALITY	: Kingston
PROJECT WATERSHED	: South Coastal
EEA NUMBER	: 15902
PROJECT PROPONENT	: Jones River Watershed Association
DATE NOTICED IN MONITOR	: August 22, 2018

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 project and hereby determine that it **does not require** the submission of an Environmental Impact Report (EIR). In a separate Draft Record of Decision (DROD) also issued today, I have proposed to grant a Waiver from the requirement to prepare a mandatory 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 MEPA review.

Project Description

As described in the Expanded Environmental Notification Form (EENF), the project consists of the removal of the Elm Street Dam located on the Jones River in Kingston. The project is being undertaken by the Jones River Watershed Association (JRWA) on behalf of the Town of Kingston, who owns the dam. JRWA's partners also include the Massachusetts Division of Ecological Resources (DER) and the National Oceanic and Atmospheric Administration (NOAA). The project is part of a larger effort to improve the quality of water and aquatic habitat and connectivity for resident and diadromous fish in the River. The Jones River is known to historically support prolific diadromous fish runs and continues to be one of the largest and most critical Rainbow smelt runs in Massachusetts. The River also provides

important Eastern brook trout habitat. A fish ladder (Alaskan Steep-pass) was installed in 2001 and has been successful in enabling the passage of River herring. However, the dam serves as an artificial head-of-tide and blocks tidal flow from reaching the upstream reaches of the river and is an obstacle to passage of Rainbow smelt and American shad. Specifically, the project has been designed to improve the conditions for Alewife (*Alosa pseudoharengus*), Blueback herring (*Alosa aestivalis*), Rainbow smelt (*Osmerus mordax*), American eel (*Anguilla rostrata*), American shad (*Alosa sapidissima*), and Eastern brook trout (*Salvelinus fontinalis*). In addition, offshore species within Cape Cod Bay and the Gulf of Maine may benefit from increased prey availability.

The Department of Conservation and Recreation (DCR)'s Office of Dam Safety (ODS) has classified the dam as a "Significant Hazard Potential" in Fair condition.The spillway capacity of the Elm Street Dam is approximately 40% of the spillway design flood (100-year storm event) which results in upstream flooding on a regular basis. In addition, downstream flooding is an issue because of tidal flow restriction. The removal of the dam and channel restoration is expected to increase water quality by improving sediment transport and base flow hydrology, reducing thermal pollution, promoting habitat connectivity, improving public safety, and reducing the Town's liability and maintenance costs.

Specifically, the project will consist of:

- Dewatering the impoundment.
- Establishment of construction access through the dewatered impoundment via conservation land owned by the Town and from the Jones River Trading Company (JRTC) property.
- Installation of a temporary cofferdam across the channel upstream of the bridge and diversion of flow through a temporary diversion conduit between the coffer dam and sluiceway and installation of a temporary cofferdam across the downstream millrace.
- Removal of approximately 300 cubic yards (cy) of accumulated sediment immediately behind the dam and under the Elm Street Bridge. Excavated sediment will be used to fill the millrace.
- Removal of the dam spillway, concrete stilling basin, weir and fishway. The removal of the spillway and stilling basin require reconstruction of the foundation wall along the south side of the Kingston Water Department (KWD) building.
- Construction of an approximately 145-foot long rock-armor channel between the upstream side of Elm Street Bridge and the approximate location of the stilling basin weir.
- Site grading to transition between the constructed channel top of the bank and adjacent properties.

For the remainder of sediment in the river channel, JRWA is proposing a passive sediment management plan based on the results of a sediment analysis report. The report indicates that sediment is not contaminated and downstream areas of the brook are sediment starved. According to the EENF, approximately 3,000 cubic yards (cy) of sediment is expected to mobilize after the removal of dam.

Project Site

The approximately 4.8 acre site includes the existing 3-acre impoundment and dam infrastructure and construction staging area (approximately 1.8 acres). The existing dam crest is approximately 200 feet long and 30 to 50 feet wide and consists primarily of Elm Street. The project area is bounded by residential area to the north, Town of Kingston conservation land to the southwest and the JRTC to the southeast. The dam is located immediately adjacent to the KWD building (KWDB). The left side of the stilling basin is adjoined to the south wall foundation of the KWDB. The dam site has included a series of dams dating back to the 1700's which supported sawmills, textile mills, iron forges, and other operations. The existing dam was constructed in 1920 to provide waterpower for a turbine located in the basement of the KWDB but this use was discontinued in the 1950's. The project site is owned by the Town of Kingston and the JRTC. Removal of the dam, stilling basin and fishway will require regrading of land owned by the JRTC. The River originates at Silver Lake and is approximately one mile downstream from the location of the former Wapping Road Dam which was removed in 2011 (EEA# 14555). The dam is located three miles upstream of Kingston Bay.

The project includes areas mapped as *Estimated or Priority Habitat of Rare Species* according to the Massachusetts Division of Fisheries and Wildlife (DFW)'s Natural Heritage and Endangered Species Program (NHESP)'s 14th edition of the Massachusetts Natural Heritage Atlas.

Environmental Impacts and Mitigation Measures

This is an ecological restoration project designed to increase the natural capacity of the resource areas, improve fish passage and spawning habitat, and improve water quality. Due to the nature of the project, permanent conversion of wetland resource areas is unavoidable. Potential environmental impacts associated with the project include the conversion of 120,000 square feet (sf) of Land Under Water (LUW) to Bordering Vegetated Wetlands (BVW). Filling of the millrace will result in permanent impacts to 951 sf of BVW. The drawdown will result in temporary impacts to Bank on the upstream portion of the project as it migrates towards the natural river channel. Approximately 145 linear feet (lf) of new bank will be created downstream of the dam location. The project will result in the restoration of 1,000 sf of Riverfront Area.

The project will restore the natural stream channel which will permanently reduce the area of LUW. Sedimentation and erosion control measures will be employed and resources impacted by construction activities and access will be restored.

Permitting and Jurisdiction

The project is undergoing MEPA review and is subject to a mandatory EIR pursuant to 301 CMR 11.03 (3)(a)(4) of the MEPA regulations because it requires a State Agency Action and will result in structural alteration of an existing dam that causes a decrease in impoundment capacity. It also exceeds the ENF threshold at 11.03(3)(b)(f) because it will result in the alteration of ½ or more acres of any other wetlands. The project will require a Section 401

Water Quality Certificate (WQC) and Chapter 91 (c. 91) authorization from the Massachusetts Department of Environmental Protection (MassDEP). It is subject to the MEPA Greenhouse Gas (GHG) Emissions Policy and Protocol (GHG Policy).

The project will require an Order of Conditions (OOC) from the Kingston Conservation Commission (or in the case of an appeal, a Superseding Order of Conditions from MassDEP) and 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.

The project is receiving State Financial Assistance. Therefore, MEPA jurisdiction is broad in scope and extends to all aspects of the project that may cause Damage to the Environment, as that term is defined in the MEPA regulations.

Waiver Request

In accordance with Section 11.05(7) of the MEPA regulations, the JRWA submitted an EENF with a request that I waive the requirement for a mandatory EIR. The EENF identifies the project's consistency with the criteria for a Waiver. The EENF was subject to an extended public comment period pursuant to Section 11.06(1) of the MEPA regulations. 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 were generally supportive of the Waiver request.

Review of the EENF

The EENF identifies potential environmental impacts, describes the nature of the project, and includes a narrative that describes the project's consistency with the request for a Waiver of the EIR. The EENF contains photographs of existing site conditions and the proposed areas of work. It contains a set of design plans that identify wetland resource areas, existing and proposed conditions, erosion and sedimentation control measures, as well as access, flow diversion, staging and demolition information. It also includes the results of a sediment analysis. Several State Agencies and numerous environmental advocacy groups including MassAudubon, the North and South Rivers Watershed Association, and the Massachusetts Bays Estuary Program have submitted comment letters expressing their support for the project. Senator de Macedo also expressed his support for the project.

Plymouth Bay Catering, tenants of the JRTC expressed concerns with the project's effect on its business operations and aesthetic appeal to event customers. JRWA is working with the property owner at 42 Elm Street to mitigate the construction period impacts and ensure the regrading of the site meets the needs of the JRTC.

Alternatives Analysis

As described in the EENF, the project design alternatives are limited because of infrastructure constraints including the Elm Street Bridge and the KWDB. Reconstruction of Elm Street Bridge was completed by Massachusetts Department of Transportation (MassDOT)

in 2014. The bridge defines the upstream channel width and elevation; therefore, changes to the width, elevation and bank slopes of the proposed channel are not feasible. In addition, the foundation of the KWDB is located downstream of the bridge; therefore, the channel stream cannot be constructed at an elevation below a point that would result in scour below the building foundation. The armament of the river channel at the location of the dam is required due to the potential for erosion that would undermine both the bridge and the KWDB.

JRWA looked at a No-Build Alternative, the Preferred Alternative (as described above) and five sediment management alternatives. The No-Build Alternative was dismissed because it would not meet any of the project goals of improving water quality, fish passage or a reduction in flood risks or maintenance costs. The sediment management alternatives described five sediment management alternatives. Sediment Management Alternative 1 involved a passive sediment management plan with no dredging. Benefits of this alternative include significantly reduced project costs as well as sediment delivery to downstream salt marshes and intertidal habitat. Sediment Management Alternative 2 involved dredging 50% of sediment (approximately 1,500 cy) within the upstream river channel. This option would result in less temporary impacts to downstream resources related to sediment mobilization; however, construction access for dredging impact would result in additional impacts to wetlands resources and would increase project costs. Sediment Management Alternative 3 involved the full dredging of the impoundment. This option would reduce temporary downstream impacts but significantly increase project costs. Sediment Management Alternative 4 involved the full dredge of the 1,200-ft river channel in the upstream impoundment as well as armament of the river channel to prevent the future mobilization of sediment. This option was dismissed due to permanent environmental impacts. Sediment Management Alternative 5 included in situ capping of sediment using gravel. This alternative was not pursued because it would not meet the goals of habitat restoration. The Preferred Alternative includes a combination of passive sediment management with the removal of 300 cy of sediment/debris immediately behind the dam. The Preferred Alternative meets the project goals while maintaining the integrity of the surrounding infrastructure.

Wetlands, Waterways and Water Quality

As noted above, the project will result in permanent and temporary impacts to LUW, Bank, BVW and Riverfront Area. The Kingston Conservation Commission will review the project to determine its consistency with the ecological restoration project provisions of the Wetlands Protection Act (WPA), the Wetlands Regulations (310 CMR 10.00), and associated performance standards. Comments from MassDEP indicate that the dam removal should be undertaken in accordance with MassDEP's December 2007 Guidance entitled: "Dam Removal and the Wetland Regulations". The proposed construction of rip rap bank armor and rock riffle will require the submission of a c. 91 License Application. MassDEP's Waterways Program has determined that the project would be classified as a water-dependent use pursuant to Waterways Regulations at 310 CMR 9.12. MassDEP will review the project to determine its consistency with the 401 WQC regulations (314 CMR 9.00) and Waterways Regulations (310 CMR 9.00).

Rare Species and Fisheries Resources

Comments from NHESP indicate that portions of the project site and drawdown area are mapped as habitat for the Eastern Box Turtle (*Terrapene carolina*), a species of Special Concern. Based on information contained in the EENF and comments from NHESP, JRWA will be incorporating protective measures during deconstruction and drawdown of the impoundment including the implementation of an onsite protection plan during dam removal and avoiding the drawdown of the impoundment between October 15 and April 15.

With these measures incorporated, NHESP anticipates that the proposed project may qualify for a MESA Habitat Management Exemption (321 CMR 10.14). No alteration of the soil, surface or vegetation associated with the proposed project shall occur on the property until NHESP has made a final decision pursuant to 321 CMR 10.18.

Comments from DFW's Fisheries section are supportive of the project and the positive impact it will have on Eastern brook trout, Rainbow smelt, River herring and American eel. They describe the project as one of the most important head-of-tide dams to be removed in the South Coastal Watershed. Comments from the Division of Marine Fisheries (DMF) are generally supportive of the project; however, DMF expresses concerns regarding the slope of the proposed riffle and fish spawning substrate. Despite site constraints, DMF expects some design improvements can be made to better integrate fish spawning habitat. DMF indicated it will continue to work with JRWA to assist with these design improvements.

Cultural Resources

The historical structures within the vicinity of the project including the KWDB and the JRTC were previously determined ineligible for listing in the National Register by MassDOT with concurrence from the Massachusetts Historical Commission (MHC) in 2011 during consultation for MassDOT's Elm Street Bridge Replacement Project.

The Proponent hired The Public Archaeology Laboratory, Inc, (PAL) to conduct an archaeological assessment of the project site. The assessment identified areas of moderate upland archaeological sensitivity in the 90% design limit of work where avoidance of project impacts or intensive (locational) archaeological survey is recommended prior to the dam removal construction work; for areas of moderate in-river archaeological sensitivity monitoring and walkover survey during the dam removal construction work are recommended. MHC and the Board of Underwater Archaeological Resources (BUAR) agree with PAL's recommendations for avoidance of project impacts and/or additional archaeological investigations to identify whether any significant archaeological resources are present within the APE.

Greenhouse Gas Emission (GHG)

This project is subject to review under the May 2010 MEPA Greenhouse Gas Emission (GHG) Policy and Protocol (Policy) because it exceeds thresholds for a mandatory EIR. The GHG Policy specifically includes a de minimis exemption for projects that are expected to produce minimal GHG emissions. As an ecological restoration project involving dam removal and restoration of natural stream processes, GHG emissions will be limited to the construction period of the project. As such, this project falls under the GHG Policy's de minimis exemption; therefore, the Proponent was not required to submit a GHG analysis in conjunction with the EENF.

Construction Period

The project must comply with MassDEP's Solid Waste and Air Pollution Control regulations, pursuant to M.G.L. c.40, s.54 during construction and demolition. All construction and demolition activities should be undertaken in compliance with the conditions of all State and local permits. Erosion and sedimentation controls should be implemented throughout the project site to reduce potential impacts to wetland resource areas. I encourage the JRWA to require contractors to install emission control devices on all off-road construction vehicles in an effort to reduce emissions of volatile organic compounds (VOCs), carbon monoxide (CO) and particulate matter (PM) from diesel-powered equipment. Off-road vehicles will be required to use ultra-low sulfur diesel fuel (ULSD). The EENF describes best management practices (BMPs) that contractors must implement to provide erosion and sedimentation control, site restoration, and protection of trees and wetland resource areas.

Mitigation

As noted previously, the project is an environmental restoration project designed to restore ecological connectivity, enhance aquatic habitat, and improve wetlands and water quality. It is expected to provide a significant net environmental benefit but will also result in temporary and long-term environmental impacts, particularly to wetland resource areas. The EENF identifies measures that will be employed to avoid, minimize and mitigate environmental impacts. These include:

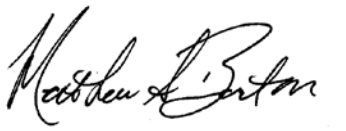
- The project will adhere to conditions established by NHESP during the MESA review process including avoiding the drawdown of the impoundment between October 15 and April 15 and implementing a turtle protection plan during construction.
- Use of silt curtains to control sedimentation during construction
- Use of mats in the riverbed for construction vehicles to protect existing habitats.
- Use of mats to protect stone walls and other potential historic resources from construction impacts.
- Repairs and revisions to the surrounding infrastructure (KWDB) to provide long-term stability and sustainability.
- Post-removal monitoring of fish passage.
- Adhering to DMF time of year (TOY) restrictions for all in-water work from March 1 to July 15 and from September 1 to November 15.

- Diverting flow via gravity (no pumping) to protect down-migrating juvenile river herring and adult eels.

Conclusion

Based on a review of the EENF and consultation with State Agencies, I find that the potential impacts of this project do not warrant further MEPA review. Outstanding issues may be addressed during the local, State, and federal permitting processes. Comment letters support the Waiver request, and do not identify alternatives that warrant additional analysis through an EIR.

I have also issued today a 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 October 10, 2018 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 October 24, 2018. 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).



September 28, 2018
Date

Matthew A. Beaton

Comments received:

08/13/2018	Jones River Trading Company
08/27/2018	Board of Underwater Archaeological Resources (BUAR)
09/17/2018	Senator deMacedo
09/17/2018	The North and South Rivers Watershed Association (NSRWA)
09/17/2018	Division of Ecological Restoration (DER)
09/17/2018	MassAudubon
09/19/2018	Massachusetts Division of Fisheries and Wildlife's Natural Heritage and Endangered Species Program (NHESP)
09/20/2018	Kingston Conservation Commission
09/20/2018	Massachusetts Department of Environmental Protection – Southeast Regional Office (MassDEP – SERO)
09/21/2018	Massachusetts Bays National Estuary Program
09/21/2018	Department of Conservation and Recreation (DCR)
09/21/2018	Massachusetts Division of Marine Fisheries (DMF)

MAB/EFF/eff

Jones River Trading Company
42 Elm Street
Kingston, MA 02364

August 13, 2018

Tom Poulis
CDC Project Manager
35 Colonial Mansfield Drive
Scituate, MA 02066

Subject: Draft Basis of Design BOD

1.2.3 What is the basis of this project? Is it the goal to get fish up to Silver Lake to spawn? When is the Dam coming down at Silver Lake?

3.2.1 The project would not result in substantial alteration of the existing view shed from the land owned by Jones River Trading Company (JRTC). This premise is totally wrong. The majority of weddings at the JRTC are outside with the Jones River and the waterfall being crucial to viability of the JRTC as a unique wedding facility.

Tours of the facility happen any day, Monday through Sunday for perspective clients.

Note: The reconstruction of the Elm Street bridge had a devastating affect on bookings as well as already scheduled weddings. These weddings that had a construction site as a back drop on their biggest day.

3.2.1.3 What specifically does this encompass? The summer is a prime time for events at the JRTC. We were told at a prior meeting the project in its entirety would take six weeks. Phase 1 alone will take six weeks <u>without allowances for delays</u>.

3.2.2 Phase 2 what specific dates would this happen? Staging of equipment on land owned by JRTC to include 220 FT of land. All work should be coordinated and performed concurrently to minimize adverse effect on the business operated by Plymouth Bay Catering, a tenant that has been in practice for almost 20 years. As discussed JRTC and PBC expect a stone retaining wall from the bridge to the end of the parking area. Also discussed was the installation, engineering, and permitting of pilings for a potential bridge over the Jones River. Intention is to restore some ambiance to the area that is being taken away.

3.2.2.3 Construction. Exactly when and how long will phase 2 take? Late fall to us is mid-November and forward.

3.2.3 Phase 3
7. Final grading of land owned by JRTC does not include the stone wall. How long and exactly when? Ideally early spring, March Through mid-April. Where will construction equipment be stored? Will Plymouth Bay Catering have access at all times to conduct its business? What days will the construction and restoration be conducted? We would like this in writing.

Note: The Commonwealth Bridge project in Boston was to take as long as five years with proper scheduling and coordinated effort by project managers and engineers took two weeks. We expect that same strategy removing the dam, Plymouth Bay Catering cannot absorb extended unnecessary time to complete this project.

We would expect appropriate bonding to ensure that this project is done in the agreed upon timely manner.

Sincerely,

Mary Barrett Costello

Mary Barrett Costello
Barrett Restaurant Group
President
781-871-3025

The COMMONWEALTH OF MASSACHUSETTS
BOARD OF UNDERWATER ARCHAEOLOGICAL RESOURCES
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS
251 Causeway Street, Suite 800, Boston, MA 02114-2136
Tel. (617) 626-1141 Fax (617) 626-1240
www.mass.gov/orgs/board-of-underwater-archaeological-resources

August 27, 2018

Secretary Matthew A. Beaton
Executive Office of Energy and Environmental Affairs
Attention: Erin Flaherty, MEPA Unit
100 Cambridge St., Suite 900
Boston, MA 02114

RE: Elm Street Dam Removal/Jones River Restoration, Kingston (EEA #15902)

Dear Secretary Beaton,

The staff of the Massachusetts Board of Underwater Archaeological Resources has completed its review of the above referenced project's ENF (EEA# 15904) prepared by the Jones River Watershed Association. We offer the following comments.

The above referenced project was subject of an archaeological assessment by The Public Archaeology Laboratory, Inc. (PAL), for the Division of Ecological Restoration, Massachusetts Department of Fish and Game. The report is entitled "*Cultural Resource Assessment Elm Street Dam Removal/Jones River Restoration*" (dated August 2018; PAL Report No. 3519). For the in-river work areas including the downstream reaches of the dam and the impoundment, these sensitive work areas be monitored by an archaeologist and subjected to walkover survey during dam removal activities. BUAR concurs with the findings and recommendations outlined in PAL's report.

For those portions of the recommended monitoring and archaeological investigations, BUAR requests that these investigations also be conducted under a BUAR Special Use Permit (312 CMR 2.04, 2.06.1c).

The Board appreciates the opportunity to provide these comments. Should you have any questions regarding this letter, please do not hesitate to contact me at the address above, by telephone at (617) 626-1141 or by email at victor.mastone@mass.gov.

Sincerely,

Victor T. Mastone
Director and Chief Archaeologist

/vtm
Cc: Brona Simon, MHC
Georgeann Keer, DFG (via email attachment)
Eric Hutchins, NOAA (via email attachment)
Alex Mansfield, JRWA (via email attachment)
Suzanne Cherau, PAL (via email attachment)

The Commonwealth of Massachusetts
MASSACHUSETTS SENATE

SENATOR VINNY DEMACEDO
Plymouth and Barnstable District

STATE HOUSE, ROOM 313C
BOSTON, MA 02133-1053
TEL: (617) 722-1330
FAX: (617) 722-1010

VINNY.DEMACEDO@MASENATE.GOV
WWW.MASENATE.GOV

Ranking Member
SENATE WAYS AND MEANS

DISTRICT OFFICE
SUITE 229
10 CORDAGE PARK CIRCLE
PLYMOUTH, MA 02360
TEL. (508) 747-6500

September 17, 2018

Secretary Matthew Beaton
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Dear Secretary Beaton,

I am writing to you today in support of the Jones River Watershed Association's application for a waiver of the requirement to file an Environmental Impact Report (EIR) for the Elm Street Dam Removal and River Restoration Project currently under review by MEPA (File #15902). The Jones River Watershed Association (JRWA) has been a tireless and fastidious partner with the Commonwealth and Kingston community to clean up our waterways and restore our state's beautiful natural resources.

I have worked with the Town of Kingston and JRWA to secure funding for the removal of the Elm Street Dam, which is owned by the Town. Although this dam was built in 1920, dams at this site go back to the origin of Plimoth Colony. However, the dam has served its purpose and needs to be removed for health of the waterway and the aquatic life in it. While the river flow is still reduced as a result of headwater diversions for water supply, and water quality is listed as Category 5 for impairments due to lack of flow and obstruction from dams. Currently, the Town and JRWA partner to improve its conditions by working on stormwater upgrades, conservation properties along the riverfront, and removing obstacles to fish migration.

With the backing this past year from the Dam and Seawall program, this project is now ready for permitting. NOAA Resiliency funding is secured to complete the details into demolition, and additional resources are being secured to implement the removal next year. JRWA is moving forward with the other necessary permits from DEP (401, Ch 91 and Order of Conditions), DCR ch 253, MA Natural Heritage, from the Federal Section 106 and Army Corps 404 permit. Sediment testing has been completed as has historical review and work with Natural Heritage and Endangered Species program. The Town of Kingston is invested in this removal project and has funds committed.

Thank you for your consideration of this request. I completely support a waiver of the EIR because all needed studies will be accomplished as the outlined required permit applications are completed. An EIR will only delay the project and cause additional unnecessary expense to our taxpayers, while at the same time potentially allowing dam failure. Should you have any questions, please do not hesitate to contact my office.

Sincerely,

Vinny deMacedo
Plymouth and Barnstable

NSRWA

September 17, 2018

Dear Ms. Flaherty,

The North and South Rivers Watershed Association (NSRWA) supports the request for a waiver of an Environmental Impact Report (EIR) under 301 CMR 11.11(5) for the removal of the Elm Street Dam and the associated restoration of the Jones River to restore anadromous fish passage and aquatic and wildlife habitat. The removal of the Elm Street Dam is a crucial step in achieving that goal.

It is our understanding that under 301 CMR, the Secretary may waive an EIR if preparation of the EIR would result in "undue hardship" to the project proponent or would "not serve to avoid or minimize damage to the environment" as described under 301 CMR 11.11(1). Furthermore, we understand that when mandatory EIR review thresholds have been exceeded, the Secretary may grant a waiver of the EIR as described under 301 CMR 11.11(2) based on determination that preparation of an EIR would not provide increased benefit to the project and the environment. Based upon scientific and engineering analysis, that preparation of an EIR for the removal of this dam would not serve to avoid or minimize damage to the environment, nor would its preparation provide increased benefit to the project and the environment for reasons enumerated below.

Determinations for an EIR Waiver are based on whether "the project is likely to cause no damage to the environment" and "ample and unconstrained infrastructure facilities exist to support the project" (301 CMR 11.11(3)). Dam removal *restores* natural ecological function and *maximizes* environmental benefit. The basis of this waiver request is founded upon the extensive data collection and analysis of environmental impacts that have been conducted in support of this project to date. These analyses support the overwhelming environmental benefit of the project, and have allowed for the development of strategies to minimize and avoid negative environmental impacts.

We have recently completed a similar project by removing the Tack Factory Dam on Third Herring Brook, a tributary to the North River. This project was completed in 2017. Since that time we have documented: the return of native anadromous fish, improved habitat for fluvial fish, and improved site safety. Based on our understanding of the site removal of the Elm Street Dam will result in similar benefits.

We know that a number of public and private meetings have already been held in which interested parties have been invited to comment. In this manner, public interests are being addressed and incorporated in the project development process. We urge you to favorably consider this waiver request.

Sincerely,

Samantha Woods
Executive Director

The North & South Rivers Watershed Association Inc.
P.O. Box 43, Norwell, Massachusetts 02061
(781) 659-8168 Fax (781) 659-7915
www.nsrwa.org

Massachusetts Department of Fish and Game
Division of Ecological Restoration
Invested in Nature and Community

Beth Lambert, Director
Hunt Durey, Deputy Director

September 17, 2018

Secretary Matthew A. Beaton
Executive Office of Energy and Environmental Affairs
Attention: MEPA Office, Erin Flaherty
100 Cambridge Street Suite 900
Boston, MA 02114

RE: **MEPA File #: 15902, Elm Street Dam Removal Project**

Dear Secretary Beaton:

The Massachusetts Division of Ecological Restoration (DER) supports the request by the Jones River Watershed Association (JRWA) and the Town of Kingston for a waiver of the mandatory Environmental Impact Report (EIR) under 301 CMR 11.11(5) for the removal of Elm Street Dam and restoration of the Jones River. DER agrees with the proponent that an EIR would result in undue hardship to the owner and that the project meets the EIR waiver requirements, including that an EIR would "not serve to avoid or minimize damage to the environment" and that "the project is likely to cause no damage to the environment".

The Jones River Restoration Project is a designated DER *Priority Project* due to its substantial environmental benefits, including the goal of restoring natural ecological processes (e.g., sediment transport and habitat connectivity) that support healthy river conditions. Historically the Jones River supported the largest smelt runs in Massachusetts (MA Division of Marine Fisheries Report 1928). Removal of the Elm Street Dam, an impediment to fish passage, will restore critical habitat and connectivity for this imperiled species and others such as Alewife, Blueback herring, American and Hickory Shad, White perch, and American eel. Dam removal will also increase Kingston's resiliency to the effects of climate change by eliminating an obsolete dam and removing a future threat to public infrastructure in the event of a catastrophic breach. Additionally, restoration of riverine habitat and associated wetlands of the Jones River will benefit the community by increasing flood storage and the River's ability to mitigate storm and flood risks - functions that were lost when this habitat was submerged in the dam's impoundment.

The project has undergone extensive engineering review since becoming a DER *Priority Project* in 2015. DER, in partnership with JRWA, has collaborated with and solicited input from the Town of Kingston Conservation Commission, the Kingston Historical Commission, the Massachusetts Division of Marine Fisheries, the Massachusetts Natural Heritage and Endangered Species Program, the Massachusetts Department of Transportation, NOAA's Restoration Center, and abutters to the property where the dam is located. A pre-application meeting with all of the relevant regulatory agencies was held at the MA DEP offices on Boston in December 2016 to discuss the proposed design. The local, state, and federal permits required for this project

will result in thorough substantive review by regulators as well as provide multiple additional opportunities for public input and comment.

Per 301 CMR 11.11(3)(a), the Restoration Project is "likely to cause no damage to the environment". The primary purpose of the project is to restore valuable aquatic resources, and in doing so reverse ecological impairments along the Jones River. The Restoration Project is consistent the Executive Office's *Dam Removal in Massachusetts: a Guide for Project Proponents*; DEP's *Dam Removal and the Wetlands Regulations*; and DEP's newly revised regulations for Ecological Restoration and Ecological Restoration Limited Projects. The Restoration Project is very similar to several recent dam removal projects for which EIR waivers have been granted, such as the Carver Cotton Gin Dam Removal (#16000), the Rattlesnake Brook Dam Removal (#15352) and the Wapping Road Dam Removal (#14555) which was located just upstream on the Jones River. A requirement to prepare an EIR would significantly increase project costs and the time required to complete the work, potentially jeopardizing federal funding for the project that is set to expire on September 2020.

DER supports an approval of this EIR waiver request. If you have any questions, please do not hesitate to contact me at (617) 626-1542.

Sincerely,

Beth Lambert, Director

Mass Audubon
Advocacy Department
208 South Great Road, Lincoln, MA 01773
781.259. 2172 hricci@massaudubon.org

September 19, 2018

Secretary Matthew A. Beaton
Executive Office of Environmental Affairs
Attention: MEPA Office, Erin Flaherty
100 Cambridge Street Suite 900
Boston, MA 02114

Via Email: erin.flaherty@state.ma.us

RE: **EOEEA# 15902 Elm Street Dam Removal, Kingston**

Dear Secretary Beaton,

On behalf of Mass Audubon, I submit the following comments on the Expanded Environmental Notification Form (EENF) for this project. Mass Audubon supports the request for a waiver of an Environmental Impact Report (EIR) under 301 CMR 11.11(5) for the removal of the Elm Street Dam and the associated restoration of the Jones River to restore anadromous fish passage and aquatic and wildlife habitat. The project proponents Jones River Watershed Association (JRWA) and the Town of Kingston have been pursuing a long-term restoration of the Jones River. The removal of the Elm Street Dam is a crucial step in achieving that goal.

Mass Audubon has a long history of both partnering with JRWA and of supporting river restoration projects statewide. We have partnered with JRWA extensively on broad regional environmental protection that spans the Taunton River, Jones River, and North River. Mass Audubon has supported the removals of several dams in the region, including three dams on the Mill River in Taunton as well as the Carver Cotton Gin Mill Dam on the Satucket River. We have also been involved in other dam removal projects across the state including Sackett Brook Dam in Pittsfield at Mass Audubon's Canoe Meadows Wildlife Sanctuary. We have seen both immediate in long-term benefits from dam removal projects, including the return of native anadromous fish, improved spawning habitat for fluvial fish and other native aquatic life, reduced flooding of residential and commercial properties, and improved riparian areas and public access. The Elm Street Dam will result in similar benefits, restoring habitat and access for river herring, American eel, rainbow smelt, and American shad, improving water quality, and eliminating flood hazards associated with this obsolete dam. This dam removal will also reduce hazards to people, property and the natural environment associated with climate change impacts including increasing storm intensities and increased frequency of droughts. The dam is located at the head-of-tide and removal will connect aquatic habitat in four miles of the mainstem river and five miles of tributaries.

The Secretary may waive an EIR if preparation of the EIR would result in "undue hardship" to the project proponent or would "not serve to avoid or minimize damage to the environment" as described under 301 CMR 11.11(1). Furthermore, when mandatory EIR review thresholds have been exceeded, the Secretary may grant a waiver of the EIR under 301 CMR 11.11(2) based on determination that preparation of an EIR would not provide increased benefit to the project and the environment. Based upon scientific and engineering analysis described in the EENF, preparation of an EIR for the removal of this dam would not serve to avoid or minimize damage to the environment, nor would its preparation provide increased benefit to the project and the environment.

Determinations for an EIR Waiver are based on whether "the project is likely to cause no damage to the environment" and "ample and unconstrained infrastructure facilities exist to support the project" (301 CMR 11.11(3)). Dam removal *restores* natural ecological function and *maximizes* environmental benefit. The basis of this waiver request is founded upon the extensive data collection and analysis of environmental impacts that have been conducted in support of this project to date. The EENF includes sediment management analysis and detailed design plans. This information is sufficient for purposes of MEPA review, and we recommend the granting of an EIR waiver that will enable the project to proceed to permitting and construction.

Thank you for the opportunity to comment.

Sincerely,

E. Heidi Ricci

E. Heidi Ricci
Assistant Director of Advocacy

Cc: Tom Calter, Town Administrator, Kingston
Alex Mansfield, Jones River Watershed Association

MASSWILDLIFE

DIVISION OF
FISHERIES & WILDLIFE

1 Rabbit Hill Road, Westborough, MA 01581
p: (508) 389-6300 | f: (508) 389-7890
MASS.GOV/MASSWILDLIFE

September 19, 2018

Matthew A. Beaton, Secretary
Executive Office of Energy and Environmental Affairs
Attention: MEPA Office
Erin Flaherty
100 Cambridge Street
Boston, Massachusetts 02114

Project Name:	*Elm Street Dam Removal*
Proponent:	*Jones River Watershed Association (JRWA)*
Location:	*Elm Street Dam (22 Elm Street, Kingston)*
Document Reviewed:	*Environmental Notification Form*
EEA Number:	*15902*
NHESP Tracking No.:	*16-36237*

Dear Secretary Beaton:

The Natural Heritage & Endangered Species Program and Fisheries Program of the Massachusetts Division of Fisheries & Wildlife (the Division) have reviewed the *Elm Street Dam Removal* (the Project) and would like to offer the following comments.

MA ENDANGERED SPECIES ACT

Based on the information provided, portions of Project and impoundment drawdown zone are located within *Priority Habitat 718* (PH 718) and *Estimated Habitat 596* (EH 596) as indicated in the *Massachusetts Natural Heritage Atlas* (14th Edition) and therefore the Project is required to submit for review through a direct filing with Division for compliance with the Massachusetts Endangered Species Act (MESA) (M.G.L. c. 131A) and its implementing regulations (321 CMR 10.00). Portions of the Project are mapped as habitat for the Eastern Box Turtle (*Terrapene carolina*), a Special Concern turtle species. Fact sheets for most state-listed rare species can be found on our website (www.mass.gov/nhesp).

The JRWA consulted with the Division in advance of filing and will be incorporating Eastern Box Turtle protective measures during deconstruction and drawdown of the impoundment. We anticipate that these measures will include (a) implementing an onsite protection plan during removal of the dam and, (b) limiting the initiation of the drawdown to be between October 15 and April 15. With these measures incorporated, it appears that the proposed project may qualify for a MESA Habitat Management Exemption (321 CMR 10.14 (15)), although a final determination will not be made until the Division receives a completed MESA filing.

The Division will not render a final decision regarding the MESA until the MEPA review process and its associated public comment period is complete, and until all required application materials have been submitted to the Division. As the MESA review process has not formally initiated, no alteration to the

soil, surface, or vegetation associated with the Project shall occur until the Division has made a final decision pursuant to 321 CMR 10.14 and 321 CMR 10.18.

FISHERIES

Fisheries surveys have been conducted in the main-stem and tributaries of the Jones River and the headwaters at Silver Lake. Coldwater fisheries resources have been identified in three nearby downstream tributaries (First, Second, and Third Brooks), in Furnace Brook immediately upstream of the project site and an unnamed tributary further upstream. The anadromous life history variant of the Eastern Brook Trout, locally known as sea run Brook Trout or Salters, are expected to greatly benefit from this project that will restore habitat connectivity to this important coastal river. Other species that would be expected to benefit include Rainbow Smelt, River Herring and American Eel.

The Southeast District Fisheries Manager has had discussions and sites visits with the Jones River Watershed Association and other interested parties about this project for many years. The removal of the Wapping Road dam started the restoration process on the Jones River and this project will greatly accelerate the restoration of fisheries and wildlife habitats to this coastal river. This is one of the most important head of tide dams to remove in the South Coastal Watershed and will help improve ecological resiliency in the Jones River Watershed.

EIR WAIVER REQUEST

The Division finds that the materials provided as part of the ENF reflect a thorough summary of the history of the site, project goals, and environmental/geotechnical testing, and provide sufficiently detailed plans to understand the Project. Therefore, the Division supports the Proponent's request of a waiver from the submission of a mandatory Environmental Impact Report.

If you have any questions about this letter, please contact Misty-Anne Marold (Senior Endangered Species Review Biologist) at (508) 389-6356. If you have any questions about Fisheries, please contact Steve Hurley (Southeast District Fisheries Manager) at (508) 759-3406. We appreciate the opportunity to comment on this project.

Sincerely,

Thomas W. French

Thomas W. French, Ph.D.
Assistant Director

cc: Alex Mansfield, JRWA
Pine duBois, JRWA
Georgeann Keer, MA Division of Ecological Restoration
Steve Hurley, MA DFW-Southeast District
Kingston Conservation Commission

KINGSTON CONSERVATION COMMISSION

26 Evergreen Street, Kingston, MA 02364

September 20, 2018

Secretary Matthew A. Beaton
Executive Office of Energy and Environmental Affairs, (EEA)
Attention: Erin Flaherty, MEPA Office
100 Cambridge Street, Suite 900
Boston, MA 02114

RE: Submission of EENF for Work to Remove the Elm Street Dam and restore the Jones River in Kingston, Massachusetts. Including formal Request for Waiver of any Requirements for Submission of an EIR
EEA #: 15902

Dear Mr. Beaton,

The Kingston Conservation Commission has reviewed the Expanded Environmental Notification Form (ENF) for Work to Remove the Elm Street Dam and restore the Jones River in Kingston, Massachusetts, including formal Request for a Waiver of any Requirements for Submission of an Environmental Impact Report (EIR) submitted by the Jones River Watershed Association (JRWA) on behalf of the Town of Kingston. As a result of this review the Kingston Conservation offers the following comments in support of JRWA Request for Waiver:

1. The Kingston Conservation Commission is of the opinion that there are no viable alternatives to the proposed project. The dam originally supported historic mechanically driven mill operations, and more recently, until approximately 1950, as a mechanical pump for the Town of Kingston's water supply. Currently the dam serves no municipal function.
2. JRWA has a long history of tirelessly advocating for the health of the Jones River and has an intimate knowledge of the entire watershed. This knowledge and advocacy is clearly demonstrated in the EENF.
3. The Kingston Conservation Commission has been an active involved partner and has been extensively involved and continuously updated throughout the entire long-term planning process for this project.

KINGSTON CONSERVATION COMMISSION

26 Evergreen Street, Kingston, MA 02364

4. The EENF provides a comprehensive review and evaluation of historical use of the area, current conditions, site restoration and future site conditions. Significant engineering and scientific analyses have been completed to demonstrate that the project does not cause damage to the environment, but rather serves to improve the aquatic environment of the area.
5. As part of the long-term planning process, JRWA participated in the scoping of the MassDOT Elm Street Bridge Replacement project and subsequent construction in 2013-2014. Input from JRWA into the bridge design provided measures that were intended to be resilient to eventual failure or removal of the dam. JRWA, in evaluating the design of the dam removal, identified a discrepancy in the construction of the northwest corner of the bridge and has incorporated corrective measures into the current proposal.
6. JRWA, in partnership with the Town of Kingston has recently participated in many projects to improve water quality entering the Jones River, including the construction of BMPs on Brook Street; BMPs on Landing Road; Rain gardens on Delano Avenue; and currently, a water quality assessment study in the vicinity of the Elm Street Dam.
7. JRWA has consistently and reliably provided well designed projects that include extensive mitigation and protection of resource areas. In approximately 2010 JRWA designed, permitted and oversaw the removal of a dam located at Wapping Road in Kingston. The completed project resulted in opening up 3.7 miles of fish passage, water quality improvements and a restoration of the natural and ecological function of the area.

The Kingston Conservation Commission fully supports JRWA request from that the Secretary consider and issue a Waiver of the requirements for an EIR as the EENF provides ample evidence that that the proposed Dam Removal is a proactive habitat restoration project that will improve and benefit public safety and will not result in a loss of flood storage capacity.

Thank you for your consideration of this request. If you have any questions in this matter, please do not hesitate to contact the conservation agent Mary Guiney.

Sincerely,

Jim Parker
Chairperson
Kingston Conservation Commission

Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

Southeast Regional Office • 20 Riverside Drive, Lakeville MA 02347 • 508-946-2700

Charles D. Baker
Governor

Karyn E. Polito
Lieutenant Governor

Matthew A. Beaton
Secretary

Martin Suuberg
Commissioner

September 20, 2018

Mathew A. Beaton,
Secretary of Environment and Energy
Executive Office of Environmental Affairs
ATTN: MEPA Office
100 Cambridge Street, Suite 900
Boston, MA 02114

RE: ENF Review EOEEA #15902.
KINGSTON. Elm Street Dam Removal at
22 Elm Street

Dear Secretary Beaton,

The Southeast Regional Office of the Department of Environmental Protection (MassDEP) has reviewed the Environmental Notification Form (ENF) for the Elm Street Dam Removal at 22 Elm Street, Kingston, Massachusetts (EOEEA # 15902). The Project Proponent provides the following information for the Project:

This project is for removal of the Elm Street Dam spillway, fish ladder, and associated elements. This includes focused tasks that physically remove dam elements, protect the associated infrastructure, manage impounded sediments, address historical recognition of site, and rebuild/restore the natural infrastructure along the river. The project wil reestablish a free-flowing natural river. This is intended to achieve two primary goals: 1) restore habitat for river herring, American eel, rainbow smelt, American shad, and other species, and 2) provide resilience benefits by eliminating an obsolete dam and removing the flooding and flood risks associated with that dam. This project will increase the amount of habitat accessible to diadromous species through a head-of-tide dam removal in one of the highest priority watersheds in the Northeast, as identified by the NOAA Restoration Center's regional fish passage prioritization. The project connects access to 4 miles of mainstem habitat, plus an additional 5 miles of tributary. For river herring this comes in the form of improved access relative to the existing fish ladder. For other species that could not pass the ladder, this represents access that has been blocked for almost 400 years. A detailed description of the project elements and the construction approach is provided in Appendix D; Basis of Design (BOD) Report. Each element is briefly described in the following text.

Bureau of Water Resources Comments

Wetlands Comments. The proposed dam removal Project is subject to review under the Wetlands Protection Act, M.G.L. c. 131 § 40. The Proponent must file a Notice of Intent (NOI) and receive an Order of Conditions from the Kingston Conservation Commission before any work within Areas Subject to Jurisdiction commences. The EENF describes proposed alteration within the

following Areas Subject to Jurisdiction: Land under Water (LUW 310 CMR 10.56), Bordering Vegetated Wetlands (BVW 310 CMR 10.55), Bordering Land Subject to Flooding (BLSF 310 CMR 10.57), Riverfront Area (RA 310 CMR 10.58), Bank (310 CMR 10.54), and the 100-foot Buffer Zone. The dewatering of the impoundment will convert approximately 120,000 square feet of Land Under Water to Bordering Vegetated Wetland. It is expected that the dam removal will be accomplished in accordance with MassDEP's December 2007 Guidance entitled: "Dam Removal and the Wetland Regulations" as the guidance is intended to encourage environmental improvements to rivers and streams resulting from dam removal.

A 401 Water Quality Certification application is required per 314 CMR 9.04(12) and is subject to the Criteria for Evaluation of Applications for the Discharge of Dredged or Fill Material in 314 CMR 9.06, subject to the criteria for evaluation of applications for dredging and dredged material disposal at 314 CMR 9.07, and the requirements of 314 CMR 4.00. An alternatives analysis that demonstrates measures taken to avoid, minimize and mitigate for the dredging and placement of fill must be submitted with the 401 Water Quality Certification Application.

The Wetlands Program indicates that the Project may qualify as an Ecological Restoration Project as defined in the Massachusetts Wetlands Protection Act regulations at 310 CMR 10.04 as "a Project whose primary purpose is to restore or otherwise improve the natural capacity of a Resource Area(s) to protect and sustain the interests identified in M.G.L. c. 131 § 40, when such interests have been degraded or destroyed by anthropogenic influences". 310 CMR 10.11 outlines the actions required before submitting a Notice of Intent for an ecological restoration Project. Form 3A-Notice of Intent for an Ecological Restoration Project should be used for the application to the Kingston Conservation Commission.

It is anticipated that the Project will result in many environmental benefits: restoring natural river processes and ecological functions, reducing local flooding risks and restoring habitat for native and migrating aquatic species.

Waterways Comments. Based on the review of the ENF, MassDEP Waterways data-base, various aerial photographs and on-site observations, the Waterways Program has determined that this portion of the Jones River is likely subject to Chapter 91 jurisdiction as a non-tidal river pursuant the Waterways Regulations at 310 CMR 9.04. Following the dam removal, the proposed construction of rip bank armor and rock riffle will require the submittal of a Chapter 91 License Application. The Waterways Program has determined that the Project would be classified as a water-dependent use pursuant to the Waterways Regulations at 310 CMR 9.12. The ENF indicates that the Project will also require the submittal of a 401 Water Quality Certification (WQC) application. The Proponent may choose to file a BRP WW26 Combined Application for Chapter 91 and WQC.

The Waterway Program has performed a cursory review of its data base and found no prior Chapter 91 authorization for the existing dam. In the review of the Chapter 91 Permit Application, the Proponent will be requested to conduct additional research to confirm that no licenses or legislative grants have been issued for the structure.

In accordance with the Waterways Regulations at 310 CMR 9.40(2), the design and timing of the dredging shall be such to as to avoid interference with anadromous/catadromous fish runs. Work shall not be performed between March 15th to June 15th of any year, except upon a determination of the Division of Marine Fisheries to waive this time of year restriction.

Bureau of Waste Site Cleanup Comments

ENF # 15902 – Based upon the information provided, the Bureau of Waste Site Cleanup (BWSC) searched its databases for disposal sites and release notifications that have occurred at or might impact the proposed Project area. A disposal site is a location where there has been a release to the environment of oil and/or hazardous material that is regulated under M.G.L. c. 21E, and the Massachusetts Contingency Plan [MCP – 310 CMR 40.0000].

There are no listed MCP disposal sites located at or in the vicinity of the site that would appear to impact the proposed Project area. Interested parties may view a map showing the location of BWSC disposal sites using the MassGIS data viewer (Oliver) at: http://maps.massgis.state.ma.us/map_ol/oliver.php Under "Available Data Layers" select "Regulated Areas", and then "DEP Tier Classified 21E Sites". MCP reports and the compliance status of specific disposal sites may be viewed using the BWSC Waste Sites/Reportable Release Lookup at: https://eeaonline.eea.state.ma.us/portal#!/search/wastesite

The Project Proponent is advised that if oil and/or hazardous material are identified during the implementation of this Project, notification pursuant to the Massachusetts Contingency Plan (310 CMR 40.0000) must be made to MassDEP, if necessary. A Licensed Site Professional (LSP) should be retained to determine if notification is required and, if need be, to render appropriate opinions. The LSP may evaluate whether risk reduction measures are necessary if contamination is present. The BWSC may be contacted for guidance if questions arise regarding cleanup.

Bureau of Air and Waste Comments:

Air Quality. Construction and operation activities shall not cause or contribute to a condition of air pollution due to dust, odor or noise. To determine the appropriate requirements please refer to:

- 310 CMR 7.09 Dust, Odor, Construction, and Demolition
- 310 CMR 7.10 Noise

Construction-Related Measures. MassDEP requests that the Proponent use construction equipment with engines manufactured to Tier 4 federal emission standards, which are the most stringent emission standards currently available for off-road engines. If a piece of equipment is not available in the Tier 4 configuration, then the Proponent should use construction equipment that has been retrofitted with the best available after-engine emission control technology, such as oxidation catalysts or diesel particulate filters, to reduce exhaust emissions. The Proponent should provide a list of the engines, their emission tiers, and, if applicable, the best available control technology installed on each piece in the subsequent environmental filing.

Massachusetts Idling Regulations. MassDEP requests that the Proponent state specifically in the subsequent environmental filing how it plans to prohibit the excessive idling during the construction period. Typical methods of reducing idling include driver training, periodic inspections by site supervisors, and posting signage. In addition, to ensure compliance with this regulation once the Project is occupied, MassDEP requests that the Proponent establish permanent signage limiting idling to five minutes or less at the completed Project.

Solid Waste Comments. As a result of its review of the Environmental Notification Form (ENF) for the Elm Street Dam Removal Project in Kingston EEA No. 15902 (Project or Site), the Massachusetts Department of Environmental Protection (MassDEP) Solid Waste Management

Section (Solid Waste) is providing the following comments in accordance with Massachusetts Solid Waste regulations, 310 CMR 16.00 & 310 CMR 19.000 ("Solid Waste Regulations"):

The ENF indicates that excavation (i.e. dredging) activities will be performed as part of the Project. The proposed dredge foot print is approximately 60 feet in length, 80 feet wide and 3.5 feet in depth. The ENF states that "about 300 cubic yards of mixed rubble, debris is present under the Elm Street bridge in the existing river channel" and the Proponent has indicated that these materials and quantities of sediments will be excavated from this area and where feasible, be reused as grading material in upland areas outside the river channel.

MassDEP Comment:

- All "mixed rubble" and "debris" at the Site that is determined to be solid waste (e.g., construction and demolition waste) and/or recyclable material (e.g., metal, asphalt, brick, and concrete) shall be disposed, recycled, and/or otherwise handled in accordance with the Solid Waste Regulations including 310 CMR 19.017: Waste Bans.

- In particular, Asphalt, brick and concrete (ABC) rubble, such as the rubble generated by the demolition of buildings or other structures must be handled in accordance with the Solid Waste regulations. These regulations allow, and MassDEP encourages, the recycling/reuse of ABC rubble. The Proponent should refer to MassDEP's Information Sheet, entitled " Using or Processing Asphalt Pavement, Brick and Concrete Rubble, Updated February 27, 2017 ", that answers commonly asked questions about ABC rubble and identifies the provisions of the solid waste regulations that pertain to recycling/reusing ABC rubble. This policy can be found on-line at the MassDEP website: https://www.mass.gov/files/documents/2018/03/19/abc-rubble.pdf

- The use of dredge (i.e. dredged sediments) as grading materials in upland areas is regulated under 314 CMR 9.00 401 Water Quality Certification regulations. The point of contact for this program is David Wong of Wetlands/Wastewater Section in Boston at (617) 292-5897. The Proponent should contact Mr. Wong to discuss the reuse of the sediments in the upland areas proposed in the ENF.

Please contact Mark Dakers at (508) 946-2847 with any questions pertaining to these comments and/or the Solid Waste regulations.

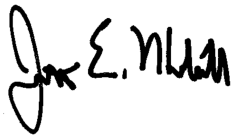
Proposed s.61 Findings

The "Certificate of the Secretary of Energy and Environmental Affairs on the Environmental Notification Form" may indicate that this Project requires further MEPA review and the preparation of an Environmental Impact Report. Pursuant to MEPA Regulations 301 CMR 11.12(5)(d), the Proponent will prepare Proposed Section 61 Findings to be included in the EIR in a separate chapter updating and summarizing proposed mitigation measures. In accordance with 301 CMR 11.07(6)(k), this chapter should also include separate updated draft Section 61 Findings for each State agency that will issue permits for the Project. The draft Section 61 Findings should contain clear commitments to implement mitigation measures, estimate the individual costs of each proposed measure, identify the parties responsible for implementation, and contain a schedule for implementation.

The MassDEP Southeast Regional Office appreciates the opportunity to comment on this proposed Project. If you have any questions regarding these comments, please contact George Zoto at (508) 946-2820.

Request for Waiver of Mandatory EIR
MassDEP supports the request for a Waiver of the Mandatory EIR.

Very truly yours,



Jonathan E. Hobill,
Regional Engineer,
Bureau of Water Resources

JH/GZ

Cc: DEP/SERO

ATTN: Millie Garcia-Serrano, Regional Director
David Johnston, Deputy Regional Director, BWR
Maria Pinaud, Deputy Regional Director, BAW
Gerard Martin, Deputy Regional Director, BWSC
Jennifer Viveiros, Deputy Regional Director, ADMIN
Jim Mahala, Chief, Wetlands and Waterways, BWR
Bernadette DeBlander, Wetlands and Waterways, BWR
David Hill, Wetlands and Waterways, BWR
Mark Dakers, Chief, Solid Waste, BAW
Allen Hemberger, Site Management, BWSC

Massachusetts Bays
NATIONAL ESTUARY PROGRAM

251 Causeway Street, Suite 800
Boston MA 02114
www.massbays.org

September 21, 2018

Secretary Matthew A. Beaton
Executive Office of Environmental Affairs
Attention: MEPA Office
100 Cambridge Street Suite 900
Boston, MA 02114

RE: MEPA File #: 15902. Elm Street Dam Removal Project

Dear Secretary Beaton,

MassBays South Shore Region supports the request for a waiver of an Environmental Impact Report (EIR) under 301 CMR 11.11(5) for the removal of the Elm Street Dam and the associated restoration of the Jones River to restore anadromous fish passage and aquatic and wildlife habitat. The removal of the Elm Street Dam is a crucial step in achieving that goal.

According to 301 CMR, the Secretary may waive an EIR if preparation of the EIR would result in "undue hardship" to the project proponent or would "not serve to avoid or minimize damage to the environment" as described under 301 CMR 11.11(1). When and if mandatory EIR review thresholds have been exceeded, the Secretary may grant a waiver of the EIR as described under 301 CMR 11.11(2) based on determination that preparation of an EIR would not provide increased benefit to the project and the environment. Based upon scientific and engineering analysis, an EIR for the removal of this dam would not serve to avoid or minimize damage to the environment, nor would it provide increased benefit to the project and the environment for the following reasons:

Determinations for an EIR Waiver are based on whether "the project is likely to cause no damage to the environment" and "ample and unconstrained infrastructure facilities exist to support the project" (301 CMR 11.11(3)). Dam removal restores natural ecological function and maximizes environmental benefit. This waiver request is supported by the extensive data collection and analysis of environmental impacts that have been conducted in support of this project to date. These analyses support the environmental benefit of the project, and have allowed for the development of strategies to minimize and avoid negative environmental impacts.

MassBays has assisted with multiple dam removals on the South Shore, with positive results like the return of native anadromous fish, improved spawning habitat for fluvial fish, improved historic recognition of the site, and improved site safety. Removal of the Elm Street Dam will result in similar benefits.

A number of public and private meetings have already been held in which interested parties have been invited to comment, so public interests are being addressed and incorporated in the project development process. We urge you to favorably consider this waiver request.

Sincerely,

Sara Grady

Sara P. Grady, NSRWA Watershed Ecologist & MassBays South Shore Regional Coordinator

NSRWA
The North & South Rivers Watershed Association is a regional partner of the
Massachusetts Bays National Estuary Program (MassBays)
MassBays is hosted by the Massachusetts Executive Office of Energy and Environment's Office of Coastal Zone Management and funded by the U.S. Environmental Protection Agency

dcr
Massachusetts

September 21, 2018

Secretary Matthew A. Beaton
Executive Office of Energy and Environmental Affairs
MEPA Office Attn: Erin Flaherty
100 Cambridge Street, Suite 900
Boston, Massachusetts 02114

RE: MEPA File No. 15902, Elm Street Dam Removal, Kingston

Dear Secretary Beaton:

The Department of Conservation and Recreation ("DCR") Office of Dam Safety ("ODS") has reviewed the Expanded Environmental Notification Form ("EENF") for the Elm Street Dam Removal project (the "Project") located in Kingston, submitted by the Jones River Watershed Association on behalf of the Town of Kingston (the "Proponent").

Background
ODS notes that Elm Street Dam is classified as a "Significant Hazard Potential" dam in Fair condition. Dams are deemed to be of Significant Hazard Potential where dam failure may cause loss of life and damage to home(s), industrial or commercial facilities, secondary highway(s), or railroad(s) or cause interruption of use or service of relatively important facilities.

Project Description
As described in the EENF, the Proponent proposes to demolish the dam's spillway and stilling basin and to construct a rock-armor channel through the Project site. The stated Project benefits are: restoration of river continuity and fish passage; reduction of upstream and downstream flooding risks; and elimination of ongoing maintenance costs and liabilities associated with an aging dam.

This dam removal Project will require a Chapter 253 dam safety permit. The permit application must be submitted to ODS for review. ODS staff will communicate with the Proponent's design engineer as part of the permit process to ensure all required documentation is provided. After receipt of all required technical information demonstrating compliance with ODS regulations, a Chapter 253 dam safety permit will be processed and issued by ODS.

Based on review of currently available information, implementation of the Project design will result in improvement over existing site conditions. This Project appears to be both in the interest of public safety and in compliance with dam safety regulations. ODS is available to provide additional guidance through the permitting process.

DCR appreciates the opportunity to comment on this Project. Please contact David Ouellette at (617) 626-1347 with any questions or to request additional information or coordination with the Office of Dam Safety.

Sincerely,

Leo Roy
Commissioner

cc: David Ouellette, Office of Dam Safety
William Salomaa, Dam Safety Director
Nat Tipton, MEPA Review Coordinator

Commonwealth of Massachusetts

Division of Marine Fisheries

251 Causeway Street, Suite 400
Boston, Massachusetts 02114
(617) 626-1520
fax (617) 626-1509

David E. Pierce, Ph.D.
Director

Charles D. Baker
Governor
Karyn E. Polito
Lieutenant Governor
Matthew A. Beaton
Secretary
Ronald Amidon
Commissioner
Mary-Lee King
Deputy Commissioner

September 21, 2018

Secretary Matthew A. Beaton
Executive Office of Energy and Environmental Affairs (EEA)
Attn: MEPA Office
Erin Flaherty, EEA No. 15902
100 Cambridge Street, Suite 900
Boston, MA 02114

Dear Secretary Beaton:

The Division of Marine Fisheries (MA DMF) has reviewed the Expanded Environmental Notification Form (EENF) by the Jones River Watershed Association (JRWA) for the proposed Elm Street Dam Removal Project in the Town of Kingston. The project consists of the removal of the Elm Street Dam spillway, fish ladder, and associated components. The project will reestablish a free-flowing river and has two primary goals: restoration of diadromous fish habitat and elimination of flood risks associated with an obsolete dam structure. Existing marine fisheries resources and potential project impacts are outlined in the following paragraphs.

The project site currently provides habitat for a variety of diadromous fish species. The Jones River supports populations of alewife (*Alosa pseudoharengus*), blueback herring (*Alosa aestivalis*), rainbow smelt (*Osmerus mordax*), white perch (*Morone americana*), Atlantic tomcod (*Microgadus tomcod*), American shad (*Alosa sapidissima*), and American eel (*Anguilla rostrata*) [1]. Rainbow smelt spawning habitat has been documented by MA DMF biologists in the streambed below the dam and the Kingston Water Department Building (KWDB). Atlantic tomcod spawning habitat is located further downstream at the salt water wedge and is unlikely to be impacted by the proposed construction activity.

MA DMF offers the following comments for your consideration:

- We have reviewed the project related to fish passage and the proposed construction riffle and recommend that the project revisits these design components. A 145 foot riffle is proposed at the dam removal site with two sections of different slopes (0.25 and 1.9%). We are concerned that the focus on these design features has been only on fish passage and compatibility with the existing bridge abutments, with not enough attention to the important project benefit of improved diadromous fish spawning substrate. Specifically, the downstream section of the proposed riffle has a 1.9% slope that corresponds to median water velocity that is at the top end of suitable rainbow smelt spawning habitat and at higher river flows will cause water velocity at the top end of smelt passage criteria. We recognize that forecasted tidal influence will soften these water velocities at higher than average tidal amplitudes. We expect that some design improvements can be made to better integrate diadromous fish passage and spawning habitat requirements. One significant benefit of this dam removal project is the opportunity to create spawning substrate for several diadromous fish species upstream of

the Elm Street Dam. We look forward to working with the project proponent to assist with these design improvements.

- A time of year (TOY) restriction is recommended from **March 1 to July 15** (Spring) and **September 1 to November 15** (Fall) for all in-water work including installation of silt-containment structures, demolition and removal of the dam, stilling basin and weir, fish ladder removal, sediment removal, armoring of the KWDB, rip-rap armoring of the downstream channel, closure of the existing headrace, drawdown of the upstream impoundment, and other associated activities. For the Fall TOY restriction period, in-water work could occur if silt-containment structures are installed prior to the start of this TOY period (i.e., before September 1). In addition, the EENF (p. 11) describes diverting flow around the work site via a temporary diversion conduit. The temporary diversion conduit should be in place prior to the Fall TOY and water should be diverted downstream via gravity (no pumping) to protect down-migrating juvenile river herring and adult eels.

Questions regarding this review may be directed to John Logan in our New Bedford office at (508) 742-9722.

Sincerely,

David E. Pierce
Director

cc: Kingston Conservation Commission
Alex Mansfield, JRWA
Alison Verkade, NMFS
Robert Boeri, CZM
Ed Reiner, EPA
Richard Lehan, DFG
Brad Chase, John Sheppard, Kathryn Ford, Pooja Potti, DMF

References

1. Evans NT, Ford KH, Chase BC, Sheppard J. Recommended Time of Year Restrictions (TOYs) for Coastal Alteration Projects to Protect Marine Fisheries Resources in Massachusetts. Massachusetts Division of Marine Fisheries Technical Report, TR-47. 2011;

DP/BC/JS/JL/sd