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March 13, 2019

FINAL RECORD OF DECISION

PROJECT NAME	: Manhan River Restoration Project
PROJECT MUNICIPALITY	: Southampton
PROJECT WATERSHED	: Manhan River
EEA NUMBER	: 15971
PROJECT PROPONENT	: Glenn West
DATE NOTICED IN MONITOR	: February 20, 2019

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 consists of removing the Lyman Pond Dam (Dam) spillway that spans the Satucket River in Southampton and the relocation of a water supply main from the river bed. The water main is owned by the Town of Southampton (Town). The Dam is privately-owned and classified as a Significant Hazard in Unsafe condition by the Department of Conservation and Recreation's (DCR) Office of Dam Safety (ODS). In 2015, the ODS issued the private owner of Lyman Pond Dam a letter of noncompliance and the Proponent cut several outlets into the slab of the Dam to provide additional flood flow capacity. The intent of the outlets was to improve protection of adjacent infrastructure. The change mobilized sediments from the impoundment and lowered the impoundment. According to the EENF, the Dam continues to block fish passage during most flow conditions and impounds the Manhan River under moderate and high flows. The Division of Ecological Restoration (DER) has designated the project a "Priority Project" and has worked with the Proponent on its design.

According to the EENF project goals include:

- Eliminate safety concerns and decommission aging and unsafe infrastructure;
- Improve protection of existing infrastructure through bank protection;
- Restore natural river processes, ecological functions (e.g. sediment and flow regimes), habitat and water quality;
- Provide upstream/downstream fish passage; and
- Reduce local flooding risks.

Specifically, the project involves the removal of the full vertical extent (approximately 80 linear feet) of the Lyman Pond Dam spillway, relocation of the water line, and the addition of bank protection to protect infrastructure. The Dam abutments and adjacent first 'bay' sections of the spillway on each side of the Dam (approximately 5-foot wide sections) will be preserved. The remaining abutments and spillway sections will be repaired as needed, filled with rubble from the Dam and/or riprap, and covered with a buttress of excavated sediment. The lower portions of the channel slopes will be protected with a 2-foot thick layer of rubble fill and/or riprap and keyed into the channel bottom. Between the Dam and the College Road (Route 10) bridge, the channel thalweg will be shifted to the left (north) side of the former impoundment and stabilized with stones to deflect flow away from an existing building (Sheldon's Ice Cream). The west and south faces of the building will be backfilled with excavated sediment and graded into a flat area before sloping down to the new channel.

The proposed design includes excavation of approximately 1,100 cubic yards (cy) of sediment to create the channel and placement of approximately 600 cy of stone to protect channel slopes (approximately 60 cy of which will be obtained from the rubble fill within the Dam; the remainder will be from offsite).

The EENF indicates that the only known utility that could potentially be impacted by Dam removal is the buried water main line which crosses the river approximately 20 feet upstream of the College Highway bridge. Prior to removing the spillway, the water main will be relocated to the College Highway bridge. The bridge has hangers necessary to accommodate the pipe.

Project Site

The project site is located along a stretch of the Manhan River on a 3.67-acre site off of College Highway (Route 10) near Moose Brook Road. Lyman Pond Dam is located on the Manhan River approximately 280 feet downstream of the College Highway bridge and 12.5 miles upstream from the confluence with the Connecticut River. The Dam is classified by DCR/ODS as a Small Size, Significant (Class II) Hazard Potential Structure in Unsafe condition.

The Lyman Pond Dam consists of a sloped 5- to 6-inch thick reinforced concrete slab supported by 12-inch thick reinforced buttresses spaced approximately 7 feet apart on center. The upstream side of the approach slab is supported by a stone rubble wall approximately 4 feet in height. The Dam is approximately 90 feet long and 10 feet high. The Proponent created the outlets (4 feet wide by 6 feet long) to increase flow capacity and protect adjacent infrastructure.

The project site is within the Lockville Historic District, listed in the State and National Registers of Historic Places, and may contain remnants of former mills and dams. The Dam was constructed for manufacturing in the mid-1800s and was part of the New Haven and Northampton Canal and lock system.

The Manhan River system supports a number of resident and migratory fish including wild Eastern brook trout (*Salvelinus fontinalis*), American eel (*Anguilla rostrata*), and Atlantic salmon (*Salmo salar*).

The project includes areas mapped as *Estimated and Priority Habitat of Rare Species* according to the Massachusetts Division of Fisheries and Wildlife (DFW)'s Natural Heritage and Endangered Species Program's (NHESP) 14th edition of the Massachusetts Natural Heritage Atlas. Portions of the site are mapped habitat for the Creeper (*Strophitus undulatus*, mussel) and the Wood Turtle (*Glyptemys insculpta*), two species state-listed as (Special Concern).

Environmental Impacts and Mitigation Measures

The project is proposed as 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 impacts and conversion of wetland resource areas are unavoidable. The project will result in approximately 1.78 acres of temporary land alteration associated with construction access and staging. The removal of the spillway will convert 2.0 acres from Land Under Water (LUW) to Bordering Vegetated Wetlands (BVW). The project is expected to impact 3,000 square feet (sf) of Bordering Land Subject to Flooding (BLSF), 17,424 sf of Riverfront Area, 460 linear feet (lf) of Fish Runs, and 690 lf of Bank. Approximately 1,100 cy of sediment will be dredged between the Dam and the College Street bridge. The project will impact area mapped as Estimated and Priority Habitat, impact historic resources, and potentially impact archaeological resources.

Measures to avoid, minimize and mitigate Damage to the Environment include use of sedimentation and erosion control measures, including stabilized construction access ways and ramps, swamp mats and turbidity curtains; restoration of resource areas impacted by construction activities; Invasive species management of non-native common reed (*Phragmites*) and Japanese knotweed leading up to and following construction; and observance of time-of-year (TOY) restrictions during construction.

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. 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), a Dam Safety Permit from DCR/ODS, and a Permit to Access a State Highway from the Massachusetts Department of Transportation (MassDOT). Although not indicated in the

EENF, the project will also require a Conservation and Management Permit (CMP) from NHESP. It also is subject to the MEPA Greenhouse Gas (GHG) Emissions Policy and Protocol (GHG Policy).

The project will require Section 106 Historical Review from the Massachusetts Historical Commission (MHC) and a special use permit from the Massachusetts Board of Underwater Archaeological Resources (BUAR) for archaeological monitoring within the river.

The project will require an Order of Conditions (OOC) from the Southampton 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 will be funded in part by Financial Assistance 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 that term is defined in the MEPA regulations.

Waiver Request

In accordance with Section 11.05(7) of the MEPA regulations, the Proponent submitted an EENF with a request that I waive the requirement for a mandatory EIR. The 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. Comment letters were generally supportive of the Waiver request.

Standards for All Waivers

The MEPA regulations at 301 CMR 11.11(1) state that I may waive any provision or requirement in 301 CMR 11.00 not specifically required by MEPA and may impose appropriate and relevant conditions or restrictions, provided that I find that strict compliance with the provision or requirement would:

(a) Result in an undue hardship for the Proponent, unless based on delay in compliance by the Proponent; and,
(b) Not serve to avoid or minimize Damage to the Environment.

Determinations for an EIR Waiver

The MEPA regulations at 301 CMR 11.11(3) state that, in the case of a waiver of a mandatory EIR review threshold, I shall at a minimum base the finding required in accordance with 301 CMR 11.11(1)(b) stated above on a determination that:

(a) The project is likely to cause no Damage to the Environment; and,
(b) Ample and unconstrained infrastructure facilities and services exist to support those aspects of the project within subject matter jurisdiction.

Findings

Based upon the information submitted by the Proponent, consultation with the relevant State Agencies, and review of comment letters on the EENF, I find that the Waiver request has merit and that the Proponent has demonstrated that the proposed project can meet the standards for all waivers at 301 CMR 11.11(1). I find that strict compliance with the requirement to prepare a mandatory EIR for the project would result in undue hardship for the Proponent.

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 EENF adequately demonstrates that environmental impacts will be avoided and, where impacts cannot be avoided, that they will be minimized and mitigated. 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:

   - Construction activities will be scheduled outside of any TOY restrictions to avoid or minimize potential impacts to diadromous fish species.
   - Invasive species management of non-native common reed (*Phragmites*) and Japanese knotweed leading up to and following construction.
   - In stream construction shall cease during high flow events to minimize river hazards and to avoid flood-induced erosion.
   - Erosion and sedimentation controls, including stabilized construction access ways and ramps, swamp mats and turbidity curtains shall be utilized.

   The project will require a c. 91 Permit and 401 WQC from MassDEP, a Dam Safety Permit from DCR/ODS, a Permit to Access a State Highway MassDOT, a CMP from NHESP, Section 106 Historical Review from MHC, and a special use permit from BUAR for archaeological monitoring within the river. The project will require an Order of Conditions from the Southampton Conservation Commission. The Commission will review the project for consistency with the Wetlands Protection Act, Wetlands Regulations (301 CMR 10.00) and associated performance standards. The Proponent should continue to collaborate with State Agencies during the permitting process.

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. The restoration of riverine habitat and associated wetlands will improve the resiliency of the river to the effects

of climate change and its ability to mitigate storm and flood risks.

Conclusion

Based on these findings, I have determined that the Waiver request has merit. A Draft Record of Decision (DROD) was issued on February 15, 2019 and was published in the Environmental Monitor on February 20, 2019 in accordance with 301 CMR 11.15(2), which began the public comment period. The 14-day public comment period concluded on March 6, 2019. Accordingly, I hereby **grant a Waiver** from the requirement to prepare a mandatory EIR.

March 13, 2019
Date

Matthew A. Beaton

Comments received on the FROD:

None.

MAB/ACC/acc