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December 16, 2009

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

PROJECT NAME : Upper Hathaway Dam Removal  
 PROJECT MUNICIPALITY : Dalton  
 PROJECT WATERSHED : Housatonic River  
 EEA NUMBER : 14493  
 PROJECT PROPONENT : City of Pittsfield  
 DATE NOTICED IN MONITOR : October 7, 2009

Pursuant to the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-621) and Section 11.06 of the MEPA regulations (301 CMR 11.00), I hereby determine that this project **does not require** the preparation of an Environmental Impact Report (EIR). I have issued separately a Draft Record of Decision (DROD) proposing to grant a waiver from the requirement to prepare a mandatory Environmental Impact Report (EIR) for the project. The DROD will be noticed in the December 23, 2009 issue of the *Environmental Monitor* for a 14-day public comment period after which I will confirm, amend or reconsider the waiver decision. If the Full Waiver is not approved in a Final Record of Decision (FROD), this Certificate on the Expanded ENF will be re-issued with a Scope for an EIR.

Project Description

The proposed project as described in the Expanded Environmental Notification Form (ENF) consists of removal of the Upper Hathaway Dam located at Washington Mountain Road in Dalton, which is within the Housatonic River watershed. The project is being undertaken by the City of Pittsfield (the Proponent) as part of a broader stream restoration effort to restore connectivity between the Housatonic River and the upper reaches of Hathaway Brook. The dam currently impounds the Hathaway Reservoir, which was used historically for water supply but has been abandoned since the 1950's. The City proposes to remove the Upper Hathaway Dam in

conjunction with removal of the Lower Hathaway Dam, which previously underwent MEPA review. The removal of the dams will improve aquatic connectivity for brook trout and provide other ecological benefits including restoration of habitat and natural stream flow.

The project will result in alterations to Land Under Water, Bank, Riverfront Area, and Buffer Zone as a result of dam removal, sediment excavation, and upland habitat and stream restoration activities. Approximately 4,500 cubic yards of sediment will be excavated of which 1,500 cubic yards will be reused on-site and the remainder transported off-site for disposal.

### MEPA Background

The City of Pittsfield submitted a Notice of Project Change (NPC) for the Ashley Lake Dam Repair Project (EEA# 14295) which proposed removal of the Lower Hathaway Dam as mitigation for wetlands impacts associated with the repair of Ashley Lake dam. A Certificate on the NPC was issued April 10, 2009 with a determination that the project did not require an EIR. The NPC noted that the Upper Hathaway Dam would be the subject of a separate MEPA filing. The Certificate on the NPC required that the filing for the Upper Hathaway Dam removal should address the cumulative impacts of both dam removals. The Expanded ENF includes information on cumulative impacts as required.

In addition to removing the Lower Hathaway Dam as mitigation for the Ashley Lake Dam Repair project, the City is proposing to remove the Sackett Brook Dam as mitigation for impacts associated with the Pittsfield Municipal Airport Improvements Project (EEA# 12480). As noted in the Certificate on the NPC for the airfield project, dated October 23, 2009, MassDEP's Variance decision required restoration of Sackett Brook as mitigation, or if that is infeasible, removal of the Upper Hathaway Dam. The City is conducting sediment testing to evaluate the feasibility of Sackett Brook restoration plans and is negotiating an agreement with Mass Audubon as a partner to implement the dam removal. At this time, the City is not proposing the Upper Hathaway Dam removal as a mitigation project.

### Permits and Jurisdiction

The proposed project is undergoing environmental review and is subject to requirements for a mandatory EIR pursuant to Section 11.03(3)(a)(4) of the MEPA regulations because it will result in structural alteration of an existing dam that causes a decrease in impoundment capacity. The project is also under review pursuant to Section 11.03(3)(b)(f) of the regulations because it will result in alteration of one-half or more acres of wetland resource areas. As noted above, the Proponent is seeking a waiver from the requirement to prepare an EIR in accordance with 301 CMR 11.11.

The project requires a 401 Water Quality Certification from the Massachusetts Department of Environmental Protection (MassDEP) and an Order of Conditions from the Dalton Conservation Commission (and, on appeal only, a Superseding Order from MassDEP). The project requires a Section 404 Permit from the U.S. Army Corps of Engineers (USACOE) and a National Pollutant Discharge Elimination System (NDPES) general stormwater permit for construction activities from the U.S. Environmental Protection Agency. The Department of

Conservation and Recreation (DCR) has determined that the Upper Hathaway and Lower Hathaway Dams are Non-jurisdictional and that the proposed dam removal project does not require an Office of Dam Safety Chapter 253 Dam Safety Permit (as confirmed in a letter from DCR to the Proponent, dated November 23,2009).

The City has applied for financial assistance from the Commonwealth through the Housatonic Natural Resource Damages (NRD) grant program<sup>1</sup>. Therefore, MEPA jurisdiction is broad and extends to all aspects of the project that may cause Damage to the Environment as defined in the MEPA regulations.

#### Review of the Expanded ENF

The Expanded ENF includes a description of the proposed dam removal as well as details of the stream and habitat restoration design. The Expanded ENF also discusses two alternatives; the no action alternative and repair of the dam. Since the condition of the dam has deteriorated significantly and is no longer in use, and because repair would result in wetlands impacts without any significant environmental benefits, the removal of the dam was selected as the preferred option. A description of existing environmental conditions is provided in the Expanded ENF along with an analysis of project-related impacts, and mitigation plans that address erosion and sedimentation and control of invasive species.

During the MEPA site visit and public consultation, there was considerable discussion about potential erosion and sedimentation issues and post-construction monitoring plans. In addition, the City indicated it had been unable to secure easements necessary for a portion of the access road and proposed an alternative route for vehicle and equipment access. The public comment period was extended to allow for distribution and review of supplemental information, which included: 1) revised drawings with new access road design and staging areas, an updated planting plan, and revised grading plan for construction of a potential vernal pool habitat; 2) revised wetland resource area impact tables; 3) more detailed dewatering and sediment removal plans; and 4) a post-dam removal monitoring plan.

The Upper Hathaway Dam was built in 1908 for the City of Pittsfield water supply. It is 157 feet in length, 5 feet, 2 inches in width at the crest, and 22 feet high. Upstream of the dam, Hathaway Brook, a 15-foot wide channel, provides water flow into the reservoir. A significant amount of sediment has been deposited into the reservoir over the past 100 years resulting in a current water depth of 1 to 3 feet. The brook flows in two stream channels approximately 250 feet downstream of the Upper Dam before reaching the Lower Hathaway Dam. There does not appear to be any impoundment area between the upper and lower dams.

The proposed project includes filling portions of the Hathaway Reservoir to restore a more uniform stream channel for Hathaway Brook and to restore upland topography that existed prior to the construction of the Upper Dam. Grading is proposed to create a continuous, gradually sloped channel, approximately 20 feet wide, which will be lined with cobbles to create

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<sup>1</sup> However, the Upper Hathaway Dam removal would no longer be eligible for NRD funding if it is undertaken as mitigation for impacts associated with the Pittsfield Airport project (EEA# 12480).

a bottom surface amenable to brook trout. Stream banks will be stabilized post-grading. The City has prepared a habitat restoration planting plan comprised of species native and indigenous to the region. During the site visit, the City acknowledged opportunities for stormwater mitigation and improvements for existing conveyances from Mountain Washington Road, as well as creation of vernal pool habitat. I encourage the City to explore additional opportunities for riverfront and other habitat improvement and preservation in further developing its project design and mitigation plans. I refer the City to the comment letters received with recommendations for vernal pool and other habitat restoration, and invasive species control.

#### Wetlands

Based on the supplemental information provided by the City (letter dated November 20, 2009), removal of the upper dam and filling of the reservoir area will result in permanent alteration of 19,500 square feet (sf) of Land Under Water (LUW) and 800 linear feet (lf) of Bank. Restoration of the stream channel will result in creation of 200 square feet (sf) of new LUW and 440 lf of Bank. The project will involve temporary alteration of 12,000 sf of the 100-foot buffer zone and 13,120 sf of the 200-foot Riverfront Area. Cumulative wetlands impacts, when combined with the Lower Hathaway Dam removal are estimated at 6,850 sf of temporary LUW impacts, 190 lf of temporary Bank alteration and a 520 lf overall reduction in Bank (based on 1,000 lf permanent loss of Bank and 480 linear feet of new streambank created). Other cumulative impacts include temporary alterations of 13,500 sf of buffer zone and 14,620 sf of Riverfront Area. In addition, the revised access path will involve temporary impacts to the 100-foot buffer zone (11,200 sf) and Riverfront Area (20,110 sf). The off-site staging area will not impact any wetland resource or buffer zone areas.

Overall, the project is expected to result in significant environmental benefits associated with restoration of the stream channel, habitat connectivity improvements, and related biological resource and water quality enhancements. Brook trout (*Salvelinus fontinalis*) have been observed both above and below the Upper Hathaway Dam. Removal of the dam presents a great opportunity to restore connectivity in this important coldwater fishery resource. Brook trout have been identified as a Species in Greatest Need of Conservation (SGCN) in the Massachusetts Wildlife Action Plan.

The project requires a Section 401 Water Quality Certification (WQC), which is administered by the MassDEP Boston Office. MassDEP advises that the City should submit the application for the dredge and fill portions of the project as a single filing. The project is subject to the Wetlands Protection Act and must comply with the associated regulations as noted in the MassDEP comment letter. The City submitted a Notice of Intent to the Dalton Conservation Commission on September 3, 2009 and MassDEP has issued a file number for the project (140-0167) and comments to the Commission regarding the project. MassDEP has recommended that the Commission keep the hearing for the project open until the MEPA review is complete and until all comments or permits are received from other State or Federal agencies, such as the U.S. Army Corps of Engineers (the Corps). The project may be eligible for review as a Limited Project under 310 CMR 10.53(4) as an improvement to the natural capacity of a resource area(s). If it is reviewed as a Limited Project, the City and the Dalton Conservation Commission should

use the MassDEP Dam Removal Guidance found at <http://www.mass.gov/dep/water/resources/dampol.pdf>  
*Erosion and Sediment Control*

The City has committed to implement erosion and sediment controls and included plans as part of the Expanded ENF. The City has proposed a Dewatering and Sediment Removal Plan designed to avoid and minimize potential release of excess sediment downstream during dam removal activities. A Contingency Plan is also proposed to minimize sediment discharge during a storm event. Work will be undertaken during normal low flow periods between July and October. Best Management Practices (BMPs) should be adhered to during all phases of the project to minimize potential impacts to fisheries resources.

#### *Post Dam Removal Monitoring*

A Post Dam Removal Monitoring Plan will be implemented one year, two years, and five years after dam removal. The monitoring plan includes observations of restored stream bed conditions, stream profile surveys, invasive species surveys, and visual surveys to document presence of fish or other wildlife using the restored habitat. The monitoring and assessment plan indicates that remedial measures will be implemented if needed to ensure invasive species control and stabilization of slopes, soils, substrates and constructed features. The monitoring and assessment plans will be submitted to the USACOE as part of the Section 404 permitting for the project.

As described in the supplemental information provided by the City during the review of the Expanded ENF, the City proposes a fish monitoring study to be implemented pre- and post dam removal. While I acknowledge the City's efforts and commitments in this regard, I note the Division of Fisheries and Wildlife (DFW) concerns with the fish monitoring study, which includes a three-pass removal method in October or November both pre and post dam removal. The DFW surveyed all the reaches in question in 2009 as part of its annual statewide stream surveys and has excellent pre-dam removal data. DFW is concerned that the data generated from the proposed surveys would not be compatible with its existing database and would be conducted at times when salmonids are spawning in the stream. DFW is planning to conduct follow up surveys in accordance with its own Standard Operating Procedures (SOPs) and has requested that the City not conduct the proposed fish monitoring. I understand that the proposed fish monitoring study is part of a mitigation plan presented to the USACOE as part of its Section 404 permit process and have consulted with the USACOE on this issue. The USACOE indicates it is open to modifying the mitigation plan with an improved methodology for fish monitoring as recommended by DFW. The City should consult with the Corps and DFW, and I ask that DFW coordinate with the USACOE also to finalize arrangements for the fish monitoring study.

#### *Construction and Demolition*

The project should conform to current Air Pollution Control and Solid Waste regulations as indicated in the MassDEP comment letter. I refer the City to MassDEP's letter for additional guidance. Given the availability of Ultra Low Sulfur Diesel (ULSD) fuel and the requirements for off-road engines in 2010, the construction equipment for the project should operate on ULSD


fuel to reduce emissions of fine particulate matter. The City should consult with MassDEP to discuss additional construction period diesel mitigation measures and I strongly encourage the City to participate in MassDEP's Diesel Retrofit Program. The City should develop and enforce a spills contingency plan to address potential releases of oil and/or hazardous materials from pre and post construction activities as recommended by MassDEP.

Conclusion

The Expanded ENF has sufficiently defined the nature and general elements of the project, and provided additional information and analysis of potential impacts, measures to avoid and minimize impacts, and a mitigation plan. I am satisfied that any outstanding issues can be addressed through the state, local, and federal permitting processes. Based on review of the Expanded ENF and comments received, and in consultation with state and federal agencies, I have proposed to grant a waiver that would allow the project to proceed without the preparation of an EIR. Subject to a Final Record of Decision (FROD) confirming the waiver, MEPA review of the proposed dam removal is concluded, and the project may proceed to state permitting.

December 16,2009

DATE

  
for Ian A. Bowles, Secretary

Comments Received:

- 10/22/09 Division of Fisheries and Wildlife
- 12/04/09 Department of Environmental Protection, Western Regional Office
- 12/04/09 Berkshire Regional Planning Commission
- 12/04/09 Division of Fisheries and Wildlife
- 12/08/09 Berkshire Environmental Action Team

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