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 12/16/09
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December 16, 2009

DRAFT RECORD OF DECISION

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 (MEPA) (G.L.c.30, ss. 61-621) and Section 11.11 of the MEPA regulations (301 CMR 11.00), I have reviewed the Expanded Environmental Notification Form (ENF) and hereby **propose to grant a waiver** from the requirement to prepare a mandatory Environmental Impact Report (EIR).

Project Description

As described in the Expanded ENF, the project entails 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 other species, and provide other ecological benefits associated with restoration of habitat and natural stream flow.

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 MassAudubon 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.

MEPA 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.

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 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 program¹. 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.

Summary of Potential Environmental Impacts

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.

Based on the Expanded ENF and supplemental information provided by the City (in a 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.

Summary of Proposed Mitigation Measures

The City has committed to stormwater mitigation and improvements for existing conveyances from Mountain Washington Road, as well as creation of vernal pool habitat on-site. Erosion controls will be implemented and the City has developed a Dewatering and Sediment Removal Plan 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 and a Post Dam Removal Monitoring Plan will be implemented one year, two years, and five years after dam removal. The City will conduct assessments to evaluate the

¹ 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).

effectiveness of dam removal and habitat restoration. 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. Remedial measures will be implemented as appropriate to control any invasive species. The City has proposed a fish monitoring study. However, as further detailed in the comment letter from the Division of Fisheries and Wildlife (DFW) and the Certificate on the Expanded ENF, DFW has requested that the City not implement the proposed fish monitoring study. DFW will conduct follow up surveys in accordance with its own Standard Operating Procedures (SOPs).

Waiver Request

The proponent has requested a waiver from the requirement to prepare an EIR. An Expanded ENF was submitted in conjunction with this request that identifies the environmental impacts of the project and describes measures to be undertaken by the Proponent to avoid, minimize and mitigate project impacts.

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 the project, when subject matter jurisdiction is broad in scope, or those aspects of the project within subject matter jurisdiction, when jurisdiction is limited to the subject matter of state agency permits.

Findings

Based upon the information submitted by the proponent and after consultation with the state permitting agencies, I find that the Waiver Request has merit and that the proponent has demonstrated that the proposed project meets the standards for all waivers at 301 CMR 11.11(1).

I find that strict compliance with the requirement to submit a mandatory EIR would result in an undue hardship for the Proponent **and** would not serve to avoid or minimize Damage to the Environment. In accordance with 301 CMR 11.11(3), the latter finding is based on my determination that:

- (a) the project is likely to cause no Damage to the Environment;

The purpose of the project is to remove the Upper Hathaway Dam and restore the original stream channel, thereby enhancing aquatic habitat and ecological connectivity in an important coldwater fishery resource. The dam is in a state of disrepair and has not been in use as part of the City's water supply system for several decades. 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. Stream restoration will be designed to support habitat for brook trout (*Salvelinusfontinalis*), which have been identified as a Species in Greatest Need of Conservation (SGCN) in the Massachusetts Wildlife Action Plan.

The City has committed to erosion and sedimentation control measures and a contingency plan to avoid and minimize any potential adverse effects related to dam removal and restoration activities. The City has committed to stormwater management improvements, habitat restoration, and vernal pool creation. The City will also conduct a post-dam removal monitoring and assessment plan to evaluate the success of the proposed project and to identify and correct potential problems such as those related to invasive species **and/or** bank stabilization issues.

The City should consult with the U.S. Army Corps of Engineers (the Corps) and the Massachusetts Division of Fisheries and Wildlife (DFW) to finalize arrangements for the proposed fish monitoring studies.

and

- (b) ample and unconstrained infrastructure facilities and services exist to support the project, or those aspects of the project within subject matter jurisdiction.

The access route to the dam was revised, as described in the supplemental information submitted during the Expanded ENF review. The City had previously proposed an alternative access route with less riverfront and buffer zone alteration but was unable to secure an easement from the landowner. The City has submitted plans describing the proposed access road and staging area required for the dam removal, as well as detailed erosion and sediment control plans. A Contingency Plan to minimize sediment discharge during a storm event will be implemented and a Construction Stormwater Pollution Prevention Plan. 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.

Overall, the project will enhance environmental conditions and remove a potentially hazardous and failing component of the City's historic water supply infrastructure.

Conclusion

I have determined that this waiver request has merit, and am issuing this Draft Record of Decision (DROD), which will be published in the next edition of the Environmental Monitor on December 23,2009 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 January 6,2010. Based on written comments received concerning the DROD, I shall issue a Final Record of Decision or a Scope within seven days after the close of the public comment period, in accordance with 301 CMR 11.15(6). I hereby **propose to grant** the waiver requested for this project, from the requirement to prepare a mandatory Environmental Impact Report (EIR), subject to the above findings and conditions.

December 16,2009

Date

Ian A. Bowles, Secretary

Comments Received:

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| 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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