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April 16, 2010

DRAFT RECORD OF DECISION

PROJECT NAME : Wapping Road Dam Removal  
PROJECT MUNICIPALITY : Kingston  
PROJECT WATERSHED : Jones River  
EEA NUMBER : 14555  
PROJECT PROPONENT : Jones River Watershed Association  
DATE NOTICED IN MONITOR : March 10, 2010

Pursuant to the Massachusetts Environmental Policy Act (MEPA) (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 (ENF) and hereby **propose to grant a waiver** from the requirement to prepare a mandatory Environmental Impact Report (EIR).

Project Description

The proposed project as described in the Expanded Environmental Notification Form (EENF) consists of removal of the Wapping Road Dam located at Wapping Road (Route 106) in Kingston, which is located within the Jones River watershed. The Wapping Road Bridge is located approximately 200 feet upstream of the Wapping Road Dam. The Wapping Road Dam was built in the 1920s to provide hydropower to a former sawmill and textile factory located on the east side of the Jones River immediately adjacent to the dam. The textile factory was converted to commercial office space and serves the Caton Connector Corporation (Wapping Road Dam owner). The project is being undertaken by the Jones River Watershed Association (the Proponent) as part of a broader stream restoration effort to restore aquatic habitat and anadromous fisheries migration throughout the 3.5-mile main stem of the Jones River and approximately 8 miles of additional tributary on the Jones River.

The Dam forms a shallow 9.5-acre impoundment that extends 1.2-miles upstream from the dam and provides habitat for warm-water fishery habitat. The removal of the dam will restore this reach of the Jones River to a more natural condition, improve upstream water quality, improve aquatic connectivity for anadromous fisheries including blueback herring and alewife and provide other ecological benefits including restoration of habitat and natural stream flow.

The Proponent is proposing to remove the existing 47 feet-wide by 6 feet-tall concrete Wapping Road Dam spillway and sluiceway that currently impounds the Jones River on the north and south side of Wapping Road (Route 106). The proposed project includes filling and reforming portions of the stream channel to create more uniform segments of stream channel located immediately downstream of the dam and to restore upland topography that existed prior to the construction of the dam. Grading is proposed to create a continuous, gradually sloped (0.5% slope) channel, approximately 10-20 feet wide during seasonal low-flow conditions. During the site visit, the Proponent acknowledged opportunities for stormwater mitigation and improvements pertaining to two existing 18-inch stormwater outfalls that collect stormwater runoff from the Wapping Road Bridge. As currently proposed, the Proponent proposes to construct plunge pools immediately downstream of these two stormwater outfalls. The Proponent has committed to work closely with the Town of Kingston and others to identify additional opportunities to improve stormwater management in this section of the project area.

The Proponent is also proposing to construct two in-stream riffles with large stones and cobbles to be located upstream between the existing dam and the Wapping Road bridge and downstream of the existing dam to provide increased pooling and habitat functions. Stream banks and existing retaining walls located in the immediate vicinity of the existing dam will be stabilized post-grading with coarse substrate material and stone anchored to the existing bank. The Proponent has proposed a planting plan for the dam removal area that includes the use of select tree and woody shrub species and seed mix to provide bank stability and channel cover to the upper banks and shoreline. I encourage the proponent to explore additional opportunities for riverfront and other habitat improvement and preservation in further developing its project design and mitigation plans.

The project will result in alterations to Land Under Water, Bank, Riverfront Area, Bordering Vegetated Wetlands (BVW), Bordering Land Subject to Flooding and Buffer Zone as a result of dam removal, sediment excavation, and stream and upland habitat restoration activities. Approximately 100 cubic yards of sediment will be excavated from an area immediately behind the dam and approximately 850 cy of sediment will be excavated from the area between the dam and the Wapping Road Bridge.

## 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 Kingston Conservation Commission (and, on appeal only, a Superseding Order from MassDEP). According to the comments received from MassDEP, the proposed dredging of sediments and placement of fill in sections of the Jones River stream bed will require a Chapter 91 Permit from MassDEP pursuant to 310 CMR 9.04 of the Waterways Regulations. 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 project requires a Chapter 253 Dam Safety Permit from the Office of Dam Safety.

The Proponent is receiving direct financial assistance from the Department of Fish and Game's Division of Ecological Restoration (DER) for the project. 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 permanent alteration of approximately 5,770 square feet (sf) of Land Under Water (LUW), 25 linear feet (lf) of Bank and 3,150 Bordering Vegetated Wetlands. The project will also involve impacts to approximately 23,218 sf of the 100-foot buffer zone and 26,833 sf of the 200-foot Riverfront Area as a result of dam removal, sediment excavation, and stream and upland habitat restoration activities. The Proponent anticipates that the removal of the dam will result in the conversion open water areas to emergent marsh and scrub shrub wetlands, conversion of emergent marsh and scrub shrub wetlands to forested wetlands and upland forest. Approximately 100 cubic yards of sediment will be excavated from an area immediately behind the dam and approximately 850 cy of sediment will be excavated from the area between the dam and the Wapping Road Bridge.

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 Proponent has committed to explore opportunities to improve the existing stormwater mitigation infrastructure located immediately upstream of the dam. Erosion controls will be implemented and the Proponent has developed a Dewatering and Sediment Removal Plan to avoid and minimize potential release of excess sediment downstream during dam removal activities. Erosion and sediment controls are proposed to minimize sediment discharge during a storm event and a Post Dam Removal Monitoring Plan will be implemented after dam removal. The Proponent will conduct assessments to evaluate the effectiveness of dam removal and habitat restoration. The monitoring plan may include 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 Proponent's Invasive Species Management Plan will include remedial measures will be implemented as appropriate to control any invasive species in the project area.

### 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 Wapping Road Dam and restore the original stream channel, thereby enhancing aquatic habitat and ecological connectivity in an important coldwater fishery resource. The proposed project also includes filling/shaping small portions of river channel to restore a more uniform stream channel for sections of Jones River located immediately upstream and downstream of the existing dam and to restore upland topography in the immediate vicinity of the existing dam. Stream restoration will be designed to support fisheries habitat. The Proponent 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 Proponent has committed to explore opportunities to improve existing stormwater management infrastructure located in the project site. The Proponent 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 Proponent 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 any proposed post-construction monitoring plans. I encourage the Proponent to commit to adopting GHG mitigating measures that would require or create incentives for implementing diesel engine retrofits, the use bio-diesel fuel for off-road construction equipment and sediment hauling trucks, and the elimination of vehicle idling.

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

The Proponent 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 Proponent 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 Proponent’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 April 21, 2010 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 May 11, 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.

April 16, 2010

Date

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Ian A. Bowles, Secretary

Comments Received:

- 03/22/10 Massachusetts Historic Commission (MHC)
- 03/23/10 Department of Fish and Game, Division of Ecological Restoration (DER)
- 03/26/10 Jones River Watershed Association
- 04/07/12 Division of Marine Fisheries (DMF)
- 04/08/12 Division of Marine Fisheries (DMF) – New Bedford Field Facility
- 04/08/10 Kingston Conservation Commission
- 04/09/10 Department of Environmental Protection (MassDEP) - SERO

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DROD EEA #14555