

APPENDIX B

Consultations and Permits



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

One Winter Street Boston, MA 02108 • 617-292-5500

Charles D. Baker
Governor

Matthew A. Beaton
Secretary

Karyn E. Polito
Lieutenant Governor

Martin Suuberg
Commissioner

April 15, 2016

Mike Labossiere
City of Fall River – Water Division
One Government Center
Fall River, MA 02722

TRANSMITTAL # X268589
Chapter 91 Permit # 14074
DEP File # 026-0578
EEA # 15352

RE: COMBINED CHAPTER 91 PERMIT/401 WATER QUALITY CERTIFICATION
Application for: BRP WW 26
COMBINED PERMIT FOR DREDGING & FILLING

AT: Rattlesnake Brook Dam – Freetown
Taunton River Watershed

Dear Mr. Labossiere:

The Department of Environmental Protection (“MassDEP”) has reviewed your application for a Combined 401 Water Quality Certification Dredge and Fill Permit (“Combined Permit”), as referenced above. In accordance with the provisions of Section 401 of the Federal Clean Water Act as amended (33 U.S.C. §1251 *et seq.*), MGL c.21, §§ 26-53, and 314 CMR 9.00, MassDEP has determined there is reasonable assurance the project or activity will be conducted in a manner which will not violate applicable water quality standards (314 CMR 4.00) and other applicable requirements of state law.

The waters of this portion of Rattlesnake Brook are designated in the Massachusetts Surface Water Quality Standards as Class B. Such waters are intended “as habitat for fish, other aquatic life and wildlife, and for primary and secondary contact recreation.” Anti-degradation provisions of these Standards require that “existing uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.”

The above-referenced project involves the removal of approximately 100 linear feet of the full vertical extent of Rattlesnake Brook Dam along with the concrete structures in the western channel of Rattlesnake Brook downstream of the dam. In addition, the existing culvert in the eastern channel downstream of the dam will be filled in and abandoned. Together, these activities will result in the creation of a single stem channel between the dam and Narrows Road. The sediment accumulated upstream of the dam in the impoundment, which is formed by flows from Terry Brook and Rattlesnake Brook, will be allowed to migrate downstream passively to re-form the channels of

both brooks. Once completed, the project will restore aquatic and riparian habitat connectivity and enhance riverine function.

The demolition and filling in of the eastern culvert will impact approximately 1,200 square feet of bordering vegetated wetland ("BVW") temporarily. The construction access road for the work on the western channel will impact approximately 5,500 square feet of BVW temporarily. Approximately 1,390 cubic yards of material will be removed from the western channel and disposed of at a licensed facility [see Special Combined Permit Conditions # 14 - 16]. Further, approximately 2,265 cubic yards of sediment accumulated behind the dam itself is expected to mobilize during future storm events to naturally form restored stream channels for both Terry and Rattlesnake Brooks. This sediment will be passively transported downstream and settle in depositional areas. Some larger native rocks and trees salvaged from the work area may be placed in the stream for habitat enhancement. Approximately 200,200 square feet of land under water ("LUW") will be lost once the dam is removed and the impoundment has drained. However, it is anticipated that 200,200 square feet of BVW will be created as this area transitions to a wet meadow over time. Once a contractor is chosen, the details regarding the final demolition, dredging, and dewatering techniques shall be submitted to MassDEP for review and approval prior to construction [see Special Combined Permit Conditions # 11 - 13].

Alternatives Analysis: Numerous alternatives for the dam removal, the channel formation of both Terry and Rattlesnake Brooks upstream of the dam, and the channel formation of Rattlesnake Brook downstream of the dam were considered. For multiple reasons, the preferred alternatives were to remove 100 linear feet of the full vertical extent of Rattlesnake Brook Dam at the western spillway, to allow for the passive channel formation of both of the brooks upstream of the dam, and to route flow through the western channel downstream of the dam.

Due Diligence Review: A due diligence review of the project area was conducted through the examination of aerial photography in the subwatershed, analysis of Massachusetts GIS and web-based data, on-site examination of current land use practices in the subwatershed, and discussions with the City of Fall River Water Department. This review showed that the subwatershed does not contain any listed hazardous waste sites, solid waste facilities, or surface and underground discharge locations. Further, there are only two known reportable releases from oil tanker accidents on Main Street in 2008 and 2009, but these are unlikely to have had an environmental impact on the project site for one or more of the following reasons: the listed site release has been closed out with MassDEP, the severity of the release was limited, and the distance to the project site is relatively great. In addition, the dam was originally acquired by the City of Fall River to help provide drinking water supply. Coupled with the fact that the subwatershed is highly forested, this purchase indicates that the water quality is likely high and the sediments are uncontaminated. However, the history of the dam itself, which was on the property of a former mill building that suffered significant fire damage and was subsequently razed, indicates the potential for downstream contaminants. As a result, sediment samples were taken both to ensure that the material upstream of the dam is suitable for in-stream management and to assess the level of contamination in the sediments downstream of the dam.

Sediment Sampling Data: A total of twenty samples (one upstream of the impoundment, five in the impoundment, ten in the western channel, and four in the downstream estuary) were collected

within the watershed for analysis. A gradation analysis was performed on six of these samples (one upstream of the impoundment, four in the impoundment, and one in the downstream estuary). The results of the gradation analysis reveal that all of the samples are mainly sand with a range of 1.29 to 6.16 percent passing the No. 200 U.S. Standard Series Testing Sieve (the "No. 200 Sieve"), except for one in the impoundment, which is silt and sand with 47 percent passing the No. 200 Sieve.

The results of the chemical analysis that was performed on all twenty samples were compared to MassDEP's *Interim Policy for Sampling, Analysis, Handling and Tracking Requirements for Dredged Sediment Reuse and Disposal* (COMM-94-007). The sample taken from upstream of the impoundment showed no exceedances of relevant thresholds, which indicates that relatively clean sediment can be expected to move into the area following the dam removal. The samples in the impoundment were below the Reportable Concentration ("RC") S-1 criteria of the Massachusetts Contingency Plan ("MCP"), but there were some exceedances of the Threshold Effect Concentration ("TEC") within the polyaromatic hydrocarbons ("PAHs"), some pesticides, PCBs, lead, and mercury. There was only one slight exceedance of the Probable Effects Concentration ("PEC") in one of the samples for Sum DDD. Most of these contaminants are also found downstream of the dam in the channel and the estuary. Therefore, the passive release of the impoundment sediment is unlikely to have an adverse effect on the downstream receiving waters and, accordingly, is suitable for in-stream management. The samples in the western channel showed numerous exceedances of the MCP S-1/GW 1 thresholds for many contaminants. As a result, it must be managed according to the standards in COMM-94-007, but can be used as daily cover at an appropriate facility. However, the sediment from sample RS-3 greatly exceeds the contaminant reuse level for total PAHs in COMM-94-007 and, as such, is not suitable for use as daily cover at a lined landfill. During the dredging process, it should be segregated from the rest of the sediment that is removed from the western channel that is suitable for reuse as daily cover. The sediment from RS-3 can be disposed of at an in-state lined landfill once approval is obtained from the Division of Solid Waste in MassDEP's Regional Office where the landfill is located [see Special Combined Permit Condition # 10].

Dredged Material Dewatering: The Combined Permit application proposes several dewatering methods, but states that the final techniques and locations will be chosen by the contractor. Therefore, MassDEP shall require the applicant's contractor to provide greater detail on the exact dewatering technique and location prior to construction [see Special Combined Permit Condition # 13].

Dredged Material Disposal or Reuse: Some of the excavated, rounded rock larger than 8 inches may be reused in the restored stream channel downstream of the dam, but the majority of the dredged material will either be disposed of or reused as landfill daily cover material at an as yet undetermined in-state facility. The identification of the licensed disposal location shall be the responsibility of the contractor [see Special Combined Permit Condition # 14]. When the disposal or reuse facility is identified by the contractor, information shall be provided to MassDEP [see Special Combined Permit Condition # 14]. The applicant will include special provisions in the contract documents to ensure proper handling and disposal of the dredged material [see Special Combined Permit Conditions # 15 and 16]. Pursuant to 314 CMR

9.07(5)(a), all dredged material, when transported upon public roadways, shall have no free liquid as determined by the Paint Filter Test.

Beneficial Reuse of Sediments: The approximately 2,265 cubic yards of impounded material accumulated behind the dam will be transported downstream in pulses during storm events thereby enhancing benthic habitat and allowing for natural stream channel formation.

Rare Species and Wildlife Habitat: The site is not located within the Priority Habitat of Rare Species and Estimated Habitats of Rare Wildlife as indicated in the Massachusetts Natural Heritage Atlas, 13th Edition.

Time of Year Restriction for In-Water Work: In accordance with the letter dated March 2, 2016 from Eileen M. Feeney, Division of Marine Fisheries ("DMF") to Derek Standish, MassDEP, the Time of Year ("TOY") restriction for any in-water, silt-producing work associated with this project is from March 1 through June 30.

Public Notice: The Combined Permit Application public notice was published in The Herald News on February 15, 2016. No comments were received by MassDEP during the 21-day public comment period pursuant to 314 CMR 9.05(3)(e) and the 15 day public comment period pursuant to 310 CMR 9.13(1)(c)5, which ended on March 7, 2016 and March 1, 2016 respectively.

Section 61 Findings: Pursuant to M.G.L. Chapter 30, Sections 61 to 62H inclusive [the Massachusetts Environmental Policy Act ("MEPA")], the project, as referenced in Combined Permit Application, DEP Transmittal # X268589, was required to file an Expanded Environmental Notification Form ("EENF"). The City of Fall River (the "Proponent") filed the EENF for the construction of the project under EEA # 15352 and noticed the EENF in the Environmental Monitor (the "Monitor") on April 8, 2015. In the Certificate issued on May 15, 2015, the Secretary of Energy and Environmental Affairs (the "Secretary") determined that "the potential impacts of this project do not warrant further MEPA review" and that "outstanding issues may be addressed during the local, state, and federal permitting processes." Further, the Proponent requested a Waiver from the categorical requirement to prepare an Environmental Impact Report ("EIR") and noticed such in the Monitor on April 8, 2015. In the Final Record of Decision ("FROD") issued on June 5, 2015, the Secretary granted "a Waiver from the requirement to prepare an EIR" subject to certain conditions, which the Proponent shall meet. MassDEP has reviewed the findings in both the EENF Certificate and the FROD and confirms that based on the avoidance, minimization, and mitigation measures undertaken by the Proponent, in conjunction with the requirements set forth in this Combined Permit, all outstanding issues have been addressed satisfactorily.

Therefore, based on information currently in the record, MassDEP grants a Combined Permit for this project subject to the following conditions to maintain water quality, to minimize impact on waters and wetlands, and to ensure compliance with appropriate state law. MassDEP further certifies in accordance with 314 CMR 9.00 that there is reasonable assurance the project or activity will be conducted in a manner which will not violate applicable water quality standards (314 CMR 4.00) and other applicable requirements of state law. Finally, MassDEP has determined that upon satisfying the conditions and

mitigation requirements of this approval, the project provides a level of water quality necessary to protect existing uses and accordingly finds that the project to be implemented satisfies the Surface Water Quality Standards at 314 CMR 4.00.

STANDARD COMBINED PERMIT CONDITIONS

1. Acceptance of this Combined Permit shall constitute an agreement by the applicant to conform to all terms and conditions stated herein.
2. This Combined Permit is issued upon the express condition that any and all other applicable authorizations necessitated due to the provisions hereof shall be secured by the applicant prior to the commencement of any activity hereby authorized.
3. This Combined Permit shall be revocable by MassDEP for noncompliance with the terms and conditions set forth herein. This Combined Permit may be revoked after MassDEP has given written notice of the alleged noncompliance to the applicant or his agent and those persons who have filed a written request with MassDEP for such notice and have afforded the applicant a reasonable opportunity to correct said noncompliance.
4. This Combined Permit is issued subject to all applicable federal, state, county, and municipal laws, ordinances, by-laws, and regulations, including but not limited to, a valid Order of Conditions issued pursuant to the Wetlands Protection Act, M.G.L. Chapter 131, s.40.
5. This Combined Permit is issued upon the express condition that dredging and transportation and disposal of dredge material shall be in strict conformance with all applicable requirements and authorizations of MassDEP.
6. The applicant shall assume and pay all claims and demands arising in any manner from the work authorized herein, and shall save harmless and indemnify the Commonwealth of Massachusetts, its officers, employees, and agents from all claims, audits, damages, costs and expenses incurred by reason thereof.
7. Dredging under this Combined Permit shall be conducted in a manner not to cause unnecessary obstruction of the free passage of vessels. When conducting authorized dredging, care shall be taken not to cause any shoaling. If, however, any shoaling is caused, the applicant shall, at his expense, remove the shoal areas. The applicant shall pay all costs of supervision, and if at any time MassDEP deems necessary a survey or surveys of the area dredged, the applicant shall pay all costs associated with such work. Nothing in this Combined Permit shall be construed as to impair the legal rights of any persons, or authorize dredging on land not owned by the applicant without consent of the owner(s) of such property.

SPECIAL COMBINED PERMIT CONDITIONS

1. The contractor shall take all steps necessary to assure that the proposed activities will be conducted in a manner that will avoid violations of the anti-degradation provisions of the Massachusetts Surface Water Quality Standards that protect all waters, including wetlands.
2. Prior to the start of work, or for any portion of the work thereafter, MassDEP shall be notified of any change(s) in the proposed project or plans that may affect waters or wetlands. MassDEP will determine whether the change(s) requires a revision to this Combined Permit.
3. Filling and dredging in accordance with this Combined Permit may begin following the 21-day appeal period and once all other permits have been received.
4. All work shall be performed in accordance with the following documents and plans:
 - Application for Combined Permit, Transmittal Form # X268589, dated December 14, 2015, as revised through April 6, 2016, with attachments.
 - Plan entitled "Rattlesnake Brook Restoration, Narrows Road, Town of Freetown, Massachusetts," consisting of fifteen (15) sheets, various scales, dated October 30, 2015, not signed or stamped, prepared by Milone & MacBroom, received by MassDEP on April 4, 2016.
 - Plan entitled "Maintenance and Protection of Traffic, Rattlesnake Brook Restoration, Narrows Road, Town of Freetown, Massachusetts," consisting of one (1) sheet [Sheet 03 of 15], scale 1"=40', dated October 30, 2015, not signed or stamped, prepared by Milone & MacBroom, received by MassDEP on April 6, 2016.
 - Order of Conditions issued pursuant to the Massachusetts Wetlands Protection Act (M.G.L. Chapter 131, § 40) by the Freetown Conservation Commission for DEP File Number 026-0578, dated February 22, 2016.
5. MassDEP shall be notified, attention Derek Standish [617-654-6611], one week prior to the start of in-water work so that MassDEP staff may inspect the work for compliance with the terms and conditions of this Combined Permit.
6. The term of the Chapter 91 dredge permit of this Combined Permit is five years pursuant to 310 CMR 9.15(2). The term of the 401 WQC of the Combined Permit remains in effect for the same duration as the federal permit that requires it or five years from the date of issuance of this Combined Permit, whichever comes first.
7. The applicant may request an extension of the 401 WQC pursuant to 314 CMR 9.09(3). If MassDEP grants an extension, the Chapter 91 permit will also be extended for the same term.
8. All sedimentation barriers shall be maintained in good repair until all disturbed areas have been fully stabilized with vegetation or other means. At no time shall sediments be deposited

in a wetland or water body. During construction, the applicant or his/her designee shall inspect the erosion controls on a daily basis and shall remove accumulated sediments as needed. The applicant shall immediately control any erosion problems that occur at the site and shall also immediately notify MassDEP, which reserves the right to require additional erosion and/or damage prevention controls it may deem necessary. Sedimentation barriers shall serve as the limit of work unless another limit of work line has been approved by MassDEP pursuant to this Combined Permit.

9. Future maintenance dredging is not authorized under this Combined Permit.
10. The sediment in the vicinity of sample RS-3 shall be segregated from the rest of the material removed from the western channel and disposed of at an in-state lined landfill once approval is obtained from the Division of Solid Waste in MassDEP's Regional Office where the landfill is located. A copy of said approval shall be submitted to Derek Standish in MassDEP's Boston office.
11. No later than 21 days prior to commencement of demolition activity, a detailed plan of the physical demolition operation for both the dam and the eastern culvert, including descriptions of the type of equipment to be used, shall be submitted to MassDEP for review and approval.
12. No later than 21 days prior to commencement of dredging activity, a detailed plan of the physical dredging operation, including descriptions of the type of dredge equipment to be used, shall be submitted to MassDEP for review and approval.
13. No later than 21 days prior to commencement of dredging activity, a dredged material dewatering plan shall be submitted to MassDEP for review and approval. At a minimum, the dewatering plan shall include, but not be limited to, the type of containment, method of dewatering (i.e. mechanical or by gravity), method of collecting the dewatered effluent, and method of disposal.
14. MassDEP shall be notified in writing of the name and location of the upland licensed facility accepting the dredged material for disposal or reuse as daily cover material. If the licensed facility is located out of state, documentation shall be provided to MassDEP that the dredged material disposal/reuse has been approved and will be accepted by the receiving state in accordance with 314 CMR 9.07(13)(b). The dredged material shall not be transported to the facility without concurrence of MassDEP.
15. A Dredged Material Tracking Form ("DMTF") or Material Shipping Record ("MSR") shall be used to track the dredged material to the licensed upland facility. A fully executed copy of the DMTF or MSR shall be provided to MassDEP within 30 days of final shipment to the reused location or facility.
16. Best Management Practices ("BMPs") shall be implemented during transportation of the dredged material to the licensed receiving facility. At a minimum, when transported upon public roadways, all dredged material shall have no free liquid as determined by the Paint

Filter Test or other suitably analogous methodology acceptable to MassDEP, and a tarpaulin or other means shall be used to cover the dredged material during transport.

17. Flow to the downstream channel shall be maintained throughout construction of the project.
18. All equipment/machinery shall be stored above the HWM and outside any wetland resource areas when not in use.
19. In-water and/or silt producing work shall occur from July 1st to February 28th.
20. No in-water or silt producing work, including, but not limited to dredging, shall occur from March 1st to June 30th.
21. The applicant, or its contractor, shall make every feasible effort to complete the project within the Combined Permit timeframe. Should the applicant, or their contractor, fail to complete the project and wish to request an amendment to the Combined Permit for incursion into the no-dredge period, the written request shall be received by MassDEP by February 12th. The following information shall be included in the request:
 - a. project location and transmittal number,
 - b. the date on which dredging started,
 - c. the number of days and hours per day the dredge operated,
 - d. expected daily average production rate and the actual daily average production rate,
 - e. an explanation of why the project failed to remain on schedule,
 - f. an account of efforts made to get the project back on schedule,
 - g. a plan depicting the areas that remain to be dredged,
 - h. the number of cubic yards that remain to be dredged,
 - i. an accurate estimate of the number of days required to complete the project,
 - j. an evaluation of the impact of continued dredging on the species of concern,
 - k. a description of any efforts that will be made to minimize the impacts of the project on the species of concern, and a realistic assessment of any societal/financial effects of a denial of permission to continue dredging.
22. MassDEP will share the information with other resource agencies and a decision to grant or deny the amendment shall be made by February 28th. Requests for amendment received after February 12th will be considered at MassDEP's discretion.
23. Within 30 days of the completion of dredging, photographs of the affected areas depicting post-dredge conditions shall be taken and submitted to Derek Standish in MassDEP's Boston office.
24. No later than four weeks after issuance of this Combined Permit, the applicant shall submit a notification procedure outlining the reporting process to MassDEP for incidents relating to dredging activities that impact surrounding resource areas and habitats including, but not limited to, observed dead or distressed fish or other aquatic organisms, observed oily sheen on the surface of the water, a sediment spill, a turbidity plume beyond the deployed BMPs,

and a barge or equipment accident/spill. If at any time during implementation of the project such an incident occurs, all site related activities impacting the water shall cease until the source of the problem is identified and adequate mitigating measures are deployed to the satisfaction of MassDEP.

Failure to comply with this Combined Permit is grounds for enforcement, including civil and criminal penalties, under MGL c.21 §42, 314 CMR 9.00, MGL c. 21A §16, 310 CMR 5.00, MGL c.91, 310 CMR 9.00 or other possible actions/penalties as authorized by the General Laws of the Commonwealth.

This Combined Permit does not relieve the applicant of the obligation to comply with other appropriate state or federal statutes or regulations. Any changes made to the project as described in the previously submitted Notice of Intent, Combined Permit Application, or supplemental documents will require further notification to MassDEP.

NOTICE OF APPEAL RIGHTS

Chapter 91 Appeal Process (310 CMR 9.17)

Pursuant to 310 CMR 9.17(1)(a) and 9.17(2), the applicant may appeal this decision within twenty-one (21) days of the date of Combined Permit issuance, by submitting a written request, by certified mail, for an adjudicatory hearing. Any notice of claim for an adjudicatory hearing must include the following information: the DEP Combined Permit Application Number; the complete name, address and telephone number of the party filing the request; if represented by counsel, the name, address and telephone number of the attorney; a clear statement that a formal adjudicatory hearing is being requested; and a clear and concise statement of the specific objections to MassDEP's license decision, and the relief sought through the adjudicatory hearing, including, specifically, the changes desired in the final Combined Permit.

The following persons shall have the right to an adjudicatory hearing concerning this decision by MassDEP to grant or deny a license or Combined Permit, in accordance with 310 CMR 9.17(1):

- a. an applicant who has demonstrated property rights in the lands in question, or which is a public agency;
- b. any person aggrieved by the decision of MassDEP to grant a Combined Permit who has submitted written comments within the public comment period;
- c. ten (10) residents of the Commonwealth who, pursuant to M.G.L. c. 30A, § 10A, have submitted comments within the public comment period with at least 5 of the 10 residents residing in the municipality(s) in which the Combined Permit activity is located. The appeal shall clearly and specifically state the facts and grounds for the appeal and the relief sought, and each appealing resident shall file an affidavit stating the intent to be part of the group and to be represented by its authorized representative;
- d. the municipal official in the affected municipality who has submitted written comments within the public comment period; and
- e. CZM, for any project identified in 310 CMR 9.13(2) (a) for CZM participation or, in an Ocean Sanctuary, if it has filed a notice of participation within the public comment period.

A person requesting an adjudicatory hearing must submit a Notice of Claim to MassDEP, with a copy of the MassDEP Transmittal Form and including the detail specified below, within twenty-one (21) days of the date of issuance of this decision. The MassDEP Fee Transmittal Form is available at the following website: <http://www.inass.gov/eea/docs/dep/service/adr/adjherfm.doc>. The Notice of Claim must be made in writing and sent by certified mail or hand delivery to:

401 WQC - Transmittal # X268589

Case Administrator
 MassDEP
 One Winter Street, 2nd Floor
 Boston, MA 02108

A copy of the complete Notice of Claim must be sent at the same time by certified mail or hand delivery to: (1) the applicant, (2) the municipal official of the city or town where the project is located, and (3) the issuing office of the MassDEP, which in this case is located at:

MassDEP Waterways Program
 One Winter Street, 5th Floor
 Boston, MA 02108

The MassDEP Fee Transmittal Form and a valid check payable to the Commonwealth of Massachusetts in the amount of one hundred dollars (\$100) must be mailed to:

Commonwealth of Massachusetts
 Department of Environmental Protection
 Commonwealth Master Lockbox
 PO Box 4062
 Boston, Massachusetts 02211

Pursuant to 310 CMR 9.17(3), any Notice of Claim requesting an adjudicatory hearing must include the following information:

- a. the 401 Combined Permit Transmittal Number and MassDEP Waterways Application File Number;
- b. the complete name, address, fax number and telephone number of the applicant;
- c. the address of the project;
- d. the complete name, address, fax number, and telephone number of the party filing the request and, if represented by counsel, the name, address, fax number, and phone number of the attorney;
- e. if claiming to be a person aggrieved, the specific facts that demonstrate that the party satisfies the definition of "aggrieved person" found in 310 CMR 9.02;
- f. a clear statement that a formal adjudicatory hearing is being requested;
- g. a clear statement of the facts which are the grounds for the proceedings, the specific objections to the MassDEP's written decision, and the relief sought through the adjudicatory hearing, including specifically the changes desired in the final written decision; and
- h. a statement that a copy of the request has been sent to: the applicant and the municipal official of the city or town where the project is located.

The request for appeal will be dismissed if the filing fee is not paid, unless the appellant is exempt or is granted a waiver. The filing fee is not required if the appellant is a city or town (or municipal agency), county, or district of the Commonwealth of Massachusetts, or a municipal housing authority. MassDEP may waive the adjudicatory hearing filing fee pursuant to 310 CMR 4.06(2) for a person who shows that paying the fee will create an undue financial hardship. A person seeking a waiver must file an affidavit setting forth the facts believed to support the claim of undue financial hardship together with the hearing request as provided above.

Please note that MassDEP may revoke this Combined Permit for non-compliance with the terms and conditions set forth. Therefore, it is recommended that you contact MassDEP prior to performing any alterations or use modifications for review and, if necessary, approval pursuant to MGL Chapter 91.

401 WQC Appeal Process (314 CMR 9.10):

Certain persons shall have a right to request an adjudicatory hearing concerning Combined Permits by MassDEP when an application is required:

- a. the applicant or property owner;
- b. any person aggrieved by the decision who has submitted written comments during the public comment period;
- c. any ten (10) persons of the Commonwealth pursuant to M.G.L. c.30A where a group member has submitted written comments during the public comment period; or
- d. any governmental body or private organization with a mandate to protect the environment, which has submitted written comments during the public comment period.

Any person aggrieved, any ten (10) persons of the Commonwealth, or a governmental body or private organization with a mandate to protect the environment may appeal without having submitted written comments during the public comment period only when the claim is based on new substantive issues arising from material changes to the scope or impact of the activity and not apparent at the time of public notice. To request an adjudicatory hearing pursuant to M.G.L. c.30A, § 10, a Notice of Claim must be made in writing, provided that the request is made by certified mail or hand delivery to MassDEP, with the appropriate filing fee specified within 310 CMR 4.10 along with a DEP Fee Transmittal Form within twenty-one (21) days from the date of issuance of this Certificate.

Case Administrator
 Department of Environmental Protection
 One Winter Street, 2nd Floor
 Boston, MA 02108

A copy of the request shall at the same time be sent by certified mail or hand delivery to the issuing office of the Wetlands and Waterways Program at:

Department of Environmental Protection
 One Winter Street, 5th Floor
 Boston, MA 02108

A Notice of Claim for Adjudicatory Hearing shall comply with MassDEP's Rules for Adjudicatory Proceedings, 310 CMR 1.01(6), and shall contain the following information pursuant to 314 CMR 9.10(3):

- a. the 401 Combined Permit Transmittal Number and MassDEP Wetlands Protection Act File Number;
- b. the complete name of the applicant and address of the project;
- c. the complete name, address, and fax and telephone numbers of the party filing the request, and, if represented by counsel or other representative, the name, fax and telephone numbers, and address of the attorney;
- d. if claiming to be a party aggrieved, the specific facts that demonstrate that the party satisfies the definition of "aggrieved person" found at 314 CMR 9.02;
- e. a clear and concise statement that an adjudicatory hearing is being requested;
- f. a clear and concise statement of (1) the facts which are grounds for the proceedings, (2) the objections to this Certificate, including specifically the manner in which it is alleged to be inconsistent with the MassDEP's Water Quality Regulations, 314 CMR 9.00, and (3) the relief sought through the adjudicatory hearing, including specifically the changes desired in the final written Combined Permit; and
- g. a statement that a copy of the request has been sent by certified mail or hand delivery to the applicant, the owner (if different from the applicant), the conservation commission of the city or town where the activity will occur, the Department of Environmental Management (when the certificate concerns projects in Areas of Critical Environmental Concern), the public or private water supplier where the project is located (when the certificate concerns projects in Outstanding Resource Waters), and any other entity with responsibility for the resource where the project is located.

The hearing request along with a DEP Fee Transmittal Form and a valid check or money order payable to the Commonwealth of Massachusetts in the amount of one hundred dollars (\$100) must be mailed to:

401 WQC - Transmittal # X268589

Commonwealth of Massachusetts
Department of Environmental Protection
Commonwealth Master Lockbox
PO Box 4062
Boston, MA 02211

The request will be dismissed if the filing fee is not paid, unless the appellant is exempt or granted a waiver. The filing fee is not required if the appellant is a city or town (or municipal agency), county, or district of the Commonwealth of Massachusetts, or a municipal housing authority. MassDEP may waive the adjudicatory hearing filing fee pursuant to 310 CMR 4.06(2) for a person who shows that paying the fee will create an undue financial hardship. A person seeking a waiver must file an affidavit setting forth the facts believed to support the claim of undue financial hardship together with the hearing request as provided above.

Should you have any questions relative to this permit, please contact Derek Standish at (617) 654-6611.

Sincerely,



Lealdon Langley

Director

Wetlands and Waterways Program

cc: Freetown Conservation Commission, Three North Main Street, PO Box 438, Freetown, MA 02702
ecc: Nick Wildman and Kris Houle, MassDFG – DER, 251 Causeway Street, Suite 400, Boston, MA 02114
Jim Mahala and David Hill, MassDEP – SERO, 20 Riverside Drive, Lakeville, MA 02347
Eileen M. Feeney, Division of Marine Fisheries, 1213 Purchase Street, 3rd Floor, New Bedford, MA 02740
Robert Boeri, Office of Coastal Zone Management, 251 Causeway Street, Suite 800, Boston, MA 02114
Alan Anacheka-Nasemann, Department of the Army, New England District, Corps of Engineers, 696 Virginia Road,
Concord, MA 01742-2751

CA/EB, FWS

followup to
15-I-1941
incoming uploaded
4/21/16

INTRA-SERVICE SECTION 7 BIOLOGICAL CONSULTATION

Originating Person(s): Bill Bennett, Partners for Fish and Wildlife Program
New England Field Office, Concord, NH

Telephone Number(s): (603) 227-6422

Date: April 11, 2016

I. Service Program(s) and Proposed Activity:

Partners for Fish and Wildlife Program –This intra-Service Section 7 form modifies the dates of forest clearing on a consultation previously completed for the Rattlesnake Brook Restoration Project (Project) dated September 3, 2015 (15-I-1941). For a complete description of the Project, see the attached Intra-Service Section 7 Biological Evaluation. The proposed Project and all associated activities including dam removal, stream restoration, and forest clearing are now proposed to occur between September 1 and March 31.

II. Pertinent Species within the Area:

Northern Long-eared Bat (*Myotis septentrionalis*), threatened with a 4(d) rule - The Project is located within the geographic range of the northern long-eared bat and appears to be suitable habitat. Consequently, the bat may occur within the Project area during the summer roosting season. A more complete description of the northern long-eared bat's habitat preferences and ecology is provided on the attached form from September 3, 2015.

III. Station Name and Action:

Station: New England Field Office, Concord, NH

Action: Funding from Disaster Relief Appropriations Act of 2013 provided through the Department of Interior and National Fish and Wildlife Foundation and Technical Assistance from the Service's Partners for Fish and Wildlife Program

IV. Location

Assonet, Massachusetts. Latitude-Longitude: 41.780808, -71.086434. See Figure 1 in the attached intra-Service form.

V. Determination of Effects

A. Explanation of effects of action on species and critical habitats listed in II

Northern Long-eared Bat (*Myotis septentrionalis*), threatened with a 4(d) rule - According to the Massachusetts's Natural Heritage and Endangered Species Program database, no known hibernacula or maternity roost trees occur within a 20-mile radius of the Project; however, the

northern long-eared bat may use forested habitat within the Project area for foraging and roosting during the summer. Consequently, tree clearing could adversely affect northern long-eared bats if they are present and using the trees when removal occurs. We also conclude that the limited amount of tree clearing (1-acre), in comparison to the amount of forested habitat available in the nearby Freetown-Fall River State Forest (5,441-acres), will not diminish the northern long-eared bat's ability to feed, breed, and shelter. Consequently, we conclude that the effects of the Project on the availability of the species' habitat will be insignificant.

B. Explanations of actions to be implemented to reduce adverse effects

In order to minimize impacts to pregnant females and pups at unidentified roosts in the Project area, all construction activities and tree clearing will occur between September 1 and March 31. Implementing this conservation measure will protect the species during the maternity season (June 1 – July 31), when non-volant pups may be present and the species is at its most vulnerable to injury from tree removal. Furthermore, we believe this conservation measure will help to avoid impact to the species by limiting tree removal to the end of the active season when the northern long-eared bat begins to enter its fall swarming period. During the fall swarming period, the northern-long eared bat begins to congregate near hibernacula. However, as previously noted, there are no known hibernacula within the vicinity of the Project.

VI. Effect Determination and Response Requested

A. Listed Species Determination:

Northern Long-eared Bat – not likely to adversely affect

B. Response Requested: Concurrence

VII. Reviewing Ecological Services Office Evaluation

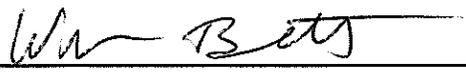
S. von Oettingen reviewed and concurred with effects determination

A. Concurrence: Concur

B. Formal Consultation Required: No

C. Conference Required: No

D. Nonconcurrence : N/A



Bill Bennett, Fish and Wildlife Biologist
Originating Official

4/21/16

Date



Thomas R. Chapman, Supervisor
New England Field Office
Reviewing Official

21 April 16

Date

INTRA-SERVICE SECTION 7 BIOLOGICAL EVALUATION

Originating Person(s): Bill Bennett, Partners for Fish and Wildlife Program
New England Field Office, Concord, NH

Telephone Number(s): (603) 227-6422

Date: September 3, 2015

I. Service Program(s) and Proposed Activity:

Partners for Fish and Wildlife Program and National Coastal Wetlands Conservation Grant Program. The proposed Rattlesnake Brook Restoration Project (Project) would breach Rattlesnake Brook Dam, a 400-foot long stone masonry and earthen structure, and restore approximately 460 linear feet of stream in Freetown, Massachusetts (Figure 1). The dam blocks all fish passage, impedes natural stream processes, and is classified as a “Small” structure in “Unsafe condition” according to the Massachusetts Office of Dam Safety. The project is a partnership between the US Fish and Wildlife Service (Service), Massachusetts Division of Ecological Restoration (DER), The Nature Conservancy, American Rivers, and the Town of Freetown (Dam Owner). The Project is expected to have a net ecological benefit by restoring natural stream processes to the watershed, rainbow smelt (*Osmerus mordax*) spawning habitat, and reconnecting 7 miles of high quality habitat for native blueback herring (*Alosa aestivalis*) and alewife (*Alosa pseudoharengus*). Public safety will also be enhanced by removing the risk of a potential catastrophic failure of the Dam.

The proposed Project would remove 100 linear feet of the Dam with ten feet of the vertical structure removed to the natural stream substrate and the remaining ninety feet removed to the elevation of the natural floodplain. In addition, an existing 200-foot diversion culvert will be capped and permanently filled with flowable fill. Upstream of the Dam, Rattlesnake Brook will be allowed to naturally form a meandering channel through the current impoundment, which will passively transport the accumulated sediments downstream. Downstream of the Dam, approximately 460 feet of stream will be restored by reshaping the channel geometry to watershed-appropriate width and depth and include installation of random boulder clusters and two grade control riffles. A grade control riffle will also be installed upstream of the Dam where Terry Brook passes under South Main Street to protect that crossing (Figure 2 and 3). Following construction, all disturbed areas will be seeded and planted with native vegetation to stabilize the site.

The impoundment will be drawn down in a controlled manner prior to demolition of the spillway to minimize in-water work. Construction would occur between July 1 and October 31 during seasonal low flows and outside of the recommended time of year restrictions (March 1 to June 30) for in-water work by the Massachusetts Division of Marine Fisheries. Erosion and sediment Best Management Practices will also be implemented throughout the entire project. Three separate areas totaling 1 acre of mixed forest consisting of oak, red maple, pine, and red cedar

will be cleared during the Project to enable site access and construction (Figures 2 and 3). All forest clearing would occur between October 1 and April 14.

II. Pertinent Species within the Area

Northern Long-eared Bat

Effective May 4, 2015, the northern long-eared bat (*Myotis septentrionalis*) was federally listed as a threatened species under the Endangered Species Act (80 FR 17974). Although the northern long-eared bat may be present in the action area, we are not aware of any recent records confirming their presence. During the summer, northern long-eared bats roost singly or in colonies in forested habitat underneath bark, in cavities or in crevices of both live trees and snags (dead trees). Northern long-eared bats seem to be flexible in selecting roosts, choosing roost trees based on suitability to retain bark or provide cavities or crevices. During the evening, northern long-eared bats can be found foraging in a variety of forested and non-forested habitats, including wetlands. During winter, northern long-eared bats hibernate in caves and mines (hibernacula) with constant temperatures, high humidity, and no air currents. Factors affecting the species include modifications to bat hibernacula, disturbance of hibernating bats, and loss of forest habitat including forest fragmentation.

III. Station Name and Action:

Station: New England Field Office, Concord, NH

Action: Funding from Disaster Relief Appropriations Act of 2013 provided through the Department of Interior and National Fish and Wildlife Foundation and Technical Assistance from the Service's Partners for Fish and Wildlife Program

IV. Location

The Rattlesnake Brook Restoration Project occupies a level, wooded tract bounded on the north by Narrows Road, and on the east by South Main Street in Freetown's village of Assonet, Massachusetts (Figure 1). The Dam's spillway breach latitude and longitude are 41.780808, -71.086434 and is located approximately 450 feet southwest of the intersection of South Main Street and Narrows Road.

V. Determination of Effects

A. Explanation of effects of action on species and critical habitats listed in II

Northern Long-eared Bat

No known hibernacula or maternity roost trees occur within the Project area; however, foraging individuals from the nearby forest may utilize the forest within the Project area. Removal of the Dam is planned to occur in the summer of 2016, however, all tree cutting will occur between October 1 and April 14. Since northern long-eared bats will not be present during tree clearing activities, we do not expect take to occur. We also conclude that the limited amount of tree clearing (1-acre), in comparison to the amount of forested habitat in the area will not diminish the northern long-eared bat's ability to feed, breed, and shelter. Consequently, we conclude that

the Rattlesnake Brook Restoration Project may affect, but is not likely to adversely affect the northern long-eared bat.

B. Explanations of actions to be implemented to reduce adverse effects

Northern Long-eared Bat

Adverse effects are not anticipated, therefore, no measures to reduce affects are needed.

VI. Effect Determination and Response Requested

A. Listed Species Determination:

Northern Long-eared Bat

As previously described, the Rattlesnake Brook Restoration Project is not likely to adversely affect the northern long-eared bat or its habitat. The Project will result in an improvement to the aquatic habitat diversity and hydrology of the watershed, as well as enhance adjacent wetland habitats; thus, the project may be beneficial to the northern long-eared bat if they were to occur in the Project area in the future.

B. Response Requested: None required

VII. Reviewing Ecological Services Office Evaluation

A. Concurrence: Concur

B. Formal Consultation Required: No

C. Conference Required: No

D. Nonconcurrence : N/A

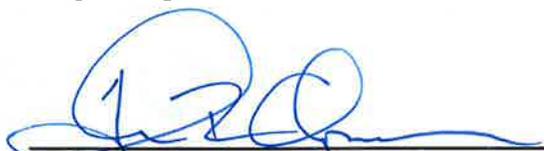
Remarks: This consultation was reviewed by Susi von Oettingen, Endangered Species Specialist, with the New England Field Office. *Concur with determination. SWO*



Bill Bennett, Fish and Wildlife Biologist
Originating Official

9/3/15

Date



Thomas R. Chapman, Supervisor
New England Field Office
Reviewing Official

8 Sept 15

Date

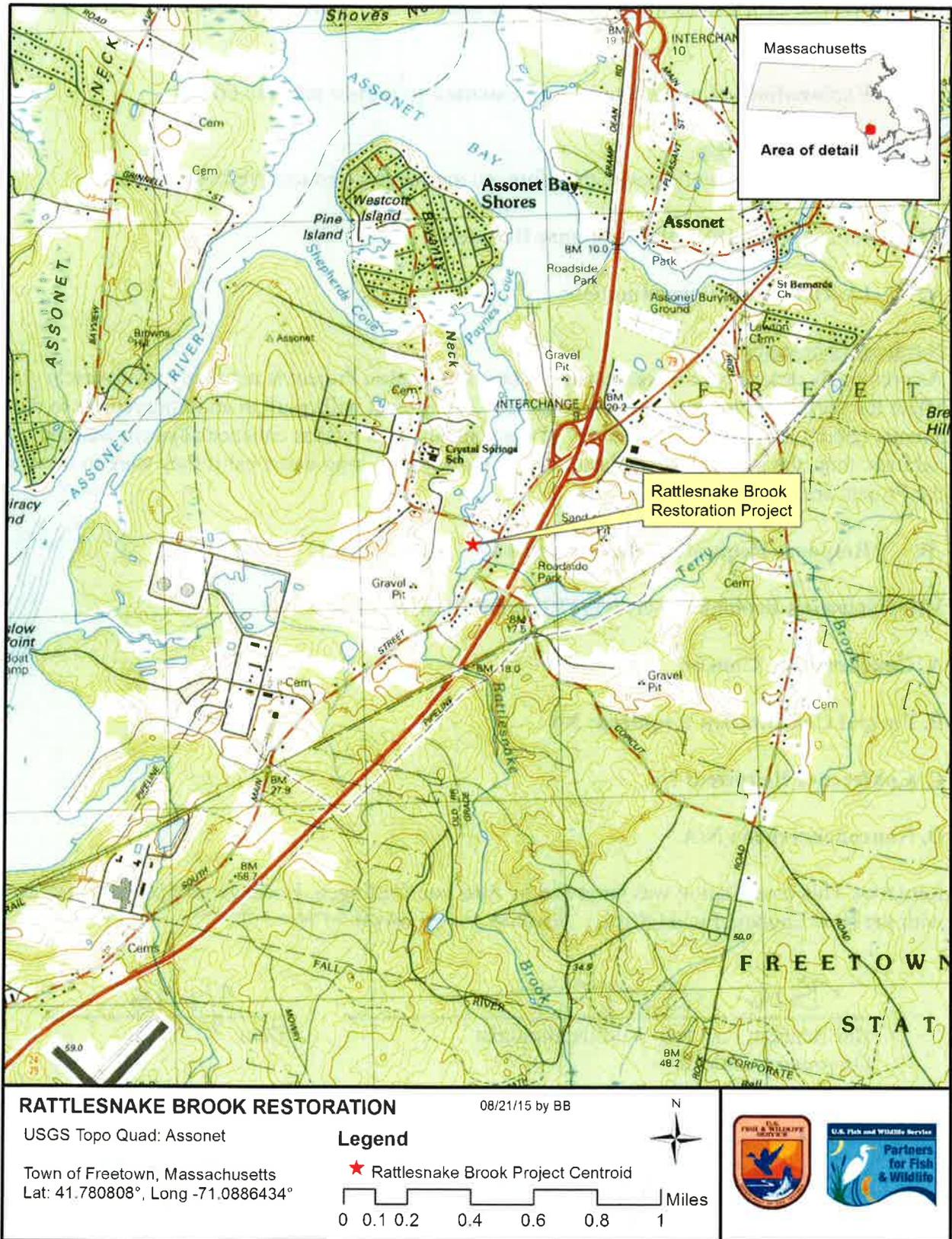


Figure 1 Rattlesnake Brook locator map on USGS Topo Quad Assonet, Massachusetts



Figure 2 Aerial photo of Rattlesnake Brook Restoration Project with dam spillway, stream restoration, and tree clearing limits shown

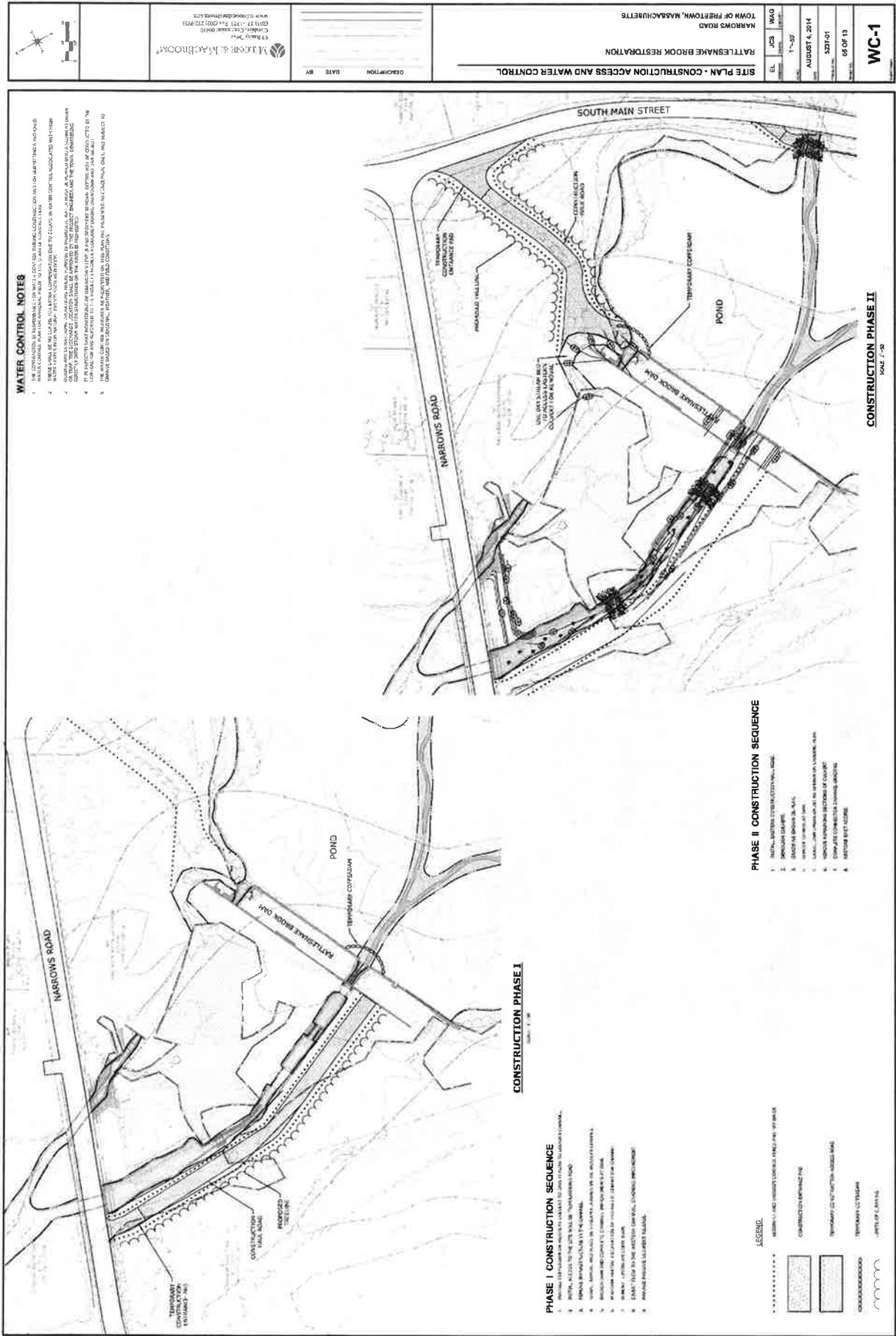


Figure 3 Rattlesnake Brook Restoration Project Design Sheet showing Phase 1 and 2 of Project with constructed access routes, restored stream channel, final spillway elevations, and water control management



DEPARTMENT OF THE ARMY
US ARMY CORPS OF ENGINEERS
NEW ENGLAND DISTRICT
696 VIRGINIA ROAD
CONCORD MA 01742-2751

April 28, 2016

Regulatory Division
File Number: NAE-2016-648

City of Fall River
c/o Mike Labossiere
1 Government Center
Fall River, Massachusetts 02722

Dear City of Fall River,

We have reviewed your application to perform work and place fill below the high tide line and ordinary high water line of waters of the United States in order to remove Rattlesnake Brook Dam, reshape and restore the western channel of Rattlesnake Brook, create temporary access to the work site, fill in an underground culvert, and replant wetland areas. This project is located in Rattlesnake Brook at Narrows Road at South Main, Freetown, Massachusetts. The work is shown on the enclosed plans entitled "Rattlesnake Brook Restoration", on 15 sheets, and dated October 30, 2015.

Based on the information you have provided, we have determined that the proposed activity, which includes a discharge of dredged or fill material into waters or wetlands, will have only minimal individual or cumulative environmental impacts on waters of the United States, including wetlands. Therefore, this work is authorized under the enclosed February 2015 General Permits for Massachusetts (GPs for MA), specifically GP 22, under the pre-construction notification process. This work must be performed in accordance with the terms and conditions of the GPs and also in compliance with the following special conditions:

1. Any silt producing activities authorized herein shall not be conducted during the time of year (TOY) restriction of March 1 to June 30 in order to minimize adverse impacts to alewife (*Alosa pseudoharengus*), blueback herring (*Alosa aestivalis*), rainbow smelt (*Osmerus mordax*), and white perch (*Morone americana*) spawning, nursery, and migration habitat.
2. To protect the potential presence of any northern long-eared bat maternity roost trees, tree clearing, cutting, and trimming shall occur from September 1 to March 31 of any year as stated in the intra-service section 7 biological consultation unless the proposed impact area is surveyed following the United States Fish and Wildlife Service (USFWS) "2015 Range-wide Indiana Bat Summer Survey Guidelines", and no bats have been detected.
3. Operations and maintenance shall be performed in accordance with the attached operation and maintenance plan entitled, "Operation and Maintenance Plan –

Rattlesnake Brook Dam Removal” on 3 sheets and dated December 1, 2015, except where modified by the Special Conditions of this permit.

4. Reports, photographs, and documentation of completed restoration activity and subsequent maintenance activities shall be provided to the Corps. Submittals required by this permit shall be marked with the words “Permit No.NAE-2016-648” and shall be submitted via: a) MAIL: Christine Renzoni - Regulatory Division, Corps of Engineers, New England District, 696 Virginia Road, Concord, MA 01742-2751, or b) EMAIL: Christine.M.Renzoni@usace.army.mil. Documents which are not marked and addressed in this manner may not reach their intended destination and do not comply with the requirements of this permit. Requirements for immediate notification to the Corps shall be done by telephone to (978) 318-8026. At minimum, photographs of completed dam removal must be provided to the Corps.

The National Marine Fisheries Service provided conservation recommendations regarding the effects of your project on Essential Fish Habitat (EFH) as designated under the Magnuson-Stevens Fishery Conservation and Management Act. These have been incorporated into the special conditions.

You are responsible for complying with all of the GP requirements. Please review the enclosed GPs for MA document carefully, in particular the general conditions beginning on Page 23, to familiarize yourself with its contents. You should ensure that whoever does the work fully understands the requirements and that a copy of the permit document and this authorization letter are at the project site throughout the time the work is underway.

This determination becomes valid only after the Massachusetts Department of Environmental Protection (MassDEP) issues or waives Water Quality Certification (WQC) as required under Section 401 of the Clean Water Act. In the event the MassDEP denies the 401 WQC, this determination becomes null and void. The address of the MassDEP Regional office for your area is provided on page 62 of the enclosed GP document.

Your project is located within, or may affect resources within the coastal zone. The Massachusetts Office of Coastal Zone Management (CZM) has already determined that no further Federal Consistency Review is required.

The GPs for MA expire on February 4, 2020. Activities authorized under the GPs that have commenced (i.e., are under construction) or are under contract to commence before the GPs expire will have until February 4, 2021 to complete the activity under the terms and general conditions. For work within Corps jurisdiction that is not completed by February 4, 2021, you will need to reference any reissued or new GPs to see if your project is still authorized or if a new application is required. If it is no longer authorized you must submit an application and receive written authorization before you can continue work within our jurisdiction. Please

contact us immediately if you change the plans or construction methods for work within our jurisdiction. This office must approve any changes before you undertake them.

This authorization requires you to complete and return the enclosed Work Start Notification Form(s) to this office at least two weeks before the anticipated starting date. You must also complete and return the enclosed Compliance Certification Form within one month following the completion of the authorized work and any required mitigation (but not mitigation monitoring, which requires separate submittals).

This permit does not obviate the need to obtain other federal, state, or local authorizations required by law, as listed on Page 57 of the GP document. Performing work not specifically authorized by this determination or failing to comply with any special condition(s) provided above or all the terms and conditions of the GP may subject you to the enforcement provisions of our regulations.

We continually strive to improve our customer service. In order for us to better serve you, we would appreciate your completing our Customer Service Survey located at http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey.

Please contact Christine Renzoni, of my staff at (978) 318-8026 if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Charles N. Farris". The signature is written in a cursive style and is positioned above the typed name and title.

Charles N. Farris
Chief, Permits & Enforcement Branch
Regulatory Division

Copies Furnished:

Ma Division of Ecological Restoration, c/o Nick Wildman, 251 Causeway Street, Suite 400, Boston, Massachusetts 02114, nick.wildman@state.ma.us

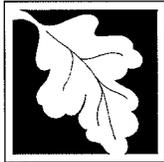
Ed Reiner, U.S. EPA, Region 1, Boston, Massachusetts, reiner.ed@epa.gov

Jim Mahala, Acting Chief, DEP SERO, Wetlands and Waterways, Lakeville, Massachusetts, jim.mahala@state.ma.us

Michael Girvan, MassDEP-WRP, Boston, Massachusetts, michael.girvan@state.ma.us,

Robert Boeri, Coastal Zone Management, Boston, Massachusetts, Robert.Boeri@state.ma.us

Town of Freetown Conservation Commission, 3 North Main Street, P.O. Box 438, Freetown, Massachusetts 02702, conservation@freetownma.gov



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

WPA Form 5A – Restoration Order of Conditions

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:
SE 026-0578
MassDEP File #

Freetown
City/Town

A. General Information (cont.)

Latitude and Longitude, if known: _____
d. Latitude (in decimal) e. Longitude (in decimal)

Note: If the Ecological Restoration Project involves work on a stream crossing, baseline photo-points that capture longitudinal views of the crossing inlet, the crossing outlet and the upstream and downstream channel beds during low flow conditions. The latitude and longitude coordinates of the photo-points shall be included in the baseline data.

6. Property recorded at the Registry of Deeds for (attach additional information if more than one parcel):

Bristol (Fall River District) _____
a. County b. Certificate Number (if registered land)
706 150
c. Book d. Page

7. Dates: _____
a. Date Ecological Restoration NOI Filed b. Date Public Hearing Closed c. Issuance Date
January 12, 2016 February 22, 2016 Feb. 22, 2016

8. Final Approved Plans and Other Documents (attach additional plan or document references as needed):

Rattlesnake Brook Restoration _____
a. Plan Title b. Prepared By
Milone & MacBroom W. Andrew Greene
c. Signed and Stamped by
October 30, 2015 Varies per page
d. Final Revision Date e. Scale

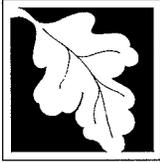
f. Additional Plan or Document Title g. Date

B. Findings

1. Findings pursuant to the Massachusetts Wetlands Protection Act:

Following the review of the Ecological Restoration Notice of Intent described in Section A and based on the information provided in this application and presented at the public hearing, this Commission finds that the areas in which work is proposed is significant to the following interests of the Wetlands Protection Act (the Act). Check all that apply:

- a. Public Water Supply d. Flood Control g. Land Containing Shellfish
b. Private Water Supply e. Storm Damage Prevention h. Fisheries
c. Groundwater Supply f. Prevention of Pollution i. Wildlife Habitat



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

**WPA Form 5A – Restoration Order of
Conditions**

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:
SE 026-0578
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Freetown
City/Town

B. Findings (cont.)

2. This Commission hereby finds the project, as proposed, is an Ecological Restoration Project for:

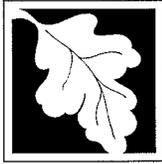
- Dam Removal
- Freshwater Stream Crossing Repair and Replacement
- Stream Daylighting
- Tidal Restoration
- Rare Species Habitat Restoration
- Restoring Fish Passageways

Approved subject to:

The following conditions are required in accordance with the Ecological Restoration eligibility criteria 310 CMR 10.13 (1) through (7) and performance standards set forth in the wetlands regulations. This Commission orders that all work shall be performed in accordance with the Ecological Restoration Notice of Intent for the project described in Section A. The General Conditions in Section C and Special Conditions checked in Section D are incorporated into this Restoration Order. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Ecological Restoration Notice of Intent, these conditions shall control.

Denied because:

The proposed work does not meet the eligibility criteria in 310 CMR 10.13(1) through (7). Therefore, work on this project may not go forward unless and until a new Notice of Intent (WPA Form 3 or 3A) is submitted and a Final Order of Conditions (WPA Form 5 or 5A) has been issued. The Commission has determined that following the eligibility criteria have NOT been met.



WPA Form 5A – Restoration Order of Conditions

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:
SE 026-0578
MassDEP File #

Freetown
City/Town

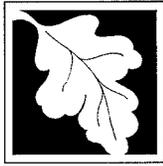
B. Findings (cont.)

Inland Resource Area Impacts: Check all that apply below. (For Approvals Only)

Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
4. <input checked="" type="checkbox"/> Bank	_____	_____	+300	+300
	a. linear feet	b. linear feet	c. linear feet	d. linear feet
5. <input checked="" type="checkbox"/> Bordering Vegetated Wetland	_____	_____	+200,200	+200,200
	a. square feet	b. square feet	c. square feet	d. square feet
6. <input checked="" type="checkbox"/> Land Under Waterbodies and Waterways	200,200	200,200	200,200	200,200 BVW
	a. square feet	b. square feet	BVW	d. square feet
	_____	_____		
	e. c/y dredged	f. c/y dredged		
7. <input checked="" type="checkbox"/> Bordering Land Subject to Flooding	_____	_____	_____	_____
	a. square feet	b. square feet	c. square feet	d. square feet
	_____	_____	_____	_____
	e. cubic feet	f. cubic feet	g. cubic feet	h. cubic feet
8. <input type="checkbox"/> Isolated Land Subject to Flooding	_____	_____	_____	_____
	a. square feet	b. square feet		
	_____	_____	_____	_____
	c. cubic feet	d. cubic feet	e. cubic feet	f. cubic feet
9. <input checked="" type="checkbox"/> Riverfront Area	_____	_____	_____	_____
	a. total sq. feet	b. total sq. feet		
	_____	_____	_____	_____
	c. square feet	d. square feet	e. square feet	f. square feet
	_____	_____	_____	_____
	g. square feet	h. square feet	i. square feet	j. square feet

Coastal Resource Area Impacts: Check all that apply below. (For Approvals Only)

	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
10. <input type="checkbox"/> Designated Port Areas	Indicate size under Land Under the Ocean, below			
11. <input type="checkbox"/> Land Under the Ocean	_____	_____		
	a. square feet	b. square feet		
	_____	_____		
	c. c/y dredged	d. c/y dredged		
12. <input type="checkbox"/> Barrier Beaches	Note: No armoring of a Coastal Dune or Barrier Beach is permitted. Indicate size under Coastal Beaches and/or Coastal Dunes below			
13. <input type="checkbox"/> Coastal Beaches	_____	_____	c/y	c/y
	a. square feet	b. square feet	c. nourishment	d. nourishment



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

WPA Form 5A – Restoration Order of Conditions

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:
SE 026-0578
MassDEP File #

Freetown
City/Town

B. Findings (cont.)

14. Coastal Dunes
- | | | | |
|----------------|----------------|----------------|----------------|
| | | c/y | c/y |
| a. square feet | b. square feet | c. nourishment | d. nourishment |

Note: No armoring of a Coastal Dune or Barrier Beach is permitted.

15. Coastal Banks
- | | |
|----------------|----------------|
| | |
| a. linear feet | b. linear feet |
16. Rocky Intertidal Shores
- | | |
|----------------|----------------|
| | |
| a. square feet | b. square feet |
17. Salt Marshes
- | | | | |
|----------------|----------------|----------------|----------------|
| | | | |
| a. square feet | b. square feet | c. square feet | d. square feet |
18. Land Under Salt Ponds
- | | |
|----------------|----------------|
| | |
| a. square feet | b. square feet |

- | | | | |
|----------------|----------------|--|--|
| | | | |
| c. c/y dredged | d. c/y dredged | | |
19. Land Containing Shellfish
- | | | | |
|----------------|----------------|----------------|----------------|
| | | | |
| a. square feet | b. square feet | c. square feet | d. square feet |

20. Fish Runs
- Indicate size under Coastal Banks, Inland Bank, Land Under the Ocean, and/or inland Land Under Waterbodies and Waterways, above
- | | |
|----------------|----------------|
| 1,390 | 1,390 |
| a. c/y dredged | b. c/y dredged |

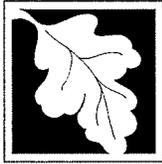
21. Land Subject to Coastal Storm Flowage
- | | |
|----------------|----------------|
| | |
| a. square feet | b. square feet |

* If the project is for the purpose of restoring or enhancing a wetland resource area in addition to the square footage that has been entered in Section B.5.c (BVW) or B.17.c (Salt Marsh) above, please enter the additional amount here

22. Riverfront Area
- | | |
|-------------------|-------------------|
| | |
| a. total sq. feet | b. total sq. feet |
- Sq ft within 100 ft
- | | | | |
|----------------|----------------|----------------|----------------|
| | | | |
| c. square feet | d. square feet | e. square feet | f. square feet |
- Sq ft between 100-200 ft
- | | | | |
|----------------|----------------|----------------|----------------|
| | | | |
| g. square feet | h. square feet | i. square feet | j. square feet |

23. Restoration/Enhancement *:
- | | | |
|-----------------------|------------------------------|------------------------------------------------|
| 200,200 | | |
| a. square feet of BVW | b. square feet of salt marsh | c. square feet of other wetland resource areas |

24. Stream Crossing(s):
- | | |
|-----------------------------------|-------------------------------------------|
| | |
| a. number of new stream crossings | b. number of replacement stream crossings |



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

WPA Form 5A – Restoration Order of Conditions

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:

SE 026-0578

MassDEP File #

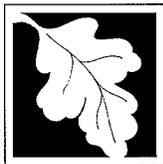
Freetown

City/Town

C. General Conditions Under Massachusetts Wetlands Protection Act

The following conditions are only applicable to Approved projects.

1. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Restoration Order of
2. The Restoration Order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
3. This Restoration Order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state, or local statutes, ordinances, bylaws, or regulations.
4. The work authorized hereunder shall be completed within three years from the date of this Restoration Order unless either of the following apply:
 - a. the work is a maintenance dredging project as provided for in the Act; or
 - b. the time for completion has been extended to a specified date more than three years, but less than five years, from the date of issuance. If this Restoration Order is intended to be valid for more than three years, the extension date and the special circumstances warranting the extended time period are set forth as a special condition in this Restoration Order.
5. This Restoration Order may be extended by the issuing authority for one or more periods of up to three years each upon application to the issuing authority at least 30 days prior to the expiration date of the Restoration Order.
6. If this Restoration Order constitutes an Amended Restoration Order of Conditions, this Amended Restoration Order of Conditions does not extend the issuance date of the original Final Order of Conditions and the Restoration Order will expire on _____ unless extended in writing by the Department.
7. Any fill used in connection with this project shall be clean fill. Any fill shall contain no trash, refuse, rubbish, or debris, including but not limited to lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles, or parts of any of the foregoing.
8. This Restoration Order is not final until all administrative appeal periods from this Restoration Order have elapsed, or if such an appeal has been taken, until all proceedings before the Department have been completed.
9. No work shall be undertaken until the Restoration Order has become final and then has been recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Restoration Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the proposed work is to be done. In the case of the registered land, the Final Restoration Order shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is done. The recording information shall be submitted to the Conservation Commission on the form at the end of this Restoration Order, which form must be stamped by the Registry of Deeds, prior to the commencement of work.



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

WPA Form 5A – Restoration Order of Conditions

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:

SE 026-0578

MassDEP File #

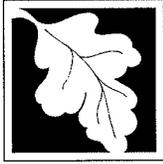
Freetown

City/Town

C. General Conditions Under Massachusetts Wetlands Protection Act (**cont.**)

10. A sign shall be displayed at the site not less than two square feet or more than three square feet in size bearing the words,

“Massachusetts Department of Environmental Protection” [or, “MassDEP”]
“File Number SE 026-0578 ”
11. Where the Department of Environmental Protection is requested to issue a Superseding Restoration Order, the Conservation Commission shall be a party to all agency proceedings and hearings before MassDEP.
12. Upon completion of the work described herein, the applicant shall submit a Request for Certificate of Compliance (WPA Form 8A) to the Conservation Commission.
13. The work shall conform to the plans and special conditions referenced in this order.
14. Any change to the plans identified in Condition #13 above shall require the applicant to inquire of the Conservation Commission in writing whether the change is significant enough to require the filing of a new Notice of Intent.
15. The Agent or members of the Conservation Commission and the Department of Environmental Protection shall have the right to enter and inspect the area subject to this Restoration Order at reasonable hours to evaluate compliance with the conditions stated in this Restoration Order, and may require the submittal of any data deemed necessary by the Conservation Commission or Department for that evaluation.
16. This Restoration Order of Conditions shall apply to any successor in interest or successor in control of the property subject to this Restoration Order and to any contractor or other person performing work conditioned by this Restoration Order.
17. Prior to the start of work, and if the project involves work adjacent to a Bordering Vegetated Wetland, the boundary of the wetland in the vicinity of the proposed work area shall be marked by wooden stakes or flagging. Once in place, the wetland boundary markers shall be maintained until a Certificate of Compliance has been issued by the Conservation Commission.
18. All sedimentation barriers shall be maintained in good repair until all disturbed areas have been fully stabilized with vegetation or other means. At no time shall sediments be deposited in a wetland or water body. During construction, the applicant or his/her designee shall inspect the erosion controls on a daily basis and shall remove accumulated sediments as needed. The applicant shall immediately control any erosion problems that occur at the site and shall also immediately notify the Conservation Commission, which reserves the right to require additional erosion and/or damage prevention controls it may deem necessary. Sedimentation barriers shall serve as the limit of work unless another limit of work line has been approved by this Restoration Order.



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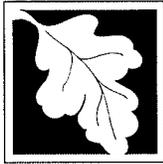
C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)

General Conditions for all Ecological Restoration Projects

19. The project shall be conducted in accordance with any preliminary written determination obtained from the Natural Heritage and Endangered Species Program as set forth in 310 CMR 10.11(2) and any time of year restrictions or other conditions recommended in writing by the Division of Marine Fisheries (for projects in coastal Resource Areas) and the Division of Fisheries and Wildlife (for projects in inland Resource Areas) as set forth in 310 CMR 10.11(3), (4) and (5).
20. The applicant shall implement the plan submitted with the Notice of Intent as approved by the Issuing Authority to prevent and control invasive species.
21. If the project involves the dredging of 100 cubic yards or more in a Resource Area or dredging of any amount in an Outstanding Resource Water, the dredging and Dredged Material management shall be performed in accordance with the Water Quality Certification submitted with the Notice of Intent.
22. If the project involves infrastructure, the owner shall operate and maintain the infrastructure in accordance with the operation and maintenance plan submitted with the Notice of Intent as approved by the Issuing Authority. Implementation of the operation and maintenance plan as approved by the Issuing Authority shall be a continuing condition that shall be set forth in the Certificate of Compliance.
23. The work associated with this Order (the "Project")
 - (1) is subject to the Massachusetts Stormwater Standards
 - (2) is NOT subject to the Massachusetts Stormwater Standards

If the work is subject to the Stormwater Standards, then the project is subject to the following conditions:

- a) All work, including site preparation, land disturbance, construction and redevelopment, shall be implemented in accordance with the construction period pollution prevention and erosion and sedimentation control plan and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollution Discharge Elimination System Construction General Permit as required by Stormwater Condition 8. Construction period erosion, sedimentation and pollution control measures and best management practices (BMPs) shall remain in place until the site is fully stabilized.
- b) No stormwater runoff may be discharged to the post-construction stormwater BMPs unless and until a Registered Professional Engineer provides a Certification that:
 - i. all construction period BMPs have been removed or will be removed by a date certain specified in the Certification. For any construction period BMPs intended to be converted to post construction operation for stormwater attenuation, recharge, and/or treatment, the conversion is allowed by the MassDEP Stormwater Handbook BMP specifications and that the BMP has been properly cleaned or prepared for post construction operation, including removal of all construction period sediment trapped in inlet and outlet control structures;



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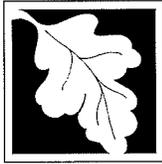
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C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)

- ii.* as-built final construction BMP plans are included, signed and stamped by a Registered Professional Engineer, certifying the site is fully stabilized;
 - iii.* any illicit discharges to the stormwater management system have been removed, as per the requirements of Stormwater Standard 10;
 - iv.* all post-construction stormwater BMPs are installed in accordance with the plans (including all planting plans) approved by the issuing authority, and have been inspected to ensure that they are not damaged and that they are in proper working condition;
 - v.* any vegetation associated with post-construction BMPs is suitably established to withstand erosion.
- c) The landowner is responsible for BMP maintenance until the issuing authority is notified that another party has legally assumed responsibility for BMP maintenance. Prior to requesting a Certificate of Compliance, or Partial Certificate of Compliance, the responsible party (defined in General Condition 18(e)) shall execute and submit to the issuing authority an Operation and Maintenance Compliance Statement ("O&M Statement") for the Stormwater BMPs identifying the party responsible for implementing the stormwater BMP Operation and Maintenance Plan ("O&M Plan") and certifying the following:
 - i.) the O&M Plan is complete and will be implemented upon receipt of the Certificate of Compliance, and
 - ii.) the future responsible parties shall be notified in writing of their ongoing legal responsibility to operate and maintain the stormwater management BMPs and implement the Stormwater Pollution Prevention Plan.
- d) Post-construction pollution prevention and source control shall be implemented in accordance with the long-term pollution prevention plan section of the approved Stormwater Report and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollution Discharge Elimination System Multi-Sector General Permit.
- e) Unless and until another party accepts responsibility, the landowner, or owner of any drainage easement, assumes responsibility for maintaining each BMP. To overcome this presumption, the landowner of the property must submit to the issuing authority a legally binding agreement of record, acceptable to the issuing authority, evidencing that another entity has accepted responsibility for maintaining the BMP, and that the proposed responsible party shall be treated as a permittee for purposes of implementing the requirements of Conditions 18(f) through 18(k) with respect to that BMP. Any failure of the proposed responsible party to implement the requirements of Conditions 18(f) through 18(k) with respect to that BMP shall be a violation of the Restoration Order of Conditions or Certificate of Compliance. In the case of stormwater BMPs that are serving more than one lot, the legally binding agreement shall also identify the lots that will be serviced by the stormwater BMPs. A plan and easement deed that grants the responsible party access to perform the required operation and maintenance must be submitted along with the legally binding agreement.



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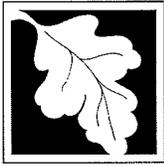
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C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)

- f) The responsible party shall operate and maintain all stormwater BMPs in accordance with the design plans, the O&M Plan, and the requirements of the Massachusetts Stormwater Handbook.
- g) The responsible party shall:
1. Maintain an operation and maintenance log for the last three (3) consecutive calendar years of inspections, repairs, maintenance and/or replacement of the stormwater management system or any part thereof, and disposal (for disposal the log shall indicate the type of material and the disposal location);
 2. Make the maintenance log available to MassDEP and the Conservation Commission ("Commission") upon request; and
 3. Allow members and agents of the MassDEP and the Commission to enter and inspect the site to evaluate and ensure that the responsible party is in compliance with the requirements for each BMP established in the O&M Plan approved by the issuing authority.
- h) All sediment or other contaminants removed from stormwater BMPs shall be disposed of in accordance with all applicable federal, state, and local laws and regulations.
- i) Illicit discharges to the stormwater management system as defined in 310 CMR 10.04 are prohibited.
- j) The stormwater management system approved in the Restoration Order of Conditions shall not be changed without the prior written approval of the issuing authority.
- k) Areas designated as qualifying pervious areas for the purpose of the Low Impact Site Design Credit (as defined in the MassDEP Stormwater Handbook, Volume 3, Chapter 1, Low Impact Development Site Design Credits) shall not be altered without the prior written approval of the issuing authority.
- l) Access for maintenance, repair, and/or replacement of BMPs shall not be withheld. Any fencing constructed around stormwater BMPs shall include access gates and shall be at least six inches above grade to allow for wildlife passage.



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D. Special Conditions for Ecological Restoration Projects

Dam Removal

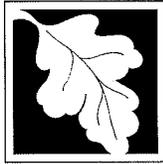
This project involves dam removal and the following special conditions shall apply in addition to the general conditions set forth in 310 CMR 10.14(1):

- a) An as-built plan and a written statement from a registered professional engineer or other environmental professional expert in ecological restoration certifying substantial compliance with the design plan and construction specifications approved in the Restoration Order of Conditions shall be submitted to the Issuing Authority within 90 days of completion of the dam removal.
- b) The applicant shall monitor the dam removal site during the first two years following completion of the dam removal. Said monitoring shall include a topographic survey of the longitudinal profile and stream cross-sections from downstream of the former dam through the upstream end of the former impoundment. The survey reference point shall comprise a permanent marker or recoverable survey point with known coordinates, such as a fixed point shown on the as-built plan, an existing bench mark, or a new benchmark. That marker should be identified or referenced on the plans and on the as-built plans. The applicant shall establish at least two photo-points for pre- and post-restoration monitoring at the dam removal site. At least one photo-point location shall be chosen to document a view of the dam pre-restoration and to document the same site after the dam is removed. A second location shall be chosen to document a view of the impoundment pre- and post-restoration. Photos shall be taken for two years after the dam removal is completed.
- c) The applicant shall submit a report detailing the results of this monitoring within six months of the completion of the two year post-construction monitoring period, or within 30 months after the dam removal is complete whichever is sooner. The report shall include a comparison of post-restoration survey data with pre-restoration survey data as illustrated by the photos taken during the monitoring period.

Freshwater Stream Crossing Repair and Replacement Projects

The project involves one or more freshwater crossing repair or replacement and the following special conditions in addition to the general conditions apply:

- a) An as-built plan and/or a written statement from a registered professional engineer or other environmental professional expert in ecological restoration certifying substantial compliance with the design plans and construction specifications approved in the Restoration Order of Conditions shall be completed within 90 days of completion of construction. The as-built plan shall include the dimensions of the structure, the invert elevation of the upstream and downstream ends of the structure and the road or other surface elevation above the structure.



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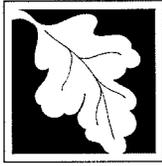
D. Special Conditions for Ecological Restoration Projects (cont.)

- b) The applicant shall monitor the site by collecting sufficient data within 12 months after construction is complete to evaluate the effect of the structure. At a minimum, when a Certificate of Compliance is requested, the applicant shall provide post-construction photo-points that capture longitudinal views of the crossing inlet, the crossing outlet and the upstream and downstream channel beds during low flow conditions. The photo-points shall be located at the same geographic photo-point latitude and longitude coordinates as required in the Notice of Intent per 310 CMR 10.12(1)(n). The applicant shall submit a report to the Issuing Authority detailing the results of this monitoring within 18 months after construction is complete. The report shall include a comparison of the post-restoration data with pre-restoration data.

Stream Daylighting

The project involves stream daylighting and the following special conditions in addition to the general conditions apply:

- a) An as-built plan and a written statement from a registered professional engineer or other environmental professional expert in ecological restoration certifying substantial compliance with the design plan and construction specifications approved in the Restoration Order of Conditions shall be submitted to the Issuing Authority within 90 days of completion of the project. At a minimum, when a Certificate of Compliance is requested, the applicant shall provide post-construction photo-points that capture longitudinal views of the upstream and downstream channel beds of the daylighted reach during low flow conditions.
- b) The applicant shall conduct photo-point monitoring by establishing at least three photo-points for pre- and post-restoration monitoring at the stream daylighting site. One photo-point location shall be chosen to document the upstream end of the site and one photo-point location shall be chosen to document the downstream end of the site. A third photo-point shall be chosen to document conditions in the restored channel. Photos shall be taken during high flow and low (summer) flow of each year during the two years following completion of the project.
- c) Within 30 months after the completion of the project, the applicant shall submit a report describing the ecological changes observed at the project site during the two years following completion of the project, as illustrated by the photos.



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D. Special Conditions for Ecological Restoration Projects (cont.)

Tidal Restoration Projects

The project involves restoration of tidal influence and the following special conditions in addition to the general conditions apply:

- a) If the project is a culvert or bridge replacement or repair project, an as-built plan and a written statement from a registered professional engineer or other environmental professional expert in ecological restoration certifying substantial compliance with the design plans and construction specifications approved in the Restoration Order of Conditions shall be submitted to the Issuing Authority within 90 days of completion of construction. The as-built plan shall include the dimensions of the structure, the invert elevation of the upstream and downstream ends of the structure and the road or other surface elevation above the structure.
- b) The applicant shall monitor pre- and post-construction tidal conditions upstream and downstream of the tidal restriction with water level readings measured at an interval no greater than every 10 minutes over a minimum of a one-week period that includes a spring tide. Pre- and post-construction water level readings shall be taken at approximately the same locations and shall be referenced to the same vertical elevation datum. The applicant shall prepare a report detailing the results of this monitoring within 12 months after construction is complete. The report shall include and compare pre- and post-construction tidal elevation monitoring data to assess attainment of the project's predicted post-restoration tidal conditions.

Rare Species Habitat Restoration

The project is a Rare Species Habitat Restoration Project and in addition to the general conditions the following special conditions apply:

- a) An as-built plan and a written statement from a registered professional engineer or other environmental professional expert in ecological restoration certifying substantial compliance with the design plan, construction specifications, and the Habitat Management Plan submitted with the Notice of Intent as approved in the Restoration Order of Conditions shall be submitted to the Issuing Authority within 90 days of completion of the project.
- b) The applicant shall establish at least two photo-points for pre- and post-restoration monitoring at the project site. Photos shall be taken for two years after construction is complete. Within 30 months of completion of the project, the applicant shall submit to the Issuing Authority a report describing the ecological changes observed at the project site as illustrated by the photos.



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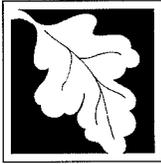
City/Town

D. Special Conditions for Ecological Restoration Projects (cont.)

Fish Passageway Restoration

The project involves the repair or replacement of a fish passageway and in addition to the general conditions the following special conditions:

- a) The property owner is responsible for maintaining and repairing the fishway in good condition so that it will support safe and efficient fish passage in accordance with an operation and maintenance plan approved by the Division of Marine Fisheries. This requirement is a continuing condition that shall be set forth in the Certificate of Compliance.
- b) a post-construction project summary using surveys, a narrative and photographs as needed, that confirm the fishway slope and entrance and exit elevations shall be submitted to and approved by the Division of Marine Fisheries, prior to submittal of a request for a Certificate of Compliance.



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**WPA Form 5A – Restoration Order of
Conditions**

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

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E. Findings Under Municipal Wetlands Bylaw or Ordinance

1. Is a municipal wetlands bylaw or ordinance applicable? Yes No
2. The Freetown Conservation Commission hereby finds (check one that applies):
Conservation Commission
 - a. that the proposed work cannot be conditioned to meet the standards set forth in a municipal ordinance or bylaw, specifically:

1. Municipal Ordinance or Bylaw	2. Citation
---------------------------------	-------------

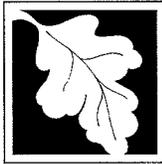
Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides measures which are adequate to meet these standards, and a final Order of Conditions is issued.

- b. that the following additional conditions are necessary to comply with a municipal ordinance or bylaw:

1. Municipal Ordinance or Bylaw	2. Citation
---------------------------------	-------------

3. The Commission orders that all work shall be performed in accordance with the following conditions and with the Notice of Intent referenced above. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, the conditions shall control.

The special conditions relating to municipal ordinance or bylaw are as follows (if you need more space for additional conditions, attach a text document):



Massachusetts Department of Environmental Protection
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Provided by MassDEP:

SE 026-0578

MassDEP File #

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F. Signatures

This Restoration Order is valid for three years, unless otherwise specified as a special condition pursuant to General Conditions #4, from the date of issuance.

Feb. 22, 2016

1. Date of Issuance

Please indicate the number of members who will sign this form.

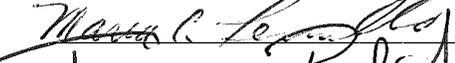
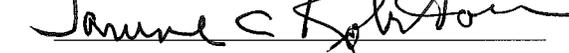
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2. Number of Signers

This Restoration Order must be signed by a majority of the Conservation Commission.

The Restoration Order must be mailed by certified mail (return receipt requested) or hand delivered to the applicant. A copy also must be mailed or hand delivered at the same time to the appropriate Department of Environmental Protection Regional Office and the property owner, if different from applicant.

Signatures:

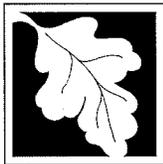
by hand delivery on

Date

by certified mail, return receipt requested, on

February 23, 2016

Date



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

WPA Form 5A – Restoration Order of Conditions

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:

SE 026-0578

MassDEP File #

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G. Appeals

The applicant, the owner, any person aggrieved by this Restoration Order, any owner of land abutting the land subject to this Restoration Order, or any ten residents of the city or town in which such land is located, are hereby notified of their right to request the appropriate MassDEP Regional Office to issue a Superseding Restoration Order of Conditions. The request must be made by certified mail or hand delivery to the Department, with the appropriate filing fee and a completed Request for Departmental Action Fee Transmittal Form, as provided in 310 CMR 10.03(7) within ten business days from the date of issuance of this Restoration Order. A copy of the request shall at the same time be sent by certified mail or hand delivery to the Conservation Commission and to the applicant, if he/she is not the appellant.

Any appellants seeking to appeal the Department's Superseding Restoration Order of Conditions associated with this appeal will be required to demonstrate prior participation in the review of this project. Previous participation in the permit proceeding means the submission of written information to the Conservation Commission prior to the close of the public hearing, requesting a Superseding Restoration Order, or providing written information to the Department prior to issuance of a Superseding Restoration Order.

The request shall state clearly and concisely how the project permitted under the Restoration Order which is being appealed does or does not meet the eligibility criteria in 310 CMR 10.13(1) and the relevant provisions of 310 CMR 10.13(2) through (7). To the extent that the Restoration Order is based on a municipal ordinance or bylaw, and not on the Massachusetts Wetlands Protection Act or regulations, the Department has no appellate jurisdiction.



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>

June 5, 2015

FINAL RECORD OF DECISION

PROJECT NAME : Rattlesnake Brook Restoration
PROJECT MUNICIPALITY : Freetown
PROJECT WATERSHED : Taunton
EEA NUMBER : 15352
PROJECT PROPONENT : City of Fall River
DATE NOTICED IN MONITOR : May 20, 2015

Pursuant to the Massachusetts Environmental Policy Act (M.G.L.c.30, ss. 61-62I) and Section 11.11 of the MEPA Regulations (301 CMR 11.00), I have reviewed this project and hereby **grant a Waiver** from the categorical requirement to prepare an Environmental Impact Report (EIR). In a separate Certificate issued on May 15, 2015, I set forth the outstanding issues related to the project to be addressed by the project proponent (the City of Fall River) and local, State and federal permitting agencies.

Project Description

As described in the Expanded Environmental Notification Form (EENF), the project consists of the breaching of the Rattlesnake Brook dam. The dam is owned by the City of Fall River and is located on both Rattlesnake and Terry Brooks upstream of Narrows Road near the head of tide in Freetown. The Dam has been classified as having Low Hazard potential by the Department of Conservation and Recreation (DCR) Office of Dam Safety (ODS), which signifies that its failure will cause minimal property damage and loss of life is not expected. The dam presents the first blockage to upstream fish migration on Rattlesnake Brook. The goal of this project is to restore the habitat connectivity and ecological function of the Rattlesnake Brook system, to reduce liability through declassification of the dam as a jurisdictional structure, and to improve public safety conditions at the site. The proposed project is consistent with the City of Fall River's Master Plan 2009-2030.

The project consists of:

- Removal of up to 100 linear feet (lf) of the Rattlesnake Brook dam;
- Re-formation of both the Rattlesnake Brook and Terry Brook stream channels due to passive sediment migration through the existing impoundment;
- Restoration of a single stem channel between the dam and Narrows Road;
- Abandonment of the existing buried culvert on the eastern channel between the dam and Narrows Road;
- Creation of a hydraulic connection upstream of Narrows Road to distribute flows through both the east and west culverts; and
- Protection of the Terry Brook crossing.

Project Site

A historic mill operated on the site as a bleachery up until the mid-20th century. The earthen embankment dam impounds Bleachery Pond and prevents upstream passage of resident and diadromous fish. The impoundment is fed by both Rattlesnake Brook and Terry Brook. The dam discharges over two separate spillways, bifurcating flow downstream of the dam to the east and west channels.

The eastern channel between the dam and Narrows Road flows through an approximately 210-foot-long, five-foot-wide by three-foot-high buried culvert. The western channel between the dam and Narrows Road is approximately 400 linear feet and is approximately 18 feet wide. Portions of the west channel banks are supported by granite stone walls. An existing bridge and other abandoned bridge structures are located along this channel. The channel substrate consists of stones, brick, cobble, gravel, sand, and debris. The banks are densely vegetated.

The Narrows Road culverts are precast concrete four-sided box structures with internal widths of 10 and 15 feet for the east and west culverts, respectively. Both have internal heights of six feet. The channel beds under the culverts are riprap, the same material lining the upstream banks. The culverts were reconstructed in 2012 following storm damage in 2010.

The current Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRMs), effective date July 7, 2009, depict both a floodplain and a regulatory floodway on the project site. The floodway is depicted as generally following the alignment of the buried culvert to the east. The Base Flood Elevation (BFE) is 14 feet at Narrows Road and 15 feet upstream of the dam. The limit of the regulatory floodway is located on the upstream side of Narrows Road. The Flood Insurance Study (FIS) indicates that, during the one percent annual chance event, Narrows Road would be overtopped by more than five feet of water.

Permitting and Jurisdiction

This project is subject to MEPA review and requires the preparation of a mandatory EIR pursuant to 301 CMR 11.03(3)(a)(4) because it requires State Agency Actions and will result in structural alteration of an existing dam that causes a decrease in impoundment capacity. The project also exceeds ENF thresholds for alteration of 500 or more linear feet of bank along a fish

run or inland bank (301 CMR 11.03(3)(b)(1)(b)); alteration of 5,000 or more square feet of BVW (301 CMR 11.03(3)(b)(1)(d)); and, new fill or structure or expansion of existing fill or structure in a velocity zone (301 CMR 11.03(3)(b)(1)(e)). The project will require a Chapter 91 (c. 91) Permit and a Section 401 Water Quality Certificate (WQC) from the Massachusetts Department of Environmental Protection (MassDEP) and a Chapter 253 Dam Safety Permit from the Office of Dam Safety (ODS).

The project will also require an Order of Conditions from the Freetown Conservation Commission, or in the case of an appeal, a Superseding Order of Conditions from MassDEP. A Category 2 General Permit from the United States Army Corps of Engineers will be required in accordance with Section 404 of the Federal Clean Water Act. This project is subject to review by Massachusetts Historical Commission (MHC) acting as the State Historic Preservation Officer (SHPO) pursuant to Section 106 of the National Historic Preservation Act of 1966, as amended (36 CFR 800). The project will be required to obtain a National Pollutant Discharge Elimination System Construction General Permit (NPDES CGP) from the United States Environmental Protection Agency (EPA).

Funding and technical assistance will be provided from the Massachusetts Environmental Trust (MET) and from the Department of Fish and Game (DFG) Division of Ecological Restoration (DER). Therefore, MEPA jurisdiction is broad in scope and extends to all aspects of the project that may cause Damage to the Environment, as defined in the MEPA regulations.

Waiver Request

The City submitted an EENF for the project with a request for a Waiver from the requirement to prepare a Draft and Final EIR. I have determined that the EENF demonstrates that the project meets the Waiver criteria at 301 CMR 11.11. The Waiver request was discussed at the consultation session for the project and attendees were supportive of the Waiver request. Most of the comment letters explicitly supported the waiver request and none of the letters identify concerns with the issuance of a Waiver.

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 on the EENF and consultation with State 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 prepare a Mandatory EIR for the project would result in undue hardship by delaying completion of an environmental restoration project. In addition, the preparation of an EIR would not avoid Damage to the Environment, as the EENF includes an adequate analysis of alternatives and the project and proposed design are supported by State Agencies. Although the project exceeds the mandatory EIR threshold related to a decrease in the impoundment capacity of a dam, the project is proposed as an environmental restoration project and the purpose is to restore stream ecology, improve water quality, enhance fish and wildlife habitat, and restore fish passage from ocean to headwaters. Notably, the project will accomplish its goals by breaching a dam that inhibits natural processes, and establish conditions that will allow the site to recover without ongoing intervention and maintenance.

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 project will employ the following mitigation measures to ensure the impacts of the project are avoided, minimized and mitigated:
 - Staging and maintenance of construction vehicles and equipment in a designated area using appropriate measures to prevent leakage of fuel or other fluids;
 - Preparation of a Stormwater Pollution Prevention Plan (SWPPP) in accordance with the NPDES CGP that will identify Best Management Practices (BMP) to control erosion and sedimentation. BMPs will include use of silt fencing, seeding of floodplain areas that will be exposed for more than seven days, maintenance of emergency erosion control materials on-site, stabilization of exposed areas upon completion of work, and separation of flow between constructed areas and the dewatering ditch;
 - Monitoring of changes to the site to evaluate effectiveness of the project;
 - The project will obtain a Section 401 Water Quality Certificate from MassDEP for

dredging over 100 cy of sediment. The project will be designed and constructed in a manner consistent with applicable Water Quality Regulations (314 CMR 9.00) and Surface Water Quality Standards (314 CMR 4.00);

- The project will obtain a c. 91 Permit from MassDEP that will include conditions to maintain appropriate public access (310 CMR 9.00);
- The project will obtain an Order of Conditions outlining how the project will comply with the Limited Project provisions (310 CMR 10.53(4)) of the Massachusetts Wetlands Protection Act, including any necessary monitoring of the restoration.
- The project and its partners will develop and implement pre- and post-removal monitoring plans to evaluate impacts associated the project;
- Work will be conducted in accordance with a Time-of-Year (TOY) restriction on all in-water, silt-producing work from March 1 to June 30 to protect smelt and river herring spawning habitat; and,
- The project will use sedimentation, turbidity, and erosion controls during construction.

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 to accomplish its overall goal of habitat restoration.

Conclusion

Based on these findings, I have determined that this Waiver request has merit. A DROD was issued on May 15, 2015 and published in the Environmental Monitor on May 20, 2015 in accordance with 301 CMR 11.15(2), which began the public comment period. The public comment period lasted for 14 days and concluded on June 3, 2015. Accordingly, I hereby grant a Waiver from the requirement to prepare an EIR, subject to the above findings and conditions.

June 5, 2015
Date


Matthew A. Beaton

Comments received on the DROD:

None

MAB/ACC/acc