

# Anticipated Permitting Pathways for Three Priority Projects

Horsley Witten Group, Inc. (HW) compiled an anticipated permitting pathway for the three Priority Projects involving infrastructure construction identified in the Assawompset Ponds Complex Flood Water Mitigation Project 2020 efforts. These Priority Project are:

- Assawompset Pond Dam Repair and Replacement Project,
- Snake River Culvert Replacement Project, and
- Nemasket River Sand Trap and Sediment Removal Project.

Each of these projects is more fully described in the Final Report to which this document is attached. The permitting pathway for these projects is summarized in the Table below, and each permit is described in more detail on the following pages. The permit pathway includes a list of each of the permits that are expected to be required in order to construct the projects, as well as the agency that issues the permit, the approximate review period that can be expected for the project, and the order in which the permits would be pursued. Some permit applications are typically submitted and reviewed concurrently, and some permit applications must include proof of permit issuance from prior permits processes. The table below identifies the likely order or stage in which each permit application would be submitted along the permit pathway for each project and a general estimate of the overall permitting timeline. We note that permitting occurs during the project design process and the permit requirements and conditions inform the design process for each project as it progresses.

The following pages provide more details about key requirements of each permit and anticipated regulatory review overlap. We note, however, that every project is unique and results in a unique permitting pathway and timeframe as a result of project and site conditions, as well as other unpredictable outside influences on the schedule. In addition, an alternative permitting pathway has been developed recently to facilitate Ecological Restoration Projects. In this case, a Notice of Intent is submitted to the local Conservation Commission and MA DEP at the end of the permitting process once all of the other permit processes have progressed and all agencies have provided comments. This permitting pathway is a potential option for the Snake River Culvert Replacement project, but does not always yield expedience in acquiring permits. This report presents the more traditional permitting approach, and describes all permits, but the order of operations can be explored at the initial permitting phase for each project to determine if the Ecological Restoration approach may be beneficial.

**Table 1. Summary of Permits Anticipated to be Required for Implementation of Three Priority Projects**

ORDER/ STAGE	PERMIT	AGENCY <sup>1</sup>	APPROX REVIEW PERIOD	PROJECT		
				Assawompset Pond Dam Repair/Replace	Snake River Culvert Replacement	Nemasket Sand Trap & Sediment Removal
1	MA Environmental Policy Act Certificate	MA EEA, MEPA Program	6 months	X	X	X
1	Order of Conditions	Conservation Commissions MA DEP	1-3 months	X	X	X
1	MA Endangered Species Act Review	MassWildlife, NHESP	3 months	X	X	X
1	Chapter 91 Waterways Permit	MA DEP	6-12 months	X	X	X
1	Section 401 Water Quality Certification	MA DEP	6-12 months (typically filed with Ch 91)	X	X	X
1	Section 404 General Permit	Army Corps of Engineers	2-3 months	X	X	X
1	Section 106 Historical Review	MA Historical Commission	1 month (filed with MEPA)	X	X	
2	State Highway Access Permit	MA DOT	25% design: 20 days 75-100% design: 20 days Final Plans, Specs and Estimates: 10 days		X	
2	Chapter 85, Section 35 Bridge Review	MA DOT	Variable		X	
2	Fishway Construction Permit	MA DMF	Variable, 1-2 months	X		
3	Dam Safety Permit	MA DCR	2 months	X		
Total Estimated Permit Timeline:				18-24 months	13-14 months	13-14 months

<sup>1</sup> EEA = Executive Office of Energy and Environmental Affairs; MEPA = Massachusetts Environmental Policy Act; DEP = Department of Environmental Protection; DOT = Department of Transportation; DMF = Division of Marine Fisheries; MassWildlife = Massachusetts Division of Fisheries and Wildlife; NHESP = Natural Heritage and Endangered Species Program; DCR = Department of Conservation and Recreation

## Description of Anticipated Permits

### MA Environmental Policy Act

The MEPA review process is triggered under a variety of thresholds specified in MA CMR 11.03, including impacts to state-listed endangered, threatened, or special concern species habitat; alteration of wetland areas; alteration of fish run; and dredging. State funding, which is a likely contributor to any of these projects, also triggers MEPA review in conjunction with any other threshold.

The MEPA process includes an Environmental Notification Form (ENF) for initial review, and is sometimes followed by a more detailed Environmental Impact Report (EIR) for more complicated projects. These projects will require an ENF but are less likely to trigger an EIR. The dam repair and silt trap projects are more likely than the culvert replacement to potentially trigger an EIR.

#### Key Requirements:

- Quantification of impacts to wetland resource areas
- Identification of rare and endangered species habitat
- Impacts to the water supply
- Impacts to historical/archeological resources
- Indication of presence of hazardous waste
- Statement of existing environmental conditions
- Assessment of environmental impact
- List of required permits
- Mitigation measures proposed
- Analysis of project alternatives
- EIR must contain response to ENF comments

#### Regulatory Overlap:

The ENF also circulates to MA DEP, MA DOT, SRPEDD, Lakeville, Middleborough, Freetown, Rochester, Taunton, New Bedford (city councils/select people, planning departments/boards, conservation commissions, departments of health, public libraries), MA Coastal Zone Management office, MA DMF, MA DCR, MA Historical Commission, Native American tribes and MassWildlife

#### Permitting Timeline:

- The MEPA review process may take up to 30-37 days before issuance of a MEPA Certificate.
- Following review, comments are filed with the Secretary of EEA within 20-37 days.

### Order of Conditions

An Order of Conditions is required for any project that involves the removal, dredging, filling, or altering of wetlands under the Massachusetts Wetlands Protection Act (General Law Chapter 131, Section 40). This project is located in both Middleborough and Lakeville, and neither community has a local wetlands protection bylaw. An Order of Conditions is obtained by submitting a Notice of Intent to the Conservation Commissions in each town in which the project is located and the MA DEP.

Key Requirements:

- Quantification of impacts to buffer zones and resource areas.
- Notation of other applicable environmental standards/requirements, including requirements for projects in rare wetland wildlife habitat or in coastal fisheries.

Key Restrictions:

- Cannot discharge dredged or fill material within 400 feet of the high water mark of a Class A surface water, or in a vernal pool.
- Project shall not impede or obstruct migration of fish unless allowed by DMF, shall not change volume or rate of flow of water in fish run, or impair the capacity of spawning/nursing habitats for fish. Dredging/disposal of dredge material is prohibited March 15<sup>th</sup>-June 15<sup>th</sup>.
- No more than 5000 square feet of Bordering Vegetated Wetland may be lost.

Regulatory Overlap:

- A copy of the NOI must also be submitted to MA DEP, Natural Heritage and Endangered Species Program, and MA Department of Marine Fisheries.
- For projects located on the Assawompset Pond, copies of the NOI must also be sent to the Taunton and New Bedford Water Departments.

Permitting Timeline:

- Conservation Commissions are likely to take between 1-3 months to reach a decision.

## Massachusetts Endangered Species Act Review

The MA Endangered Species Act Review is triggered by projects within priority habitat zones, and in project areas in which endangered species are known to be present.

Key Requirements:

- Quantification of wetland resource area impacts.
- Geography and assessment of impacts within priority habitats and efforts to avoid impacts.

Key Restrictions:

- Activities cannot occur within 300 feet of a vernal pool.
- Changes in environment cannot be likely to result in stress, lowered reproduction or growth, or decline in local population of Endangered or Threatened species.
- The project cannot prevent, hinder, or stop ecological processes which are important to the survival of Endangered or Threatened species.
- The project cannot isolate populations of Endangered or Threatened species from each other.
- Activities cannot disrupt seasonal or daily movements or migrations of Endangered or Threatened species.
- Activities cannot decrease the long term survival or recovery of local populations of Endangered or Threatened species.

Regulatory Overlap:

- Likely to be triggered during the MEPA review process.

Permitting Timeline:

- Review from MassWildlife will take up to 30 days, followed by a 60 day determination period prior to a response being issued.

## Chapter 91 – Waterways Permit

Waterways Permits are generally required for activities involving dredging, filling, or installing structures in regulated waterways, which includes Great Ponds and navigable waters on which public funds have been expended for stream clearance, channel improvement, or any form of flood control or prevention work, either upstream or downstream within the river basin in MA. Chapter 91 has jurisdiction in Assawompset Pond due to its classification as a Great Pond, and any Structural Alteration activities would require Chapter 91 authorization through a Water-Dependent Waterways License. Chapter 91 has jurisdiction in the Nemasket River as a navigable waterway.

### Key Requirements:

- Description of any filling or dredging activities planned.
- Description of potential impacts on any docks, piers, boat ramps, private water supply wells, surface water withdrawal points.
- Description of any potential impacts to public access or navigation.
- Grain size analysis and sediment quality testing, for any dredging projects.

### Key Restrictions:

- May not adversely impact the width or depth of an existing channel.
- Project shall not disrupt any water-dependent use in operation.
- Structures must meet the standards of State Building Code, 780 CMR.
- No dredging may occur to a mean low water depth greater than 20 feet.
- No dredging may occur between March 15<sup>th</sup> and June 15<sup>th</sup> unless otherwise determined by DMF.
- Dredging activities must be a minimum of 25 feet away from any marsh boundaries.

### Regulatory Overlap:

- Application must also be sent to the Lakeville and Middleborough Planning Boards.
- Application can be filed jointly with a Chapter 401 Water Quality Certification Application.
- An Applicant may initiate coordinated review under MEPA by specifying so on the ENF filing.

### Permitting Timeline:

- After an application is filed, a public notice must be issued (including in at least one local newspaper) and a 30-day public review period occurs.
- Regulatory review up to 276 days (total process can be 6-12 months).

## Section 401 Water Quality Certification

Water Quality Certification is required for projects involving dredging at least 100 cubic yards of material or activities disturbing more than 5000 square feet of wetland area.

### Key Requirements:

- See Chapter 91 – Waterways Permit
- Discharges to wetland areas must result in 1:1 wetland replication efforts.

- Chemical and physical testing of dredged material. The regulations state that testing must occur if at least 10% of the dredged sediment passes the No. 200 U.S. Standard Series Testing Sieve; in practice, testing is generally required.
- For projects that dredge up to 10,000 cubic yards of material, one core for every 1,000 cubic yards must be collected. For larger projects, a project-specific sampling plan must be developed.

#### Key Restrictions

- No discharges of dredged material may be released in Outstanding Resource Waters.
- No dredged material may be discharged within 400 feet of the high water mark of a Class A surface water.
- No discharge of dredged material is permitted for the impoundment or detention of stormwater for purposes of controlling sedimentation or other pollutant attenuation. Dredging may be permitted to manage stormwater for flood control if there is no practicable alternative.
- Avoid adverse impacts to wetland areas to the greatest extent practicable.
- Where possible, maintain 25-feet between the edge of vegetated wetlands and the dredging area.
- Dredging may not occur during migration, spawning, or development of finfish, shellfish, crustaceans, or merostomatans.
- Dredged material cannot be transported with free liquid and must minimize fugitive dust.

#### Regulatory Overlap:

- Can be filed jointly with a Chapter 91 Permit Application or jointly with the Army Corps Section 404 Permit.

#### Permitting Timeline:

- Chemical analyses of sampled material must be performed within 3 years prior to the submission of the application.

### Section 404 General Permit

Sections 404 and 10 General Permits are required for dredging activity in coastal and waterway areas. The Assawompset Dam Restoration may be permitted under Massachusetts General Permit 1: Maintenance. A pre-application consultation with New England Corps is recommended in order to review application needs, anticipated project restrictions, and potential combination of this project with downstream dredging, if that is also being pursued, in order to avoid project segmentation. It is possible that Army Corps may require an Individual Permit.

#### Key Requirements:

- Vicinity map locating the site of the entire project.
- Site plan showing the project limits and the limits of waterbodies/wetlands.
- Detailed plan showing the proposed activity, as well as the limits of proposed dredging or filling.

#### Key Restrictions:

- No more than 1000 square feet of permanent impacts to riffle and pool complexes or non-tidal vegetated shallows.
- No more than 5000 square feet of temporary permanent impacts to riffle and pool complexes, or 1000 square feet of temporary impacts in vegetated shallows.

#### Regulatory Overlap:

- This review typically occurs at the same time as the Chapter 91 and Water Quality Certificate processes, and after the Notice of Intent (application for Order of Conditions).

#### Permitting Timeline:

- The ACOE review process will take up to 45 days from the time a complete application is submitted, and includes both internal review and a public notification/comment period. If ACOE has questions and requests additional information, this can extend the timeline.

### Section 106 Review

#### Key Requirements:

- A Project Notification Form should include:
  - Descriptions of any demolition, rehabilitation, or new construction activities.
  - Indication of the presence of known historical or archaeological properties/sites.
  - Quantification of resource area impacts.

#### Key Restrictions:

- The project may not have adverse effects on historical, architectural, archaeological, or cultural characteristics of a property. If a finding of adverse effects is reached, the Historical Commission will provide consultation on project alternatives to protect the historical characteristics.

#### Regulatory Overlap:

- The MA Historical Commission is typically notified during the onset of the MEPA review process.

#### Permitting Timeline:

- Review by the Historical Commission will take up to 30 days.
- Maximum of 120 day process if adverse effects are disputed and Historical Commission does not accept adverse effect.

### State Highway Access Permit

A Non-Vehicular State Highway Access Permit is required for construction, relocation, or repair of utilities within a state highway layout (SHLO). The Access Permit must be obtained from the MA DOT District 5 Highway Division office in Taunton.

#### Key Requirements:

- Proposed designs must meet the 13 controlling criteria outlined in the MA Highway Department Project Development and Design Guide
- Traffic Management Plan and Detour Plan
- Tree Cutting or Landscaping Plan
- Vegetative Plan
- Pre-review of the permit application by District 5 Office, requiring:
  - General project information including the town and State Highway in which project work is proposed, description of work to be performed
  - Evidence of EOEEA certification of MEPA compliance

- Engineering plans in a form acceptable to the Division of Highways
- Detailed Access Permit Review
  - A series of three submissions at the 25% design, 75% or 100% design, and PS&E phases

Key Restrictions:

- Avoid, minimize, or mitigate transportation-related air pollution (as determined applicable by DOT)

Regulatory Overlap:

- MA DOT will provide comments as part of the MEPA Review process.

Permitting Timeline:

- The Detailed Application Review process is anticipated to take a minimum of 75 days between the three phases of review, although this process may be broken out by the various design phases.
- Access Permit Application should follow certification of compliance with MEPA.
- Permit must be renewed if construction is not complete within 1 year of approval.

## Chapter 85, Section 35 Bridge Review

The purpose of this review is to allow MA DOT to evaluate the bridge design for any proposed alteration or construction of a bridge located on a public highway and spanning more than 10 feet to determine the maximum allowable load for the bridge. This review is typically performed by the MA DOT District office.

## Fishway Construction Permit

A fishway construction permit is required for the construction or alteration of any fish passage device, such as fish ladders. Any alterations or improvements to the existing fish ladder at the Assawompset Dam associated with dam repair or replacement would require this permit.

Key Requirements:

- Intended time of construction for the fishway.
- An operation and maintenance plan for the fishway.
- A fishway monitoring plan.
- A fish passage suitability statement.

Key Restrictions:

- Dredging activities prohibited between March 15<sup>th</sup> – June 15<sup>th</sup>

Regulatory Overlap:

- n/a

Permitting Timeline:



- The permitting timeline is not clearly defined, but application should occur prior to Ch. 91, Ch. 401, and NOI applications if variances from allowed construction/dredging time periods are sought.

## Dam Safety Permit Application

A Dam Safety Permit is required for any dam-related work, including dam repairs, improvements, or removals. This dam is categorized as a Low Hazard dam.

### Key Requirements:

- Preliminary report, including early site investigation information, preliminary designs.
- Final design report, including hydrologic, hydraulic, and structural considerations, as well as construction schedule, filling schedule, and operation and maintenance plan.
- Construction documents, including plans and specifications.
- Dam design:
  - Spillway must be able to pass the 100-year (for Low Hazard) or 500-year (for Significant Hazard) flood. Emergency spillway must pass the 25-year or 50-year flood.
  - A gate or conduit must be provided to drain the reservoir. Minimum drain time must be computed. Water conveyance velocity shall prevent damage to the interior surface. Seepage protection must be provided. Trash rack must be installed at intake.
  - Dam must be designed to prevent instability due to seepage, uplift, or loss of material.
  - Must provide structural and slope stability analysis.

### Regulatory Overlap:

- Dam owner must notify the Dam Safety Commissioner, the Conservation Commissions, and the Division of Fish and Wildlife 21 days prior to construction or drawdown occurs.

### Permitting Timeline:

- Permit is issued within 60 days from the submission of the final design report.