

December 9, 2008

Round 2 Land Protection

Summary of Housatonic River Natural Resource Damages Restoration Process

SCOPE

The MA SubCouncil of the Housatonic River Natural Resource Trustees (MA SubCouncil) proposes to emphasize land acquisition/protection and habitat restoration for compensatory restoration during the Natural Resource Damages Round 2 funding process. The emphasis on land acquisition/protection will include proposal solicitation and selection processes described in the Massachusetts Housatonic River Watershed Restoration Program Final Programmatic Environmental Assessment (PEA) prepared to satisfy the requirements of the National Environmental Policy Act (NEPA) and the Massachusetts Environmental Policy Act (MEPA), and will include separate solicitations for land acquisition/protection and habitat restoration projects. Two Restoration Plans / Supplemental Environmental Assessments (RP/SEA) will be prepared during Round 2 under dual timelines: one for land acquisition/protection projects, and one for habitat restoration projects.

The proposed emphasis is a result of feedback from applicants during the Round 1 funding process as well as agencies and non-profit organizations, and includes additional time for the preparation of proposals for land acquisition/protection projects. The objective of extending the land acquisition/protection solicitation period is to provide applicants with sufficient time to identify ecologically valuable land parcels in need of protection, develop detailed proposals for protecting these lands, and perform proper due diligence while following the established protocol presented in prior planning documents including the PEA, the Restoration Planning Strategy, and the Restoration Project Selection Procedure (RPSP).

FUNDING

The targeted funding amount for Round 2 is \$3 million, with \$2 million allocated to land acquisition/protection projects and \$1 million directed to habitat restoration projects. The MA SubCouncil reserves the right to adjust these targeted amounts or withhold funding to be used in a future funding round if proposals received during Round 2 are not selected for funding.

FOCUS GROUP SUMMARY

A Land Acquisition Focus Group public meeting was convened at the Lenox Town Hall in Lenox, MA, on October 21, 2008, to discuss criteria relevant to the selection of land protection proposals. Organizations that attended this meeting included Mass Audubon, the Massachusetts Department of Conservation and Recreation, the Massachusetts Department of Fish and Game, the Berkshire Natural Resources Council, the Trustees

of Reservations, the Town of Lenox, the Housatonic Valley Association, the Stockbridge Land Trust, the City of Pittsfield, the Berkshire Environmental Action Team, Project Native, The Nature Conservancy, the Sheffield Land Trust, the Massachusetts Executive Office of Energy and Environmental Affairs (EEA), and the United States Fish and Wildlife Service.

Of the various potential criteria relevant to land protection discussed at this meeting, the MA SubCouncil view the following to be most relevant:

- Nexus to Injured Natural Resources
- Presence of Rare/Threatened/Endangered Species and/or Habitat
- Exemplary Natural Communities
- Biomap, Living Waters Core Habitat, and/or Areas of Critical Environmental Concern, Executive Office of Energy and Environmental Affairs Habitat Reserves
- Cold Water Fisheries Resources
- Demonstrated Level of Threat to Resources
- Degree of Habitat Fragmentation
- Index of Ecological Integrity
- Value: Fair Price for Size and Location
- Potential Future Management Problems and Costs
- Protection of On-Site Resources (including cultural and archaeological resources)
- Character of Adjacent Lands (including size and proximity)
- Leveraging
- Documented Wildlife Corridors
- Level of Public Access Appropriate to Protection of Resources
- Consistency with Municipal Open Space Plans/Master Plans

PROCESS

The proposed approach to achieve restoration through land protection will begin with the issuance of a Round 2 RP/SEA specific to land protection. The Round 2 RP/SEA will be based primarily on criteria established in the previously-developed planning documents but recently refined using stakeholder input. Some criteria presented in the RPSP will likely be clarified to provide additional guidance on the MA SubCouncil's goals for land protection. The criteria discussed during the Focus Group meeting largely fit within the selection criteria outlined within the RPSP (e.g., magnitude of ecological benefits, location of project, relationship of expected costs to benefits, and leveraging of additional resources).

The MA SubCouncil has considered the merit of delineating geographic boundaries for targeted focus areas for land protection versus publishing explicit criteria to be considered for land protection. Based on feedback from the Land Acquisition Focus Group, the MA SubCouncil prefers the latter of these two options. Defining particular geographic regions for land protection could result in inflating real estate values through speculation and other potential adverse effects to land transaction negotiations. Although the intent of publishing the focus areas in the Round 2 Restoration Plan would have been to maximize transparency regarding the attributes of the land parcels for protection without publishing the specific parcel locations, the MA SubCouncil believes

that sufficient transparency can be achieved through detailed descriptions of evaluation criteria and the methodology for applying such criteria.

DRAFT RP/SEA FOR ROUND 2 LAND PROTECTION

In accordance with NEPA and MEPA requirements, there will be a 30-day public comment period following release of the Draft Round 2 RP/SEA for land protection. After the public comment period ends the MA SubCouncil will revise, as necessary, the Draft Round 2 RP/SEA and submit the Final RP/SEA for agency review and approval.

RFR: Once the Final RP/SEA is approved the MA SubCouncil will issue a Request for Responses (RFR) for Round 2 land protection proposals. The RFR will detail the EEA policies relevant to land acquisition/protection that should be followed by applicants. EEA planning documents to consider include the following:

- **Open Space and Recreation Planner's Workbook**, EEA, published 1991, revised 2008 - http://www.mass.gov/Eoeea/docs/eea/dcs/osrp_workbook08.pdf
- **The Massachusetts Conservation Restriction Handbook**, EEA, published 1991, revised 2008 - <http://www.mass.gov/Eoeea/docs/eea/dcs/crhandbook08.pdf>

IMPLEMENTATION PHASES

Following the release of the Round 2 RFR for land protection, it is anticipated that there will be 2 subrounds of funding for land protection proposals during Round 2. Each subround will consist of 2 phases.

Phase 1

- Phase 1 will allow six months for applicants to prepare project proposals that will include a project location map, an opinion of value, an estimated cost of performing due diligence (e.g., appraisal, survey, and site assessment), a narrative detailing the need for land protection based on the selection criteria, and the feasibility of the project.
- At the end of the 6-month submittal period, state and federal review teams will convene to evaluate and score the proposals. Independent research will be performed at this time to verify information presented in proposals.
- After Phase 1 proposals are evaluated and scored by review teams and necessary research is performed, the MA SubCouncil will select proposals to advance to Phase 2.

Phase 2

- Upon entering Phase 2, grant agreements will be executed by the Commonwealth for the applicants of selected proposals. Applicants will have up to an additional 6 months to perform due diligence, obtain formal land appraisals, conduct a 21E assessment, and provide a letter of interest or commitment from the land owner. Part of the grant agreements include reimbursement for future costs of due diligence. If results of the due diligence analysis indicate that land protection of a particular parcel is not feasible, the project will not receive any additional funding and will be eliminated from further consideration in Round 2,

subround 1. If, after review of the appraisals and other due diligence, proposals are selected for funding by the MA SubCouncil, the existing contract will be amended by the Commonwealth to provide the approved project funding that would allow for the purchase of the parcel or acquiring necessary Conservation Restrictions, Conservation Easement, Article 97, Fee Protection, etc.

If proposals do not advance to Phase 2 during subround 1 they may be considered again for funding during subround 2. If for some reason due diligence on a particular parcel is not complete by the end of subround 1, Phase 2 the proposal may also be considered for funding during subround 2. The MA SubCouncil has loosely targeted approximately \$1 million for each of the 2 subrounds of land protection funding, but reserves the right to withhold funding during each subround if it considers proposals not to be of sufficient value.

INCORPORATING HABITAT RESTORATION, EDUCATION, AND RECREATION

The primary focus of the Round 2 process is land protection and habitat restoration. However, it is anticipated that some proposals may be submitted that include a habitat restoration component within the greater land acquisition/protection focus of the proposed project. Restoration of acquired lands through such measures as habitat enhancement, invasive species removal, native plantings, or other means will likely enhance the ecological value of these lands, and proposals including habitat restoration will be evaluated accordingly with respect to the “Magnitude of Ecological Benefits” and other relevant criteria. Likewise, land acquisition/protection proposals that incorporate environmental recreation and/or education components also contribute to the MA SubCouncil’s goal of funding projects that benefit multiple restoration categories, enhance the public’s relationship with natural resources, and foster future restoration and stewardship. Land acquisition/protection proposals that incorporate habitat restoration, recreation, or education components will be accepted during the Round 2 Land Protection process; however, proposals will not be required to include these components to be considered for funding. Land Protection proposals which include such components will be considered as a single package under the Round 2 Land Protection process, and funding awards for any approved restoration, recreation, or education component will be taken from the \$2 million allocated to land protection.

PUBLIC ACCESS

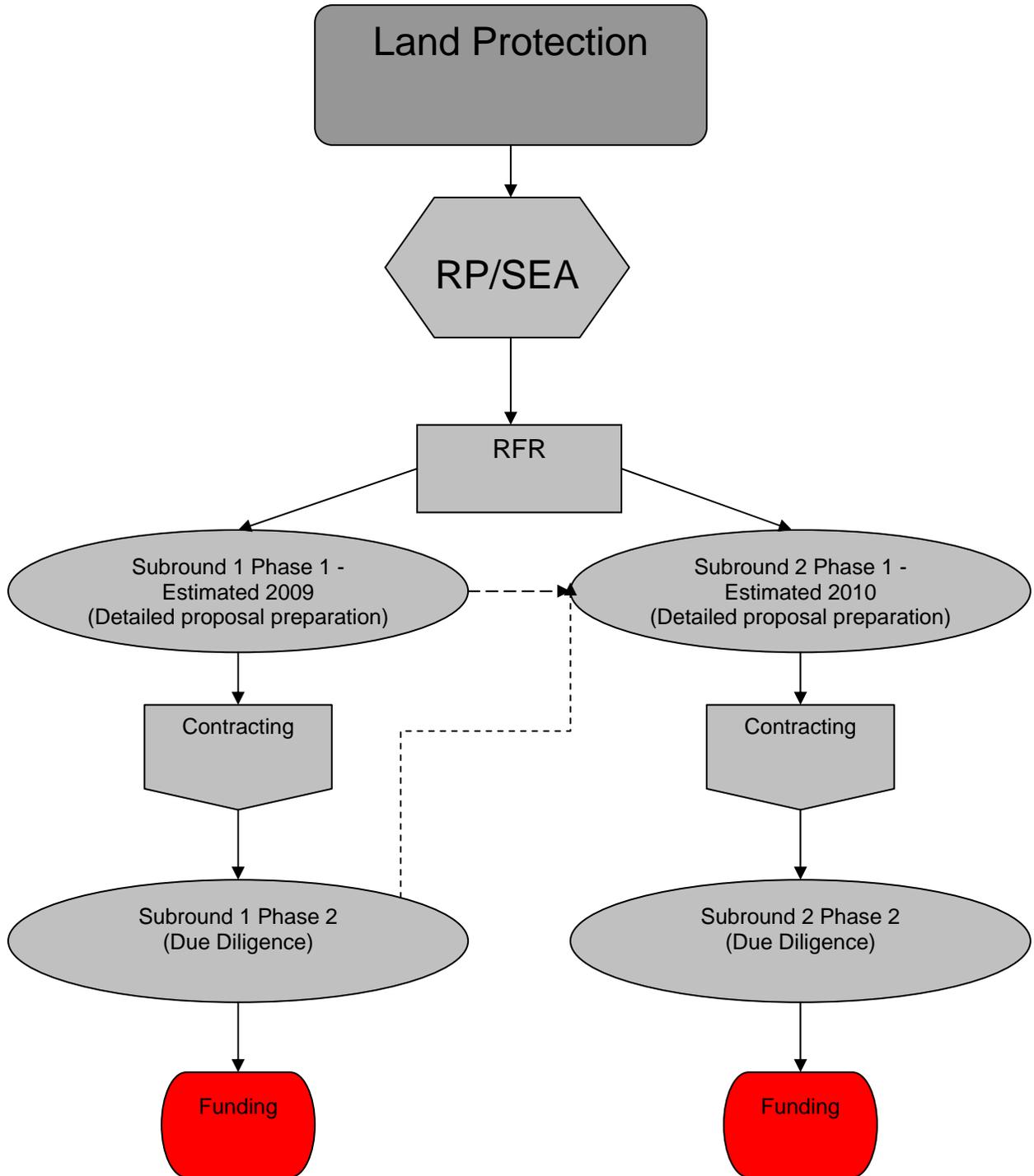
Certain types of public access could be in conflict with resource protection on protected lands (e.g., recreation within rare, threatened, or endangered species habitat). As such, public access is not required for land acquisition/protection proposal consideration, and each proposal will be evaluated independently weighing the benefits and risks of allowing public access to the parcel. All applicants requesting funds for a recreation or other public access component in their proposals should fully evaluate the feasibility of compliance with the Americans with Disabilities Act during proposal development.

CONSERVATION RESTRICTIONS

Any conservation restrictions associated with projects implemented by the Natural Resources Damages must meet the requirement of M.G.L. c. 184 section 32, which states that a conservation restriction must be held by a governmental body or by a charitable corporation or trust whose purposes include conservation of land or water

areas or of a particular such area. The MA SubCouncil expects that land acquired by one land trust will have the conservation restriction on that land held by another entity (government body or land trust) to provide additional protection.

Simplified Flow Chart of Round 2 Land Protection Process



* Simplified flow chart does not include draft RP/SEA, agency approval, public meetings, etc.