

Public Meeting**Proposed Amendment to the Round 3 Restoration Plan and Supplemental Environmental Assessment for Land Protection and Habitat Conservation**

Massachusetts Housatonic River Watershed Restoration Program

Date/Time: October 27, 2016 / 5:30 PM
Place: Lenox Library, Lenox, Massachusetts
Next Meeting: Not Scheduled
Attendees: Karen Pelto (MassDEP), State Trustee Representative, MA SubCouncil;
Thomas Potter (MassDEP), Trustee Representative Alternate, MA SubCouncil;
Kelsey Driscoll (MassDEP), Intern;
Molly Sperduto (USFWS), Federal Trustee Representative, MA SubCouncil;
Robin MacEwan (Stantec); and
Attendees (see Attendance Sheet, Attachment 1)
Distribution: Program Website (www.ma-housatonicrestoration.org)

These meeting notes summarize the proceedings, including the responses provided during the question-and-answer period, of the Public Meeting for the Proposed Amendment to the Round 3 Restoration Plan and Supplemental Environmental Assessment for Land Protection and Habitat Conservation hosted by the Massachusetts SubCouncil of the Housatonic River Natural Resource Trustees (MA SubCouncil).

Introductions

The meeting formally commenced at 5:40 PM. Robin MacEwan (Stantec) welcomed attendees and introduced the purpose of the meeting, following which the MA SubCouncil, representatives of the Massachusetts Department of Environmental Protection (MassDEP), and audience members introduced themselves.

Presentation

The MA SubCouncil gave a presentation that provided an overview of the Massachusetts Housatonic River Watershed Restoration Program (Restoration Program) and the Round 3 Restoration Plan; summarized the status of Round 3; provided an overview of the Proposed Amendment to the Round 3 Restoration Plan and Supplemental Environmental Assessment (Round 3 RP/SEA) and the status of Natural Resource Damages (NRD) settlement funds; and outlined anticipated next steps and related timelines. The MA SubCouncil noted that the public comment period for the Proposed Amendment to Round 3 ends on November 11, 2016, at 4:30 pm and that written comments must be submitted no later than this date and time.

The meeting agenda, PowerPoint presentation slides from the MA SubCouncil's presentation, and the text of the Proposed Amendment to Round 3 are available on the program website at: <http://www.ma-housatonicrestoration.org/library.htm>.

Additional resources referenced during the meeting, including the Restoration Project Selection

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Procedure (RPSP) and Round 3 RP/SEA are also available on the program website at: <http://www.ma-housatonicrestoration.org/library.htm>.

Open Forum¹

Following the MA SubCouncil's presentation, Robin MacEwan opened the Open Forum / Q&A portion of the meeting. Questions posed by the audience, and answers provided by the MA SubCouncil, are summarized below.

Question 1: Have all the Subround 2 proposals been accepted?

MA SubCouncil Response: No; only "Phase 1" of proposal review process described in the Round 3 RP/SEA has been completed. As a part of the Phase 1 review, all Subround 2 proposals have been reviewed and determined by the MA SubCouncil to be eligible for funding. The determination of eligibility for funding is based on the "Threshold Criteria" described in the RPSP and Round 3 RP/SEA. All proposals have also been evaluated and scored based on the "Evaluation Criteria" described in the RPSP and Round 3 RP/SEA. Based on the results of these reviews, and following conclusion of the Round 3 amendment process, the MA SubCouncil will select proposals to advance to Phase 2 of the proposal review process. Selection of proposals to advance to Phase 2 cannot occur until the amount of Round 3 funding is confirmed as a part of the proposed amendment process currently underway.

Question 2: If the proposed amendment is approved, will all Subround 2 proposed projects go forward?

MA SubCouncil Response: No. Approval of the proposed amendment does not mean that all Subround 2 projects will be funded. The MA SubCouncil has proposed the amendment to Round 3 to allow funding of proposed projects that ranked highly as a part of the Phase 1 review. Following conclusion of the amendment process, proposals will be selected to advance to Phase 2 "due diligence" review. Selected proposals will be funded only if the results of due diligence review determine that the projects are feasible.

Question 3: What will be the focus of Round 4?

MA SubCouncil Response: Round 4 will focus on all four "Restoration Priority Categories" identified in the RPSP. In this way, Round 4 will be similar to Round 1. The four Restoration Priority Categories are:

- Aquatic Biological Resources and Habitat;
- Wildlife Resources and Habitat;
- Recreational Uses; and
- Environmental Outreach and Education.

¹ Questions and responses presented in these meeting notes are paraphrased and summarized; they do not represent direct quotes. Additional information has been added to certain responses presented here for the purpose of further clarification.

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Question 4: Understanding the need to not provide information regarding the specific, proposed land acquisition projects, what are the criteria used by the MA SubCouncil for review and selection of projects? Can projects be located anywhere in Berkshire County?

MA SubCouncil Response: *Funds from the NRD settlement are to be used for “compensatory restoration” that will “restore, rehabilitate, replace, or acquire the equivalent of natural resources that were injured or lost as a result of the release of hazardous materials into the watershed”. Projects throughout the Massachusetts Housatonic River watershed may be eligible if they benefit the same types of resources that were affected. There are specific eligibility and evaluation criteria that applied to the review of each proposal. These eligibility and evaluation criteria were developed as a part the public planning process for the Restoration Program and are available for reference in the RPSP and Round 3 RP/SEA for Round 3 projects.*

Question 5: Are most of the Subround 2 proposed project locations open to the public?

MA SubCouncil Response: *Yes. None of the Subround 2 proposed project locations are off limits to the public. Public access and involvement is addressed in multiple Evaluation Criteria. For example, Evaluation Criterion D.1 scores projects based on “Enhancement of the Public’s Relationship with Natural Resources” and specifically states that “priority will be given to projects that enhance the public’s ability to use, enjoy, or benefit from the Housatonic River watershed”. Other, related Evaluation Criteria score projects based on the degree to which they are complementary with community goals and provide for public outreach. The specific Evaluation Criteria are available for reference in the RPSP and Round 3 RP/SEA for Round 3 projects.*

Question 6: If a proposed land protection project is funded, who would typically own the land?

MA SubCouncil Response: *Ownership can vary. The Round 3 RP/SEA states: “It is a requirement that land protected by NRD funds will be protected in perpetuity (e.g., through fee title [fee simple acquisition], conservation restoration, or dedication)”. Typically, projects involve transfer of ownership to an entity with an interest in land protection. Land protection projects funded in Subround 1 of Round 3 included purchase by a land trust (as in the case of land acquired by BNRC on Thomas and Palmer Brook in Great Barrington) and by the Commonwealth (as in the case of land acquired by the Department of Fish and Game in Egremont and Hinsdale). [Also: see response to related Question 18.]*

Question 7: Does Round 3 include only land protection, or can it include additional improvements or project elements?

MA SubCouncil Response: *Yes, Round 3 funding is available only for land protection to conserve habitat. While Round 3 funding itself is available only for land protection, other actions (e.g., development of public access) can be addressed by the project proponent through other funding sources.*

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Question 8: Some projects funded as a part of the Connecticut Housatonic River Watershed Restoration Program included elements other than land protection, such as development of public access.

MA SubCouncil Response: *Yes. The Connecticut Housatonic River Watershed Restoration Program funded a range of projects including dam removals, public access, and land protection by easement and acquisition in fee simple. While Round 3 of the Massachusetts Housatonic River Watershed Restoration Program is focused solely on land protection to conserve habitat, Rounds 1 and 2 of the Restoration Program provided funding for a range of active and passive restoration projects (e.g., addressing public access, public education and outreach, habitat enhancement and restoration, and land protection), and it is anticipated that the fourth and final round of funding ("Round 4") will be focused on a similarly wide range of potential restoration projects.*

Question 9: There is an interest in the development of bike paths. Is NRD settlement funding available for this type of project?

MA SubCouncil Response: *Projects that provide public access to the river or otherwise enhance the public's relationship with the watershed (e.g., development of canoe access points and trails along the river) have been funded in past funding rounds. Examples include a biking and walking trail along the river in the Connecticut Housatonic River watershed and the Great Barrington River Walk in Great Barrington. Bike paths or other public access projects that don't have a nexus to enhancing the public's relationship with or access to the "injured" resource (e.g., a bike path that doesn't provide access to the river) would likely not be eligible for funding.*

Question 10: Where in the watershed are the proposed Subround 2 projects located? Are they downstream from Pittsfield?

MA SubCouncil Response: *Each of the proposals received for Subround 2 propose projects that are located within the Massachusetts Housatonic River watershed downstream from Pittsfield. More specific locational information cannot be provided until after final project selection and funding is complete. As described in the Round 3 RP/SEA, this approach differs from Rounds 1 and 2 and is necessary to accommodate sensitive land transaction negotiations that could be adversely affected by public disclosure of certain information.*

Proposed projects located upstream from Pittsfield may be eligible for funding if they meet the Threshold Criteria, including Threshold Criteria #2 which requires that projects "restore, rehabilitate, replace, and/or acquire the equivalent of natural resources or natural resource services that were injured". Subround 1 of Round 3 included a project located in Hinsdale, upstream from Pittsfield; this project included scrub-shrub wetlands hydrologically connected to Bennet Brook (a tributary to the East Branch of the Housatonic) and scored highly in part because it protected resources similar to those that were injured.

Question 11: Could there be a conflict between a land protection project and future Rest of River remediation activities?

MA SubCouncil Response: *The MA SubCouncil cannot fund projects that would interfere with remediation or that the remediation would interfere with. The Threshold Criteria, utilized by the MA SubCouncil as a part of Phase 1 review to determine eligibility of proposed*

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projects, address this concern. Specifically, Threshold Criteria # 6 asks: "Will the proposed project, or any portion of the proposed project, be inconsistent with any ongoing or anticipated remedial actions (i.e., primary restoration) in the Housatonic River watershed?" The answer to this question must be "No" in order for a proposed project to be eligible for funding.

Question 12: Is there a risk that a proposed Subround 2 project could be located adjacent to a future GE landfill site and be at risk for related impacts?

MA SubCouncil Response: *The proposal review process includes review of adjacent land. The proposed Subround 2 projects currently under review each abut, to varying degrees, land that is current protected.*

Phase 2 due diligence reviews of projects selected to proceed to Phase 2 must follow the Office of Energy and Environmental Affairs (EEA) Due Diligence Policy which states that, at a minimum, the process must include:

- 1. A physical inspection of the property, and, if appropriate, surrounding areas, as documented by completion of the then-current "Environmental Site Assessment Form,"*
- 2. An inquiry into the historic uses of the property, and, if appropriate, surrounding areas, as documented by completion of the above-referenced form.*

Question 13: If the proposed amendment to Round 3 is accepted, does that mean all proposed Subround 2 projects will be funded?

MA SubCouncil Response: *No. The MA SubCouncil has only completed the first phase of review of proposals for Subround 2 projects. Following completion of the amendment process that is currently underway, the MA SubCouncil will finalize its selection of proposals to proceed to Phase 2 of proposal review. If a proposed project is determined not be feasible, it will not be funded, regardless of the status of the proposed amendment.*

Question 14: Does the Phase 2 due diligence review include a review of potential contamination?

MA SubCouncil Response: *Yes. A required element of Phase 2 due diligence review of proposed projects is an "Environmental Site Assessment" as described in the EEA Land Acquisition Policy document "Land Acquisition Policy – Environmental Site Assessments" dated August 1, 1995. The scope of each Environmental Site Assessment may vary depending on the circumstances but, at a minimum, must include 1) a physical inspection of the property and, if appropriate, surrounding areas and 2) an inquiry into the historic uses of the property and, if appropriate, surrounding areas.*

If the environmental site assessment identifies evidence of a release, or threat of release, of petroleum or other hazardous materials the project may require additional investigation and/or be determined to be infeasible. A project that was proposed in Round 1 by the Berkshire Natural Resource Council (BNRC) was identified to be contaminated with hazardous waste; as a result, the project was not funded. An alternative project subsequently proposed by BNRC was determined to have a significant solid waste (not hazardous waste) issue; this project was ultimately funded after removal of the solid waste

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was addressed.

Question 15: Who paid for the solid waste removal at the parcel referenced in the response to Question 14?

MA SubCouncil Response: *The current owner of the parcel wasn't the responsible party and the issue was old enough that the state couldn't take an action on it. To facilitate the removal of solid waste, the MassDEP Bureau of Waste Site Cleanup's Technical and Financial Services Division utilized a contractor that was qualified under its IRA-SS Service Contract to remove and recycle or dispose of solid waste that was discovered on the property during due diligence activities. The removal was funded by the MA SubCouncil and completed prior to the Berkshire Natural Resources Council taking ownership. In total, 29 tons of steel, 29 tons of solid waste, 88 cubic yards of concrete, and 5 tons of tires were removed from the oxbow.*

Question 16: Was the estimated cost of the solid waste removal referenced in Questions 14 and 15 known prior to committing to removal of the solid waste?

MA SubCouncil Response: Yes.

Question 17: Do you see a reason not to support the proposed amendment?

MA SubCouncil Response: *The MA SubCouncil sees a great benefit to supporting the proposed amendment – both in terms of providing for habitat conservation and for public use. Land preservation projects can provide significant value because they are in perpetuity. Some very strong projects have been proposed for Subround 2; if these projects are not funded in this subround they could reapply during Round 4, but many land acquisition projects are constrained within limited windows of opportunity and it is far from certain that these projects would still be possible when Round 4 funding becomes available. The proposed amendment would allow the Restoration Program to allocate existing resources under Round 3 to fund currently proposed projects that rank highly based on the Evaluation Criteria developed for this Restoration Program.*

Question 18: How can you ensure that land protection is in perpetuity if land is acquired by entities such as non-profit land trusts?

MA SubCouncil Response: *There are multiple types of entities, including land trusts, municipalities, and state agencies, that may acquire land, or deed restrictions, for land protection. There are also multiple available mechanisms of land protection, including conservation restrictions, charitable trusts, and protection under Article 97 for state- and municipal-owned lands. Under the provisions of Massachusetts General Laws Chapter (MGL) 184, §31-33, the Secretary of the EEA must approve conservation restrictions in order for certain legal protections to apply to their creation. Under Article 97, state- and municipal-owned public lands acquired for conservation or recreation purposes cannot be used for other purposes or otherwise "disposed of" except by vote of 2/3rds of the state legislature.*

The Round 3 RP/SEA requires that land protected by NRD funds be protected in perpetuity.

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Question 19: Public comments in response to the proposed amendment are due on November 11, 2016. Can you explain the anticipated timeline for the proposed amendment and next steps?

MA SubCouncil Response: *The MA SubCouncil would like to finalize the amendment as soon as possible after receipt of comments, but the actual timeline depends on the volume and type of comments received. The MA SubCouncil would like to inform applicants selected for Phase 2 review as soon as possible after the November 11th public comment deadline in order to allow them to initiate due diligence reviews. The Phase 2 due diligence review process takes approximately 6 months, after which the MA SubCouncil will conduct final review, selection, and funding of Subround 2 projects.*

Question 20: Once the MA SubCouncil enters into an agreement with an applicant to advance to Phase 2 due diligence review, are they committed to the project?

MA SubCouncil Response: *No. The agreements entered into for Phase 2 only address completion of Phase 2 due diligence review.*

Question 21: Is there a penalty that a seller would incur if they back out and sell to a different buyer?

MA SubCouncil Response: *If a landowner backs out, they may have acted in poor faith but there is no penalty that the MA SubCouncil can apply. The MA SubCouncil requires that applicants provide a letter of interest or commitment from the landowner as a part of Phase 2 due diligence, but the MA SubCouncil does not enter into an agreement with the landowner (except in the hypothetical circumstance where the landowner is also the applicant).*

Question 22: Does development potential of a parcel influence parcel value?

MA SubCouncil Response: *Yes, and development potential is also one element that is considered by the MA SubCouncil in the review of proposed land acquisition projects.*

The Land Acquisition Focus Group met in 2008, prior to development of the Round 3 RP/SEA, to discuss criteria relevant to selection of land protection proposals identified 16 attributes considered to be important for the purpose of evaluating Land Protection project proposals. One of the 16 identified attributes is "Demonstrated Level of Threat to Resources". As subsequently stated in the Round 3 RP/SEA, the "Demonstrated Level of Threat to Resources" attribute is a component of the [Sustainable Benefits] criterion and considers the likelihood and timing of potential threats to parcels."

Question 23: What prevents a landowner from backing out and seeking a different buyer after due diligence evaluations of the site are available?

MA SubCouncil Response: *As a part of Phase 1 of proposal review, applicants are required to submit an opinion of value. Opinions of value and appraisals don't typically tend to differ significantly; thus, all parties generally know, up front, the approximate value of a parcel. Phase 2 due diligence costs (included costs associated with the environmental site assessment) are relatively limited. As described in the response to Question 21, the MA SubCouncil also requires that applicants provide a letter of interest or commitment from the*

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landowner as a part of Phase 2 due diligence.

Question 24: Who are typical applicants for land protection projects? Are applicants typically the landowner or other entities?

MA SubCouncil Response: *Eligible applicants include public and private entities, including local, state, federal, and tribal governments; non-profit organizations; individuals; and commercial organizations. Though they are eligible, the landowner is not generally the applicant. Landowners would typically partner with a conservation entity, though this is not required. Applicants for land protection projects that have been proposed as a part of the Massachusetts Housatonic River Watershed Restoration Program have typically been non-profit entities, land trusts, and state agencies.*

Question 25: Would you consider an extension to the proposed amendment timeline?

MA SubCouncil Response: *It would be very difficult because it would put some of the proposed projects into serious jeopardy. Some land acquisition projects are constrained by timelines that could render the projects non-viable if the review period is significantly extended. The proposed amendment asks whether the public supports spending existing restoration funding on highly-scoring, proposed land protection projects now, as a part of Round 3, or prefers to wait and spend it later on as-yet unknown projects.*

There was a general discussion at the end of the meeting addressing confusion and frustration expressed by some attendees regarding the timing of the release of the proposed amendment (announced by the MA SubCouncil on October 13, 2016) and the release shortly thereafter of the EPA's Final Permit Modification for Rest of River (issued by the EPA on October 24, 2016). Karen Pelto noted that the MA SubCouncil agreed that it was unfortunate that the proposed amendment was released in a similar time period as the EPA's final decision on the Rest of River permit; she explained that the MA SubCouncil had hoped to release the proposed amendment for public comment much earlier but had been held up due to unrelated internal delays.

One attendee noted that they may not have seen the notice of the proposed amendment when it was announced and noted that proper announcement is an issue². Meeting attendees also expressed general, long-standing frustration regarding processes and timelines related to remediation planning (as separate from NRD restoration planning that was the focus of the October 27, 2016, public meeting). Attendees noted that this has resulted in negative feelings in the watershed. An attendee who had previously submitted written comments in response to the proposed amendment noted that she understood the proposed amendment better as a result of this meeting and apologized for the tone of the written comments.

² The MA SubCouncil publicly announced the proposed amendment on October 13, 2016. A legal notice announcing the proposed amendment was concurrently published in the following newspapers: The Berkshire Eagle, the Berkshire Record, The Pittsfield Gazette, The Republican, The Lakeville Journal, and the Litchfield County Times. The text of the proposed amendment was made available for public review on the MA SubCouncil website (<http://www.mahousatonicrestoration.org/library.htm>) and at the Lenox Library and other public libraries in the Housatonic River watershed. The October 27, 2016, public meeting summarized in these meeting notes was hosted by the MA SubCouncil to present and discuss the proposed amendment during the public comment period. Written public comments on the proposed amendment were accepted through November 11, 2016.



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The meeting adjourned at approximately 6:45 PM.

The foregoing is considered to be a true and accurate record of the items discussed. If discrepancies or inconsistencies are noted, please contact Karen Pelto at 617-292-5785.

Stantec Consulting Services Inc.

A handwritten signature in blue ink, appearing to read "Robin MacEwan".

Robin MacEwan
Senior Associate, Environmental Services
Phone: 413-584-4776
Robin.macewan@Stantec.com

Attachment: Attendance Sheet

**Massachusetts SubCouncil, Housatonic River Natural Resource Trustees
General Electric/Housatonic River Natural Resource Restoration**

**Proposed Amendment
to the
Final Round 3 Restoration Plan and
Supplemental Environmental Assessment for
Land Protection and Habitat Conservation**

PUBLIC MEETING

Thursday, October 27, 2016
5:30 PM
Lenox Library
18 Main Street
Lenox, Massachusetts

ATTENDANCE SHEET

Name	Organization
Robin MacEwan	Stantec
Kelsey Driscoll	MassDEP
Ethan Culleton	Resident
Dennis Regan	Housatonic Valley Association
Gail Beaudain	Resident
Barbara Cianfarini	Citizens for PCB Removal
Charlie Cianfarini	Citizens for PCB Removal
Karen Pelto	MassDEP
Thomas Potter	MassDEP
Molly Sperduto	US Fish and Wildlife Service