



1 Rabbit Hill Road, Westborough, MA 01581
p: (508) 389-6300 | f: (508) 389-7890
MASS.GOV/MASSWILDLIFE

The project previously completed review by the MA Environmental Policy Act (EEA 12626) and was issued a final certificate by the Secretary of the Executive of Environmental Affairs on November 15, 2021. A full list of permits required for the project was included in Table 2-1 (Final Environmental Impact Report) but include a 401 Water Quality Certification Program and Individual Programmatic General Permit for Section 404 of the Clean Water Act.

Input from the Division of Marine Fisheries was incorporated into the FEIR and the current filing, and revision will be incorporated into the final MESA permit for the project.

STATE-LISTED SPECIES:

Based on a review of the information provided and the information currently contained in our database, the proposed project is located within mapped *Priority* and *Estimated Habitat* for the following state-listed species, as indicated in the *Massachusetts Natural Heritage Atlas* (15th Edition):

Scientific Name	Common Name	State Status	Taxonomic Group
<i>Haliaeetus leucocephalus</i>	Bald Eagle	Special Concern+	Vertebrate Animal: Bird
<i>Acipenser brevirostrum</i>	Shortnose Sturgeon	Endangered*	Vertebrate Animal: Fish
<i>Acipenser oxyrinchus</i>	Atlantic Sturgeon	Endangered*	Vertebrate Animal: Fish
<i>Glyptemys insculpta</i>	Wood Turtle	Special Concern	Vertebrate Animal: Turtle

These species and their habitats are protected pursuant to the MESA. Fact sheets for these species can be found on our website, www.mass.gov/nhosp. *The Shortnose Sturgeon and Atlantic Sturgeon (Gulf of Maine distinct population) are also listed as Endangered pursuant to the federal Endangered Species Act of 1973 (16 USC §§1531-1544) and regulations (50 CFR §§17 & 402) administered by the National Oceanic and Atmospheric Association - National Marine Fisheries Service (NOAA). The Project is additionally located within Atlantic Sturgeon Critical Habitat. +The Bald Eagle was removed from the federal Endangered Species Act but remains protected according to the Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d) and Migratory Bird Treaty Act (16 U.S.C. §§ 703-712).

PROJECT DESCRIPTION:

The Project site abuts the Merrimack River to the north and Johnson Brook to the east. At present, the Project areas abutting the river and stream are forested. This reach of the Merrimack River is located between two critical areas utilized for foraging and spawning of Shortnose and Atlantic Sturgeon as well as foraging for Bald Eagle. Johnson Brook contains a regionally important population of Wood Turtles that utilize early-successional habitats like landfills and other managed landscapes for nesting and foraging. The Merrimack, its tributaries, and Johnson Brook contain a diverse fishery of both anadromous and catadromous species.

The project goal is to cap the Northern Mound of the Haverhill Landfill and buried ash discovered during capping of the Southern Mound within Lot 26. The capping is part of a mandated closure of the Northern Mound and Lot 26 Ash Area in accordance with the Solid Waste Regulation (MassDEP & CERCLA) under an Administrative Consent Order between AINER, the City and MassDEP. The ACO include construction of the final cap and addressing any other impacts from the historic waste disposal activities. All areas within the project area must be excavated to consolidate waste and capped, or capped-in-place. Landfill waste on the Northern mound was historically placed into a steep slope that abuts the Merrimack River and Johnson's Creek. To address landfill waste in the Merrimack River and Johnson's Creek, the project will excavate 5-foot riverward beyond the extent of landfill waste to create an anchor trench. Any waste encountered in this 5-foot trench will be excavated out and placed in the final cap area. The anchor trench's grade will be restored with clean soil and seeded to stabilized. Additionally, the project will armor the Bank on both rivers up to the 10-year flood elevation resulting in 2,831 linear feet (1.9 acres) with additional impacts in depth from the anchor trench. A fringe of about 3.8 acres of trees and vegetation closest to the rivers will remain, but 6.2 acres of trees and vegetation will be removed. As part of the final design, 2.8 acres of the lost forest will be restored compatibly with maintaining the cap's integrity. The closure of Lot 26 Ash Area will result in removal of all vegetation and capping of all impacted soils. Landfilled ash will be relocated to the Northern Mound area for capping. Construction related impacts of 1,415 linear feet of the Merrimack River and

Johnson Creek, 9.6 acres of Riverfront Area (2.8 acres restored) as well as impacts to Bordering Land Subject to Flooding and Bordering Vegetation Wetlands.

MA ENDANGERED SPECIES ACT & MA WETLANDS PROTECTION ACT

The purpose of the Division's review under the WPA regulations is to determine whether the proposed project will have any adverse effects on the Resource Areas Habitats of state-listed wildlife species. The purpose of the Division's review under the MESA regulations is to determine whether a Take of state-listed species will result from the proposed project.

1. BALD EAGLE:

Based on a review of the information provided and the information contained in our database, the Division has determined that this project, as currently proposed, **must be conditioned to avoid adverse effects to the Resource Area Habitats** (WPA, 310 CMR 10.58(4)(b) and 10.59) and **must be conditioned in order to avoid a prohibited a Take** (MESA; 321 CMR 10.18(2)(a)) of Bald Eagle. Detailed conditions will be incorporated into any MESA Conservation and Management Permit (321 CMR 10.23; CMP) issued for the project and will include, but may not be limited to, pre-construction surveys, time of year restrictions, and habitat enhancement. The project will include nesting platforms and include native trees and vegetation within the final project design as part of the mitigation for habitat impacts.

2. ATLANTIC STURGEON AND SHORTRNOSE STURGEON:

Based on a review of the information provided and the information contained in our database, the Division has determined that this project, as currently proposed, **will result in short- and long-term adverse effects to the actual Resource Area Habitat (310 CMR 10.58(4)(b) and 10.59) and will result in a Take (321 CMR 10.18(2)(b)) of Atlantic and Shortnose Sturgeon.** The proposed Project will alter necessary feeding, migrating, and sheltering habitats for these species through the excavation and alteration of habitat, introduction of machinery and structures, dredging and disturbance of the river bottom, including the associated release of silt/materials into the water column, installation of bank hardening and other actions occurring within habitat for these species.

3. WOOD TURTLE

Based on a review of the information provided and the information contained in our database, the Division has determined that this Project, as currently proposed, **will result in short- and long-term adverse effects to the actual Resource Area Habitats (310 CMR 10.58(4)(b) and 10.59) and will result in a Take (321 CMR 10.18(2)(b)) of the Wood Turtle.** The proposed project will permanently alter necessary nesting, feeding, breeding, and sheltering habitats through the installation of rip-rap, other bank hardening, and other actions occurring within habitat for this species. The project will include nesting and foraging habitat enhancement in Lot 26 Ash Area as part of the project mitigation.

MA Wetland Protection Act – Order of Conditions:

This project **does NOT** meet the performance standards for the issuance of an Order of Conditions pursuant to the rare species provisions of the WPA (310 CMR 10.59). For this project to proceed as proposed, the applicant will need to seek and receive a MESA CMP pursuant to 321 CMR 10.23. As provided in 310 CMR 10.37, 10.58(4)(b) and 10.59, when a project is proposed in *Estimated Habitat*, the issuing authority relies on the Division's determination as to whether a proposed project will have any short- or long-term effect on the habitat of the local population of any state-listed wildlife species. Accordingly, when the Division makes a determination pursuant to 321 CMR 10.23 that a proposed project may proceed pursuant to a MESA CMP, this determination shall be presumed to satisfy the standard for no short- or long-term adverse effects pursuant to the WPA (310 CMR 10.05(6)(e) & 10.37 and 10.59.) [see MA DEP DWW Policy 06-1 (BRP/DWM/WWP 06-1)]. Therefore, issuance of an Order of Conditions (positive or

negative) prior to the issuance of a MESA CMP is inconsistent with the rare wildlife species provisions of the WPA. The Division will send a copy of the MESA CMP to the Commission upon issuance. The Commission is then free to issue an Order of Conditions subject to compliance with all conditions required under the MESA CMP.

MA Endangered Species Act – Determination and MESA CMP:

Projects resulting in a Take of state-listed species may only be permitted if they meet the performance standards for MESA CMP (321 CMR 10.23). In order for a project to qualify for a CMP, the applicant must demonstrate that the project has avoided, minimized and mitigated impacts to state-listed species consistent with the following performance standards: (a) adequately assess alternatives to both temporary and permanent impacts to the state-listed species, (b) demonstrate that an insignificant portion of the local population will be impacted, and (c) develop and agree to carry out a conservation and management plan that provides a long-term net benefit to the conservation of the state-listed species.

This Determination is a final decision of the Division of Fisheries and Wildlife pursuant to 321 CMR 10.18. Any person aggrieved by this decision shall have the right to an adjudicatory hearing at the Division pursuant to M.G.L. c. 30A, s.11 in accordance with the procedures for informal hearings set forth in 801 CMR 1.02 and 1.03. Any notice of claim for an adjudicatory hearing shall be made in writing, accompanied by a filing fee in the amount of \$500.00 and the information specified in 321 CMR 10.25 (3). The notice of claim shall be sent to the Division's Director, Mark S. Tisa, by certified mail, hand delivered or postmarked within twenty-one (21) days of the date of the Division's Determination.

If you have any questions regarding this letter, please contact Misty-Anne R. Marold, Senior Endangered Species Review Biologist, at (508)-389-6356 or misty-anne.marold@mass.gov.

Sincerely,

A handwritten signature in black ink, reading "Everose Schlüter". The signature is fluid and cursive, with the first name "Everose" and last name "Schlüter" clearly legible.

Everose Schlüter, Ph.D.
Assistant Director

cc: Bruce Haskell, Langdon Environmental LLC
Dwight Dunk, Epsilon Associates, Inc.
Paul Sneeringer, US Army Corps
Roosevelt Mesa, NMFS