



MASSWILDLIFE

DIVISION OF FISHERIES & WILDLIFE

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

July 30, 2021

City of Haverhill
4 Summer Street
Haverhill, MA 01830

George Psche
PO Box 5270
Bradford, MA 01835

236 Elm Street LLC
7 Alnette Road
Merrimac, MA 01860

Haverhill Conservation Commission
4 Summer Street
City Hall Room 300
Haverhill, MA 01830

The Procopio Companies
220 Broadway Street, Suite 302
Lynnfield, MA 01940

Applicant: Procopio Companies
 Project Location: Proposed Mixed Use Redevelopment – Railroad Avenue (0, 19, & 31-35 Railroad Avenue), 236 S. Elm Street
 Project Description: Redevelopment of parcels with two (2), five-story residential building with 290 units, subsurface parking, ground floor retail space, and water access ramp and dock.
 NHESP Tracking No.: 06-20745
 DEP File No.: 033-1505

RE: Notice that additional information is required to take further action on your application for MESA review under 321 CMR 10.18, and Partial determination.

Dear Applicants and Commissioners:

The Natural Heritage & Endangered Species Program of the Massachusetts Division of Fisheries & Wildlife (the "Division") received a Notice of Intent (NOI) with Project Plans entitled PROPOSED SITE PLAN DOCUMENTS FOR THE PROCOPIO COMPANIES PROPOSED MULTIFAMILY DEVELOPMENT (dated 2/26/2021, revised 7/1/21; prepared by Bohler Engineering) in compliance with the rare wildlife species section of the Massachusetts Wetlands Protection Act Regulations (310 CMR 10.59). The Division also received the MESA Review Checklist and supporting documentation for review pursuant to the MA Endangered Species Act Regulations (321 CMR 10.18).

Based on the information provided, the Project is located within *Priority Habitat* and *Estimated Habitat* as indicated in the Massachusetts Natural Heritage Atlas (14th Edition). This portion of the Merrimack River and banks are habitat for the:

<u>Scientific name</u>	<u>Common Name</u>	<u>Taxonomic Group</u>	<u>State Status</u>
<i>Acipenser oxyrinchus</i>	Atlantic Sturgeon	Fish	Endangered*
<i>Acipenser brevirostrum</i>	Shortnose Sturgeon	Fish	Endangered*

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The species listed above are protected pursuant to the Massachusetts Endangered Species Act (MESA) (M.G.L. c. 131A) and its implementing regulations (321 CMR 10.00). State-listed wildlife are also protected under the state's Wetlands Protection Act (WPA) (M.G.L. c. 131, s. 40) and its implementing regulations (310 CMR 10.00). Fact Sheets for most state-listed species can be found on our website (www.mass.gov/nhesp). *Shortnose Sturgeon and Atlantic Sturgeon (Gulf of Maine distinct populations) are also listed as Endangered and Threatened, respectively, pursuant to the federal Endangered Species Act of 1973 (16 USCA §§1531-1544) and regulations (50 CFR §§17 & 402) administered by the National Marine Fisheries Service.

The Merrimack River ("River") is important habitat for both Atlantic and Shortnose Sturgeon for foraging, breeding, migration, and overwintering. These species are generally amphidromous, which means they are born in freshwater from eggs and then live in their birth (natal) river. Shortnose Sturgeon live most of their life in their natal river, making only occasional feeding or migratory trips into salt water. Atlantic Sturgeon juveniles spend their early life in their natal river, but adults often spend more time in coastal and estuarine areas. This reach of the River is of particular important to the Shortnose Sturgeon.

A. ADDITIONAL INFORMATION REQUIRED: All Work between the Merrimack River and the Line Labelled "50-Ft No-Build" on the Plans, and all Work Associated with the Proposed On-Grade Path Between the Boardwalk and the MVRTA Bus Terminal Property.

This letter is to inform you that the Division has reviewed the materials submitted with your application and has determined that **additional information is required** in order for the Division to complete its review pursuant to the Massachusetts Endangered Species Act (321 CMR 10.18) and the rare species provisions of the MA Wetlands Protection Act (310 CMR 10.59), as specified below:

1. **Access to River**: As described in the filing, the Project includes a "public access" point to the waterfront which will consist of concrete walks and staircases with handrails down to a concrete landing located above Mean Annual High Water, as well as access to a floating dock.
 - a. *Provide alternatives analysis of bank alteration and grading*. The location and configuration of the access ramp requires an analysis of alternatives that includes options to minimize and eliminate impacts to the river bank and ensure bank stability. The analysis should include consideration of the potential impacts of ice scour and boat wakes, which have been reported to contribute to bank instability in this section of the river, yet are not discussed relative to this site.
 - b. *Provide analysis of access alternatives*. Discuss alternative means of access to the River, for example, pre-fabricated wood or metals stairs to provide access to a floating dock system versus a graded pathway system.
 - c. *Provide engineered details for the access path to the River (e.g., grading, surface treatments, toe hardening, riprap, landing, dock) for each alternative*. The plans do not show any grading or construction details associated with the access path to the River. The Plans for each alternative must be show all work associated with the access path.
 - d. *Evaluate Mooring & Anchor Systems*. Traditional mooring and anchor systems impact sturgeon benthic habitat through direct impacts from chain scour, dragged moorings and increased turbidity. To protect sturgeon habitat, the Division requires use of "conservation mooring" that consists of a helical anchor and a floating flexible, retractable cord that secures the boat to the anchor. The goal of these technologies is to eliminate or reduce scour and damage to river bottom habitats. Revise the plans to show use of conservation mooring for all in-water structures.

2. **Invasive species and vegetation management zone.**

- a. *Analyze how proposed vegetation alteration can affect bank stability.* The submitted materials provide several drawings, including the “Proposed Riverfront Mitigation Map” (6/30/21), and a general description of the invasive species management and view-creation. While invasive management is important, given the bank instability occurring on the adjacent property, the goal of any work on the Bank must consider how the proposed work could either reduce or contribute to bank stability. The narrative and plans must consider how the proposed vegetation management will affect bank stability, especially in combination with the proposed access path.
- b. The “Proposed Riverfront Mitigation Map” includes the following note “1. Limbing from 5’-35’ into the property’. Please clarify what this means.
- c. *Provide an invasive species management sequencing and long-term plan.* Most of this section of the river has substantial overstory of Oriental Bittersweet among other vines. The sequencing plan should incorporate cutting stems of overstory vines and physically removing them, along with herbicide treatment of the cut stems prior to identifying specific targets to maintain the views.

The Division reserves the right to request additional information to understand the potential impacts of the proposed project on state-listed species and their habitats. After receiving the above requested information, the Division will continue its review of the proposed project for compliance with the state-listed species provisions of the MESA regulations. Pursuant to 321 CMR 10.20, the Division reserves the right to request additional information beyond that described above to understand the potential impacts of the proposed project on state-listed species and their habitats.

B. ACTIVITIES APPROVED SUBJECT TO CONDITIONS: All Work Inland of the Line Labelled “50-Ft No-Build” on the Plans

Based on the information provided and the information contained in our database, it is the opinion of the Division that a portion of this project, as currently proposed, **must be conditioned in order to avoid adverse effects** to the Resource Area Habitats of state-listed wildlife species (310 CMR 10.59) and **must be conditioned in order to avoid a prohibited Take** of state-listed species (321 CMR 10.18(2)(a)). The following conditions must be met for work conducted within *Priority Habitat*:

1. **Erosion & Sedimentation Control:** Prior to the start of Work, adequate erosion and sedimentation control measures shall be implemented, including any necessary controls not specifically referenced in the Plan, and be maintained in effect throughout Project construction and until the site has become stabilized. Structural failure of erosion and sedimentation controls may be subject to enforcement action pursuant to the MESA.
2. **Plantings and Seeds.** Any plantings or seeds located outside of areas to be maintained as lawn and landscape, shall be native to Essex County in accordance to ‘The Vascular Plants of Massachusetts: A County Checklist First Revision’ (Dow Cullina, M., B. Connolly, B. Sorrie, and P. Somers. 2011. MA NHESP DFW). Available from State Library of Massachusetts at <http://archives.lib.state.ma.us> {search for the name of the publication noted herein}.
3. **Compliance Report:** Within thirty (30) days of completing construction of the project as shown on the Plans, the Applicant shall file a brief written report to the Division confirming that work has been completed with photographs showing compliance with Condition #1.

4. **Authorization Duration:** The authorization is valid for 5 years from the date of issuance. Should the town wish to conduct construction activities at the site after the expiration of this determination, a new filing is required.

Provided the above-noted conditions relevant to MESA Section B are fully implemented and there are no changes to the Project Plans relevant to Section B, this aspect of the project may proceed. No work or other activities related to work described in Section A may be conducted anywhere on the project site until the Division completes its review. If you have decided to withdraw your application for review under 321 CMR 10.18, please notify the Division of that decision in writing so that we can close out our review file for this project. If you have any questions concerning this notice, please contact Misty-Anne R. Marold, Senior Endangered Species Review Biologist (misty-anne.marold@mass.gov).

Sincerely,



Everose Schlüter, Ph.D.
Assistant Director

cc: Patricia Huckery, MA DFW Northeast District Supervisor
Alicia Geilen, Wetlands Circuit Rider for the Northeast Regional Office
Timothy Hayes, Bohler Engineering