



MASSWILDLIFE

DIVISION OF FISHERIES & WILDLIFE

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MASS.GOV/MASSWILDLIFE

September 27, 2021

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

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

Owners:
City of Haverhill
4 Summer Street
Haverhill, MA 01830

George Pyche
PO Box 5270
Bradford, MA 01835

236 Elm Street LLC
7 Alnette Road
Merrimac, MA 01860

Applicant: Procopio Companies
Project Location: Proposed Mixed Use Redevelopment – Railroad Avenue (1, 19, & 31-35 Railroad Avenue), Parcels: 712-684-1, 711-4-4A, 711-4-4, 711-4-3, 711-4-2A, 711-4-1.
Project Description: Redevelopment of parcels to two, five-story residential building with 290 units, subsurface parking, and ground floor retail space.
NHESP Tracking No.: 06-20745
DEP File No.: 033-1505

Dear Applicants and Commissioners:

The Natural Heritage & Endangered Species Program of the Massachusetts Division of Fisheries & Wildlife previously reviewed and issued a determination on 7/30/21 for this project. At that time, the project included direct access from the buildings to the Merrimack River including a graded walking path, dock, landing, and gangway. The Division’s determination letter provided conditions on most of the work (Section B) but required additional information about the proposed access to the Merrimack River (Section A).

The Applicant’s representative sent a letter responding to our request for additional information (Re: Proposed Mixed Use Redevelopment – Railroad Avenue & S. Elm Street NHESP Tracking No. 06-20745; DEP File No. 033-1505) stating that all the work providing direct access from the buildings to the Merrimack River were withdrawn. The only work remaining along the banks of the river is vegetation management. This determination responds to the revision of the project that withdraws all direct access from the buildings to the Merrimack River, including the formerly proposed graded walking path, dock, landing, and gangway.

Based on the information provided, the Project is located within *Priority Habitat* and *Estimated Habitat* as indicated in the Massachusetts Natural Heritage Atlas (15th 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.

Based on the information provided and the information contained in our database, the project 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 all work:

1. **Submit Revised Construction Plans.** Prior to start of work, the project shall submit revised plans that reflect the withdrawal of the river-access elements to MassWildlife for review and approval.
2. **Submit Revised Invasive Plant Species and Overall Vegetation Management Plan.** The response letter submission included additional details about invasive species control along the bank, but the Division remains concerned about the proposed plan.
 - a. **Overall Invasive Control & Restoration** (full length of property within 50' of river) – The proposed plan and additional information includes removal of most of the vegetation along the entire length of the bank and replacement of the vegetation with a grass seed mixture within the first growing season. The goals of an overall invasive control plan should include phasing of control on an annual basis with clear annual monitoring and treatment. Given the dynamic nature of this river, each phase of the plan must maintain the stability and diversity of the bank, while invasive control is occurring. The final goals would include re-establishment of a full overstory, mid-story and understory with native species. Successful invasive species control plans focus on working on a few target species or areas at a time, replacing those with native plant species and long-term annual monitoring and control/treatments. Restoration should include in-kind replacement for a significant portion of removed vegetation.

Management of invasive species requires a long-term commitment and repeated treatments and plantings tied to clear monitoring. The revised plan should fully articulate the sequencing and goals for vegetation management at each phase of vegetation removal on an annual basis.

- b. **View Cutting/Maintenance** – Within the length of the river, the project can identify specific areas for increased vegetation pruning to maintain glimpses of the river. The views should be no more than ~25% of the width of the property, as opposed to the current plan that proposes to limb most of the trees for the full length of the river. Individual trees within the views should not have more than 10% of the canopy removed. These maintained view areas should have a dense and healthy shrub layer maintained and, as necessary, planted, to help protect the bank.

Prior to the initiation of any work, the Applicant shall submit a revised invasive species management for review and approval.

3. **Erosion & Sedimentation Control.** Prior to the start of Work, adequate erosion and sedimentation control measures shall be implemented at each phase or stage of the work, 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.
4. **Plantings and Seeds.** Any plantings or seeds located outside of areas to be maintained as lawn and landscape, shall be native to the County in accordance with '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>
5. **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 these conditions.
6. **Authorization Duration.** The authorization is valid for 5 years from the date of issuance. A new filing is required to conduct construction activities at the site after the expiration of this determination.

Provided the above-noted conditions are fully implemented and there are no changes to the project plan, this project will not result in an adverse effect to the actual Resource Area (310 CMR 10.59) or Take of state-listed species. We note that conditions 3 – 6 are identical to those issued in the Division's prior determination letter dated 7/30/21, but now apply to all work associated with the site.

All work is subject to the anti-segmentation provisions (321 CMR 10.16) of the MESA. This determination is a final decision of the Division of Fisheries and Wildlife pursuant to 321 CMR 10.18. Any changes to the proposed project or any additional work beyond that shown on the site plans may require an additional filing with the Division pursuant to the MESA. This project may be subject to further review if no physical work is commenced within five years from the date of issuance of this determination, or if there is a change to the project. If you have any questions regarding this letter please contact, Misty-Anne Marold, Senior Endangered Species Review Biologist, at (508)-389-6356.

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
Brad Johnson, Bohler Engineering