

and Shortnose Sturgeons are federally listed and protected pursuant to the U.S. Endangered Species Act (ESA, 50 CFR 17.11) implemented by the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS). Fact Sheets for most state-listed species can be found on our website (www.mass.gov/nhosp).

The project is located along the southern bank of the tidally influenced Merrimack River. The project is presently an industrial building with a paved parking area, a loading dock and an overgrown vegetated area. The site contains a riprap bank with vegetation within the riprap and above the riprap to the edge of pavement. The project proposes to convert the building to accommodate 48 condominium units (the Project). The Project will also incorporate a rail trail for public use. Invasive plant species will be managed on site in accordance with the INVASIVE SPECIES CONTROL PLAN, and native planting installed in accordance with the PLAN OF RECORD (Collectively, the Work).

Based on the information provided and the information contained in our database, the Division finds that this project, as currently proposed, **must be conditioned in order to avoid adverse effects to the actual Resource Area Habitat** of state-protected rare wildlife species and **in order to avoid a prohibited Take of state-listed species (321 CMR 10.18(2)(a))**.

- 1) **Plans of Record.** All work must conform to the Plans of Record and other documents referenced above. Any changes, updates, or revisions to the proposed Project or any additional work beyond that shown on the Plans of Record shall require additional review and approval by the Division prior to implementation.
- 2) **Annual Report – Invasive Control & Planting Plan.**
 - a. The proponent must submit a report documenting the invasive control and planting work conducted during the calendar year, including photos and a brief narrative.
 - b. A report must be submitted annually during the invasive control phase, and then 1, 3, 5 and 7 years after the completion of the final seeding/planting on the site.
- 3) **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. If any additional measures are proposed to be installed below the high tide line, consultation with the Division is required.
- 4) **Plantings and Seeds.** Any plantings or seeds located outside of areas to be maintained as lawn 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). The document is available free from State Library of Massachusetts at <http://archives.lib.state.ma.us> {search for the name of the publication noted herein}.

Please carefully review the species and varieties listed on the noted Ernst Seeds mixes at the time of buying them, as the specific mixes and species vary over time and in some years have contained species not in compliance with this condition.

- 5) **Compliance Report.** Within thirty (30) days of completion of work the Applicant shall submit a brief written report including photographs showing previous and final conditions with emphasize on demonstrating compliance with Conditions herein.
- 6) **Renewal, extension or Amendment of the Order of Conditions, Request for Certificate of Compliance.** Upon filing for any renewal, extension, amendment, certification of compliance to any Orders of Conditions issued

associated with this site pursuant to the MA Wetlands Protection Act, the Applicant shall similarly file with the Division.

- 7) **Authorization Duration.** This authorization is valid for 5 years from the date of issuance of this letter. Work shall be completed by the expiration of this authorization.

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 a Take of state-listed species. All work is subject to the anti-segmentation provisions (321 CMR 10.16) of the MESA. We note that all work is subject to the anti-segmentation provisions (321 CMR 10.16) of the MESA. This MESA 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. Upon filing for any renewal, extension, or amendment of the Orders of Conditions issued under the MA Wetlands Protection Act, the Applicant shall contact the Division to determine if re-filing under MESA is required.

Please contact Misty-Anne R. Marold, Senior Endangered Species Review Biologist, at (508) 389-6356 (misty-anne.marold@mass.gov) with any questions or comments relative to this determination.

Sincerely,



Everose Schluter, Ph.D.
Assistant Director

cc: Patricia Huckery, MA DFW Northeast District Supervisor
Alicia Geilen, Wetlands Circuit Rider for the Northeast Regional Office
Thomas Hughes, Hughes Environmental Consulting