DESIGNATION OF AMENDMENTS to the SQUANNASSIT AREA OF CRITICAL ENVIRONMENTAL CONCERN and to the PETAPAWAG AREA OF CRITICAL ENVIRONMENTAL CONCERN WITH SUPPORTING FINDINGS

Following an extensive formal review required by the regulations of the Executive Office of Energy and Environmental Affairs (301 CMR 12.00), including acceptance of proposed amendments for public review, public information meetings, a public hearing and written comment period, and evaluation of all public comment and assembled data, I, the Secretary of the Executive Office of Energy and Environmental Affairs (EEA), hereby amend the Squannassit Area of Critical Environmental Concern and the Petapawag Area of Critical Environmental Concern, both of which were designated on December 11, 2002. I take this action pursuant to the authority granted to me under Massachusetts General Laws, Chapter 21A, Section 2(7).

I. Findings of Fact

1. On December 11, 2002, the Secretary of the Executive Office of Environmental Affairs designated as Areas of Critical Environmental Concern ("ACEC") (1) the Squannassit resource area, which is comprised of 37,450 acres of land located in portions of Ashby, Ayer, Groton, Harvard, Lancaster, Lunenburg, Pepperell, Shirley and Townsend; and (2) the Petapawag resource area, which is comprised of 25,630 acres of land located in portions of Ayer, Dunstable, Groton, Pepperell, and Tyngsborough.

2. Pursuant to G. L. c. 91, the Department of Environmental Protection (MassDEP) Waterways Program is authorized to issue licenses for structures and uses located within Great Ponds and navigable waterways, as those terms are defined in the waterways regulations at 310 CMR 9.00. The waterways regulations, at 310 CMR 9.32(1)(e) also contain categorical restrictions (prohibitions) that do not accept license applications for private unlicensed structures built after 1990 or for proposed new structures within an ACEC unless found consistent with a Resource Management Plan adopted by a municipality and approved by the Secretary.

3. When the Secretary designated the two resource areas as ACECs in accordance with 301 CMR 12.11(1), the Secretary also extended the effective date of each designation as it pertains to those water bodies within the delineated ACEC areas that are subject to the jurisdiction of G. L. c. 91 . The effect of these designations is such that any owner of a structure that is subject to the licensing requirements under the waterways regulations may apply for a waterways license during the extension period. At the same time municipalities and other stakeholders were afforded the opportunity to further study the resource areas and develop comprehensive resource management plans for the Great Ponds and navigable rivers and streams located within the two ACECs.

4. Since the ACEC designations in 2002, Squannacook Pond in Shirley, MA was removed from the Great Ponds list; and Vinton Pond in Townsend, MA was determined to be a Great Pond, and accordingly added to the Great Ponds list.[1] According to the extension of the effective date of designation written into the original designations dated December 11, 2002, without this designation of amendments, the Squannassit and Petapawag ACECs will incorporate the following revised list of Great Ponds, as updated by MassDEP in 2006, as well as all navigable waterways in the eleven ACEC towns, into the ACEC boundaries on December 11, 2007:

Sandy or Sand Pond in Ayer
Long Pond in Ayer and Groton
Massapoag Pond in Dunstable, Groton and Tyngsborough
Knops Pond/Lost Lake in Groton
Whitney or Cow Pond in Groton
Martins Pond in Groton
Baddacook Pond in Groton
Heald Pond (or Blood Pond) in Pepperell, and
Vinton Pond in Townsend

5. On September 26, 2007, Richard K. Sullivan, Commissioner of the Department of Conservation and Recreation (DCR), the agency charged with the administration of the ACEC Program on behalf of EEA, filed with the Secretary a petition to amend the Squannassit and Petapawag ACEC designations, pursuant to 301 CMR 12.13(1) and (2). The petition seeks to amend the ACEC designations such that the effective date of the ACEC designations regarding Great Ponds and navigable rivers and streams be extended for an additional two years.

II. Public Review of Amendment Proposal

1. On September 28, 2007 pursuant to 301 CMR 12.13(2) and 12.07, I accepted the Commissioner's petition to amend the Squannassit and Petapawag ACEC designations,

---

[1] On December 3, 2003, the Department of Environmental Protection (MassDEP) wrote to Environmental Affairs Secretary Ellen Roy Herzfelder to advise her that Squannacook Pond in Shirley is not a Great Pond as defined under the Chapter 91 Regulations and that MassDEP would remove the pond from its Great Pond list. On September 2, 2004, the Secretary issued a "Secretarial Finding regarding Squannacook Pond (located in Shirley) and the Boundary of Squannassit Area of Critical Environmental Concern", which finding was published in the Environmental Monitor to the effect that "Squannacook Pond" in Shirley is to be included within the boundary of the Squannassit ACEC.

Vinton Pond in Townsend was determined to be a Great Pond in a letter from MassDEP to the Townsend Conservation Land Trust and concerned residents of Townsend on November 6, 2006, finding that it therefore shall be regulated in accordance with the provisions of 310 CMR 9.00. The effect of that determination is that Vinton Pond is now included with the original extension of effective date of designation for Great Ponds within the Squannassit ACEC.

dated September 26, 2007, for full public review. Prior to the Commissioner's petition to amend the ACECs being accepted for full public review, DCR's ACEC Program and MassDEP's Waterways Program held joint public meetings to provide information regarding ACEC resource management planning and the application of the waterways regulations to ACECs. The public meetings were held with the Squannassit-Petapawag ACEC Stewardship Committee on May 15, 2007, and the Groton Great Ponds Advisory Committee on May 23, 2007. A public information meeting was held at the Groton-Dunstable Middle School on August 22, 2007. Finally, after the Commissioner's petition to amend the ACECs was accepted for full public review, a public information meeting was held in Groton on October 23, 2007; and a public hearing was held in Groton on November 8, 2007. The Secretary entertained written comments until the close of the public comment period on November 19, 2007.

2. As the Squannassit and Petapawag ACECs are located adjacent to one another, were nominated and designated concurrently, and the proposed amendments refer to both ACECs, the public review was conducted in a joint procedure, and comments were accepted regarding the petition to amend either ACEC or both ACECs.

3. Public notice of a hearing and information meeting regarding the proposed amendments was published in the October 5, 2007 editions of The Sentinel & Enterprise, the Lowell Sun; The Groton Landmark, the Harvard Hillside, the Pepperell Free Press, the Ayer Public Spirit, the Shirley Oracle, the Townsend Times; The Worcester Telegram and Gazette; and The Groton Herald. The public notice was also published in the October 9, 2007 edition of The Shirley Volunteer and the EEA's Environmental Monitor. Copies of the notice were emailed to affected municipalities and interested parties in correspondence from me dated September 28, 2007. Copies were also sent to the municipal libraries of Ayer, Dunstable, Groton, Pepperell, Townsend, and Tyngsborough (the towns with Great Ponds) for posting.

III. Decision

After careful consideration of the Commissioner's request, and following a detailed and thorough evaluation of the information received, the public comment provided, and recommendations by agency staff from DCR and MassDEP, I hereby issue this decision, pursuant to 301 CMR 12.13(1) and (2), to amend the Squannassit and Petapawag ACECs to extend their effective dates specific to the Great Ponds and waterways subject to c. 91 jurisdiction to December 11, 2009. As a result, any owner of a structure that is within these ACECs and subject to the licensing requirements under the waterways regulations may apply for a c. 91 license during the extension period. This extension will provide municipalities with additional time to prepare resource management plans. Additionally, any landowner potentially affected by these regulations will be afforded additional time to secure requisite licenses under the waterways regulations for private structures such as docks and piers. These amendments are further explained and described below in Section IV, Amendments to the Squannassit and Petapawag ACEC Designations.

Discussion of the Criteria Specified in Section 12.09 of the ACEC Regulations

In reviewing this request to amend the ACEC designations, the Secretary must consider the factors specified in 301 CMR 12.09. As stated in the regulations, these factors need not be weighed equally; and all factors need not be present for an area to be designated (or amended). The strong presence of a single factor may be sufficient for designation (or amendment). Based on the information presented in the petition to amend the Squannassit and Petapawag ACECs and at the public hearing, and upon due consideration of the written comments received throughout the public review process, along with any applicable agency research and review, I find the following factors relevant to the issuance of this decision.

1. Because the major purposes of ACEC designation are to preserve, enhance, restore, manage and encourage appropriate use of the natural and cultural resources within the designated ACEC boundaries, these amendments are appropriate as they will focus public attention to allow for further resource assessment and management of the hydrologically connected resources of the ACECs. As described in the Petapawag and Squannassit ACEC designation documents dated December 11, 2002, the significance of the ecological resources of the area remain the same now as when the areas were designated.

2. The amendments to these two ACECs will extend the effective dates of designation specific to the Great Ponds and waterways subject to c91 jurisdiction to December 11, 2009. This extension will allow existing owners of structures in the Squannassit and Petapawag ACECs to secure the requisite waterways licenses without a state-approved ACEC RMP. At the same time, municipalities will have additional time to develop RMPs for management of their Great Ponds and rivers and for possible licensing of new structures after 2009. Based on the foregoing, I find that this extension is supported by the needs of the public for more information and assistance concerning licensing before the regulatory restrictions for ACECs become effective, and by the opportunity to encourage resource management planning for the nine Great Ponds in these ACECs.

3. Specific to the factors listed at CMR 12.09, this limited extension of time before these ACEC designated areas are subject to the waterways regulations may address threats to public health by encouraging compliance with wetlands and waterways regulations, may allow for improvements to the quality of the natural resources, may improve or enhance the uniqueness of the area, and may improve and enhance recreational access and use. The preparation of resource management plans will also address potentially significant, irreversible, or imminent threats to the resources of the area.

4. The "supporting factors" category listed at 310 CMR 12.09(9) is also important in contributing to the adoption of these amendments to the Squannassit and Petapawag ACECs.

- Fifteen comments were received regarding the proposed amendments. All comments received regarding the proposed amendments supported them, reflecting a public consensus and public awareness of the value and importance of the area and the need for more time for planning and licensing to be accomplished.

• Further, criteria regarding the lack of coordinated local management because the area is located within more than one municipality supports the need for these ACEC amendments and the need for a limited time extension to help expedite, streamline and coordinate efforts by municipal and state agencies, and environmental and community organizations, to preserve, restore, enhance, use and manage the natural and cultural resources of this area.

• The preparation and implementation of ACEC resource management plans (or of individual plans for these Great Ponds) and other planning efforts within the ACECs should be a dynamic process, and guidelines and technical assistance are offered by the ACEC Program and the MassDEP Waterways Program. Input from the public will be a key component of the development of draft plans.

In summary, I find ample justification to amend the Squannassit and Petapawag ACEC designations as described herein.

IV. Amendments to the Squannassit and Petapawag ACEC Designations

The effective date of these amendments shall be December 11, 2007.

Petapawag Area of Critical Environmental Concern

As stated in the Petapawag ACEC designation document, dated December 11, 2002, (pages 4-5),

> According to the list of Great Ponds compiled by the Department of Environmental Protection in 1996, the following lakes or ponds are classified as Great Ponds, subject to the provisions of the Waterways (Chapter 91) Regulations (301 CMR 9.00):
>
> Sandy or Sand Pond in Ayer
> Long Pond in Ayer and Groton
> Massapoag Pond in Dunstable, Groton and Tyngsborough
> Knops Pond/Lost Lake in Groton
> Whitney or Cow Pond in Groton
> Martins Pond in Groton
> Baddacook Pond in Groton

The language in the Petapawag ACEC designation document entitled "Great Ponds and Navigable Rivers and Streams as Determined by the State Waterways (or Chapter 91) Regulations (310 CMR 9.00)" on pages 16-17 shall be superseded by the following:

> The final boundary includes several Great Ponds and navigable rivers and streams as determined by the Massachusetts Waterways (or Chapter 91) Regulations (310 CMR 9.00), administered by the state Department of Environmental Protection. These Great Ponds and waterways will be included within the boundary of the Petapawag ACEC, but the effective date for these areas will be within a period of up to two years following the date of this ACEC designation amendment, that is December 11, 2009. Further study and resource management planning for these water bodies is recommended before they are

included within the boundary of the ACEC. The effective date that these water bodies will be included as part of the ACEC is as follows (whichever date is earliest), in accordance with 301 CMR 12.11(1):

a) two years from the effective date of this designation amendment; or
b) the effective date of approval by the Secretary of Energy and Environmental Affairs of a Resource Management Plan (RMP) for a specific water body, after the RMP has been adopted by the municipality or municipalities where the water body is located.

Squannassit Area of Critical Environmental Concern

As stated in the Squannassit ACEC designation document, dated December 11, 2002, (pages 4-5), and as updated by the MassDEP in 2006,

> According to the list of Great Ponds compiled by the Department of Environmental Protection in 1996, the following lakes or ponds are classified as Great Ponds, subject to the provisions of the Waterways (Chapter 91) Regulations (301 CMR 9.00):
>
> Heald Pond (or Blood Pond) in Pepperell, and
> Vinton Pond in Townsend

The language in the Squannassit ACEC designation document entitled "Great Ponds and Navigable Rivers and Streams as Determined by the State Waterways (or Chapter 91) Regulations (310 CMR 9.00)" on pages 16-17 shall be superseded by the following:

> The final boundary includes several Great Ponds and navigable rivers and streams as determined by the Massachusetts Waterways (or Chapter 91) Regulations (310 CMR 9.00), administered by the state Department of Environmental Protection. These Great Ponds and waterways will be included within the boundary of the Squannassit ACEC, but the effective date for these areas will be within a period of up to two years following the date of this ACEC designation amendment, that is December 11, 2009. Further study and resource management planning for these water bodies is recommended before they are included within the boundary of the ACEC. The effective date that these water bodies will be included as part of the ACEC is as follows (whichever date is earliest), in accordance with 301 CMR 12.11(1):
>
> a) two years from the effective date of this designation amendment; or
> b) the effective date of approval by the Secretary of Energy and Environmental Affairs of a Resource Management Plan (RMP) for a specific water body, after the RMP has been adopted by the municipality or municipalities where the water body is located.

12/6/07

Ian A. Bowles
Secretary of Energy and Environmental Affairs

Date