



*The Commonwealth of Massachusetts*  
*Executive Office of Environmental Affairs*  
*100 Cambridge Street, Suite 900*  
*Boston, MA 02114*

Deval L. Patrick  
GOVERNOR

Timothy P. Murray  
LIEUTENANT GOVERNOR

Ian A. Bowles  
SECRETARY

Tel: (617) 626-1000  
Fax: (617) 626-1181  
<http://www.mass.gov/envir>

February 22, 2007

CERTIFICATE OF THE SECRETARY OF ENVIRONMENTAL AFFAIRS  
ON THE  
ENVIRONMENTAL NOTIFICATION FORM

PROJECT NAME : Proposed Maintenance and Improvement Dredging of  
Federal Channel, and Beach Nourishment  
PROJECT MUNICIPALITY : Westport  
PROJECT WATERSHED : Buzzards Bay  
EOEA NUMBER : 13953  
PROJECT PROPONENT : Town of Westport  
DATE NOTICED IN MONITOR : January 23, 2007

Pursuant to the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-62H) and Section 11.06 of the MEPA regulations (301 CMR 11.00), I hereby determine that this project **does not require** the preparation of an Environmental Impact Report (EIR).

The proposed project consists of maintenance dredging at the west end of Horseneck Beach and deposition of dredged sand for beach nourishment at Cherry and Webb Beach, on the southwest side of Horseneck Beach. The purpose of the project is to provide navigational and safety improvements. The project will provide a Federal navigation channel approximately 9,700 feet long through the inlet to connect deep water in Buzzards Bay with deep water in Westport Harbor (the portion requiring dredging is 4,550 feet long). According to the Environmental Notification Form (ENF), shoaling of the river has impeded commercial and recreational use of the river and resulted in groundings, and problems with existing conditions and channel alignment pose safety concerns.

The project will impact Land Under Ocean as a result of dredging of approximately 19,000 cubic yards of material. Beach deposition of dredged material will impact approximately 3,300 linear feet of coastal beach (in an approximately 75-foot wide zone). According to the ENF, which included an Environmental Assessment by the U.S. Army Corps of Engineers, the

placement of sand above the mean low water tide level will increase the supratidal area by approximately 1.7 acres, and result in a decrease of approximately 2 acres of subtidal habitat. The project site provides habitat for federal and state-listed rare and endangered species including the Piping Plover and the Northeastern Beach Tiger Beetle, and includes Essential Fish Habitat (EFH) and mapped shellfish habitat areas.

The project is undergoing review pursuant to Section 11.03 (2)(b)(2) because it may result in a taking of an endangered or threatened species or species of special concern; Section 11.03(3)(b)(1)(f) because it will result in alteration of 1/2 or more acres of wetlands; and Sections 11.03(3)(b)(3) and (4) because it will result in dredging of 10,000 or more cubic yards (cy) of material and disposal of 10,000 or more cy of dredged material. The project requires a 401 Water Quality Certification and a Chapter 91 License from the Massachusetts Department of Environmental Protection (MassDEP). The project requires an Order of Conditions from the Town of Westport Conservation Commission (and, on appeal only, a Superseding Order from MassDEP). The project requires a Conservation and Management Permit from the Department of Fisheries and Wildlife, Natural Heritage and Endangered Species Program (NHESP), and a Federal Consistency Review by the Massachusetts Office of Coastal Zone Management (CZM).

The proponent (Town of Westport) is not seeking financial assistance from the Commonwealth. Therefore, MEPA jurisdiction applies to those aspects of the project within the subject matter of required state permits with the potential to cause Damage to the Environment as defined in the MEPA regulations. In this case, given the broad scope of the Chapter 91 Permit, MEPA jurisdiction effectively extends to all aspects of the project.

As further detailed in the comment letter from the NHESP, the project site is located within the actual habitat of the Piping Plover (*Charadrius melodus*), Common Tern (*Sterna hirundo*), Least Tern (*Sterna antillarum*), and Northeastern Beach Tiger Beetle (*Cicindela dorsalis*). The Piping Plover is state-listed as "threatened", the Northeastern Beach Tiger Beetle as endangered, and both terns are listed as species of "Special Concern". The Piping Plover and Northeastern Beach Tiger Beetle are also federally protected as "threatened" species. The Town has consulted with NHESP to address state-listed species concerns and filed in compliance with the Massachusetts Endangered Species Act (MESA) and the rare wildlife species section of the Massachusetts Wetlands Protection Act (WPA) regulations (310 CMR 10.37). Since the submission of the ENF, the Town has provided plan revisions to NHESP as requested. The Town has also provided NHESP with a draft of a monitoring agreement with the Massachusetts Audubon Society, which addresses some of NHESP's concerns regarding state-listed species protection. The Town should provide final signed copies to NHESP in order for a final determination to be made. The Town should also ensure that management and monitoring reports include, at a minimum, a completed "Massachusetts Piping Plover Census Form", a completed "Massachusetts Tern Census Form", and a map or recent aerial photo as requested by NHESP in its comment letter.

NHESP has raised concerns regarding potential impacts to state-listed species as a result of All Terrain Vehicle (ATV) use and dogs on the beach. The proposed beach nourishment project may attract state-listed species to the site and the use of the beach by ATVs and dogs could negatively impact these species during the breeding season. Town prohibition on ATVs

and dogs do not appear to be strictly enforced, and as noted in the NHESP comment letter, disturbance by ATVs or dogs may result in a "take" of state-listed species. The Town should provide NEHSP with information on how town regulations will be enforced to protect state-listed species and their habitats.

The Division of Marine Fisheries (DMF) has identified the Westport River and Harbor as winter flounder spawning habitat and as important migration and spawning routes for diadromous species. Portions of the Westport Harbor and Westport River are also mapped horseshoe crab spawning and nursery areas. As recommended by DMF, eelgrass beds should be avoided at all times, and all in-water silt producing activity should be prohibited from January 15 through July of any year to protect winter flounder, diadromous species and horseshoe crab spawning and juvenile development. The Town has committed to conduct work between October 1 - January 14 to the extent feasible, while requesting a two-week grace period until January 31st in case of unforeseen delays. The Town should consult with DMF and the Office of Coastal Zone Management (CZM) if project activities cannot be completed prior to January 15th. The ENF indicates that there may be temporary turbidity impacts to adjacent eelgrass bed areas, and that impacts are expected to be minimal as the project will occur outside eelgrass growing season.

The DMF has also expressed concerns regarding damage to sensitive marine animals and vegetation in the intertidal habitat, and the loss of public trust tidelands. DMF recommends that beach fill should be limited to areas above the mean high water mark. The ENF indicates that beach fill will occur above the mean low water mark, and will result in burial of benthic organisms in the intertidal area, which typically include isopods, amphipods and surf clams. According to the ENF, recolonization usually occurs within one to two seasons after the project, although it may be slower for some species, and the intertidal habitat would move into the subtidal area resulting in a loss of approximately two acres of subtidal habitat. The Town proposes to undertake beach nourishment activities in the winter, during a two-to-four week period between October 1 and January 31st to minimize impacts to benthic organisms, which generally spawn between spring and fall. I advise the Town to consult with DMF regarding its concerns and to discuss opportunities to minimize impacts to intertidal areas. In addition, I expect that issues relating to loss of public trust tidelands will be addressed by MassDEP during the Chapter 91 permitting process.

In its comment letter, MassDEP indicates that the project site is not listed as a current disposal site and that no other disposal sites are listed in the immediate vicinity. I refer the Town to the MassDEP letter for further information regarding provisions of the Massachusetts Contingency Plan (310 CMR 40.0000) that may be applicable to the project, including the anti-degradation provisions, which address the transportation and disposal of contaminated media.

The Massachusetts Board of Underwater Archaeological Resources (BUAR) has determined that the project is unlikely to impact submerged cultural resources. However, unknown submerged resources may exist in the project area. There are historical records of shipwrecks in the Westport vicinity during the 1832-1952 period for which locations are vague, and there may be other lost and abandoned vessels in the area that are not included in the documentary record. If heretofore unknown submerged cultural resources are encountered during

the course of the project, the Town should take steps to limit adverse effects and contact BUAR and other appropriate agencies immediately in accordance with BUAR's *Policy Guidance for the Discovery of Unanticipated Archaeological Resources* (updated 9/28/06).

The Town has committed to a range of measures to avoid and minimize, or mitigate environmental impacts. These measures include the following:

- All work shall occur after October 1 and no later than January 14 of a given year to minimize impacts to spawning winter flounder, and to prevent impacts to Piping Plovers and Northeastern Beach Tiger Beetles (although an additional 2-week period may be needed, up to January 31st, in case of unforeseen project delays);
- Beach nourishment will be at a 10:1 slope extending seaward from the toe of the dune, to accommodate nesting Piping Plover;
  - The proponent shall enlist MassAudubon to ensure protection of Piping Plovers and other endangered birds, and to conduct monitoring activities in advance of dredging and for four years after dredged material is moved to Horseneck Beach;
- Sand fencing will be installed between the seaward side of the dunes and the disposal area; and
- The Northeastern Beach Tiger Beetle habitat will be delineated prior to construction to avoid disposal in this habitat.

The ENF has served to adequately disclose the potential impacts and mitigation associated with the project. Based on review of the ENF, comment letters received and consultation with relevant agencies, I find that impacts associated with the project do not warrant further MEPA review. I am satisfied that any remaining issues can be adequately addressed during the state and local permit and review processes. I ask that MassDEP consider the comments received on the ENF from DMF, NHESP and BUAR during its permitting process.

February 22, 2007

DATE



Ian A. Bowles, Secretary

Comments Received:

- 2/09/07 Department of Environmental Protection, Southeast Regional Office
- 2/09/07 Board of Underwater Archaeological Resources, Office of Coastal Zone Management
- 2/12/07 Division of Marine Fisheries (copy of letter from DMF to Westport Conservation Commission, dated July 31, 2006)
- 2/13/07 Division of Fisheries and Wildlife, NHESP

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