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February 8, 2007

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

PROJECT NAME : Proposed Maintenance Dredging Town Wharves & Creek
PROJECT MUNICIPALITY : Westport
PROJECT WATERSHED : Buzzards Bay
EOEA NUMBER : 13946
PROJECT PROPONENT : Town of Westport
DATE NOTICED IN MONITOR : January 9, 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.

As described in the Environmental Notification Form (ENF), the project involves the maintenance dredging of the Westport Town Wharves. The maintenance project would require removal of about 20,735 cubic yards (cy) of material by mechanical dredging. The dredged material will be disposed offshore at the Cape Cod Bay Disposal Site.

The project is undergoing MEPA review pursuant to section 11.03 (3)(b)(3), because it requires state permits and involves the dredging of more than 10,000 cy of material. The project will require a Chapter 91 License and a 401 Water Quality Certificate from the Department of Environmental Protection (MassDEP). The project also requires a U.S. Army Corp of Engineers (ACOE) 404 Wetlands permit. The project is not subject to Coastal Zone Management's (CZM) federal consistency review because CZM has already signed off on the ACOE 404 permit.

Because the proponent is not seeking financial assistance from the Commonwealth for the project, MEPA jurisdiction is limited to those aspects of the project that may cause Damage to the Environment and are within the subject matter of required state permits. In this case, MEPA jurisdiction exists over land alteration, wetlands, and water quality.

The ENF states that approximately 850 cy of dredged material may be unsuitable for offshore disposal and would be disposed at an acceptable upland disposal site. I note that revisions to 314 CMR 9.00 added provisions for MassDEP to have authorization of shoreline and upland dredged material reuse under the 401 Water Quality Certificate. In addition, reuse or disposal of dredge at a lined landfill requires compliance with the MassDEP's policy, *Reuse and Disposal of Dredged Sediment at Permitted Landfills, February 1995*. Reuse at an unlined landfill will also require DEP approval. Therefore, I advise the Town to work closely with MassDEP prior to and during the permitting process.

The project site is within an Estimated/Priority Habitat for rare species. The Natural Heritage and Endangered Species Program (NHESP) has determined that this project, as currently proposed, will occur within the actual habitat of the Least Tern (*Sterna antillarum*) and the Common Tern (*Sterna hirundo*). These species are listed as species of "Special Concern" and protected pursuant to the provisions of the MA Endangered Species Act (MESA) (M.G.L. c.131A) and its implementing regulations (321 CMR 10.00). NHESP has determined that if no work occurs at the project site between April 1 and August 31, and no dredged spoils are utilized for beach nourishment, this project will not result in a "take" of state-listed species. The Town should work with the NHESP to avoid adverse impacts to these species.

The project site also lies within mapped shellfish habitat and is afforded protection under the Wetlands Protection Act (310 CMR, 10.34). The Massachusetts Division of Marine Fisheries' (DMF) Shellfish Project has determined that this area is significant habitat for quahogs (*Mercenaria mercenaria*), blue mussels (*Mytilus edulis*) and bay scallops (*Argopecten irradians*). DMF has also identified the Westport Rivers and Westport Harbor as winter flounder (*Pseudopleuronectes americanus*) spawning habitat, and important migration and spawning routes for diadromous species such as alewife (*Alosa pseudoharengus*), white perch (*Morone americana*) and American eel (*Anguilla rostrata*). These species transit through the river enroute to spawning areas. Portions of the Westport Harbor and Westport Rivers that are near the proposed dredge sites are mapped horseshoe crab (*Limulus polyphemus*) spawning and nursery areas. Therefore, I advise the Town to work closely with DMF prior to the permitting process to establish appropriate time-of-year (TOY) restrictions and to ensure that the dredging vessels will not have an adverse impact on these valuable resource areas.


I ask that DEP consider comments received specifically those from DMF, NHESP and the Massachusetts Historical Commission, during the review of the ENF prior to and during its permitting process.

The review of the ENF has served to adequately disclose the potential impacts and mitigation associated with this project. Based on a review of the ENF, the comment letters, and consultation with the relevant public agencies, I find that the impacts of the project do not

warrant further MEPA review. The Town can resolve the remaining issues associated with the maintenance dredging and all wetland issues with the state permitting agencies as the project progresses into the permitting process.

February 8, 2007

Date



Ian A. Bowles

Comments Received:

01/18/07 Coastal Zone Management
01/17/07 Massachusetts Division of Marine Fisheries
01/22/07 Massachusetts Historical Commission
01/29/07 Natural Heritage & Endangered Species Program
01/31/07 Department of Environmental Protection

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