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February 15, 2007

CERTIFICATE OF THE SECRETARY OF ENVIRONMENTAL AFFAIRS  
ON THE  
FINAL ENVIRONMENTAL IMPACT REPORT

PROJECT NAME : Sterling Marine Terminal and CAD Cells  
PROJECT MUNICIPALITY : East Boston  
PROJECT WATERSHED : Boston Harbor  
EOEA NUMBER : 13126R  
PROJECT PROPONENT : Dredge Management Solutions, LLC  
DATE NOTICED IN MONITOR : January 9, 2007

As Secretary of Environmental Affairs, I hereby determine that the Final Environmental Impact Report (FEIR) submitted on this project does not adequately and properly comply with the Massachusetts Environmental Policy Act (M.G.L. c. 30, ss. 61-62H) and with its implementing regulations (301 CMR 11.00).

This project proposes a potentially innovative remedy to the chronic challenge faced by urban marine facilities that require periodic maintenance dredging when contamination in the sediment precludes ocean disposal. The project is also the first of its kind to be reviewed under new dredging regulations recently issued by the Department of Environmental Protection. My intent in requiring limited further MEPA review is to facilitate the policy and regulatory evaluation of the project. The scope for the Supplemental FEIR (SFEIR), provided below, is narrowly focused to address issues raised by the Department of Environmental Protection (MassDEP) and Coastal Zone Management (CZM) regarding alternatives, potential users, and the project's consistency with state water quality and public tidelands regulations. I have also received comments regarding water quality monitoring, marine habitat, fisheries, and other aspects of the project. While these issues can be resolved in the permitting process, the proponent should provide a response to all comments received on the FEIR.

Project description

Originally proposed by Jay Cashman Inc. in a February 2004 expanded Environmental Notification Form (EENF), the project involved waterside infrastructure improvements and the construction of two confined aquatic disposal (CAD) cells within the Sterling Marine Terminal site located in the Chelsea Creek Designated Port Area (Chelsea Creek DPA) in East Boston. The proposed waterside infrastructure improvements included the reconstruction of the existing bulkhead, construction of the transfer bridge, and the mechanical maintenance dredging (to -15 MLW) of a portion (approximately 60,000 sf) of the Sterling Marine Terminal area. The dredged sediment (approximately 7,800 cy) from the Phase I activities would be temporarily stored on three barges to be moored within the project site. The CAD cells construction activities involved the excavation of approximately 36,500 cy of parent material to construct CAD 1. The temporarily stored dredged sediment from the Phase I dredging activities will be disposed of in CAD 1 along with the dredged sediment (approximately 7,200 cy) from the proponent's proposed maintenance dredging of the remaining portion (68,000 sf) of the project site. The proponent proposed to excavate approximately 110,000 cy of additional parent material from the remaining portion (68,000 sf) of the project site to construct CAD 2. As described by the proponent, the project will create approximately 114,000 cy of CAD capacity to accommodate, for a fee, dredged material from other projects.

The project has been modeled and designed to reflect the CAD cells constructed by the US Army Corps of Engineers as part of its Boston Harbor Navigation Improvement Project (BHNIP), a large-scale dredging project involving the construction of CAD cells for the resultant dredge material reviewed by MEPA in March 2003 (#8695). The dredging component of the project will create adequate drafts to continue to accommodate large marine barges and other vessels to enter the site and unload materials and equipment, and thereby support the site's continued use as an active marine terminal within a Designated Port Area. The Secretary's Certificate and Scope issued in March 2004 on the EENF assumed that the disposal of the parent material excavated from the construction of CAD cells 1 and 2 (approximately 146,500 cy) is suitable for unconfined off-shore disposal at the Massachusetts Bay Disposal Site (MBDS).

In May 2004, the proponent, Dredge Management Solutions, LLC (formerly Jay Cashman Inc.) filed a Notice of Project Change (NPC) describing modifications to the original project to include the waterside infrastructure improvements described above, the construction of a single CAD cell, and the dredging of approximately 155,000 cubic yards (cy) of sediment in Phase II. The proponent proposed to dispose approximately 21,000 cy of surficial material from the project site in the proposed CAD cell, and a cap layer of 16,000 cy of suitable material. The resultant CAD cell storage capacity will be approximately 101,000 cy. The Sterling Marine CAD cell project will be constructed, filled, and closed/capped over a three-year period (2006-2009).

The proposed single CAD cell will be constructed by dredging approximately 155,000 cubic yards (cy) from a 3.38-acre basin area to a depth of -72 feet Mean Low Water (MLW) with 2:1 sloped side walls. The construction and capping process will occur over a three year period and includes; 1) dredging of 21,000 cy of surficial material from the proposed 3.38-acre CAD footprint, and off-site dewatering and beneficial reuse/disposal to an upland location; 2) dredging and unconfined off-shore disposal of parent material (approximately 138,000 cy) at the MBDS, 3) disposal of dredged material from off-site dredging projects into new CAD cell, and 4) the capping/closure of the CAD cell. The CAD cell will be constructed, filled and capped within a three-year period. The filling and capping of the CAD cell is to be completed within a one-year period, subject to proposed TOY restrictions. The proponent has proposed to incorporate the CAD cell capping guidelines used for the BHNIP project for the proposed Sterling Marine CAD cell capping process. The proposed cap will be comprised of a 3-foot thick layer of approximately 16,000 cy suitable granular capping material (70% sand) and will cover 90% of the CAD cell surface to contain the dredged material stored in the CAD cell. The proponent has committed to a 200-day consolidation period prior to capping the CAD cell. The proposed three-year project timeline will provide adequate time to create the CAD cell, fill the cell with appropriate dredged material from other off-site dredging projects, allow settling of CAD cell (200 days), and CAD cell closure. All in-water work will be conducted within proposed Time of Year (TOY) restrictions.

#### State permits and jurisdiction

The project is undergoing MEPA review pursuant to section 11.03 (3)(b)(3), because the project requires state permits and involves the dredging of more than 10,000 cubic yards of material (approximately 155,000 cubic yards total). The project will require a Chapter 91 License and a 401 Water Quality Certificate from the Department of Environmental Protection (MassDEP); an Order of Conditions from the Boston Conservation Commission (and hence a Superseding Order of Conditions from MassDEP if the local Order were appealed); and Coastal Zone Management (CZM) Federal Consistency review. Construction of the CAD cell also requires Section 404 Permit authorizations from the U.S. Army Corps of Engineers (ACOE) under the Clean Water Act, the Rivers and Harbors Act (Section 10 Permit), and the Marine Protection, Research and Sanctuaries Act (Section 103 Permit).

### SCOPE

#### Tidelands

In their comments, MassDEP has indicated that the proposed primary use of the CAD cell is for the disposal of dredge materials from Designated Port Areas (DPAs), particularly within the Chelsea Creek DPA and other Boston Harbor DPAs, will serve in the operation of DPAs and

therefore can be considered a permissible use pursuant to MassDEP's waterways regulations (310 CMR 9.36(5)(b)) and the Chapter 91 licensing process. The proponent has also committed to undertake the maintenance dredging of the Fitzgerald Shipyard to offset the private use of Commonwealth Tidelands.

The FEIR provided additional information regarding the availability of required quantities of acceptable off-site dredge material from approximately 18 potential CAD cell users for disposal of acceptable dredge material into the CAD cell during the one-year dredge disposal timeline proposed in phase three of the project's construction process. According to the comments received from MassDEP, Mass CZM and the City of Boston Conservation Commission, the proponent will be required to demonstrate, prior to the start of CAD cell construction, that sufficient quantities of acceptable off-site dredge material will be available for disposal within the proposed one-year timeline for filling and capping of the CAD cell. To receive required permits from MassDEP, the proponent will need to identify specific CAD cell users who have either obtained a 401 Water Quality Certification for their respective dredging projects or who have applied for such certification.

MassDEP comments emphasize that "no confined aquatic disposal cells shall be permitted if there is a practicable alternative that would have less impact on the ecosystem." (314 CMR 9.07(8)(a)3) MassDEP states that the proponent has not demonstrated that there is no alternative to the project as proposed. Comments from CZM state that "CZM does not support the private CAD aspect of the project," because the project "would place a new disposal area in Commonwealth tidelands, without cost to the proponent, while generating income from private dredging projects that would not benefit the state." The SFEIR should provide a discussion of available alternatives, assessment of potential future projects, and its proposed use of Commonwealth tidelands in the context of these comment letters.

### Mitigation

A project of this purpose inevitably requires analysis of trade-offs. Although the proposed CAD cell construction project may provide a cost effective means of dredge sediment disposal for both on and off-site dredge material, and will result in the increased likelihood of maintenance dredging in the Chelsea Creek and Boston Harbor, it will also result in impacts to marine resource areas and fisheries habitat, and a private and permanent commitment of flowed Commonwealth tidelands that will have a limiting effect on future water-dependent industrial uses on this site or elsewhere in the Chelsea Creek DPA. The proponent has proposed mitigation to offset the potential impacts to fisheries resources and the use of Commonwealth Tidelands to ensure compliance with MassDEP's Chapter 91 licensing process. According to the information provided in the FEIR, the project has been designed to avoid impacts to impacts to marine habitat and fisheries resources. The proponent has committed to use construction best management practices (BMPs) and to implement a Time-Of-Year (TOY) in-water construction restriction (February 15 – June 30) to avoid adverse impacts to winter flounder spawning and juvenile

development. The proponent has also committed to work with local organizations to remove areas of fill and Phragmites from within the Mill Creek, a tributary to Chelsea Creek, in Chelsea as part of an ongoing intertidal habitat and salt restoration project.

The proponent has proposed to complete a number of off-site project improvements as part of the proponent's project mitigation plan. Pursuant to Section 11.01 of the MEPA regulations, I must consider the environmental impacts associated with the proponent's CAD cell development project and the proposed off-site mitigation activities as a "common plan or undertaking." The SFEIR should include a description of the proponent's proposed off-site mitigation activities and their respective impacts to environmental resource areas to determine the potential impacts to water quality, wetlands, fisheries, and Commonwealth Tidelands. The SFEIR should discuss the potential cumulative environmental impacts and site planning issues arising out of the CAD cell development project and the proposed off-site mitigation work in the Mill Creek and the Fitzgerald Shipyard.

#### Other issues

I have received a number of comments on the FEIR document that express concern with the proponent's proposed water quality monitoring program and the project's potential impacts to fisheries habitat and resources. While I am confident that these issues can be satisfactorily resolved in permitting, the proponent should respond to these and all other comments received on the FEIR.

#### Circulation

The SFEIR should be circulated in compliance with Section 11.16 of the MEPA regulations and copies should also be sent to the list of "comments received" below and to the City of Boston officials. A copy of the SFEIR should be made available for public review at the City of Boston Public Library.

February 15, 2007

Date



Ian A. Bowles, Secretary

#### Comments received:

02/09/07	Department of Environmental Protection (DEP) - Boston
02/12/07	NOAA/National Marine Fisheries Service (NMFS) – Northeast Region
02/08/07	City of Boston Environment Department

02/06/07      Mass Coastal Zone Management (CZM)  
02/08/07      Massachusetts Division of Marine Fisheries  
02/08/07      Chelsea Creek Restoration Partnership  
02/07/07      Neighborhood of Affordable Housing (NOAH)  
02/05/07      Gail Miller  
02/07/07      Nancei Radicchi

IB/NCZ/ncz  
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