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

PROJECT NAME : Eel River Channel Relocation and Expansion  
PROJECT MUNICIPALITY : Falmouth  
PROJECT WATERSHED : Cape Cod  
EOEA NUMBER : 14239  
PROJECT PROPONENT : Town of Falmouth  
DATE NOTICED IN MONITOR : May 7, 2008

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 project consists of the relocation and expansion of the Eel River Channel for navigational purposes. The Town is proposing to relocate the more southerly leg of the channel, which leads to the Child's River, to extend the channel north of the Menauhant Yacht Club and to permit a turning basin. The purpose of the extension is to avoid sediment accretion at the adjacent Washburn Island and avoid the recreational boat landing and swimming area. The purpose of the turning basin is to meet future navigational needs of this system. The proposed channel will require dredging through an existing sandbar. The ENF indicates that the channel and turning basin will be dredged to -6 mean low water (MLW). A hydraulic dredge will be used and up to 7,500 cubic yards of dredge material will be placed on 2,700 feet of Menauhant Beach, west of the channel. The ENF provides a grain size analysis and indicates that all nourishment material will be placed landward of the high tide line.

The ENF provides a project description, a summary of potential impacts and identifies measures to avoid, minimize and mitigate project impacts. Supplemental information provided in a letter dated May 20, 2008 describes alternatives to the proposed project that were considered by the Town of Falmouth Waterways Committee including retention of the current permitted channel and relocation of the channel farther to the north.

According to the 12<sup>th</sup> Edition of the Massachusetts Natural Heritage Atlas, the project site is located within *Priority* and *Estimated* Habitat for the Least Tern (*Sterna antillarum*), Roseate Tern (*Sterna dougalli*), Common Tern (*Sterna hirundo*) and the Piping Plover (*Charadrius melodus*). The Roseate Tern and the Piping Plover are identified as Endangered and the Least Tern and Common Tern are considered species of Special Concern by the Natural Heritage and Endangered Species Program (NHESP). The project site lies within mapped shellfish habitat for soft-shelled clam (*Mya arenaria*) and bay scallop (*Argopecten irradians*). Waters of Eel River and surrounding embayments have been identified as winter flounder (*Pseudopleuronectes americanus*) spawning habitat. Also, the Eel River Channel provides passage, spawning and/or juvenile development habitat for alewife (*Alosa spp*), white perch (*Morone Americana*) and sea-run brook trout (*Salvinus fontinalus*). In addition, eelgrass beds are located just outside the river mouth. The project abuts the Waquoit Bay National Estuary Research Reserve (WBNERR) Area of Critical Environmental Concern (ACEC). WBNERR is managed by the Department of Conservation and Recreation (DCR) in partnership with the National Oceanic and Atmospheric Administration (NOAA).

The project is undergoing MEPA review pursuant to Section 11.03 (2)(b)(2), (3)(b)(1)(a) and (3)(b)(1)(f) because it requires a state permit and may result in a take of an endangered or threatened species or species of special concern, consists of alteration of coastal dune, barrier beach or coastal bank and consists of alteration of ½ or more acres of any other wetlands. The project requires a Chapter 91 License and a 401 Water Quality Certificate from the Department of Environmental Protection (MassDEP) and review by the NHESP. In addition, it requires an Order of Conditions from the Falmouth Conservation Commission (and hence a Superseding Order of Conditions from MassDEP in the event that the local Order is appealed). The project may require a NPDES Stormwater Permit for Construction Activities.

Because the proponent is not seeking financial assistance from the Commonwealth, MEPA jurisdiction extends to those aspects of the project that may have significant environmental impacts and that are within the subject matter of required or potentially required state permits. These include wetlands, tidelands, water quality and rare species.

Potential environmental impacts associated with the project include alteration of 5.5 acres of land, 235,967 square feet (sf) of Land Under the Ocean, 70,400 sf of Barrier Beaches and 54,000 sf of Land Containing Shellfish. Measures to avoid, minimize and mitigate project impacts will include beneficial reuse of dredged materials, observance of time-of-year (TOY) restrictions and monitoring of rare species prior to dredging.

Comment letters submitted by state agencies identify additional information that will be required during project permitting, identify one alternative that may warrant further consideration as the project proceeds through permitting and indicate support for the proposed beach nourishment and.

### Marine Resources

Comments from DCR affirm the proponent's assertion that the existing navigational channel has been subject to rapid accretion and growth of the Washburn Island spit and that proximity to the recreational boat landing and swimming area is an issue. Proposed relocation

farther from the spit will address ongoing concerns and reduce the frequency of maintenance dredging and/or volume of sediments that need to be dredged.

Comments from Mass DEP indicate that the plans submitted with the ENF do not identify the limit of work line or MHW for three of the proposed nourishment areas. The Proponent should submit to the Conservation Commission as part of the Notice of Intent a plan that clearly identifies the limit of work and includes more detailed information on how the beach nourishment will be conducted and managed.

In addition, comments from MassDEP indicate that the proposed channel will be located in close proximity to several existing private piers. The plans accompanying the ENF do not indicate whether there are ramps and floats associated with the fixed piers. During project permitting, the proponent will need to demonstrate that the relocated channel will provide safe navigation and will not significantly disrupt any existing water-dependent use.

Comments from the Division of Marine Fisheries (DMF) indicate that TOY restrictions on all in-water activity should extend from January 15 to July 31 to protect winter flounder and anadromous fish passage and spawning. In addition, beach fill material should be of equal grain size to avoid premature loss from the beach and to avoid impacts to near shore bottom habitat.

Comment letters from DMF and DCR recommend the proponent further consider an alternative that would relocate the channel farther to the north to take advantage of natural bathymetry and hydrodynamics. This alternative may further limit environmental disturbance over time by reducing the frequency of maintenance dredging; however, I note that the Town rejected this alternative because it would impact seeded shellfish beds and there was a concern that boaters traveling seaward through the Eel River channel from the east would use a more direct route rather than the marked channel. The merits of this alternative should be considered by MassDEP during permitting.

### Rare Species and Wildlife

Comments from NHESP indicate that the project should be able to be conditioned to avoid adverse effects to rare species habitat and to avoid a prohibited "take" of state-listed species. Conditions for the proposed project will likely include, but are not limited to, the following:

- No beach nourishment shall occur between April 1 and August 31, the breeding period for state-listed birds. Work may continue until April 15 if monitoring (conducted at least twice weekly per site by an experienced shorebird monitor) determines that no Piping Plovers have begun to establish nesting territories at the site.
- The ocean-facing slope created during beach nourishment shall be as gently sloping as possible (i.e. at or near a 10:1 horizontal to vertical ratio).
- The dredged material deposited on the beach shall not be planted with dune grass or other vegetation, nor shall sand fencing be erected on it.
- No above-ground storage of dredge pipe or other equipment shall be permitted on the beach between April 1 and August 31. No excavation or transport of buried pipe shall be permitted on the beach between April 1 and 31 August.

Historic and Archaeological Resources

Comments from the Board of Underwater Archaeologists (BUAR) and the Massachusetts Historical Commission indicate that the site may contain submerged historic/archaeological resources. Comments from BUAR indicate that the landscape and bottom topography of the Eel Pond/Eel River/Child's River system is suggestive of the potential for the occurrence of Native American (prehistoric) sites and that BUAR has issued a reconnaissance permit for unidentified underwater archaeological resources in the adjacent Waquoit Bay. Given the proximity of these resources to the project area and the comparable environmental settings, BUAR believes a similar archaeological potential exists in some portions of the proposed project area including the proposed turning basin. MHC has requested that the proponent conduct a marine archaeological survey of sensitive project impact areas to locate and identify any significant historic or archaeological resources that may be affected by the project. BUAR has requested that vibratory core samples and remote sensing data (i.e. sub-bottom profiler and side scan sonar records) be collected and the results provided to them. The proponent should contact MHC and BUAR in the event that submerged cultural resources are encountered during the course of the project and take steps to limit adverse impacts. I encourage the proponent to consult with MHC and BUAR regarding these requests.

Conclusion

The review of the ENF has served to adequately disclose the potential impacts associated with this project. Outstanding issues can be addressed during the state permitting and review process. Based on the information in the ENF and after consultation with relevant public agencies, I find that no further MEPA review is required.

June 6, 2008

Date



Ian A. Bowles

## Comments Received:

5/23/08	Board of Underwater Archaeology (BUAR)
5/27/08	Department of Conservation and Recreation (DCR)
5/27/08	Department of Environmental Protection /Southeast Regional Office (MassDEP/ SERO)
5/27/08	MA Division of Fisheries and Wildlife/Natural Heritage and Endangered Species Program (DFW/NHESP)
5/27/08	Division of Marine Fisheries
5/22/07	Massachusetts Historical Commission

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