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August 22, 2008

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

PROJECT NAME : Apponagansett Bay Sewer Project
PROJECT MUNICIPALITY : Dartmouth
PROJECT WATERSHED : Apponagansett Bay
EEA NUMBER : 14284
PROJECT PROPONENTS : **Town of Dartmouth's** Department of Public Works
DATE NOTICED IN MONITOR : July 23, 2008

Pursuant to the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-62I) 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).

As described in the Environmental Notification Form (ENF), the project involved the installation of a gravity sewer main across a salt marsh to improve the water quality of Apponagansett Bay by the Town of Dartmouth's Department of Public Works in 1999. The project is located within the easement between Lucy Street and Highland Street, at 32 Lucy Street in the Town of Dartmouth.

The project is undergoing review pursuant to Section 11.03 (3)(b)(5) of the MEPA regulations, because the project will require a Chapter 91 Amnesty License from the Department of Environmental Protection (MassDEP) for an existing non-water dependent use of tidelands. The project also exceeds the MEPA thresholds pursuant to Section 11.03 (3)(b)(1)(c) because the project has altered 1,000 or more square feet of salt marsh. The project received a 401 Water Quality Certificate from MassDEP on November 16, 1999 and an Order of Conditions from the Dartmouth Conservation Commission on September 21, 1999. As stated in the ENF the project also requires a Sewer Extension Permit from MassDEP. Because the proponent is not seeking financial assistance from the Commonwealth for the project, MEPA jurisdiction extends to those aspects of the project that are within the subject matter of required state permits and that may

cause Damage to the Environment as defined in the MEPA regulations. In this case, MEPA jurisdiction extends to the broad issues concerning waterways (including impacts to wetlands), water quality and wastewater.

The project has already been completed and the proponent is filing this ENF to satisfy MassDEP's requirements of an Emergency Authorization pursuant to 310 CMR 9.20, issued in December of 1999, which required the proponent to file a Chapter 91 License application within 30 days. The Chapter 91 License application was incomplete until recently, and the public hearing will be scheduled once the MEPA process is concluded. Under the Chapter 91 regulations, the project is considered to be an infrastructure crossing facility, which has been determined to be nonwater-dependent in accordance with 310 CMR 9.12(2)(d).

The Apponagansett Bay Sewer Project was initiated in 1999 by citizens' petition to the Dartmouth Board of Selectmen. At that time the based on the analysis of four options, it was determined that the installation of gravity sewer for the Apponagansett Bay Sewer Project would be in accordance with the Town of Dartmouth's Department of Public Works Master Plan for Wastewater Collection. It was determined at the time that the existing septic systems would be difficult to repair due to the high water table and poor soils.

The proposed sewer service area had been identified as one of the greatest sources of nutrient loading to the Apponagansett Bay. The project as designed minimizes potential damage to the environment. However, the Natural Heritage and Endangered Species Program (NHESP) of the Massachusetts Division of Fisheries and Wildlife has stated that the project site is located within Priority and Estimated Habitat as indicated in the 12th Edition of the MA Natural Heritage Atlas and therefore requires review through a direct filing with NHESP for compliance with the Massachusetts Endangered Species Act (MESA 321 CMR 10.00). In addition, the Massachusetts Historical Commission (MHC) has stated that limited portions of the project area are archaeologically sensitive and were possibly used for ancient and historic period Native American land use and occupation. The comments from the MHC and NHESP have brought up several outstanding issues even though the project has already been built. I anticipate that the proponent will resolve these issues during the permitting process.

I conclude that no further MEPA review is required. The review of the ENF has served to demonstrate that the potential impacts of the project do not warrant the preparation of an EIR. The proponent can resolve the remaining issues during the Chapter 91 permitting process. I ask that MassDEP consider the comments received during the MEPA review when finalizing the conditions of the Chapter 91 Amnesty License.

August 22, 2008

Date


for Ian A. Bowles, Secretary

Comments received:

07/26/2008 Peter L. Johnson
07/30/2008 Massachusetts Historical Commission

Comments received (continued):

08/06/2008 Division of Marine Fisheries

08/11/2008 **Natural Heritage and Endangered Species Program** of the Massachusetts Division
of Fisheries & Wildlife

08/12/2008 Department of Environmental Protection

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