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August 24, 2007

CERTIFICATE OF THE SECRETARY OF ENVIRONMENTAL AFFAIRS
ON THE
NOTICE OF PROJECT CHANGE

PROJECT NAME : Proposed Maintenance Dredging Town Wharves & Creek
PROJECT MUNICIPALITY : Westport
PROJECT WATERSHED : Buzzards Bay
EEA NUMBER : 13946
PROJECT PROPONENT : Town of Westport
DATE NOTICED IN MONITOR : July 25, 2007

Pursuant to the Massachusetts Environmental Policy Act (G.L. c. 30, ss. 61-62H) and Section 11.10 of the MEPA regulations (301 CMR 11.00), I have reviewed the Notice of Project Change (NPC) submitted on this project and hereby determine that it **does not require** the preparation of an Environmental Impact Report (EIR).

The project originally underwent MEPA review in January, 2007. An Environmental Impact Report (EIR) was not required as stated by a Certificate on the Environmental Notification Form (ENF), dated February 8, 2007. The project, as originally described in the ENF, involved 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 was proposed to be disposed offshore at the Cape Cod Bay Disposal Site.

The project was originally reviewed pursuant to section 11.03 (3)(b)(3) of the MEPA regulations, because it required state permits and involved 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 project change described in this NPC involves the reduction of the overall dredge footprint and minimal reduction of eel grass area, crossing the creek's entrance. Overall the reduction in the dredge footprint, the 30-foot no dredge zone and the no side slope dredging at the entrance to the creek will lessen adverse environmental impacts to the resource areas.

The original ENF stated that a portion of the 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, Town should continue to work with MassDEP prior to and during the permitting process. In addition, if oil or hazardous material is identified during the implementation of this project, notification pursuant to the Massachusetts Contingency Plan (310 CMR 40.0000) must be made to MassDEP. A Licensed Site Professional (LSP) may be retained to determine if notification is required and, if need be, to render appropriate opinions.

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).


The dredging will impact two small areas of eel grass, where tern food sources may reside. However, the NHESP has determined that impacts to this habitat will be insignificant due to the small size of the eel grass beds to be impacted. I commend the proponent for reducing the overall dredge footprint in order to protect larger areas of eel grass habitat which may be significant sources of food for state-listed terns. The 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 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. DMF has made specific recommendations in their comment letter in regards to avoiding impacts to eelgrass or further mitigation measures if that cannot be avoided. The Town should 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 MassDEP consider comments received from DMF and NHESP prior to and during its permitting process. Based on a review of the information provided in the NPC, and after consultation with the relevant public agencies, I find that the potential impacts of this project change do not warrant the preparation of an EIR. No further MEPA review is required at this time. 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.

August 24, 2007
Date


Ian A. Bowles

Comments Received:

08/10/07 Massachusetts Division of Marine Fisheries
08/14/07 Department of Environmental Protection
08/15/07 Natural Heritage & Endangered Species Program

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