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November 14, 2008

CERTIFICATE OF THE SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS  
ON THE  
DRAFT ENVIRONMENTAL IMPACT REPORT

PROJECT NAME : West Islands Channel and Basin Dredging  
PROJECT MUNICIPALITY : Fairhaven  
PROJECT WATERSHED : Nasketucket Bay, Buzzards Bay  
EOEA NUMBER : 13607  
PROJECT PROPONENT : Board of Selectmen, Town of Fairhaven  
DATE NOTICED IN MONITOR : October 8, 2008

As Secretary of Energy and Environmental Affairs, I hereby determine that the Draft Environmental Impact Report (DEIR) submitted on this project **does not adequately and properly comply** with the Massachusetts Environmental Policy Act (M.G.L. c. 30, ss. 61-62I) and with its implementing regulations (301 CMR 11.00). Additional information and analysis of alternatives is required in a Supplemental DEIR.

The proposed project consists of improvement dredging of channels and basins along the westerly side of West Island, on the north and south side of Causeway Road in the Town of Fairhaven. The DEIR proposes dredging of approximately 54,000 cubic yards of material and disposal of the material for beach and dune nourishment at East Cove Beach, which is located on the easterly shoreline of West Island. The project will impact approximately 64 acres of Land Under the Ocean and 7.4 acres of coastal dune and beach area. The purpose of the project is to improve commercial and recreational navigation and to increase the number of moorings for power and sail vessels from 131 to 237 moorings.

The project is undergoing environmental review and is subject to a mandatory EIR pursuant to Section 11.03 (3)(a)(1)(b) of the MEPA regulations because it will result in the alteration of ten or more acres of wetlands (Land Under the Ocean). The project is also subject to

review pursuant to Section 11.03(3)(b)(1)(a) because it will result in alteration of a coastal dune; Section 11.03(3)(b)(3) because it involves dredging of more than 10,000 cubic yards of material; and Section 11.03(3)(b)(4) because it involves disposal of more than 10,000 cubic yards of dredged material.

The project will require a Chapter 91 License and a 401 Water Quality Certification from the Massachusetts Department of Environmental Protection (MassDEP). The project is subject to a Federal Consistency Review by the Massachusetts Office of Coastal Zone Management (CZM) and a Massachusetts Endangered Species Act (MESA) review by the Division of Fisheries and Wildlife, Natural Heritage and Endangered Species Program (NHESP). The project will require a Programmatic General Permit from the U.S. Army Corps of Engineers (U.S. ACOE).

The project will obtain financing from the Department of Conservation and Recreation (DCR). Therefore, MEPA jurisdiction is broad and extends to all aspects of the project that may cause Damage to the Environment as defined in the MEPA regulations.

#### Review of DEIR - Alternatives Analysis

The Certificate on the Environmental Notification Form (ENF) required a comprehensive alternatives analysis, which was not included in the DEIR. In response to the Scope, the DEIR reiterates the statement from the ENF that there are no alternatives to the proposed dredging that would provide the intended improvements. The alternatives section of the DEIR states that the proposed project is designed to maximize the number of moorings, and to provide a route that is as direct as possible to the open waters of Buzzards Bay while minimizing the amount of dredging to achieve the -5 mean low water (MLW) and -6.0 MLW depths necessary to accommodate navigation. However, the DEIR does not include an analysis of any alternatives or explain how the project as designed will minimize dredging.

The alternatives section of the DEIR also reiterates the statement made in the ENF regarding the selection of a disposal location, and states that East Cove Beach is the only public beach within reasonable proximity that is suitable for receiving the dredged material. The DEIR also states that the value of providing dune nourishment to halt the degradation of the salt marsh and mosquito drains on the existing dune simply outweighs the reasoning for other possible sites. This is not an adequate response to the requirement for an alternatives analysis. The DEIR provides no analysis of alternative locations or other information to justify the proponent's selection of East Cove Beach.

The Scope for the DEIR encouraged the proponent to work closely with NHESP to avoid and minimize impacts to habitat and to develop a beach nourishment project that can actually enhance habitat for Piping Plovers and Least Terns at West Island. The Scope required that the DEIR include a discussion of the proponent's coordination with NHESP, a full discussion of impacts to piping plover habitat and any NHESP permitting requirements. The proponent did not coordinate with NHESP as recommended in the ENF Certificate. The DEIR does not adequately address the requirements of the Scope or NHESP's comments on the ENF.

The Supplemental DEIR should include an alternatives analysis and an update on mitigation commitments as outlined in the Scope below.

## SCOPE

### General

The proponent should prepare a Supplemental DEIR in accordance with the general guidance for outline and content found in Section 11.07 of the MEPA regulations as modified by this Scope. The Supplemental DEIR should include existing conditions and proposed conditions plans (for the preferred and other alternatives evaluated). Plans should be provided at a reasonable scale to facilitate review and comment. The Supplemental DEIR should clarify any project changes since the DEIR filing.

### Alternatives

The Supplemental DEIR should provide a rationale to explain why certain dredge design, beach nourishment locations, and minimization and mitigation measures are selected and others ruled out from further consideration. The Supplemental DEIR should include a comparison of the impacts associated with alternatives including, but not limited to, impacts to state-listed species, shellfish habitat and marine fisheries.

The Supplemental DEIR should include additional information to substantiate the stated need for the project. The Supplemental DEIR should also include a detailed analysis of alternative dredge material disposal sites considered, the selection criteria used, and the rationale for selection of the proposed beach nourishment site and the elimination of other alternatives.

As part of the 401 Water Quality Certification (WQC) permitting process, the proponent is required to conduct an evaluation of alternatives to minimize the adverse impact of dredging in accordance with 314 CMR 9.07(1). The Supplemental DEIR should include a comprehensive analysis of practicable alternatives as recommended by MassDEP in its comment letter, and describe in detail how the project will meet the performance standards for a 401 WQC. The Supplemental DEIR should also describe how the project will comply with the standards for dredging and dredged material disposal pursuant to the Waterways Regulations at 310 CMR 9.40(3)(a) and 310 CMR 9.40(4).

The project site is located within mapped habitat of two state-listed species, the Piping Plover (*Charadrius melodus*) and the Least Tern (*Sterna antillarum*). The Piping Plover is also federally protected as a "threatened" species pursuant to the U.S. Endangered Species Act. As noted in its comment letter, the NHESP believes that the beach nourishment design proposed in the DEIR is likely to result in degradation or destruction of nesting, feeding, and chick-rearing habitat of state-listed shorebirds. The Supplemental DEIR should include an alternative design for the beach nourishment component of the project, based on consultations with NHESP, that will enhance habitat for Piping Plovers and Least Terns at West Island. The Supplemental DEIR

should evaluate an alternative design with a much lower maximum dune elevation (similar to the height of existing dunes), seaward and landward dune and beach slopes that are no steeper than 10:1 horizontal to vertical ratio, and no vegetation planting or installation of sand fencing. The Supplemental DEIR should address the concerns raised by NHESP in its comment letters on the ENF and DEIR.

The Supplemental DEIR should include an analysis of alternative dredge plans and timelines to avoid and minimize impacts to shellfish, horseshoe crab spawning and the development of juvenile fish. The Division of Marine Fisheries (*Marine Fisheries*) in its comment letter has expressed concerns that improvement dredging in Round Cove and the resulting increase in boating activity may result in loss of public trust marine resources. *Marine Fisheries* has also expressed concern that dredging near Association Beach may alter beach slope and impact horseshoe crab spawning.

*Marine Fisheries* has recommended that an area east of the Causeway opening northerly to the western tip of Bella Vista Island should not be dredged because of the significance of the shellfish resource and the value of that resource to the Town of Fairhaven's shellfish propagation program. The Supplemental DEIR should evaluate an alternative that avoids this area.

The DEIR concludes that impacts to fish and shellfish would be minor and short-term. However, *Marine Fisheries* indicates that habitat recovery may be unlikely due to the increase in moorings from 131 to 237 and the constant passage of motorized vehicles. CZM also notes in its comment letter that while dredging impacts on shellfish and benthic habitat may be short-term, the proposed moorings are likely to have permanent long-term impacts. Traditional moorings, depending on the type used can permanently disrupt benthic habitat. The Supplemental DEIR should evaluate the feasibility of new technology such as helical moorings and elastic rodes as recommended by CZM to reduce the space necessary for the proposed moorings and thereby reduce the corresponding volume and spatial extent of dredging.

The proponent should consult with MassDEP, NHESP, CZM and *Marine Fisheries* during the preparation of the Supplemental DEIR to discuss alternatives to avoid and minimize adverse impacts associated with beach nourishment and dredging, and to develop appropriate mitigation plans. The Supplemental DEIR should include an update on consultations with state agencies.

#### Response to Comments

The Supplemental DEIR should include a copy of this Certificate and the comment letters received. The Supplemental DEIR should respond to comments within the scope of this Certificate. This directive is not intended to, and shall not be construed to, enlarge the scope of the Supplemental DEIR beyond what has been expressly identified in the initial scoping certificate or this certificate.

Mitigation and Section 61 Findings

The Supplemental DEIR should include a revised mitigation chapter updating the proponent's commitments to project-related mitigation. This section of the Supplemental DEIR should include draft Section 61 Findings for each state permit required that describe all measures the proponent will take to avoid, minimize and mitigate impacts to the maximum extent practicable. The draft Section 61 Findings, which will be incorporated by each state agency in its permitting process, should also include a schedule for implementation of mitigation, and identify parties responsible for funding and implementing the mitigation measures.

As indicated in the comment letter from NHESP, the project may be revised to avoid a "take" of state-listed species. Therefore, with appropriate revisions and conditions, the project would not require a Conservation and Management Permit. Although an NHESP permit and Section 61 Findings may not be required for the project, the mitigation chapter of the Supplemental DEIR should describe measures proposed to avoid a "take" and to minimize, or mitigate impacts to state-listed species. The Supplemental DEIR should include a draft beach nourishment plan and a Piping Plover and Least Tern monitoring and protection plan developed in consultation with NHESP.

Circulation

The Supplemental DEIR should be circulated in compliance with Section 11.16 of the MEPA regulations and copies should be sent to the list of "comments received" below, to state agencies from which a permit or approval will be required, and to Town of Fairhaven officials. A copy of the Supplemental DEIR should be made available for public review at the Fairhaven Public Library.

November 14, 2008

DATE



Ian A. Bowles, Secretary

## Comments Received:

11/03/08	Office of Coastal Zone Management
11/06/08	Division of Fisheries and Wildlife, Natural Heritage and Endangered Species Program
11/07/08	Division of Marine Fisheries
11/07/08	Department of Environmental Protection, Southeast Regional Office

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