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February 6, 2009

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

PROJECT NAME : Waquoit Bay National Estuarine Research Reserve
Research Dock
PROJECT MUNICIPALITY : Falmouth
PROJECT WATERSHED : Waquoit Bay
EOEA NUMBER : 14360
PROJECT PROPONENT : Massachusetts Department of Conservation and
Recreation (DCR)
DATE NOTICED IN MONITOR : January 7, 2009

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 determine that the above project **does not require** the preparation of an Environmental Impact Report (EIR).

Project Description

According to the Environmental Notification Form (ENF), the proposed project involves the construction of a wooden pile-supported pier, ramp and float to provide access to the waters of Waquoit Bay. The proposed pier is 182.5 feet (ft.) long, 4ft. wide with a 10 ft. by 20 ft. float. The project will support a multitude of ongoing research activities at the Waquoit Bay National Estuarine Research Reserve, including providing improved access to research vessels and a platform for a variety of remote sensing instruments.

Project Site

The project is located within the Waquoit Bay National Estuarine Reserve (WBNER) and Area of Critical Environmental Concern (ACEC) and is subject to regulatory requirements of the Massachusetts Ocean Sanctuaries Act, which prohibits the construction of structures on the seabed unless it can be clearly demonstrated that the structure is of “public necessity and convenience”. In addition, the Falmouth Wetlands Bylaw and Regulations prohibits new docks within this area unless there is a demonstrated public benefit.

Permits and Jurisdiction

The project is undergoing review pursuant to Sections 11.03(11)(b) of the MEPA regulations because it requires a State agency action and is located within a designated ACEC. The project will require a Chapter 91 License from the Massachusetts Department of Environmental Protection (MassDEP) and a Section 404 Permit from the Army Corps of Engineers (ACOE). It will also require an Order of Conditions from the Falmouth Conservation Commission (OCC) (and a Superseding Order of Conditions from MassDEP if the local Order is appealed). The project may require Federal Consistency review from the Massachusetts Office of Coastal Zone Management (CZM).

Because the Proponent is an agency of the Commonwealth, MEPA jurisdiction extends to all aspects of the project that may cause Damage to the Environment as defined in the MEPA regulations.

Review of the ENF

The ENF included a detailed description of the project with plans. The ENF identified the existing environmental conditions and proposed measures to avoid, minimize and mitigate environmental impacts. It indicated that DCR has consulted with the state agencies to ensure that the project is implemented consistent with regulatory standards. In addition, it indicated that DCR has consulted with abutters and environmental advocacy groups to identify their concerns with the proposed project and to address those concerns to the greatest extent possible.

CZM has stated in its comment letter that the project provides a demonstrated public benefit by advancing research and educational activities that directly contribute to the stewardship of Waquoit Bay and other similar estuarine systems. Additionally, CZM states that this pier and float will help mitigate and minimize ongoing impacts to wetland resources resulting from the current practice of beaching research vessels for loading and unloading.

MassDEP has stated in its comment letters that while the Waterways Regulations at 310 CMR 9.32 generally prohibit the construction of new docks within an ACEC, this project may be allowed because it will be considered a “publicly owned” structure. MassDEP has stated that the pier has been adequately designed to allow for lateral public access under the pier within the intertidal zone in accordance with the Waterways Regulations at 9.35(3)(b) and meets the

design criteria set forth in the MassDEP Guide to Permitting Small Pile-Supported Docks and Piers. However, during the Chapter 91 License review, DCR must demonstrate that the pier has been designed to minimize encroachment into the Waquoit Bay.

The Division of Marine Fisheries (DMF) has stated that the project site lies within mapped shellfish habitat for quahogs (*Mercenaria mercenaria*) and soft shelled crabs (*Mya arenaria*) which are afforded protection under the Wetlands Protection Act (310 CMR 10.34). DMF advises that prior to construction that DCR should make arrangements with the Falmouth shellfish constable to move any shellfish from the footprint of the pier. I advise DCR to consult with DMF if questions arise regarding these protected species.

Conclusion

I am satisfied that the project's impacts to tideland resource areas can be adequately addressed during the permitting processes. Therefore, based on a review of the information provided by the proponent and after consultation with relevant public agencies, I find that the potential impacts of this project do not warrant the preparation of an EIR.

February 6, 2009

Date



Ian A. Bowles

Comments received:

01/14/2009	Kenneth Foreman, Ph.D., Marine Biological Laboratory
01/22/2009	Cape Cod Commission
01/23/2009	Massachusetts Division of Marine Fisheries
01/27/2009	Massachusetts Department of Environmental Protection – SERO
01/27/2009	Massachusetts Office of Coastal Zone Management

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