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October 24, 2008

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

PROJECT NAME : Town of Falmouth Inner Harbor Modifications
PROJECT MUNICIPALITY : Falmouth
PROJECT WATERSHED : Vineyard Sound
EOEA NUMBER : 14314
PROJECT PROPONENT : Town of Falmouth
DATE NOTICED IN MONITOR : September 24, 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).

The proposed project consists of modifications and expansion of the existing licensed marina facility located along the Falmouth Inner Harbor. The project includes removal of the existing nineteen timber piers and associated mooring piles, and construction and maintenance of seven floating dock systems with mooring piles. The existing pier system comprises approximately 2,600 square feet. The Town of Falmouth (the proponent) proposes an expansion of 4,700 sf for a total of 7,300 sf of pier structures. As discussed in the Environmental Notification Form (ENF), the proposed marina expansion and modification is for public use. The existing pier and pilings provide 38 boat slips. The proposed project will expand the facility with 29 additional mooring spaces for a total capacity of 67 slips. The new floating docks will also allow access for shell fishing during the off-season.

The project is undergoing environmental review pursuant to Section 11.03(3)(b)(6) because it will result in construction of a bottom-anchored structure of 2,000 or more square feet base area occupying flowed tidelands or other waterways. The project requires a Chapter 91 License from the Massachusetts Department of Environmental Protection (MassDEP) and an Order of Conditions from the Falmouth Conservation Commission (and, on appeal only, a

Superseding Order from MassDEP). The project is currently under review by MassDEP for a Superseding Order of Conditions. According to MassDEP's comment letter, a draft condition is being circulated for review which may result in an amended Order of Conditions from the Falmouth Conservation Commission and a withdrawal of the request for a Superseding Order.

The Town is not seeking financial assistance from an agency of the Commonwealth. Therefore, MEPA jurisdiction is limited to the subject matter of state agency permits required with the potential to cause Damage to the Environment as defined in the MEPA regulations. In this case, MEPA jurisdiction extends to wetlands, waterways and tidelands.

As part of its Chapter 91 License application to MassDEP, the Town should submit copies of prior Chapter 91 Authorizations for the site to MassDEP and information regarding the location of historic mean high and low water shorelines. The Town will also be required to demonstrate why it is not feasible to maintain a 25-foot offset between the southerly floating dock and the abutting property line, which is required where feasible pursuant to the Waterways Regulations at 310 CMR 9.36(2). In addition, MassDEP has recommended that the Town consider including a "reconfiguration zone" on project plans in accordance with the Waterways Regulations at 310 CMR 9.39, which would allow the Town to make further modifications to the docking facilities without further licensing provided the conditions in the license are adhered to. The Town should consult with the MEPA Office to determine whether a Notice of Project Change (NPC) is required, pursuant to 301 CMR 11.10, for any additional modifications to the project

I refer the Town to MassDEP's comment letter for additional guidance on potential notification requirements pursuant to the Massachusetts Contingency Plan, and on the National Pollutant Discharge Elimination System (NPDES) Stormwater Permit for Construction Activities, which may be required.


The Division of Marine Fisheries (*Marine Fisheries*) has identified Falmouth Inner Harbor and surrounding embayments as winter flounder (*Pseudopleuronectes americanus*) spawning habitat, which is designated as a Habitat Area of Particular Concern (HAPC) by the Atlantic States Marine Fisheries Commission. *Marine Fisheries* has recommended a time-of-year restriction on all in-water activity from January 15 to May 31 to protect winter flounder spawning habitat. This Order of Conditions issued by the town includes a special condition to address this toy restriction and a special condition to provide adequate clean-up equipment for the duration of the project in case of a spill, as recommended by *Marine Fisheries*.

As noted in the comment letter from *Marine Fisheries*, the project site lies within mapped shellfish habitat for quahogs (*Merceneria merceneria*) and soft shell clams (*Mya arenaria*) which is protected under the Wetlands Protection Act (310 CMR 10.34). The Town has agreed to inspect the site prior to construction and to relocate any shellfish found during construction to a location approved by the Falmouth Department of Natural Resources. The ENF proposes driving piles during construction rather than jetting to minimize turbidity impacts.

Based on review of the ENF and comments received, and consultation with state agencies, I have determined that no further MEPA review is required for the project as proposed in the ENF. The project may proceed to state permitting.

October 24, 2008

DATE



Ian A. Bowles, Secretary

Comments Received:

10/14/08 Department of Environmental Protection, Southeast Regional Office
10/14/08 Division of Marine Fisheries

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