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January 22, 2010

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

PROJECT NAME : Stone-filled Breakwater and Pile-Supported Pier  
PROJECT MUNICIPALITY : Marion  
PROJECT WATERSHED : Buzzard's Bay  
EEA NUMBER : 14526  
PROJECT PROPONENT : 96 Moorings Road Nominee Trust  
DATE NOTICED IN MONITOR : December 23, 2009

Pursuant to the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-62I) and Section 11.03 of the MEPA regulations (301 CMR 11.00), I hereby determine that this project **requires** the preparation of an Environmental Impact Report (EIR). The review of the ENF has identified a number of areas of concern pertaining to the proposed project's impacts to coastal resource areas, its consistency with MassDEP's Waterways Regulations and the adequacy of the Proponent's alternatives analysis. MassDEP has indicated that as currently designed, the project is likely not be permissible. The EIR process is essential to resolve these issues, to identify and analyze alternative project designs, to ensure public input into project design, and to develop sufficient information for the State permitting agencies to issue their permitting decisions.

Project Description

As described in the Environmental Notification Form (ENF), the project involves the removal of remnants of two previously permitted (License Plan No. 12112, May 13, 2008) existing stone jetties and the construction of a 1,270 square foot (sf) stone breakwater, a 132 foot (ft) long by 4 ft-wide pile-supported timber pier, a 3 ft by 24 ft gangway ramp, and an 8 ft by 20 ft pile-anchored float to serve seasonal vessel docking activities associated with a 2.75-acre residential property located off Moorings Road on Converse Point in Marion.

The project site is located in a velocity zone (VE) and will result in impacts to coastal wetland resource areas including 1,270 sf of fill in Land Under the Ocean, 1,355 sf of Rocky Intertidal Shores, 4.0 sf of Coastal Beaches and 909 sf of Land Containing Shellfish.

### MEPA Jurisdiction and Required Permits

The project is undergoing MEPA review pursuant to Section 11.03 (3)(b)(1)(e) because it requires a State Agency action and will result in the placement of new fill or structure in a velocity zone. The project will require a Chapter 91 License and a Section 401 Water Quality Certificate (WQC) from the Massachusetts Department of Environmental Protection (MassDEP). It will also need to obtain an Order of Conditions from the Marion Conservation Commission for impacts to wetland resource areas and, on appeal only, a Superseding Order of Conditions from MassDEP. The project will need to obtain a Programmatic General Permit II (PGP II) from the U.S. Army Corps of Engineers (ACOE). The project requires Federal Consistency Review by the Massachusetts Office of Coastal Zone Management (MCZM). The project should comply with the National Pollutant Discharge Elimination System (NPDES) General Permit for stormwater discharges from a construction site.

The Proponent is not seeking financial assistance from an agency of the Commonwealth. Therefore, MEPA jurisdiction is limited to those aspects of the project that are within the subject matter of any required or potentially required state permits and that are likely, directly or indirectly, to cause Damage to the Environment as defined in the MEPA regulations. In this case, MEPA jurisdiction extends to wetlands, waterways and tidelands, fisheries habitat and water quality.

## SCOPE

### Project Alternatives

In addition to the preferred alternative, the ENF includes a brief description of an alternative project design involving a solid fill pier with a total fill area of 1,647 sf, and a fixed pier, ramp and seasonal float. According to the Proponent, this alternative design was approved by the Marion Conservation Commission on November 21, 2008 and the Army Corps of Engineers on November 17, 2009. As presented in the ENF, the Proponent subsequently revised the project design to reduce the area of proposed fill from 1,647 sf to 1,270 sf. The ENF also includes a discussion of the use of wave attenuation systems including a timber wave fence and a floating wave attenuator to provide safe berthing for seasonal vessel docking based on wave energy reflection patterns in the harbor. Based on the comments received from MassDEP, CZM and others, it may be possible for the Proponent to reduce or eliminate the amount of solid fill proposed even further. As described more fully below, the DEIR should include an expanded Alternatives Analysis to evaluate project alternatives that would be permissible under MassDEP's c.91 regulations. The expanded Alternative Analysis should further investigate all feasible methods of avoiding, reducing, or minimizing project impacts.

The Proponent must fully explore all feasible design alternatives for the proposed pier construction project. I acknowledge that the Proponent may have to make fundamental changes to the currently proposed project design to accommodate state permitting requirements (e.g., reduce or eliminate the amount of proposed fill).

### Wetlands and Waterways

Construction of the proposed project will impact approximately 1,270 sf of Land Under Ocean and 4.0 sf of Coastal Beach. As mitigation for project impacts, the Proponent has proposed to remove the remnants of the two existing stone jetties to create additional suitable habitat for eelgrass and shellfish. The removal of these existing stone jetties will temporarily impact approximately 2,580 sf of Land Under Ocean.

As noted above, the comments received from MassDEP, have indicated that the proposed project cannot be permitted because the project design does not conform to the standards for minimizing fill, will result in an undue encroachment in a waterway, and is categorically restricted by 310 CMR 9.32(1)(a)2. According to MassDEP, the project does not serve a proper public purpose which provides greater benefit than detriment to the public's rights in tidelands as specified in the Waterways Regulations at 310 CMR 9.31(2)(a). CZM has expressed similar concerns with the proposed project's impacts to coastal resources, wildlife habitat and the public rights in tidelands. According to CZM, the proposed placement of solid fill in coastal waterways will also interfere with water circulation and sediment transport and effects on functions of natural coastal landforms such as land under the ocean.

The Proponent should prepare a sufficiently detailed expanded Alternatives Analysis that provides a comprehensive analysis of alternative project designs to reduce or eliminate the amount of proposed solid fill in coastal waterways. The expanded Alternatives Analysis should contain an analysis and evaluation of alternative pier designs and orientations and the use of alternative wave attenuation systems. The analysis of pier design alternatives should include a comprehensive examination of a steel pier structure and the use of a travel boat lift and davit system to allow a vessel to be suspended above the water off the edge of the pile-supported pier when not in use. The Proponent should examine reductions in the size and configuration of the currently proposed solid-fill design. Pier configuration alternatives should be evaluated including a more linear configuration to reduce impacts to water circulation and sedimentation. The Proponent should consider dimensional modifications to the project design and should evaluate pulling in the ends of the proposed solid fill breakwater, narrowing its footprint, and steepening its face. The expanded Alternatives Analysis should expand upon the discussion of wave attenuation provided in the ENF to include a detailed discussion of both vertical and inclined steel breakwaters.

For each of the design alternatives discussed in the expanded Alternative Analysis, the Proponent should identify and compare their corresponding fill requirements, environmental impacts and level of storm protection provided. The DEIR should provide a detailed explanation for the Proponent's proposed pier design and the elimination of other potential pier design alternative from further consideration.

The Proponent should use this section of the DEIR to discuss the proposed project's consistency with the MassDEP's Waterways Regulations (310 CMR 9.32). I strongly encourage the Proponent to consult with MassDEP and CZM in the preparation of the expanded Alternatives analysis.

### Fisheries Habitat

According to the Division of Marine Fisheries (DMF), the project site lies within and abuts mapped shellfish habitat for American oysters (*Crassostrea virginica*) and soft shelled clams (*Mya arenaria*) which are protected under the Wetlands Protection Act (310 CMR 10.34). The area around Converse Point is designated by the town as one of the soft shelled clam family harvest areas. Additionally, the area just offshore of the site is mapped as eelgrass (*Zostera marina*) beds. In its comments, DMF has indicated that the proposed construction of a stone pier will encroach into essential fish habitat (EFH) and result in the permanent loss of EFH. DMF has requested that the project as currently proposed not be permitted. DMF has recommended the use of a timber supported pier alternative to result in less impacts on EFH. The DEIR should include a response to DMF's comments pertaining to project design, project construction and the seasonal use of the proposed float.

### Underwater Resources

The Board of Underwater Archaeological Resources (BUAR) has noted that while there is no historical record of any underwater archaeological resources in the project area, the BUAR cannot conclude that there are in fact no such resources within the project boundaries. Should heretofore-unknown submerged cultural resources be encountered during the course of the project, the BUAR expects that the Town will take steps to limit adverse effects and notify the BUAR in accordance with the *Policy Guidance for the Discovery of Unanticipated Archaeological Resources*.

### Construction Impacts

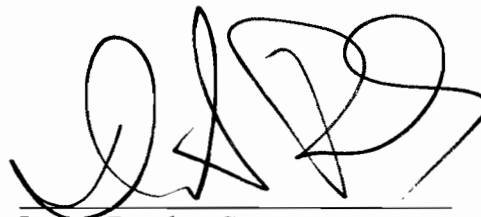
I encourage the Proponent to reduce and mitigate construction period diesel emissions to the maximum extent feasible. The Proponent should work with MassDEP to implement construction-period diesel emission mitigation, which could include the installation of after-engine emission controls such as oxidation catalysts or diesel particulate filters. I remind the Proponent that off-road equipment engines must use low sulfur diesel (LSD) fuel as of July 2007, as required by a 2004 regulation issued by the U.S. EPA. I encourage the Proponent to mitigate construction period air quality impacts through the use of ultra low sulfur diesel (ULSD) fuel in off-road engines, which contains even lower sulfur content than LSD.

Comments

The DEIR should respond to the comments received to the extent that the comments are within MEPA jurisdiction. This directive is not intended to, and shall not be construed to enlarge the scope of the DEIR beyond what has been expressly identified in the initial scoping certificate or this certificate. I recommend that the proponent use either an indexed response to comments format, or else direct narrative response. I recommend that the Proponent use either an indexed response to comments format, or else direct narrative response. The DEIR should present any additional narrative or quantitative analysis necessary to respond to the comments received.

Circulation

The DEIR should be circulated in compliance with Section 11.16 of the MEPA regulations and copies should also be sent to the list of "comments received" below and to Town of Marion officials. A copy of the DEIR should be made available for public review at the Marion Public Library.



Ian A. Bowles, Secretary

January 22, 2010  
Date

## Comments received:

12/23/2009	Board of Underwater Archaeological Resources (BUAR)
01/12/2010	Massachusetts Office of Coastal Zone Management (CZM)
01/12/2010	Massachusetts Department of Environmental Protection (MassDEP) – SERO
01/12/2010	Division of Marine Fisheries (DMF)

IAB/NCZ/ncz  
ENF #14526