Public Notice

U.S. Army Corps
Of Engineers
New England District
696 Virginia Road
Concord, MA 01742-2751

Date: June 2, 2006

Comment Period Closes: July 3, 2006

Evaluation Branch, Engineering/Planning Division

ENVIRONMENTAL RESTORATION PROJECT
BIRD ISLAND, MARION, MASSACHUSETTS

Interested parties are hereby notified that the U.S. Army Corps of Engineers, New England District, is proposing an environmental restoration at Bird Island in Marion, Massachusetts (MA) (see Figure 1, Location Map). The Massachusetts Executive Office of Environmental Affairs, represented by the Office of Coastal Zone Management and the Division of Fisheries and Wildlife (DFW) is the non-federal project sponsor. Two Army Corps of Engineers authorities are potentially applicable to the project: the Aquatic Ecosystem Restoration Authority and the Beneficial Uses of Dredged Material Authority. Section 206 of the Water Resources Development Act of 1996 (PL 104-303) entitled Aquatic Ecosystem Restoration provides authority for the Secretary of the Army to implement projects that improve the quality of the environment, are in the public interest, and are cost effective. The use of dredged material in this restoration project is authorized under Section 204 of the Water Resources Development Act of 1992 (PL 102-980) entitled Beneficial Uses of Dredged Material, which provides authority for the Secretary of the Army to implement projects for the protection, restoration, and rehabilitation of aquatic and ecologically related habitats, including wetlands, in connection with dredging for construction, operation, or maintenance dredging of an authorized federal navigation project. This public notice provides information about the environmental restoration project and documents compliance with all applicable laws and regulations.

Purpose and Need for Work: Bird Island provides critical nesting habitat for about 22 percent of the northeast population of Roseate Terns, which are listed as Endangered at both the Federal and State levels of jurisdiction. Roseate Terns are listed as Endangered principally because of range contraction and secondarily because of declining numbers. Few suitable Roseate Tern nesting sites exist in Massachusetts and for the Northeast region as a whole. As a result, terns are highly concentrated into just a few sites. This increases their vulnerability to threats such as habitat loss, oil spills, severe predation and storm events, and disease. Therefore, it is imperative that suitable nesting sites be restored and maintained so that as many alternate sites as possible are available in order to buffer the terns in case major threats materialize. Loss of even one primary Roseate Tern nesting island could have severe consequences for this endangered population. The restoration of Bird Island presents an opportunity to substantially increase the northeast population of Roseate Terns.

Project Description: Bird Island measures approximately 3 acres in size, of which 1.5 acres of the island is above the elevation of the Mean Spring High Water tide. The island is surrounded by a

deteriorating revetment, which has allowed waves to erode its surface, lowering the ground elevation and changing it from sand and gravel with low herbaceous vegetation to salt marsh and salt pannes. This habitat alteration has reduced the area available for tern nesting. The limited nesting area on Bird Island forces Roseate Terns to compete with Common Terns, its nesting associate, which is also listed as a Species of Special Concern in Massachusetts.

The objectives of this project are to reverse the deterioration at Bird Island and to increase the island's stability in order to increase numbers and productivity of both species of terns there. This habitat restoration project is considered essential to meet the short and long-term goals of the MA DFW Buzzards Bay tern restoration program and would be an important step in meeting the goals of the Federal Recovery Plan for the Northeastern population of the Roseate Tern. Restoring the revetment has the added benefit of protecting the historic Bird Island lighthouse, a supplemental goal of the proposed project.

Revetment and Nesting Habitat Restoration (Alternative C) is the recommended plan (see Figure 2, Proposed Site Plan). Restoring the stone revetment would stabilize the shorefront and attenuate wave energy, protecting the island from all but extreme storm waves and reduce the rate of erosion of upland material. Sand from dredging the Cape Cod Canal Hog Island Channel, or other source, would be placed in the eroded and scoured areas inside the revetment. This material would restore appropriate substrates for nesting terns outside the range of tidal influence. The restored nesting areas would improve and expand Common Tern nesting areas within the revetment, reducing Common Tern encroachment into the higher elevation, Roseate Tern nesting areas. The project would allow the Roseate Tern population to increase without adversely affecting the Common Tern populations. Based on average tern densities on Bird Island from 2001 to 2005 (provided by the Massachusetts Division of Fisheries and Wildlife), Bird Island currently supports 750 Roseate Tern nesting pairs and 1,900 Common Tern nesting pairs. This alternative would provide a suitable substrate to increase the number of Roseate Tern nesting pairs to an estimated 1,157 and increase Common Tern nesting pairs to an estimated 2,893. Compensation for the loss of wetland function and value as a result of the filling of 0.64 acres of salt marsh/salt panne resources on Bird Island will be accomplished through the restoration/enhancement of 0.3 acres of salt marsh at Apponagansett Bay in Dartmouth and 0.5 acres of salt marsh in Little Bay in Fairhaven (for a total of 0.8 acres). Salt marsh located at the toe of the existing revetment, three areas totaling 5,300 square feet (0.12 acres), would be temporarily excavated during construction and replaced at the toe of the new revetment.

Alternatives Analysis: Three alternatives (including the No Action Alterative) were considered to restore tern-nesting habitat on Bird Island. Under the No Action Alternative, the island would lose at least 0.5 additional acres of suitable nesting area over the next fifty years. Under the second alternative (Alternative B), the revetment would be restored in the same general location to protect and maintain the existing 1.5 acres of suitable tern nesting habitat however, no restoration of eroded substrates would be conducted. The third alterative (Alternative C) involves stabilizing the revetment in the same general location and restoring just over one-half acre of substrate landward of the revetment, which would provide 2.2 acres of suitable nesting habitat. Restored substrates in combination with management practices, including placement of nest boxes, would allow the Roseate Tern population to be maintained and eventually increase without adversely affecting the Common Tern populations. Alternative C provides a suitable substrate to increase the number of nesting pairs of Roseate Terns and Common Terns consistent with project goals and was therefore determined to be the recommended plan. Two other alternatives, aimed at

expanding the island by 1 and 2 acres respectively were eliminated from detailed evaluation in the report because of their potential impacts to aquatic habitats.

Coordination: The proposed work is being coordinated with the following Federal, State and Local agencies:

Federal
U.S. Fish and Wildlife Service
U.S. Environmental Protection Agency
U.S. National Marine Fisheries Service

State
Massachusetts Executive Office of Environmental Affairs
- Massachusetts Coastal Zone Management
- Massachusetts Environmental Policy Act Unit

Massachusetts Department of Environmental Protection
- Operations and Programs - Northeast Regional Office
- Bureau of Resource Protection - Wetlands and Waterways Program

Massachusetts Department of Environmental Management
- Division of Resource Conservation
  - Bureau of Engineering - Office of Waterways
  - Bureau of Resource Protection - Office of Water Resources

Massachusetts Department of Fisheries, Wildlife and Environmental Law Enforcement
- Division of Fisheries and Wildlife
  - Natural Heritage & Endangered Species Program
- Division of Marine Fisheries

Massachusetts Historic Preservation Office
Massachusetts Board of Underwater Archaeological Resources

Tribal Governments
Wampanoag Tribe of Gay Head (Aquinnah)

Local
Town of Marion
Town of Dartmouth
Town of Fairhaven

Non-Governmental Organizations
Massachusetts Audubon Society

Endangered Species: At present, Bird Island provides nesting habitat to the Federal and State listed endangered Roseate Tern and the Common Tern, a designated Massachusetts Species of Special Concern. The proposed project will allow the Roseate Tern population to be maintained and eventually increase without adversely affecting the Common Tern populations. Roseate Terns are very sensitive to disturbance during their nesting season and therefore, no construction activities will be scheduled on the island from April 7th to September 7th in any year. In addition, without prior approval from the Massachusetts Natural Heritage and Endangered Species Program, Bird Island may not be visited for the purposes of project planning, design, construction or monitoring

during the time of year when terns are present (generally April 7th to September 7th). The U.S. Fish and Wildlife Service provided concurrence, pursuant to the Endangered Species Act dated 13 February 2006, that the proposed project is likely to have only beneficial effects on the Roseate Tern and therefore, no formal consultation pursuant to Section 7 of the Endangered Species Act is required. Other protected species identified as seasonally present in Massachusetts waters by the National Marine Fisheries Service include three species of Endangered whales and three species of Federally threatened or endangered sea turtles. The National Marine Fisheries Service, in a letter dated March 6, 2006 concurred with a determination that there will be no impacts to protected species as a result from the proposed project.

Essential Fish Habitat : Impacts to Essential Fish Habitat (EFH) in the project area were avoided or minimized to the maximum extent practicable through the planning and design process. Mitigation provided to compensate for permanent impacts to intertidal, subtidal and salt marsh habitats will provide comparable habitat benefits to the Buzzard's Bay estuarine environment and will adequately compensate impacts to foraging or nursery areas for EFH species. The inclusion of mitigation is consistent with Essential Fish Habitat Conservation Recommendations provided in a letter from the National Marine Fisheries Service, dated 16 February 2006. In addition, further coordination will be conducted with Federal and State resource agencies during preparation of Plans and Specifications to assure adequate compensation to protected species.

Environmental Impacts: A Detailed Project Report and Environmental Assessment (DPR/EA) was prepared for this environmental restoration project. A preliminary determination was made that an Environmental Impact Statement for the proposed restoration is not required under the provisions of the National Environmental Policy Act of 1969.

Cultural Resources: This project was coordinated with both the Massachusetts State Historic Preservation Officer (Massachusetts Historical Commission) and the Wampanoag Tribe of Gay Head (Aquinnah) in 2001 and 2002 resulting in a finding of no adverse effect upon significant cultural resources. The proposed project serves to protect the historic Bird Island Lighthouse and the island itself from further erosion by rebuilding the existing stone revetment. Although the revetment dates from the mid-19th Century, due to storm damage and erosion, it has been modified and both repaired and rebuilt several times.

Federal Consistency with Coastal Zone Management: The restoration project will be conducted in a manner consistent to the maximum extent practicable with the approved coastal zone management program of the Commonwealth of Massachusetts. A Coastal Zone Management Consistency Determination will be submitted to the Massachusetts Coastal Zone Management Office for concurrence.

Other Federal Permit Requirements: A Water Quality Certificate application will be submitted to the Massachusetts Department of Environmental Protection under Section 401 of the Clean Water Act of 1977 (P.L. 95-217). A Section 404(b)(1) evaluation, pursuant to the Clean Water Act, is provided as an attachment to the draft DPR/EA.

Compliance: This Public Notice is being issued in compliance with several environmental laws and regulations (see Attachment A).

Availability of the Draft Report and Environmental Assessment: Copies of the draft report and environmental assessment are available upon request by contacting the Project Manager, Larry Oliver at 978-318-8347.

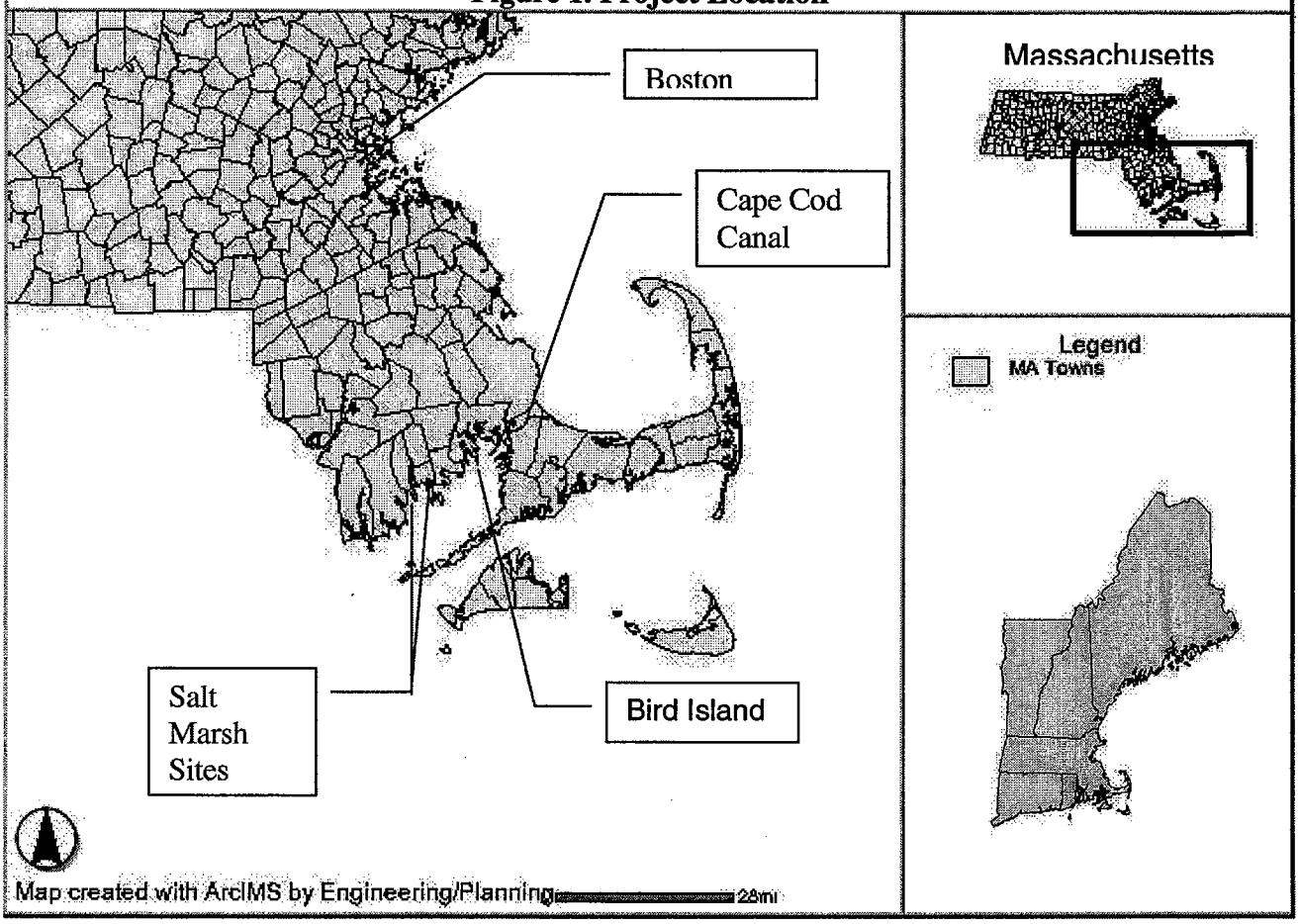
Additional Information: Any person who has an interest that may be affected by this restoration project may request a public hearing. The request must be submitted in writing to me within 30 days of the date of this notice and must clearly set forth the interest that may be affected and the manner in which the interest may be affected by this activity.

Public Comments: Comments are invited from all concerned parties and should be directed to the District Engineer at 696 Virginia Road, Concord, MA 01742, ATTN: Engineering/Planning Division (Mr. Lawrence Oliver), within 30 days of this notice. Please bring this notice to the attention of anyone you know to be interested in the project.

23 May 2006
Date

Curtis L. Thalken
Colonel, Corps of Engineers
District Engineer

Figure 1. Project Location



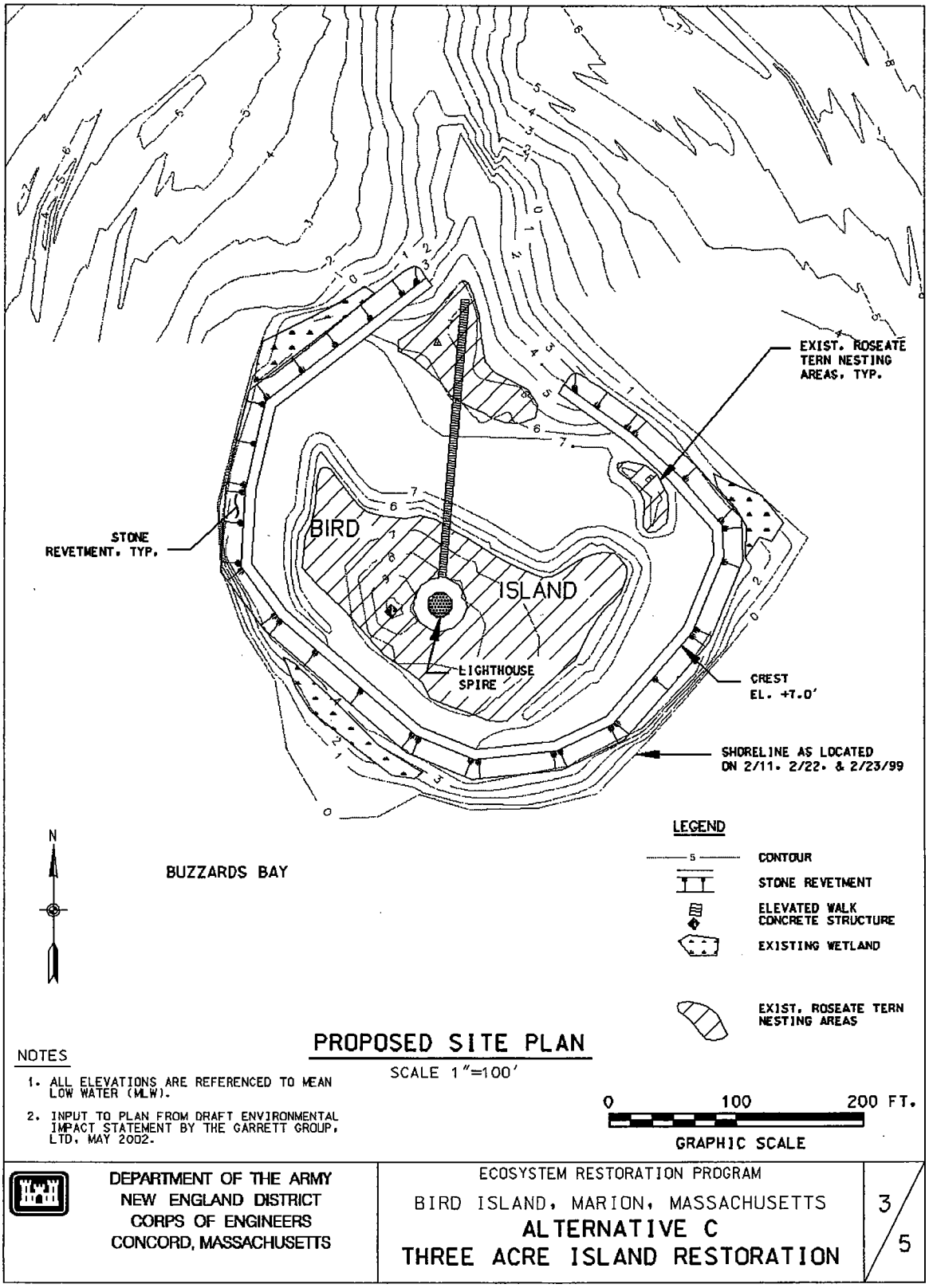

EXIST. ROSEATE TERN NESTING AREAS, TYP.
STONE REVETMENT, TYP.
BIRD
ISLAND
LIGHTHOUSE SPIRE
CREST EL. +7.0'
SHORELINE AS LOCATED ON 2/11, 2/22, & 2/23/99
N
BUZZARDS BAY
LEGEND
CONTOUR
STONE REVETMENT
ELEVATED WALK CONCRETE STRUCTURE
EXISTING WETLAND
EXIST. ROSEATE TERN NESTING AREAS
PROPOSED SITE PLAN
SCALE 1"=100'
NOTES
1. ALL ELEVATIONS ARE REFERENCED TO MEAN LOW WATER (MLW).
2. INPUT TO PLAN FROM DRAFT ENVIRONMENTAL IMPACT STATEMENT BY THE GARRETT GROUP, LTD, MAY 2002.
0 100 200 FT.
GRAPHIC SCALE
DEPARTMENT OF THE ARMY
NEW ENGLAND DISTRICT
CORPS OF ENGINEERS
CONCORD, MASSACHUSETTS
ECOSYSTEM RESTORATION PROGRAM
BIRD ISLAND, MARION, MASSACHUSETTS
ALTERNATIVE C
THREE ACRE ISLAND RESTORATION
3/5

Figure 2

Attachment A

PERTINENT LAWS, REGULATIONS AND DIRECTIVES

Clean Air Act, as amended (42 U.S.C. 1221 et. seq.)

Clean Water Act, as amended (33 U.S.C. 1251 et. seq.)

Coastal Zone Management Act of 1972, Sections 307 (c)(1) and (2)[16 U.S.C. 760c-760g]

Endangered Species Act of 1973, as amended (16 U.S.C. 668aa-668cc)

Executive Order 11988, Floodplain Management, 24 May 1977

Executive Order 11990, Protection of Wetlands, 24 May 1977

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994.

Executive Order 13007, Accommodations of Sacred Sites, May 24, 1996.

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks, April 21, 1997.

Fish and Wildlife Coordination Act (16 U.S.C. 661-666c)

Magnuson-Stevens Fishery Conservation and Management Act and amended by the Sustainable Fisheries Act of 1996

National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347)

National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470 et seq.

White House Memorandum, Government-to-Government Relations with Indian Tribes, April 29, 1994.