December 7, 2004

Secretary Ellen Roy Herzfelder
Massachusetts Executive Office of Environmental Affairs
MEPA Unit
100 Cambridge Street, Suite 900
Boston, MA 02114

RE: Weaver's Cove Energy, LLC;
Fall River Pipeline, LLC
EOEA Number 13061
FERC Docket Numbers CP04-36-000 and CP04-41-000

City of Fall River, Massachusetts' Comments on Supplemental Draft Environmental Impact Report

Dear Secretary Herzfelder:

The City of Fall River, MA, through this correspondence, submits its written comments in response to the Supplemental Draft Environmental Impact Report (SDEIR) filed with the Massachusetts Executive Office of Environmental Affairs, Massachusetts Environmental Policy Unit (MEPA) by Weaver's Cove Energy, LLC and Fall River Pipeline, LLC (collectively "WCE" or "proponents") on or about November 1, 2004.

The context for submission of the SDEIR and these comments is as follows. On July 30, 2004, the Federal Energy Regulatory Commission (FERC) issued a Draft Environmental Impact Statement/Draft Environmental Impact Report (DEIS/DEIR) in accordance with its National Environmental Policy Act obligations and, by express agreement of the project proponents, as part of the Special Review Procedures established under MEPA.

On October 1, 2004, the Secretary issued a Certificate on the DEIR (Certificate) finding that it failed to provide sufficient information or analyses necessary to comply with M.G.L. c. 30, §§ 61-62H and the MEPA Regulations; 301 CMR 11.00. In particular, the Certificate raised significant concerns about the project, "as it relates to impacts from dredging on water quality and fisheries habitat, the management and reuse of dredge material on a site undergoing extensive remediation, and public safety."

The following comments address the failure of the SDEIR to respond to the environmental concerns raised by the Secretary in the Certificate.[1] The SDEIR is so deficient in precisely the areas called out by the Certificate that it will be impossible to formulate Section 61 Findings or proceed with state permitting without requiring extensive, additional information to be developed and submitted by the proponents.

The comments are organized into two sections. Section One explains why the basic deficiencies in the SDEIR make it impossible to analyze alternatives, document impacts, and demonstrate that the project design avoids, minimizes, and mitigates Damage to the Environment, as required by MEPA.

[1] This is not to imply in any way that the City of Fall River concludes that the SDEIR has satisfactorily responded to the other concerns set forth by the Secretary; i.e. public safety, transportation, etc. Those issues are beyond the scope of these comments, which address public health, natural resources, and environmental impacts.

Section Two sets forth the individual requirements and information needs identified in the Certificate, compares those requirements with what has been submitted, and discusses the extent to which the SDEIR responds to each requirement. Section Two also incorporates information relevant to the analysis of the SDEIR prepared by the proponents and other interested parties and provided to other forums; i.e. FERC; that may have not been submitted to MEPA.

Section One: The SDEIR Fails to Demonstrate that the Project Design Avoids, Minimizes, and Mitigates Damage to the Environment

The Certificate required the proponents to submit the significant information lacking in the DEIS/DEIR necessary to develop §§ 61 Findings and state permits and approvals. The common themes throughout the fourteen distinct categories of information required by the Certificate were:

(1) Complete evaluation of all reasonable off-site and on-site alternatives; and

(2) Demonstration of compliance with applicable state regulatory or statutory performance standards.

The SDEIR does not provide this fundamental information. The document itself is essentially a patchwork comprised of sections of prior filings made to the FERC and other federal and state agencies that rely, in large part, on the Resource Reports and studies that pre-date and underlie the July 30, 2004 DEIS/DEIR and that offer almost no new or responsive information.

The SDEIR does not provide the basic information required by the Certificate. The non-responsiveness of the SDEIR is aggravated by the fact that the failure to provide the required information is intentional and purposeful. The SDEIR expressly states that the information necessary to perform a complete evaluation of all reasonable off-site and on-site alternatives and to demonstrate compliance with applicable state requirements has either not yet been developed or will not be developed because the proponents consider it to be unnecessary.[2] Why would the proponents choose to file an admittedly non-responsive SDEIR?

The answer appears to be that the state's MEPA requirements and other state statutory and regulatory requirements are not central to the proponents' plan for developing and constructing the project. The SDEIR is comprised of portions of other documents and materials developed primarily to respond to the FERC; i.e. FERC Supplemental Environmental Data Requests; and expressly lacks much of the information necessary to respond to the state MEPA and permitting requirements.

The timing of the SDEIR submission underscores the conclusion that the state requirements are really secondary here. The proponents were not under a deadline to submit the SDEIR. They could have chosen to wait until the information necessary for a responsive SDEIR had been developed. Given the critical importance and fundamental nature of the information missing from the SDEIR, which includes but is not limited to the Federal Suitability Determination and Tier III Sampling Analysis, without which no reasonable alternatives analysis can go forward; and the MCP Conceptual Site Model, Groundwater Flow Model, and TCLP Analysis, without which no demonstration of compliance with 21E requirements can be made or alternative upland disposal scenarios can be considered; submitting the SDEIR without this

[2] The proponents continually state that the level of detail being called for is inappropriate for MEPA review and will be supplied through state permitting applications. However, as discussed in Section Two, permit applications already submitted by proponents for state water quality certifications, c. 91 waterways and dredging, and wetlands Orders of Conditions suffer from the same deficiencies in detailed information as those identified in the Certificate.

information communicates that the proponents believe they can go forward without responding to these state requirements.

This conclusion draws further credence from the proponents' outspoken objections to coordinating the MEPA DEIR/EIR with the FERC FEIS. On October 7, 2004, the Secretary wrote to the FERC specifically requesting that the FERC delay filing its FEIS until her review of the SDEIR was completed. A copy of this request is included with these comments as **Attachment 1**. The basis for the request was her conclusion that, "Such a delay is essential to maintaining continued alignment of the federal and state review processes and assisting the public in understanding the numerous complex issues associated with the project."

In response to this request, the proponents filed an objection expressly stating that no further information was necessary for the state to conduct its MEPA review, that the comments submitted to the Secretary by state agencies were not made in good faith but were a reflection of anti-LNG and anti-energy infrastructure bias, and that no amount of information the proponents could submit now or in the future would satisfy the state agencies. The proponents urged the FERC to disregard the Secretary's request for continued coordination and denied that any substantive information was missing from the DEIS/DEIR. A copy of the objection is included with these comments as **Attachment 2**.

The only reasonable conclusion that may be drawn from this admittedly incomplete and non-responsive SDEIR, coupled with the proponents' vociferous objections to continued coordination of the NEPA/MEPA review, is that the proponents' objective is not complying with MEPA or other state regulatory and statutory requirements. The proponents' objective is to conclude the federal process and preemptively proceed to an authorization to construct the project, with or without complying with MEPA and with or without state permits.

There is one other notable omission in the SDEIR. The Secretary directed the proponents to consider the effect upon the project of the projected 2010 completion date for the Brightman Street Bridge. The proponents' response was both terse and direct. According to the proponents, the Massachusetts Highway Department's (MHD) assessment of the construction schedule is wrong; the bridge will be completed much sooner than the MHD's estimated 2010 completion date.

The proponents did not consider the effect upon the project of the change in schedule or the potential to substantially avoid or mitigate the environmental impacts that inevitably result from the project as now proposed because they cannot.

The opinion provided by the MHD that the Brightman Street Bridge will not be completed until 2010, which effectively delays the proponents' operations until 2010 as well, places at issue the very purpose and need for this project at all. The proponents have justified this project, with all of the attendant impacts to public health and the environment it presents, because it is necessary to respond to a projected 2008 natural gas shortfall in New England. Speculation about the effect of delaying the project's completion until 2010 undercuts the very purpose and need for this project as currently configured and sited.

If the proponents were to consider the opportunity provided by what appears to be an unavoidable delay in their proposed schedule, they would have to address the regionally-based approach to planning and siting of LNG facilities to serve New England endorsed by the Governor of Massachusetts, the Conservation Law Foundation, the Attorneys General of Massachusetts and Rhode Island, and numerous other stakeholders. Once again, the proponents cannot do this, because such an approach would demonstrate that this project fails to avoid, minimize, or mitigate damage to the environment to the maximum extent practicable.

Section Two: Comparison and Discussion of MEPA Certificate Requirements and SDEIR Deficiencies

These comments are presented as follows. The requirements established by the Secretary's October 1, 2004 Certificate are presented in *Italics* and include the specific pages at which they appear in the Certificate. The City of Fall River's discussion and analysis is presented in standard font. References to attachments and specific state agency comments are presented in **bold**.

Permitting (page 5)

The SDEIR should include a general description of each project element, and should briefly discuss each state permit or Agency Action required for the project.

> The SDEIR minimally responds to this requirement. It provides only the most general and hypothetical discussion about the permits it DOES address and it ignores state permitting requirements that it cannot address; i.e. solid waste permitting and site assignment requirements; beneficial reuse (BUD) performance standards.

The SDEIR should demonstrate that the project can meet any applicable regulatory or statutory performance standards.

> The SDEIR either largely ignores applicable performance standards it cannot meet; i.e. state water quality standards for zinc, copper; c. 21E/MCP anti-degradation requirements; or provides conclusions without supporting data.

Alternatives (pages 5 – 6)

The SDEIR should evaluate the no-build alternative to establish baseline conditions (page 5).

> The SDEIR does not respond to this requirement. The SDEIR offers a summary discussion concerning economic impacts and LNG supplies and, based upon this discussion, concludes that the no-build alternative is not feasible.
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> The fact that the SDEIR does not respond to this MEPA requirement is not surprising. Most of the information assembled to create the SDEIR was developed for the FERC and federal agencies, not for the state. The proponents have challenged the authority of the federal agencies to request a no-build analysis as part of the NEPA process:
>
> > In that regard, these other agencies appear to be under the misapprehension that one of their responsibilities under NEPA is to investigate (*and advocate*) either the "no-build alternative" or other non-feasible alternatives. Such actions are not appropriate; it is this Commission's ultimate responsibility under the NGA to determine fundamental project need, and therefore the attempt by these other agencies to champion no-build or other speculative options is an abdication of their statutory obligation to focus on the proposed action and help determine how a needed project's construction, as determined by this Commission, can be accomplished in an environmentally acceptable manner. SDEIR at App. A, pages 18 – 19.
>
> Without a reason to develop this information for the FERC, the proponents had no independent reason to develop it for the state.

The SDEIR should also fully evaluate the proponent's preferred alternative, including alternative site designs, to arrive at a design that minimizes overall impacts (page 5).

The SDEIR does not respond to this requirement. It references the June 28, 2004 NOI submitted to the Fall River Conservation Commission (FRCC), which the FRCC found deficient concerning the evaluation of the preferred alterative and deficient concerning alternative site designs. A copy of the FRCC's Order Denial Order of Conditions is included with these comments as **Attachment 3**.

The SDEIR also references Attachment 7 of App. A., which is a cover sheet from a "no dredge fill plot plan." The plan itself is not included in the SDEIR, as the proponents have designated it to be critical energy infrastructure information.

The SDEIR should evaluate a site design without disposal of dredged sediment on the site (page 5).

The SDEIR does not include this evaluation because the proponents have not performed the sediment characterizations necessary to evaluate other disposal options, either on-site or off-site, including land-based, off-site disposal.

The SDEIR states that a sediment analysis may be available in January.

At a minimum, the SDEIR should provide an expanded analysis that includes detailed descriptions of potential impacts to environmental resources and public safety associated with the alternative coastal locations examined in the DEIR, particularly Providence Harbor and the facility proposed off the shore of Cape Ann (page 5).

The SDEIR does not provide this expanded analysis.

The SDEIR should evaluate any alternative sites deemed necessary by CZM to establish coastal dependency and to otherwise comply with Coastal Energy Policy #1 and the state permitting processes, including the Chapter 91 License and the Water Quality Certification (page 5).

The SDEIR does not evaluate the alternative sites deemed necessary by CZM and does not provide the evaluations necessary to comply with Chapter 91 license requirements (310 CMR 9.00) or with Section 401 Water Quality Standards requirements (314 CMR 9.00).

The SDEIR should evaluate the consistency of the project with the enforceable policies of the Massachusetts Coastal Zone Management Plan (page 5).

The SDEIR fails to evaluate the consistency of the project with the enforceable policies of the Massachusetts Coastal Zone Management Program. The SDEIR, at page 3-3, references, but does not include, the Draft Federal Consistency Statement the proponents submitted to CZM in July 2004. The Consistency Statement consists of: (1) references to the Resource Reports prepared in November 2003, the inadequacies of which precipitated the October 1, 2004 Certificate requirements, (2) statements that additional studies and data will be developed during federal and state permitting, and (3) assurances that the project will comply with all applicable performance standards. No new or additional information is provided.

The alternatives analysis should be organized so as to allow the review of the public safety impacts both separately and in conjunction with the environmental impacts for each alternative (page 5).

> As the SDEIR does not include the required alternatives analysis, it cannot comply with this requirement. To the extent that the SDEIR does address public safety and environmental impacts, it fails to organize or present that information so as to allow the review contemplated by the Certificate.

As detailed in the Transportation section of this scope, the SDEIR should also discuss how the schedule for completing the new Brightman Street Bridge, as well as for demolishing the old Brightman Street Bridge, would affect the proposed project and the regional gas supply (page 6).

> The SDEIR ignores this requirement and responds by stating that the MHD 2010 estimated completion date and project schedule; a copy of which is included here as **Attachment 4**; is simply wrong. The SDEIR at App. A, page 139, states that the MHD estimate is inconsistent with the estimated schedule originally proposed by the MHD in 1995 and offers in support of this conclusion the importance and the public need for the project that would necessitate its completion in less than four years.

It should also examine how any delay in completing the bridge may provide the opportunity for additional study and analysis of alternative potential sites for an LNG terminal (page 6).

> As set forth in Section One of these comments, the SDEIR ignores this requirement.

Dredging and Water Quality (pages 6 – 7)

The SDEIR should quantify the amount of dredged sediment to be disposed and address concerns regarding the accuracy of its volume based on a one-foot overdredge as compared to a two-foot overdredge (page 6).

> The SDEIR argues with the need for this calculation and provides a series of ranges, based on differing assumptions. It fails to provide any quantification analysis that would assist in evaluating actual impacts.

The proponent's preferred alternative for dredge material disposal is on-site upland reuse, including the creation of landforms for spill containment and screening. However, DEP has raised concerns regarding the viability of the proposed upland reuse of the dredged material, as detailed in the next section. Because a fundamental purpose of a DEIR is to identify a preferred alternative on which final assessments of impacts and benefits are subsequently predicated, this issue must be resolved prior to advancing to the final EIR (page 6).

> As set forth at pages 9 – 10 infra., the SDEIR does not address DEP's concern about viability of the proposed upland reuse of the dredged material. It argues with the agency conclusion that concerns legitimately exist.

In addition, the SDEIR should analyze open water disposal under the federal suitability determination procedures in order to provide reviewing agencies with the means to evaluate whether the impacts of the project as proposed have been avoided and minimized to the greatest extent possible. Such a determination is currently not possible given the absence of such information in the DEIR (page 6).

The SDEIR does not analyze open water disposal under the federal suitability determination procedures because the proponents have not performed the required sediment testing and analysis in order to develop the data necessary to the federal suitability determination procedures.

The SDEIR also characterizes this requirement as "ludicrous" and unnecessary; SDEIR at App. A, page 77; and goes on to state that:

> The late-developing directive change [for the federal suitability determination] from the Federal and state agencies personnel is completely unfounded and in conflict with the stated preference of Federal and state resource agencies involved in the review of the project. SDEIR at App. A, page 78.

The SDEIR should characterize the dredged materials for their suitability for open water disposal and develop an alternative that incorporates both upland reuse and open water disposal (page 6).

The SDEIR does not characterize the dredged materials for their suitability for open water disposal. The proponents have not developed the data necessary for that characterization.

The SDEIR does not include development of an alternative incorporating both upland reuse and open water disposal.

If a modified upland reuse/open water disposal alternative is feasible under applicable regulations, the SDEIR should present a comparative analysis of the environmental impacts of the current preferred alternative (upland reuse) and the modified alternative, including a more thorough description of existing resources, potential dredging impacts and proposed mitigation, as detailed in the comments of DEP and CZM. Additional analysis of alternatives and a detailed description of the impacts of the preferred alternative will determine appropriate actions to minimize and mitigate project impacts (pages 6 – 7).

The SDEIR cannot determine the feasibility of a modified upland reuse/open water disposal alternative. The proponents have not developed the necessary data for that determination.

The SDEIR does not present a comparative analysis.

The SDEIR does not provide a more thorough description of existing resources, potential dredging impacts, and proposed mitigation and, as set forth at pages 9 – 10 infra., does not respond to the comments submitted by DEP and CZM.

The DEIR provided only general information regarding measures to avoid and/or minimize impacts to aquatic resources on water quality, leaving detailed management measures to be developed prior to construction. Given the potentially significant impacts to shellfish and sensitive life stages of aquatic organisms, the SDEIR should provide a more detailed description of the design and operational management of the proposed dredging in order to determine the extent of potential impacts (page 7).

The SDEIR does not provide a more detailed description of the design and operational management of the proposed dredging. The SDEIR challenges the requirement and states that, "the level of design detail supplied is more than sufficient for issuance of DEIS/DEIR." SDEIR at App. A, page 98.

The SDEIR also states that, "There are almost an infinite number of ways to stage the work" and "optimum staging of the placement work can only be defined once the permits are issued and once the work is underway." SDEIR at App. A, page 98.

The SDEIR also states by way of detail, "As previously identified, the entire south parcel will be used sequentially and intermittently for lay-down and staging of equipment, stockpiles, and fill management. The facilities at the site will be constructed in stages, and the figures provided in Attachment 8, which were prepared by Weaver's Cove and included in its supplemental response to the FRCC, although preliminary, show conceptually how these activities will progress." SDEIR at App. A, page 99.[3]

The SDEIR should thoroughly address all of the comments expressed by state agencies in their comment letters regarding sediment analysis, water quality modeling, and the biological impacts of the proposed dredging (page 7).

The SDEIR does not thoroughly address all of the comments of DEP, CZM, or DMF regarding sediment analysis, water quality modeling, or biological impacts of the proposed dredging, as follows.

DEP Comments:

(Pages 10 – 11) The Department does not concur with the conclusions in the DEIS/DEIR that the sediment was comprehensively sampled or its evaluation of the significance of the concentrations of PAHs and metals in relation to MCP compliance for reuse of contaminated media. The project proponent should prepare a Conceptual Site Model demonstrating that a sufficient understanding of sediment deposition and potential sources of contamination exists to justify the sediment sampling conducted to-date.

The SDEIR does not include a Conceptual Site Model (CSM).

(Page 11) The proponent must demonstrate that the leaching characteristics are not altered by the addition of the Portland cement by conducting Toxicity Characteristic Leachability Procedure (TCLP) testing on a sufficient number of test samples.

The SDEIR does not provide this demonstration.

(Page 11) The soil sampling conducted at the project site as part of its MCP assessment did not include a number of contaminants identified in the sediment through the sampling. Prior to the Department making a final determination on the reuse proposal, the project proponent will be required to submit additional data to establish the extent and level of contaminants at site corresponding with the sediment's contaminants. This data should be included in future FERC/MEPA filings for this project.

The SDEIR does not provide this data. The SDEIR argues instead that DEP's use of an "internal draft" of "potential" revisions to the Water Quality Standards regulations, which apply MCP anti-degradation requirements, has no legal force or effect. The proponents

[3] The FRCC had the opportunity to review these conceptual submissions, which were not provided with the SDEIR. Similar to the issue raised in the Certificate and as explained in **Attachment 3**, the information was so general and lacking in detail that it was impossible to address avoidance or minimization of impacts.

made a similar argument, without success, to DEP in August 2003. As set forth in the September 12, 2003 interpretive correspondence from DEP to the proponents' representatives, DEP has consistently applied the anti-degradation requirements to the proposed reuse of dredged sediments; a copy of the proponents' inquiry and DEP's correspondence is enclosed with these comments as **Attachment 5**. The proponents have been aware of this state permitting requirement and the need to provide this information as a part of the MEPA process for well over a year.

The SDEIR also states that the need to provide this data prior to the issuance of the FEIS (by analogy, the FEIR) is "not supportable." SDEIR at App. A., pages 44 – 45.

The SDEIR characterizations of the issues raised concerning compliance demonstrations with the MCP and the validity of the conclusions drawn by the proponents is further addressed in comments submitted to the FERC by Shell Oil Products US (SOPUS), the party responsible for MCP compliance at the site proposed for the LNG terminal. SOPUS believes that the proponents' analysis is deficient and flawed and that, based on its own analysis, concludes that the contaminant concentrations contained in the dredged sediments and soil at the proposed site would result in heightened risks and site degradation. A copy of the SOPUS comments is enclosed here as **Attachment 6**.

(Page 11) Detailed information should be provided in future FERC/MEPA filings that demonstrate that those site grading and landform purposes are reasonable and consistent with the project's design and that the volume of sediment being allocated to each of proposed reuse purposes is necessary to accomplish its function.

The SDEIR does not provide this information, does not demonstrate the nexus of design reasonability and consistency with reuse volumes, and does not provide volume allocations.

CZM Comments:

(Page 2, Section 3.) The DEIS does not adequately characterize the environmental and safety impacts of potential alternatives to the Fall River site. At a minimum, supplemental information should quantify the potential impacts to environmental resources and human safety associated with an alternative coastal location as the baseline for a detailed comparative analysis with the preferred alternative. Note that this will require that additional information be provided to characterize the preferred alternative, as described in Number 5, below.

The SDEIR does not quantify the potential impacts to environmental resources and human safety associated with an alternative coastal location. The proponents did not perform the requisite alternatives analyses.

(Page 4, Section 5) The design and operational management of the proposed dredging require additional characterization to determine the extent of potential impacts. The DEIS materials provide only general information regarding measures to avoid and/or minimize impacts to aquatic resources and water quality, leaving detailed management measures to be developed "prior to construction." Given the potentially significant impacts to shellfish and sensitive life stages of aquatic organisms, CZM requests that these materials be provided to a greater level of specificity in the SDEIS. Absent this more detailed information, it is not clear to CZM that the project as proposed is permittable.

The SDEIR does not provide additional, specific information concerning proposed dredging design and operational management. As set forth at page 8, supra., the SDEIR states that the additional detail required is unnecessary for the issuance of a DEIR/EIR.

(Page 2, Section 3) CZM also recommends that the supplemental information include an expanded analysis of the *LNG terminal alternatives* for several of the potential onshore alternative sites. These sites include the Boston Harbor site, the Providence Harbor site, Quonset Point site, Coddington/Melville site, the New London Harbor site, and the Prudence Island site.

The SDEIR does not provide any supplemental information and does not include any expanded analysis of the LNG terminal alternatives identified by CZM. The SDEIR repeats what was set forth in the DEIS/DEIR; that this analysis was performed and reflected in Resource Report 10 (November 2003). SDEIR at App. A., pages 56 – 57.

(Pages 2 – 3, Section 3) Importantly, one or more of the LNG facilities that have been recently proposed in New England could potentially serve New England energy needs with less environmental and/or safety impacts than the Fall River project. Therefore, CZM recommends that a comparative analysis of these alternative facilities be provided in the SDEIS.

The SDEIR does not provide this comparative analysis and characterizes this comment as seeking a "futile outcome." SDEIR at App. A, page 53.

(Page 3, Section 4) As part of an enhanced *postponed action alternative* analysis, CZM recommends that a full discussion of the impacts of the recently modified completion date for the new Brightman Street Bridge be included in the SDEIS. This should include discussion of how this later completion date affects the proposed project, the regional gas supply, and how any delay in completion of the bridge may provide the opportunity for additional study and analysis.

The SDEIR ignores this requirement and, as set forth at page 3 supra., refuses to consider or accept the MHD 2010 completion date.

(Page 3, Section 4) From CZM's analysis of the sediment data, it appears that a more nuanced approach to managing the dredged materials may be feasible and appropriate. Instead of the proposed 'all or nothing' upland reuse, an analysis of the dredged material under the federal suitability determination procedures for open water disposal would provide CZM and other agencies with the means to evaluate whether impacts of the project as proposed have, in fact, been avoided and minimized to the greatest extent possible. That comparison is currently impossible, given the absence of such information. CZM requests that the SDEIS characterize the dredged materials for their suitability for open water disposal, and develop an alternative that incorporates both upland and open water reuse/disposal.

The SDEIR does not provide this characterization and it does not consider any alternative characterizations.

(Page 4, Section 4) In the event that both disposal options are deemed feasible from a regulatory perspective, the SDEIS should present a comparative analysis of the environmental impacts of the two disposal options.

The SDEIR does not present this analysis.

DMF Comments:

(Pages 1 – 2) Estimates of the range and magnitude of potential negative impacts to finfish and shellfish very likely underestimate these effects as they are based on inadequate models that cannot accurately portray conditions within the river system due to inadequate data. The models do not include any inputs for turbidity/suspended solids during high fishing and/or low water flow periods because no such data were collected. Further, we continue to question the accuracy of a model that was only tested against the one month's data upon which the model was based. As this modeling is linked to a proposal to perform year-round dredging for three plus years, it seems reasonable to require the collection of multiple years' worth of data upon which to base the model.

> The SDEIR does not provide this data and states that the conclusions reached by the DMF "cannot be sustained in the face of scientific evidence which Weaver's Cove has supplied for the record." SDEIR at App. A, pages 131 – 132.
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> The SDEIR goes on, in dismissing this comments, by stating that:
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> > Contrary to the views of NOAA and the MDMF, there is a sufficient historical suspended sediment data [sic] available such that there is no need to halt the evaluation of the dredging impacts while one year's worth (or more) of suspended sediment data is collected from Mount Hope Bay and the Taunton River. SDEIR at App. A., page 71.

(Page 2)The failure of the DEIR to adequately consider appropriate time-of-year (TOY) work restrictions for all species at risk from the proposed activity should be addressed in a supplemental DEIR. Information regarding these species and the associated periods of concern were provided to the applicants and to FERC staff. The only mitigative measures discussed for the proposed dredging were applied to winter flounder spawning periods, and these do not even adequately protect that resource. There is no discussion of avoidance of impacts to the many diadromous species that move through the area, nor a realistic discussion of potential shellfish impacts.

> The SDEIR does not address this comment; it ignores virtually every anadromous species and TOY recommendation provided by the DMF. The SDEIR states that modeling was performed for shad and salmon, neither of which was raised as a species at risk by the DMF. The SDEIR also concludes, without addressing the DMF comments, that mitigative measures are unnecessary. SDEIR at App. A., page 134.

(Page 2) In a similar vein, the DEIR should contain discussion of actions to minimize and/or mitigate for the impacts likely to result by the regular passage of the LNG tanker and support vessels through the embayment.

> The SDEIR does not include any consideration or discussion of actions to minimize and/or mitigate for these impacts. The SDEIR concludes, citing a USACE study in Boston Harbor after passage of an LNG tanker at an active confined aquatic disposal cell that, "there does not appear to be any basis for the commenters' allegations regarding navigation-induced sediment, and none has been cited." SDEIR at App. A, page 129.

(Page 2) Proposals to perform one-time shellfish seeding and remove quahogs from the dredge footprint do not address the direct loss of habitat caused by dredging or the continuing impacts that are likely to result from vessel passage through the river.

> The SDEIR does not address the concern about loss of habitat resulting from vessel passage impacts. The only reference to mitigation of impacts re-states the offer, limited to the dredge footprint, to perform relaying and re-seeding. SDEIR at App. A., page 132.

(Page 2) *MarineFisheries* recommends that the supplemental DEIR include a more comprehensive discussion of the contribution that dredging and vessel operations associated with the Weaver's Cove project will make to the overall cumulative impacts visited upon the marine fisheries resources and habitats found in the Mount Hope Bay/Taunton River system.

> The SDEIR responds to this comment by stating that such an analysis would be impossible, that the relevant information does not exist on a quantitative level. The SDEIR also concludes this response to the DMF by stating that, "In the final analysis, and as noted elsewhere in these comments, the time is now due for some rational pragmatism in the environmental review process." SDEIR at App. A, pages 144 – 145.

(Page 2) A more comprehensive discussion of the use of horizontal directional drilling (HDD) is warranted in the supplemental DEIR. The seeming rejection of this technique for use in the Taunton River is based on speculation and does not appear to reflect the state-of-the-art.

> The SDEIR does not respond to this comment. It re-states the information provided in the DEIS/DEIR; based upon literature reviews set forth in Resource Report 6 (November 2003), HDD is not feasible. SDEIR at App. A, page 66.

(Page 2) The DEIR contains virtually no discussion of the potential impacts from the withdrawal of millions of gallons of river water for ballast and hydrostatic testing other than a brief accounting of potential impingement/entrainment mortality. The regular withdrawal of such volumes of water needs to be discussed within the context of other similar activities within the embayment and with due consideration of the greater impact such activity may have during periods of drought or seasonal low water.

> The SDEIR does not respond to this comment. It provides a general discussion about the "negligible impacts" resulting from plankton uptake, ignores any discussion of similar activities within the embayment, and ignores any consideration of drought or seasonal low water. SDEIR at App. A., pages 129 – 130.[4]

(Page 3) The supplemental DEIR should contain a more contemporary and comprehensive analysis of the potential for siting an offshore LNG terminal.

> The SDEIR responds to this comment by first by referencing pages 3-12 and 3-13 of the DEIS/DEIR, which were been determined to be inadequate in the initial review. It next refers to Attachment 5, Appendix A. Attachment 5, Appendix A., incorporates by reference the original analysis included in the DEIS/DEIR and, after some discussion, concludes that the Northeast Gateway Project is infeasible.

[4] The SDEIR also ignores the fact that the Taunton River Basin has been characterized as a "medium stressed" basin, which would, independently, trigger an assessment of these impacts.

Excelerate Energy, LLC, who permitted the offshore terminal in the Gulf of Mexico and is developing the offshore proposal referred to as "Northeast Gateway Project," found the proponents' discussion misleading and, in some cases, inaccurate and false, so much so that it submitted an independent response to the FERC, a copy of which is included with these comments as **Attachment 7.**

The DEIR indicated that open buckets will generally be used for the dredging operation. However, due to the presence of fine sediments and the potential for re-suspension of dredged material in many areas, the use of an environmental bucket and/or other mitigation measures should be considered. The SDEIR should include a detailed discussion of this issue, as well as a general discussion of an environmental monitoring and testing plan for the dredging operation (page 7).

The SDEIR does offer to consider, as a limited mitigation measure, some specific use, for specific locations, of an environmental bucket, and does not address environmental monitoring and testing.

Dredged Sediment Management (pages 7 - 10)

The SDEIR should include a detailed plan that identifies procedures to ensure that the project would not interfere with the existing recovery system or that identifies alternative remedial approaches designed to achieve a Response Action Outcome (RAO) pursuant to the MCP (page 8).

The SDEIR does not include any plan or discussion responsive to this requirement.

The SDEIR should include a detailed plan that identifies the procedures that will be established to prevent the discharge of NAPL into the river during the replacement of the bulkhead (page 8).

The SDEIR does not include any plan or discussion responsive to this requirement.

In addition, the SDEIR must demonstrate that the placement of a deeper bulkhead and low-permeability material on the site will not alter groundwater flow and the elevation of the water table so as to alter the migration or the recovery of the NAPL, or develop a plan for an alternative remedial approach designed to achieve a Response Action Outcome pursuant to the MCP (page 8).

The SDEIR does not include this demonstration, does not include a groundwater flow model, and does not include a proposed alternative approach.

The SDEIR should include a groundwater flow model that depicts both existing conditions and the changes likely to result from the proposed conditions (page 8).

The SDEIR does not include a groundwater flow model.

Before approving reuse of the dredged sediment, DEP must evaluate the types and extent of contamination within the sediment in comparison with the site's contaminant profile in order to prevent the occurrence of a release condition at the site that would require remediation or significantly increase contamination at the site. The DEIR did not provide sufficient information to determine compliance with these provisions of the MCP (page 9).

The SDEIR challenges the need to present this information and states that this is not within the purview of the NEPA/MEPA process. Please see comments at pages 8 – 9, supra.

The SDEIR should provide sufficient data to adequately characterize the nature and source of contaminants, including a Conceptual Site Model (CSM) described in DEP's Comment letter (page 9).

The SDEIR does not include any data and does not include a Conceptual Site Model.

If the CSM cannot be used to justify the sediment sampling conducted to date, the SDEIR should provide a sampling plan to fill the data gaps identified (page 9).

The SDEIR does not provide a sampling plan. Please see previous comment.

The SDEIR should include the results of a Toxicity Characteristic Leachability Procedure, as described in greater detail in DEP's comment letter, which demonstrates that the leaching characteristics are not altered by the addition of the Portland cement (page 9).

The SDEIR does not include any TCLP results responsive to DEP's comment.

In order to be considered a valid reuse proposal, the proponent must demonstrate that the purposes for which the dredged sediment is being reused are reasonable and consistent with the project's design, construction and operation, and that the volume of material proposed to be reused is the minimum amount necessary to accomplish those purposes. Sediment volume that exceeds those criteria will be considered solid waste, if proposed to be disposed upland, and will be subject to management pursuant to the Solid Waste Regulations at M.G.L. c. 111, § 150A and 150A1/2 and 310 CMR 16.00 and 19.000 (pages 9 – 10).

The SDEIR does not respond to this requirement and ignores any discussion of solid waste requirements.

The SDEIR should demonstrate that those site grading and landform purposes are reasonable and consistent with the project's design and that the volume of sediment proposed to be allocated to each proposed berm and landform is necessary to accomplish its function (page 10).

The SDEIR does not provide this demonstration and questions the relevance of the requirement. Please also review **Attachment 3** discussion concerning this lack of information and proponents' failure to provide it when requested by the FRCC.

Because the consistency of the proposed reuse plan with the MCP has not been established and the volume of permittable sediment reuse has not been demonstrated, the SDEIR should include a detailed evaluation of the alternatives to on-site upland management (page 10).

The SDEIR does not include any detailed evaluations and states that there is no requirement under NEPA/MEPA to include such an analysis.

Wetlands (pages 10 – 11)

The SDEIR should include a thorough assessment of the impacts from dredging and site construction to wetland resource areas within the Taunton River system to determine if impacts to relatively small wetland areas, including salt marsh, coastal bank, and coastal dune, are significant regardless of the extent of the wetland resource area. Appropriate mitigation for

each wetland resource area to be affected by the project should be thoroughly described to ensure resource protection and/or restoration (page 11).

> The SDEIR does not respond to this requirement. Please see discussion contained in **Attachment 3** which addresses the same deficiencies in information and lack of consideration concerning assessment or mitigation. One point of note is that the proponents advised the FRCC that it had been provided with a greater level of detail than what had been provided to MEPA, when in fact the submissions are almost identical.

The SDEIR should also include a wetland mitigation and monitoring plan that will facilitate an evaluation of the restoration potential of both on-site and off-site wetlands (page 11).

> The SDEIR limits its response to this comment to a proposed salt marsh mitigation plan addressing the filling of 1450 sq. feet of salt marsh on site, if required by the United States Army Corps of Engineers.

Drainage (pages 11 – 12)

The DEIR presented generic best management practices to address stormwater management. Given the expected magnitude of the site alteration and the complex and difficult challenges that stormwater management will likely present for this project, the SDEIR should include a draft stormwater management and sedimentation control plan for review and comment (page 11).

> The SDEIR does not respond to this requirement. The SDEIR includes the generic plan given to the FRCC and the FERC's Model Plans and Procedures. Please see the discussion concerning this deficiency set forth in **Attachment 3**.

The stormwater management and sedimentation control plan should include a thorough description of the dewatering process, including the location where the dewatering is to occur if scow overflow is not allowed and a thorough description of how the dredged sediments, including contaminated sediments, will be stabilized (pages 11 – 12).

> Please see previous comment and **Attachment 3**.

The plan should also include rigorous provisions for monitoring to ensure that water quality standards are met during the processes (page 12).

> The SDEIR ignores any reference to monitoring other than to defer the issue and leave it to the discretion of construction contractors.

Water Supply (page 12)

The proposed hydrostatic testing will likely require the need for a Water Management Act Withdrawal Permit from DEP, as well as a National Pollutant Discharge Eliminations System (NPDES) Permit from EPA and DEP. The SDEIR should discuss the details of this activity, including the locations of possible withdrawal and discharge points under consideration.

> The SDEIR states that hydrostatic testing is not subject to the Water Management Act and ignores the reference to NPDES. SDEIR at App. A, page 49.

In its comments, DEP also questioned whether there will be a need to supplement city water with water from the Taunton River for the proposed on-site fire suppressant system. If so, the SDEIR should include a plan showing the location of any intake pipe.

> The SDEIR states that a proposed water use plan the proponents prepared for the FERC, which it has refused to provide the City of Fall River and does not include with the SDEIR, fully responds to this requirement.

Waterways/Chapter 91 (pages 12 – 13)

The SDEIR should include detailed plans of the LNG terminal, pier, revetment, boat ramp, fill, other shore-side structures, the pipeline, the dredge footprint, and profiles of the cut and final depth (page 12).

> The SDEIR does not include these plans and profiles. It references two c. 91 applications submitted to DEP in May and June 2004, which are not included in the SDEIR. A review of those submissions will demonstrate that they are similarly deficient concerning anything beyond conceptual discussions and drawings.

The SDEIR should discuss whether any of the streams are navigable and, if so, by what types of vessels, as well as the expected navigational impacts during construction and post-construction (page 13).

> The SDEIR references the same Resource Report; Resource Report 10 (November 2003); relied upon in the DEIS/DEIR and provides no other response to this requirement. SDEIR at App. A, page 51.

The SDEIR should consider the use of other technologies for this project, including plowing, jetting, and water-to-water or water-to-land HDD (page 13).

> The SDEIR does not respond to this requirement. See pages 66 - 68 of App. A, which state that HDD for one location was evaluated, based on literature and borings done in other locations and rejected as infeasible. No other relevant information is included.

Marine Fisheries (page 13)

The SDEIR should provide estimates of the range and magnitude of potential negative impacts to all finfish and shellfish fisheries and habitats in the Mount Hope Bay and Taunton River system. These estimates should be based on accurate data and models, as indicated in the comments provided by the Massachusetts Division of Marine Fisheries (DMF).

The SDEIR does not provide any relevant or applicable information and ignores the species' recommendations set forth by the DMF. Please also see comments at pages 11 – 12, supra.

The SDEIR should also discuss the likely impacts to marine fisheries from vessel operations through the embayment, proposed year-round dredging operations, proposed use of spuds to anchor dredge barges, and the proposed withdrawal of large volumes of river water for ballast and hydrostatic testing.

The SDEIR discussion is limited to rejecting the need to consider such impacts. Please also see comments at pages 12 – 13, supra.

In addition, the document [SDEIR] should include a comprehensive discussion of the contribution that dredging and vessel operations for this project will have on the cumulative adverse impacts to marine fisheries caused by other sources.

The SDEIR does not include this discussion and rejects the requirement as being impossible to perform. Please also see comments at page 13, supra.

The SDEIR should consider appropriate time-of-year restrictions for all species of finfish and shellfish expected to be affected by the proposed dredging, especially in light of the fact that the reported construction schedule for the Brightman Street Bridge precludes the proponent's stated need for year-round dredging.

The SDEIR consideration of this requirement is limited to the statements that TOY restrictions are unnecessary, but the proponents may consider a TOY for winter flounder applicable to the Turning Basin during February, March, and April. SDEIR at App. A, page 138.

Air Quality (pages 16 - 17)

The SDEIR should propose mitigation measures to offset the NOx emissions from the project in order to demonstrate that the SIP can accommodate increases in NOx emissions and thereby demonstrate attainment of the eight-hour ozone standard (pages 16 – 17).

The SDEIR proposes no mitigation measures and claims that the requirement is not applicable to the project. SDEIR at App. A, page 188.

The SDEIR should evaluate and incorporate alternative water/glycol heater designs to reduce particulate matter (PM_{10}) ground level impacts (page 17).

The SDEIR discusses possible alternatives but proposes nothing and incorporates nothing into the project.

The DEIR did not indicate how odorant storage, pipeline odorant injection, spent odorant storage containers, etc., will be designed and managed to prevent the occurrence of a condition of air pollution resulting from the release of odorant to the ambient air. The SDEIR should also include a detailed discussion of these issues (page 17).

The SDEIR includes a discussion about state-of-the-art technologies that could be available, but makes no specific design or project proposals.

<u>Mitigation</u> (page 18)

The SDEIR should include a summary of all mitigation measures to which the proponent is committed.

> The SDEIR does not commit to ANY mitigation measures. Pages 13 – 2 through 13-16 present a table of actions, mitigation measures, and implementation schedules. None of the possible mitigation measures are proposed as actions proponents WILL take; the measures are suggestions the proponents will consider and incorporate into FERC-required actions. The SDEIR also states, at 13 – 11, that NO MITIGATION will be proposed for impacts associated with ballast water withdrawals during operations of the LNG terminal or propeller wash resulting from LNG ships traversing the channel.

The SDEIR should also include revised draft § 61 findings for use by the state permitting agencies.

> The SDEIR merges this requirement as part of the Mitigation Tables, virtually restates the DEIS/DEIR language and provides no relevant revisions or additions.

Respectfully submitted on behalf of the City of Fall River, Massachusetts,

Carol R. Wasserman
ESS Group, Inc.