



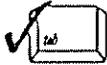
Massachusetts Department of Environmental Protection
 Bureau of Resource Protection - Wetlands
WPA Form 5 – Order of Conditions
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number

SE-24-444

A. General Information

Important:
 When filling out forms on the computer, use only the tab key to move your cursor - do not use the return key.



From: Fall River
 1. Conservation Commission

2. This issuance is for (check one): Order of Conditions Amended Order of Conditions

3. To: Applicant:

Ted Gehrig Weaver's Cove Energy LLC
 a. First Name b. Last Name c. Company

One New Street
 d. Mailing Address

Fall River MA 02720
 e. City/Town f. State g. Zip Code

4. Property Owner (if different from applicant):

Fall River Marine Terminal LLC
 a. First Name b. Last Name c. Company

20 West Howell Street
 d. Mailing Address

Boston MA 02125
 e. City/Town f. State g. Zip Code

5. Project Location:

One New Street Fall River
 a. Street Address b. City/Town

A.P.T-1, Lots 33+38; T-2, Lot 1; T-15, Lots 1, 2+3.
 c. Assessors Map/Plat Number d. Parcel/Lot Number

Latitude and Longitude, if known (note: electronic filers will click for GIS locator):
 e. Latitude f. Longitude

6. Property recorded at the Registry of Deeds for (attach additional information if more than one parcel)

Bristol
 a. County b. Certificate (if registered land)

3965 22
 c. Book d. Page

7. Dates: 6-28-04 10-13-04 11-3-04
 a. Date Notice of Intent Filed b. Date Public Hearing Closed c. Date of Issuance

8. Final Approved Plans and Other Documents (attach additional plan or document references as needed):

a. Plan Title

b. Prepared By c. Signed and Stamped by

d. Final Revision Date e. Scale

f. Additional Plan or Document Title g. Date

9. Total WPA Fee Paid: \$3,450.00 \$1,712.50 \$1,737.50
 a. Total Fee Paid b. State Fee Paid c. City/Town Fee Paid



B. Findings

1. Findings pursuant to the Massachusetts Wetlands Protection Act:

Following the review of the above-referenced Notice of Intent and based on the information provided in this application and presented at the public hearing, this Commission finds that the areas in which work is proposed is significant to the following interests of the Wetlands Protection Act. Check all that apply:

- a. Public Water Supply
- b. Land Containing Shellfish
- c. Prevention of Pollution
- d. Private Water Supply
- e. Fisheries
- f. Protection of Wildlife Habitat
- g. Groundwater Supply
- h. Storm Damage Prevention
- i. Flood Control

2. This Commission hereby finds the project, as proposed, is: (check one of the following boxes)

Approved subject to:

the following conditions which are necessary in accordance with the performance standards set forth in the wetlands regulations. This Commission orders that all work shall be performed in accordance with the Notice of Intent referenced above, the following General Conditions, and any other special conditions attached to this Order. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, these conditions shall control.

Denied because:

the proposed work cannot be conditioned to meet the performance standards set forth in the wetlands regulations. Therefore, work on this project may not go forward unless and until a new Notice of Intent is submitted which provides measures which are adequate to protect these interests, and a final Order of Conditions is issued. **A description of the performance standards which the proposed work cannot meet is attached to this Order.**

the information submitted by the applicant is not sufficient to describe the site, the work, or the effect of the work on the interests identified in the Wetlands Protection Act. Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides sufficient information and includes measures which are adequate to protect the Act's interests, and a final Order of Conditions is issued. **A description of the specific information which is lacking and why it is necessary is attached to this Order as per 310 CMR 10.05(6)(c).**

Inland Resource Area Impacts: Check all that apply below. (For Approvals Only) *(OIC is a denial)*

Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
3. <input type="checkbox"/> Bank	a. linear feet	b. linear feet	c. linear feet	d. linear feet
4. <input type="checkbox"/> Bordering Vegetated Wetland	a. square feet	b. square feet	c. square feet	d. square feet
5. <input type="checkbox"/> Land Under Waterbodies and Waterways	a. square feet	b. square feet	c. square feet	d. square feet
	e. cu.yd dredged	f. cu.yd dredged		



WPA Form 5 – Order of Conditions
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

3E-24-444

B. Findings (cont.)

Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
6. <input type="checkbox"/> Bordering Land Subject to Flooding	a. square feet	b. square feet	c. square feet	d. square feet
Cubic Feet Flood Storage	e. cubic feet	f. cubic feet	g. cubic feet	h. cubic feet
7. <input type="checkbox"/> Isolated Land Subject to Flooding	a. square feet	b. square feet		
Cubic Feet Flood Storage	c. cubic feet	d. cubic feet	e. cubic feet	f. cubic feet
8. <input type="checkbox"/> Riverfront area	a. total sq. feet	b. total sq. feet		
Sq ft within 100 ft	c. square feet	d. square feet		
Sq ft between 100-200 ft	e. square feet	f. square feet		

Coastal Resource Area Impacts: Check all that apply below. (For Approvals Only)

9. <input type="checkbox"/> Designated Port Areas	Indicate size under Land Under the Ocean, below			
10. <input type="checkbox"/> Land Under the Ocean	a. square feet	b. square feet		
	c. cu.yd dredged	d. cu.yd dredged		
11. <input type="checkbox"/> Barrier Beaches	Indicate size under Coastal Beaches and/or Coastal Dunes below			
12. <input type="checkbox"/> Coastal Beaches	a. square feet	b. square feet	c. c/y nourishmt.	d. c/y nourishmt.
13. <input type="checkbox"/> Coastal Dunes	a. square feet	b. square feet	c. c/y nourishmt.	d. c/y nourishmt.
14. <input type="checkbox"/> Coastal Banks	a. linear feet	b. linear feet		
15. <input type="checkbox"/> Rocky Intertidal Shores	a. square feet	b. square feet		
16. <input type="checkbox"/> Salt Marshes	a. square feet	b. square feet	c. square feet	d. square feet
17. <input type="checkbox"/> Land Under Salt Ponds	a. square feet	b. square feet		
	c. cu.yd dredged	d. cu.yd dredged		
18. <input type="checkbox"/> Land Containing Shellfish	a. square feet	b. square feet	c. square feet	d. square feet
19. <input type="checkbox"/> Fish Runs	Indicate size under Coastal Banks, inland Bank, Land Under the Ocean, and/or inland Land Under Waterbodies and Waterways, above			
	a. cu.yd dredged	b. cu.yd dredged		
20. <input type="checkbox"/> Land Subject to Coastal Storm Flowage	a. square feet	b. square feet		



C. General Conditions Under Massachusetts Wetlands Protection Act

(only applicable to approved projects)

1. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Order.
2. The Order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
3. This Order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state, or local statutes, ordinances, bylaws, or regulations.
4. The work authorized hereunder shall be completed within three years from the date of this Order unless either of the following apply:
 - a. the work is a maintenance dredging project as provided for in the Act; or
 - b. the time for completion has been extended to a specified date more than three years, but less than five years, from the date of issuance. If this Order is intended to be valid for more than three years, the extension date and the special circumstances warranting the extended time period are set forth as a special condition in this Order.
5. This Order may be extended by the issuing authority for one or more periods of up to three years each upon application to the issuing authority at least 30 days prior to the expiration date of the Order.
6. Any fill used in connection with this project shall be clean fill. Any fill shall contain no trash, refuse, rubbish, or debris, including but not limited to lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles, or parts of any of the foregoing.
7. This Order is not final until all administrative appeal periods from this Order have elapsed, or if such an appeal has been taken, until all proceedings before the Department have been completed.
8. No work shall be undertaken until the Order has become final and then has been recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the proposed work is to be done. In the case of the registered land, the Final Order shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is done. The recording information shall be submitted to this Conservation Commission on the form at the end of this Order, which form must be stamped by the Registry of Deeds, prior to the commencement of work.
9. A sign shall be displayed at the site not less than two square feet or more than three square feet in size bearing the words,

"Massachusetts Department of Environmental Protection" [or, "MA DEP"]

"File Number _____"



C. General Conditions Under Massachusetts Wetlands Protection Act

10. Where the Department of Environmental Protection is requested to issue a Superseding Order, the Conservation Commission shall be a party to all agency proceedings and hearings before DEP.
11. Upon completion of the work described herein, the applicant shall submit a Request for Certificate of Compliance (WPA Form 8A) to the Conservation Commission.
12. The work shall conform to the plans and special conditions referenced in this order.
13. Any change to the plans identified in Condition #12 above shall require the applicant to inquire of the Conservation Commission in writing whether the change is significant enough to require the filing of a new Notice of Intent.
14. The Agent or members of the Conservation Commission and the Department of Environmental Protection shall have the right to enter and inspect the area subject to this Order at reasonable hours to evaluate compliance with the conditions stated in this Order, and may require the submittal of any data deemed necessary by the Conservation Commission or Department for that evaluation.
15. This Order of Conditions shall apply to any successor in interest or successor in control of the property subject to this Order and to any contractor or other person performing work conditioned by this Order.
16. Prior to the start of work, and if the project involves work adjacent to a Bordering Vegetated Wetland the boundary of the wetland in the vicinity of the proposed work area shall be marked by wooden stakes or flagging. Once in place, the wetland boundary markers shall be maintained until a Certificate of Compliance has been issued by the Conservation Commission.
17. All sedimentation barriers shall be maintained in good repair until all disturbed areas have been fully stabilized with vegetation or other means. At no time shall sediments be deposited in a wetland or water body. During construction, the applicant or his/her designee shall inspect the erosion controls on a daily basis and shall remove accumulated sediments as needed. The applicant shall immediately control any erosion problems that occur at the site and shall also immediately notify the Conservation Commission, which reserves the right to require additional erosion and/or damage prevention controls it may deem necessary. Sedimentation barriers shall serve as the limit of work unless another limit of work line has been approved by this Order.

Special Conditions:

If you need more space for additional conditions, select box to attach a text document

Denial of Order of Conditions for Weaver's Cove Energy, LLC
LNG Terminal Project
Fall River Massachusetts
DEP File Number SE-24-444

I. Introduction and Project Description

Weaver's Cove Energy, LLC (WCE or applicant) submitted a Notice of Intent (NOI) dated June 29, 2004 to the Fall River Conservation Commission (Commission or FRCC). The NOI; DEP # SE-24-444; requests an Order of Conditions, for a term of five years, authorizing all activities necessary to construct and operate a Liquefied Natural Gas (LNG) Terminal (the project), in conjunction with all activities necessary to construct an associated project for which a separate NOI has been submitted by Mill River Pipeline, LLC (MRP); DEP File Number SE-24-445; the natural gas pipelines serving the LNG Terminal. The Pipeline Activities are discussed in a separate Order issued simultaneously with this Order.

The project contemplates the construction of a 200,000 m³ LNG storage tank, enclosed by a series of engineered containment structures, associated piping and vaporization equipment, and a tanker truck loading area designed to accommodate up to four trucks simultaneously and up to 100 truck trips/day.

The project includes the construction of a perimeter road running roughly parallel to the Taunton River, administration and support buildings, utilities and parking areas, the removal of an existing pier structure, and the construction of a rip-rap revetment, a new sheet pile bulkhead and pile-supported pier structure, and a boat ramp.¹

The project also includes dredging of the existing federally-authorized Mount Hope Bay-Fall River Harbor navigation channel and turning basin to satisfy the navigational requirements of LNG ships.

A. Impacts on Resource Areas in Fall River.

¹ WCE points out, at page 10, that the construction sequence for the rip-rap revetment and the boat ramp could be delayed until the associated pipeline project, which includes a proposed open-cut trench through 2,500 linear feet of the Taunton River, is completed. While the NOI for the LNG Terminal was submitted by WCE and the NOI for the pipeline projects was submitted by MRP separately, the two projects are inherently inter-related; the dredging program drives all of the activities for both of the projects; and the overlapping and successive impacts upon Resource Areas and buffer zones from construction activities, timing, methodology, use and storage of equipment, and staging for each project cannot be considered independently. Construction sequencing and methodology of all aspects of the activities proposed, as discussed later in this Order, are being left to the discretion of the construction contractors.

The NOI indicates that the proposed activities will impact the following Resource Areas in Fall River:

Permanent Impacts from Terminal Construction:

Riverfront area	60,150 square feet
Land subject to coastal storm flowage	613,300 square feet
Salt marsh	1,790 square feet
Coastal bank	3,935 linear feet
Coastal beach	47,635 square feet
Coastal dune	11,000 square feet
Land under the ocean	8,850 square feet
Land containing shellfish	5,210 square feet
Anadromous/catadromous fish run	42,125 square feet

Impacts from Dredging:

Land under the ocean	3,320,000 square feet (77 acres)
Land containing shellfish	2,274,500 square feet (53 acres)
Anadromous/catadromous fish run	3,320,000 square feet (77 acres)

The applicant describes the impacts from dredging as temporary.

II. Existing Site Conditions

The approximately 73 acre site, located on the Taunton River, is described in the NOI as the North and South Parcels, which are divided by an existing railroad Right-of-Way (ROW). Approximately fifty-five acres comprise the South Parcel. The remaining 18 acres, north and east of the ROW, make up the North Parcel. A portion of the project site falls within the boundary of the Fall River – Mount Hope Bay Designated Port Area (DPA).

The site is owned by Jay Cashman, Inc. and Fall River Marine Terminal, LLC, (FRMT). The site is currently used storage and lay-down of construction equipment. WCE holds an option to purchase the project site.

The site was previously owned by the Shell Oil Company (Shell), who operated an oil storage and distribution facility on the site. In 2000, Shell sold the project site to Jay Cashman, Inc. The site is contaminated with oil and hazardous materials and has been undergoing remediation in accordance with a MADEP Disposal Site permit, RTN Numbers 04-0930 and 04-0749.

III. Procedural History

The Commission received a NOI for this project dated June 29, 2004. A site walk was conducted on Monday, July 26. With the agreement of the applicant to extend the twenty-one day period for opening the public hearing, the first public hearing was held at Fall River Government Center on Wednesday, July 28, 2004.² The second public hearing was held on Wednesday, September 22, 2004. The third public hearing was held on October 13, 2004 and, at the request of the applicant, the hearing record was closed. The final public hearing was conducted on October 27, 2004. At this hearing, the Commission received the findings and recommendations of the Conservation Agent and voted to deny the project. A complete list of the information considered by the Commission in developing this Order is found in Appendix A.

IV. Questions Addressed by the Fall River Conservation Commission

A. Questions Regarding Dredging Activities.

In order to allow LNG tanker ships to access the terminal, WCE proposes dredging approximately seven miles of the Taunton River over a continuous three-year period. WCE proposes to manage, treat, stabilize, place, and dispose between 2.1 and 3.1 million cubic yards (mcy) of contaminated dredged materials on the site, in both Resource Areas and upland areas, and states that the total dredging footprint within Resources Areas in Fall River will cover approximately 77 acres.³

WCE proposes to use the dredged materials to raise the overall grade of the site, to construct berms and containment structures, and to construct a "landform" approximately 110 feet in height to provide partial visual screening of the planned, 220 feet high LNG storage tank.

Considering the impacts of the dredging operations as well as the impacts of the management and ultimate disposition of the dredged materials on and affecting Resource Areas and the possible avoidance and mitigation of those impacts are the responsibility of the Commission under the Wetlands Protection Act and the regulations at 310 CMR 10.00.⁴

² At the request of WCE and MRP, the Commission agreed to open public hearings on both NOIs and all continuances and subsequent hearings were by agreement of both WCE and MRP.

³ No distinction is drawn by the applicant between parent materials (native sediments existing prior to industrialization) and the contaminated dredged materials.

⁴ The dredging activities and federal wetlands and water quality issues are also being reviewed by other federal and state agencies. The Federal Energy Regulatory Commission (FERC), United States Army Corps of Engineers (USACE), National Oceanic and Atmospheric Administration and Marine Fisheries Service (NOAA), United States Environmental Protection Agency (EPA), Massachusetts Executive Office of Environmental Affairs (EOEA), Massachusetts Office of Coastal Zone Management (MCZM), Massachusetts Department of Environmental Protection (MADEP),

On October 1, 2004, the Secretary of the Massachusetts Executive Office of Environmental Affairs (EOEA) issued a MEPA Certificate; EOEA Number 13061; (Certificate) finding the lack of information about the dredging program so significant⁵ that the Certificate required the preparation of a Supplemental Draft Environmental Impact Report which included the requirement to "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."

The Secretary also required that WCE, "provide a more detailed description of the design and operational management of the proposed dredging in order to determine the extent of potential impacts. The SDEIR should thoroughly address all of the concerns expressed by state agencies in their comment letters regarding sediment analysis, water quality modeling, and the biological impacts of the proposed dredging."

B. Potential Impacts on Fisheries and Shellfish.

The applicant states that the project has been designed using best practical measures and the work is not anticipated to have any measurable impact on water circulation patterns, temperatures or turbidity in the Taunton River, nor will it be a source of pollutants. The Commission found the Suspended Sediment Model and the supplemental information provided by the applicant to be inadequate to support this conclusion and lacking specific inputs reflecting actual project conditions; i.e. actual duration of dredging, contaminants released, and inputs concerning impacts to winter flounder eggs recommended by NOAA Fisheries.⁶ The USACE, NOAA, EPA, EOEA, MCZM, MADEP, and MDMF have all requested additional information in order to enable them to review and quantify the impacts of the proposed dredging program upon essential fish habitat, water quality, finfish and benthic populations, wetlands and waterways, and project site contamination and hydrogeology.⁷

and the Massachusetts Division of Marine Fisheries (MDMF) are all engaged in reviewing aspects of the WCE proposed dredging program.

⁵ The Secretary's Findings are consistent with the Commission's findings. While WCE provided basic information, it was general, non-specific, and discussed alternative and hypothetical approaches that could be used, not the approach that would be implemented for the project.

⁶ In addition, the applicant, in another filing to the MADEP; a Section 401 Water Quality Certification application reviewed by the Commission; states that levels of copper and zinc released during dredging will exceed water quality standards.

⁷ The Certificate, which was also considered by the Commission during this proceeding, also set forth an extensive list of data gaps and information needs concerning impacts of the proposed dredging program, including impacts upon Resource Areas subject to the jurisdiction of the Commission:

The Commission also considered the July 23, 2004 comment letter submitted by the Massachusetts Division of Marine Fisheries (MDMF). The MDMF stated that the Taunton River provides valuable habitat for a diverse assemblage of finfish and invertebrates, and that portions of the river within and adjacent to the proposed footprint of the project have been designated "Significant Shellfish Habitat" in recognition of the extremely productive quahog, soft-shelled clam and American oyster resources. MDMF expressed great concern that "the sediment modeling performed to evaluate potential fisheries impacts from dredging and construction is faulty and greatly underestimates these impacts" and described the very limited amount of field data collected for use in the model as inadequate. MDMF stated that, "in part due to the underestimation of potential impacts that resulted from the use of a faulty model, the proposed dredging/construction restrictions offered in place of traditional no work time-of-year windows and project sequencing with the Taunton River are unacceptable."

MDMF further stated that, "the description of potential winter flounder spawning habitat is incorrect and greatly underestimates the amount of area that may be permanently altered," and that, "the applicant's claim that the Turning Basin area is too deep for successful winter flounder spawning and egg deposition have no basis." Finally, MDMF said that, "the regular passage of LNG tankers to the planned Weaver's Cove facility will likely cause additional impacts via the resuspension of sediments during transit...Increased turbidity can greatly hinder fish spawning and larval survival and can retard juvenile development. Benthic invertebrates such as clams and quahogs can become deeply buried or suffer mortality caused by clogging of their respiratory systems." MDMF stated the NOI failed to address this issue.

C. Potential Impacts of Contaminated Dredged Materials on Resource Areas.

According to the July 26, 2004 comments submitted to the FRCC by Shell, the party responsible for the ongoing remediation, the proposed dredged materials operations and disposal could significantly impact groundwater and surface water on the site.

The DEIR provided only general information regarding measure 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, the SDEIR should provide a more detailed description of the design and operation management of the proposed dredging in order to determine the extent of potential impacts. Page 7.

Shell's comments included concerns that the dredged materials could:

- (1) exacerbate contamination already existing at and under the project site by the release of additional contamination into Resource Areas, surface water and groundwater,
- (2) change the flow of the groundwater and force quantities of LNAPL to further migrate into and under Resource Areas, including the Taunton River, and
- (3) precipitate releases of hazardous material into the Taunton River by removing the existing bulkhead.

In addition, Shell commented that the admixtures proposed by WCE for use with the dredged materials could leach into Resource Areas, including into the groundwater and the Taunton River and could materially affect pH balances and water quality.

Shell also commented that WCE has no authority to alter or to move discharge points permitted by Shell under the NPDES program, which are also part of the remediation system owned and operated by Shell, as proposed in the NOI. The current remedial action plan and remedial implementation plan approved by the MADEP prescribe the requirements for the current remedial system. The applicant has not provided any information to the Commission demonstrating that it has the authority to alter Shell's system or that the MADEP has approved any modification, shut-downs, or changes to the current system, which is removing LNAPL from the ground water and containing LNAPL migration through the ground water into other Resource Areas, including the Taunton River.⁸

D. Volume of Dredged Materials.

The applicant stated at the September 22 public hearing that the total volume of dredged materials, no matter how much material is ultimately generated, will be placed on the project site, but WCE has not provided the Commission with any explanation concerning engineering or construction necessity for staging, managing, treating, placing, and disposing this volume of dredged materials on the site, which includes ongoing placement in and filling of Resource Areas.

⁸ At the October 13, 2004 hearing, the Commission asked whether WCE's Licensed Site Professional had been designated as the LSP of Record for the project site with the MADEP and he stated that he had not. Michael Bingham, who is employed by Shell, is the LSP of Record for the site.

At the hearings conducted on September 22, 2004 and October 13, 2004, the Commission questioned the applicant about the necessity for placing this volume of materials on the site. The Commission also questioned the associated impacts upon Resource Areas resulting from the lay-down, stockpiling, transit, treatment, and addition of admixtures; i.e. lime, fly ash, cement, fragrances, deodorant foams, etc.; which include run-off into Resource Areas, erosion, sedimentation, back-watering, and leaching of contaminants into the ground water and surface waters of the Taunton River. The Commission suggested that, if the only purpose of constructing the 100 foot high or greater "landform" was to provide a partial visual screen, that the applicant should propose alternatives with fewer impacts, such as fencing or landscaping. WCE responded that the proposed landform carried with it the fewest impacts for Resource Areas but presented no information to support this conclusion.

E. Stabilization and Erosion Controls for the Proposed Landform.

The applicant did not provide the Commission with sufficient information provided concerning stabilization and erosion controls for the "landform," the size, slope, and footprint of which WCE states will change depending upon site conditions and the volume of dredged materials disposed of on the site. The Resource Areas within which these activities will take place include Land Under the Ocean, Land Containing Shellfish, Anadromous/Catadromous Fish Run, Coastal Dune, Coastal Beach, Coastal Bank, Salt Marsh, Bordering Vegetated Wetland, Land Subject to Coastal Storm Flowage, and the 25 foot Riverfront Area.

The lack of information concerning the ultimate size and footprint of the landform also makes it impossible to determine whether the swales proposed at the base of the landform will be adequate. Changing the size of the landform will necessitate significant redesign from the conceptual layout provided in the NOI, with very little available space to engineer such a redesign.

The applicant states that the entire South Parcel portion of the project site, as well as portions of the North Parcel, will be used for dredged materials operations; lay-down areas, staging, stockpiling, de-watering, and filling,⁹ but did not provide specifics concerning quantification of volumes, duration of activities, or impacts to Resource Areas. Dredging operation and construction activities include de-watering, stockpiling, stabilizing, setting-up, curing, treating for odor control, placing, land-forming, and disposal, which will occur throughout the course of construction of both the LNG terminal and the associated pipelines.

⁹ September 3, 2004 Response to Commission Information Request Number 3, at page 2.

While the applicant lists a series of possible activities and methodologies to be employed in construction and dredged materials operations and states "they will be equivalent to other dredged material stabilization projects occurring on the East and West US coasts",¹⁰ it fails to describe what activities will be engaged in, the Resource Areas affected by those activities, or the duration of those activities, and reserves those specific determinations to the dredging and construction contractors prior to commencement of construction.¹¹

F. Questions Regarding Construction Activities.

¹⁰ September 3, 2004 Response to Commission Information Request Number 3, at page 3.

¹¹ As set forth in the Storm Water Management Report (pages 2 – 3), WCE describes the possible activities concerning dredged materials operations as follows:

Weaver's Cove Energy proposes to place approximately 2.1 to 2.5 million cubic yards (this volume, as set forth in supplemental materials provided to the FRCC, has increased, to potentially 3.1 million cubic yards) of engineered fill material onto the LNG terminal site. The dredged material, which will be removed using mechanical dredging methods, will be de-watered, then stabilized with cement or other suitable stabilizing agents (e.g., lime, fly ash) at the site prior to initial placement as engineered fill. ...

The basic construction sequence will consist of the following steps:

Dredge in-situ sediments ...

[t]ransport the barge by tug from the dredge site to the LNG Terminal site and moor the barge adjacent to a new bulkhead...

Discharge the supernatant either directly into the Taunton River from the barge or pump the supernatant to a landward Supernatant Clarification Basin...

Offload the dredged material from the barge and stabilize with cement or other selected stabilizing agents. The specific methodology for the stabilization will include one or a combination of the following methods based on an optimized process realized during construction phase:

- In-barge mixing. Cement is added to the dredged material and mixed in the barge with mechanical equipment. After setting up the soil is removed from the barge and placed on land in a stockpile.
- A mixing mill similar to a cement batch plant. Dredged material is placed in a hopper that feeds the material to the mill where the material is mixed with cement (or other additive) and conveyed to a stockpile area.
- Spread and Till. The dredged material is placed in lifts onsite where the cement is added and mechanically mixed or tilled to create engineered fill.
- Details regarding the sequence of dredging and upland reuse placement will be finalized both during final design and in accordance with the methods selected by the successful construction contractor.

Site Preparation. WCE states that the first activities to take place will be the demolition and removal of existing structures, facilities, utilities, and associated equipment, along with any other activities determined to be necessary by WCE to prepare the site for construction. The Commission has been provided with no information concerning these activities, despite both the actual necessity to perform work in Resource Areas and the potential for impacts to Resource Areas. WCE states that all such information will be provided, at an indeterminate date, by the current site owner:

It is expected that the current owner, FRMT, will provide a "construction ready" property to the Applicant. Accordingly, the FRMT will be conducting certain demolition and site preparation activities before the site is transferred and the project is initiated. These activities will include removal of the remaining tanks and piping (including piping on the existing jetty structure), removal of most of the above-ground electrical service, demolition to grade and removal of existing structures...
(page 28)

The applicant also states that an electrical transfer station will be constructed on the site, but has not provided the Commission with any information concerning that proposed construction either. The applicant states that the Commission has sufficient information to make its determination.

Construction and Operation. The NOI provides only general information concerning construction timing and means, without identifying specific processes, methodologies, or quantifying impacts to Resource Areas. The NOI states that the actual sequencing of land form engineering, grading, stabilization activities, shoreline construction, construction of the LNG storage tank and associated facilities, including roads and processing areas, and pipeline laterals, are dependent upon the dredged materials production and management program, details of which will be left to the dredging and construction contractors (pages 26, 54; page 3 of the Stormwater Management Report).

The NOI contains insufficient information to assess or quantify the impacts to Resource Areas resulting from temporary construction activities and facilities:

The proposed temporary construction facilities consist of all buildings, fencing, roads, parking lots, communications, power, and water that will be required to support the construction activities. A portion of these project components will occur in previously developed and degraded RFA, LSCSF and the 100-foot buffer zone of coastal bank (page 27).

G. Questions Regarding Erosion and Sedimentation Controls.

The applicant has not given the Commission sufficient information concerning erosion and sedimentation controls during construction. While it references the FERC Plan and Procedure, this Plan is a generic guideline that does not address this project. The FERC Plan lists types of controls, identifies the need for environmental inspectors and maintenance of controls, and provides generic guidance applicable to all projects everywhere; i.e. identify all construction work areas, develop grazing deferment plans, etc. There are no enforceable or quantifiable requirements contained in the FERC Plan, and the Plan can be revised at will by the FERC or by WCE with the agreement of the FERC, following receipt of FERC's authorization to construct.

WCE proposes only one project-specific control:

However, as may be necessary, a single row of staked haybales in conjunction with silt fences also will be installed between the boundaries of wetland resource areas and proposed construction activities (pages 43 – 44).

In addition to the significant data gaps and lack of information, some of the information provided is internally inconsistent. The Stormwater Management Report states that the engineered fill for the North Parcel would be the same as utilized on the South Parcel. However, the Dredging Program description states that the fills will be engineered differently, depending upon site requirements. The accompanying drainage calculations fail to include back-up information for the rate of infiltration and the runoff coefficients for the different locations where the fill will be used.

H. Stormwater Management.

With regard to the stormwater components of the NOI, the Commission concurs with the conclusions set forth in the MEPA Certificate:¹²

¹² At the October 13, 2004 public hearing, the Commission asked the applicant how it expected the Commission to develop Orders of Conditions based on the information submitted, when the Executive Office of Environmental Affairs and the MADEP concluded that the information concerning wetland impacts, construction, dredged material management and disposal, sediment contamination, and water quality effects was inadequate to develop or support permitting conclusions. WCE stated that the Commission had been given more information than what had been supplied to the MADEP and to EOE. When asked to identify the information provided to the Commission that had not been provided to EOE or the MADEP, WCE stated that "permit level details" had been provided to the Commission, as well as supplemental responses to the Commission's written questions.

No new information was provided to the Commission. The permitting details and written responses provided to the Commission reiterated and referenced back to the information previously provided to the FERC to develop the DEIS and to the information previously provided to the USACE as part of a joint permit application.

"The project, as currently proposed, is expected to have significant impacts and enormous landscape changes to the project site. Stormwater management, from both a quantity and a quality perspective, will be an issue after project completion but also during project construction, especially during the dredge material processing and disposal. 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 draft stormwater management and sedimentation control plan [sic] for review and comment.

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. The plan should include rigorous provisions monitoring to ensure that water quality standards are met during these processes." (pages 11 - 12)

V. Findings

A. Significance of Wetland Resource Areas to the Interests of the Wetlands Protection Act.

The Commission makes the following findings regarding the significance of the Resource Areas, some of which are located within the DPA, which will be altered by this project to the interests identified in the Wetlands Protection Act.

Riverfront Area. The applicant proposes work that will permanently alter 60,150 s.f. of this Resource Area. The Riverfront Area affected by the proposed project is the 25 foot area defined by the wetlands regulations for Fall River (310 CMR 10.58(2)(a)3.a, except for a portion of the Coastal Dune. As set forth in the regulations, the Commission presumes this Resource Area to be significant to the protection of public and private water supplies, to the protection of groundwater, to provide flood control, to prevent storm damage, to prevent pollution, to protect land containing shellfish, to protect wildlife, and to protect fisheries.

Coastal Dune. The applicant proposes work that will permanently alter 11,000 s.f. of this Resource Area. The applicant states that this Coastal Dune is not significant to the interests of storm damage prevention, flood control and the protection of wildlife habitat for the following reasons. WCE states that the Coastal Dune is located next to the DPA, which means that the Coastal Dune is

not likely to be significant to storm damage prevention or flood control. WCE has failed to provide to the FRCC any information that supports the conclusion that proximity to a DPA authorizes the FRCC to determine that a Resource Area is insignificant to these interests.

The applicant also states that, because the 100-year flood plain extends approximately 250-feet landward of the Coastal Dune, the dune is not significant to these interests. WCE offers no scientific support for this conclusion.

The applicant also states that the dune is small, which limits its ability to provide for important wildlife habitat functions; has limited ability to grow or migrate; and that the entire area has been previously deteriorated as to its ability to add value to coastal processes. WCE did not provide the Commission with any basis to conclude that size, especially in an area that has been admittedly degraded by prior alteration, is a basis upon which to determine the Resource Area insignificant. In fact, in urban areas where many wetland resource areas have been altered or degraded by past practices, those areas that remain are exceptionally valuable to the community. The applicant has not conducted any field studies that would demonstrate the Resource Area is insignificant to important wildlife habitat function.

Consistent with the regulations at 310 CMR 10.28(1); the Commission presumes this Resource Area to be significant to the interests of storm damage prevention, flood control, and the protection of wildlife habitat.

Coastal Beach. The applicant proposes work that will permanently alter 47,635 s.f. of this Resource Area. As set forth in the regulations; 310 CMR 10.27; coastal beaches are significant to storm damage prevention, flood control, protection of wildlife habitat, protection of marine fisheries, and land containing shellfish.

However, because the Coastal Beach is located within the DPA, the FRCC must also look at the regulations at 310 CMR 10.26(1), where it states that in designated port areas, salt marshes, coastal dunes, land under salt ponds, coastal beaches, tidal flats, barrier beaches, rocky intertidal shores and land containing shellfish are not likely to be significant to marine fisheries, storm damage prevention, or flood control.

The applicant states that the Coastal Beach is not significant to storm damage prevention, flood control, protection of marine fisheries, and land containing shellfish because of the relatively small size of the Resource Area, proximity to a CSO discharge point, and bacterial contamination of the mapped shellfish habitat within the Resource Area.

WCE did not provide the Commission with the information necessary to support these conclusions. WCE states that the FRCC has the authority to determine that the size and location of this Resource Area provide sufficient basis to allow permanent alteration of the Coastal Beach.

WCE also contends that the Resource Area is not significant to the protection of wildlife habitat because, "These small coastal beaches do not appear to provide important shelter, migratory, or overwintering areas, or breeding areas for wildlife (page 39)." WCE did not provide the Commission with any studies or field reviews supporting this conclusion.

The Commission finds that the Coastal Beach is significant to storm damage prevention, flood control, protection of wildlife habitat, protection of marine fisheries, and land containing shellfish.

Land Subject to Coastal Storm Flowage (LSCSF). The applicant proposes work that will permanently alter 613,300 s.f. of this Resource Area. The Commission presumes, as set forth in the regulations, that this Resource Area is significant to storm damage prevention and flood control. The work in this Resource Area will also, as the applicant points out, impact other Resource Areas, including the 25 foot Riverfront Area and the Coastal Dune.

Salt Marshes. The applicant proposes work that will permanently alter 1,790 s.f. of these Resource Areas,¹³ which are located within the DPA. As set forth in the regulations; 310 CMR 10.32; salt marshes are significant to protection of marine fisheries, wildlife habitat, and where there are shellfish, to protection of land containing shellfish, and prevention of pollution and are likely to be significant to storm damage prevention and ground water supply.

However, because the Salt Marshes are located within the DPA, the FRCC must also look to the regulations at 310 CMR 10.26(1), where it states that in designated port areas, salt marshes, coastal dunes, land under salt ponds, coastal beaches, tidal flats, barrier beaches, rocky intertidal shores and land containing shellfish are not likely to be significant to marine fisheries, storm damage prevention, or flood control.

¹³ In the NOI, WCE stated that one of the reasons for filling the salt marshes was site security; that a straight line-of-sight was necessary around the shoreline of the terminal. However, on October 12, 2004, WCE submitted a preliminary, conceptual alternative plan for the Commission to consider, that would leave a portion of the salt marshes intact, but also would NOT provide the straight line-of-sight earlier claimed to be necessary. WCE has not provided the Commission with the information; i.e. public safety or regulatory requirements; necessary to conclude that security requirements would require filling of these salt marshes.

WCE states that the Salt Marshes are not significant to protection of marine fisheries, wildlife habitat, protection of land containing shellfish, prevention of pollution, storm damage prevention, or ground water supply. The Commission is authorized to make this determination if the information necessary to support it is provided.

WCE provides the following information to demonstrate that the Salt Marshes are not significant to these interests. First, WCE states that the location within the DPA supported the conclusion: "As a result, salt marshes in this area are not deemed to play a role [emphasis added] in the protection of marine fisheries, storm damage prevention or flood control under the MA Wetlands Protection Act (see 310 CMR 10.26)" (page 1 of Salt Marsh Functional Analysis).¹⁴

Second, WCE submitted a Salt Marsh Functional Analysis to the Commission. The Analysis concluded that the salt marshes provided the following functions and values:

- Groundwater Recharge/Discharge;
- Floodflow Alteration;
- Fish and Shellfish Habitat;
- Sediment/Toxicant Reduction;
- Nutrient Removal;
- Production Export;
- Sediment/Shoreline Stabilization; and
- Some Wildlife Habitat Functions

(pages 5 – 7 of Salt Marsh Functional Analysis).

WCE concluded that, although the Salt Marshes provided these functions and values, their small size made them insignificant.

The Commission requested additional information from WCE concerning the basis for concluding that the size of the Salt Marshes made them insignificant. WCE responded, on September 3, 2004, stating that the small size of the Salt Marshes was critical to their functions and values; rendering them insignificant; but provided no information to support this conclusion.

WCE also claimed that the Salt Marshes, while being found in the Functional Analysis to provide for some important wildlife habitat functions, were not significant, because the regulations addressing wildlife habitat were enacted in

¹⁴ The Commission reviewed 310 CMR 10.26, which states that salt marshes in a DPA are "not likely to be significant..." The regulations do not state that they are deemed to be insignificant. The Commission believes this to mean that it is authorized to make that determination, given the information necessary to support it and WCE has failed to offer any information to support its conclusion that "not likely to" means "deemed to be" under the regulations.

1986 by the MADEP, well after the DPA regulations were promulgated in 1978 (page 17). The FRCC fails to understand why this would remove wildlife habitat as an interest to be considered. According to the regulations; 310 CMR 10.10(5); they apply to all NOIs filed on or after November 1, 1987, as well as to any significant procedures related to those filings.

The Commission finds that the Salt Marshes are significant to protection of marine fisheries, wildlife habitat, protection of land containing shellfish, prevention of pollution, storm damage prevention, or ground water supply.

Land Under the Ocean. The applicant proposes work that will result in the permanent alteration of 8,850 s.f. of Land Under the Ocean and 3,320,000 s.f. as a result of dredging which are located within the DPA. As set forth in the regulations; 310 CMR 10.25(1); Land Under the Ocean is significant to protection of marine fisheries, to protection of land containing shellfish, storm damage prevention, flood control, and protection of wildlife habitat.

However, because the Land Under the Ocean is located within the DPA, the Commission must also look to the regulations at 310 CMR 10.26(1), where it states that, for projects involving dredging, filling, removing, or altering land under the ocean in designated port areas, the area is significant to marine fisheries, and storm damage prevention. In addition, the Massachusetts Division of Marine Fisheries has stated that the Taunton River provides valuable habitat for a diverse assemblage of fish.

The Commission concludes that this Resource Area is significant to these interests.

Land Containing Shellfish. The applicant proposes work that will permanently alter 5,210 s.f. of this Resource Area and 2,274,500 s.f. as the result of dredging. The Massachusetts Division of Marine Fisheries (MDMF) determined the areas that would be impacted are significant shellfish habitat under 310 CMR 10.34. The Commission adopts the determination of significance made by MDMF.

Anadromous/Catadromous Fish Run. The applicant proposes work that will permanently alter 42,125 s.f. of this Resource Areas as the result of proposed terminal construction and 3,320,000 s.f. as the result of dredging. The MDMF determined that the fish run areas that would be impacted are significant to the interests of fisheries and shellfish habitat. The Commission adopts the determination of significance made by MDMF.

B. Sufficiency of Information.

310 CMR 10.03 states: Any person who files a Notice of Intent has the burden of demonstrating that the area is not significant to the protection of any interests identified in MGL c. 131 s. 40, or that the proposed work within a resource area will contribute to the protection of the interests identified in MGL c. 131 s. 40 by complying with the general performance standards established for that area.

310 CMR 10.05(6)(c) states: If the conservation commission finds that the information submitted by the applicant is not sufficient to describe the site, the work or the effect of the work on the interests identified in MGL c. 131 s. 40 it may issue an Order prohibiting the work. The Commission finds that the applicant has failed to provide sufficient information in the following areas:

Regarding Impacts of Dredged Materials Operations within Resource Areas and Buffer Zones:

Comments submitted by Shell state that the proposed dredged materials operations and disposal of dredged materials could:

significantly impact groundwater and surface water, exacerbate contamination already existing at and under the project site by the release of additional contamination into Resource Areas, change the flow of the groundwater and force quantities of LNAPL to further migrate into and under Resource Areas, and precipitate the release of hazardous materials into the Taunton River.

Shell commented that proposed admixtures could leach into Resource Areas and materially alter water quality. Shell also commented that WCE has no authority to shut down, alter, or in any way affect its remediation system, which is removing LNAPL from the groundwater and limiting migration of contamination into the Taunton River. The applicant has failed to provide sufficient information to the Commission to respond to these comments or demonstrate that such impacts will not occur.

Regarding Dredged Materials Placement and Disposal:

The applicant stated that the total volume of dredged material, no matter what the volume may be, will be placed in or will affect Resource Areas. The applicant has failed to provide any information to the Commission concerning engineering necessities or construction-based justifications for staging, managing, treating, placing, and disposing this volume of dredged materials on the site, which will result in significant temporary and permanent alterations of Resource Areas.

The applicant has provided insufficient information to the Commission to demonstrate that the sampling conducted by WCE to characterize levels of

contamination in the dredged materials will be protective of Resource Areas in which these dredged materials will be managed, stockpiled, and permanently disposed.

The applicant has provided insufficient information to the Commission to demonstrate whether, should volumes of the contaminated dredged materials increase up to 3.1 million cubic yards, these additional dredged materials will also be contaminated, the extent and nature of the contamination, the extent to which the contamination could impact Resource Areas and the extent to which additional sedimentation and erosion from these activities would impact Resource Areas.

The applicant has stated that the entire South Parcel as well as portions of the North Parcel will be used for dredged materials operations and disposal but provides no quantification of volumes, duration of activities or impacts on Resource Areas as a result of these activities.

The applicant identified a series of possible activities and methodologies that may be used in dredged materials operations, but fails to describe specifically which activities will be engaged in or the duration and impacts of those activities on Resource Areas.

The applicant has provided no specific information about the sequence of dredging and dredged materials operations in or affecting Resource Areas, including the disposal of any volumes of dredged materials exceeding the proposed 2.1 – 2.5 mcy in or affecting Resource Areas, stating that those determinations would be made during the final design and in accordance with the methods selected by the construction contractor.

The applicant has provided no information concerning demolition and removal of existing structures, facilities, utilities and associated equipment necessary to prepare the site for construction of the proposed terminal, despite the potential impacts to Resource Areas resulting from those activities. The applicant also stated that a transfer station would be constructed on the site but has provided no information concerning that construction.

The applicant has provided no specific information concerning construction timing, order or methodology.

Because the applicant has failed to provide an analysis of possible alternatives to dredging, filling, or otherwise altering Resources Areas with the dredged materials, the Commission cannot determine whether the impacts to Resource Areas have in fact been avoided and minimized, or could be avoided or minimized, to the greatest extent possible. The applicant has also failed to

demonstrate that there is no viable, less environmentally damaging alternative to the proposed open trench excavation for the western lateral pipeline.

Regarding Erosion and Sedimentation Controls:

The Applicant has not provided sufficient information concerning erosion and sedimentation controls during project construction; the only specific control was a proposed single row of staked haybales in conjunction with silt fences. The Commission finds the information inadequate to authorize the proposed work.

C. Compliance with Performance Standards for Resource Areas

Riverfront Area.

The applicant is proposing work that will permanently alter 60,150 s.f. of the Riverfront Area.

The performance standards are those standards applicable to redevelopment within previously developed riverfront area; 310 CMR 10.58(5). The burden falls upon WCE to demonstrate that the proposed work shall result in an improvement over existing conditions of the capacity of the Riverfront Area to protect the interests identified in M.G.L. c. 131 § 40.

WCE has not provided the Commission with sufficient information to demonstrate that the proposed work will result in an improvement over existing conditions. WCE has, instead, offered an analysis about why the performance standards for the 25-foot Riverfront Area do not apply to this project. WCE states that the project should be treated as a limited project, as defined at 310 CMR 10.53(3)(I). This section of the regulations applies to the construction, reconstruction, operation or maintenance of water-dependent uses. The construction within this Resource Area of a perimeter road is not a water-dependent use. The regulations define water-dependent uses to include roadways, but roadways that connect to industrial uses that are generally perpendicular to the waterway, not to private roads.

WCE also states that the work in the Riverfront Area subject to Chapter 91 jurisdiction is exempt from the applicable performance standards because WCE has filed applications for a Chapter 91 license and a Chapter 91 permit with the MADEP. The wetland regulations state, at 310 CMR 10.58(6)(i), that structures and activities subject to Chapter 91 are exempt provided that the structure or activity subject to Chapter 91 jurisdiction obtains a license, a permit, or other authorization under 310 CMR 9.00. Filing an application does not mean that a license, permit, or waterways authorization has been or will be obtained. Without such an authorization from the MADEP, this standard does not apply and

will not apply unless and until WCE obtains authorization from the MADEP under Chapter 91.

Coastal Dune.

The applicant proposes work that will permanently alter 11,000 s.f. of Coastal Dune. When a Coastal Dune is determined to be significant to storm damage prevention, flood control, or the protection of wildlife habitat, 310 CMR 10.28(3) through (6) shall apply: (3) Any alteration of, or structure on, a coastal dune or within 100 feet of a coastal dune shall not have an adverse effect on the coastal dune by:

- (a) affecting the ability of waves to remove sand from the dune;
- (b) disturbing the vegetative cover so as to destabilize the dune;
- (c) causing any modification of the dune form that would increase the potential for storm or flood damage;
- (d) interfering with the landward or lateral movement of the dune;
- (e) causing removal of sand from the dune artificially; or
- (f) interfering with mapped or otherwise identified bird nesting habitat.

The applicant states that replacing this Coastal Dune with an engineered structure better serves the interests protected by the Act. WCE has failed to provide the Commission with information that would support the conclusion that the Commission may authorize permanent alteration of a Coastal Dune that has NOT been shown to be insignificant to the interests of the Act, because an engineered structure has been proposed to replace this Resource Area.

The Commission cannot authorize the proposed work in or affecting this Resource Area.

Coastal Beach.

The applicant proposes work that will permanently alter 47,635 s.f. of Coastal Beach. According to the regulations, when a Coastal Beach is determined to be significant to these interests, a project on a coastal beach shall: (1) not have an adverse effect by increasing erosion, decreasing the volume or changing the form of any such coastal beach, and (2) shall not have an adverse effect on marine fisheries and wildlife habitat caused by alterations in water circulation, alterations in the distribution of sediment grain size, and changes in water quality.

Because the proposed work will decrease the volume and change the form of the Resource Area, the Commission cannot authorize proposed work in or affecting this Resource Area.

Land Subject to Coastal Storm Flowage (LSCSF).

The applicant proposes the following work, which will permanently alter 613,300 s.f. of LSCSF and buffer zone: construction of a portion of the LNG storage tank, construction staging, dredged materials operations, filling and disposal.

WCE states that work in this Resource Area will not impair the ability of these wetlands resources to provide those interests presumed to be significant under the Act because construction activities, including an engineered landform structure, will provide a greater degree of flood control and storm damage prevention than what is currently provided. WCE has not provided the Commission with the information necessary to support this conclusion.

The Commission has no authority under the regulations to determine that the interests of the Act will be protected by permanently altering one Resource Area and subsequently replacing it with an engineered structure.

The Commission cannot authorize the work proposed in or affecting this Resource Area.

Salt Marshes.

The applicant proposes work that will permanently alter 1790 s.f. of Salt Marshes. The applicant submitted a proposed mitigation and replacement plan addressing the permanent alterations to the Salt Marshes. However, the plan, other than identifying a potential replacement ratio, provided insufficient information to demonstrate that it would either effectively replicate the altered Resource Areas, or would be monitored and maintained to continue to provide for the interests to be protected.

Based upon the information provided to the Commission by the applicant, the Commission is required by the regulations to apply the performance standard set forth in 310 CMR 10.32(3), which states that:

a proposed project in a salt marsh shall not destroy any portion of the salt marsh and shall not have an adverse effect on the productivity of the salt marsh.

The Commission cannot authorize work proposed in or affecting these Resource Areas.

Land Under the Ocean.

The applicant proposes work that will result in the permanent alteration of 8,850 s.f. of Land Under the Ocean as a result of proposed terminal construction and 3,320,000 s.f. as a result of dredging. Based on the MDMF comments and determinations of significance, which have not been rebutted by WCE, the Commission finds that the alteration resulting from dredging cannot be considered a temporary alteration.

The Commission is required by the regulations to apply the performance standard for work in this Resource Area set forth in 310 CMR 10.26(3) and (4), which states that:

(3) Projects shall be designed and constructed, using best practical measures, so as to minimize adverse effect on marine fisheries caused by changes in:

- (a) water circulation;
- (b) water quality, including but not limited to, other than natural fluctuations in the level of dissolved oxygen, temperature or turbidity, or the addition of pollutants.

(4) Projects shall be designed and constructed, using the best practical measures, so as to minimize, adverse effects on storm damage prevention or flood control caused by changes in such land's ability to provide support for adjacent coastal banks or adjacent coastal engineering structures.

WCE states that the project has been designed using best practical measures and is not anticipated to have any measurable impact on water circulation patterns, temperatures or turbidity in the Taunton River nor will be it a source of pollutants.

The MDMF disagrees with the applicant and the MDMF comments contradict these conclusions as to water quality impacts and sources of pollutants. The comments of NOAA Fisheries, EPA, and the MADEP similarly either directly disagree or question the limited information submitted by WCE, including the modeling efforts, water quality results, and construction methodology, particularly as to the dredging program.

When asked by the Commission to respond to these agency comments, WCE restated its conclusions, but provided no additional information to either support its own conclusions or rebut the questions raised and the determinations made by these agencies.

The Commission cannot authorize the work proposed in or affecting this Resource Area.

Land Containing Shellfish.

The applicant proposes work that will result in permanent alteration of 5,210 s.f. of Land Containing Shellfish as a result of proposed terminal construction and 2,274,000 s.f. as a result of dredging. The MDMF comments conclude that the proposed work will result in substantial, negative, and permanent impacts and could result in permanent destruction of marine fisheries resources and habitat. WCE did not provide the Commission with the information necessary to either support its own conclusions or to rebut the DMF conclusions.¹⁵

The Commission cannot authorize the work proposed in or affecting this Resource Area.

Anadromous/Catadromous Fish Run.

The applicant proposes work that will permanently alter 42,125 s.f. of Anadromous/Catadromous Fish Run as a result of proposed terminal construction and 3,320,000 s.f. as a result of dredging. The MDMF has determined that the proposed work in this Resource Area will impose significant, negative impacts and potentially result in permanent loss of habitat.

The applicant has failed to demonstrate to the Commission that the MDMF has changed that determination, nor has WCE submitted any information to rebut this determination or to demonstrate that proposed work in this Resource Area has been determined to be acceptable by the MDMF under c. 130 § 19, which is required by the regulations; 310 CMR 10.35.

The Commission cannot authorize work proposed in or affecting this Resource Area.

VI. Decision of the Fall River Conservation Commission

On October 27, 2004, a motion was made by Commissioner Patrick Langlois and seconded by Commissioner Donna Valente to deny the Order of Conditions requested by Weaver's Cove Energy LLC. The motion passed by a unanimous vote of three Commissioners: Commissioner Langlois, Commissioner Valente, and Commission Chairwoman Charlotte Assad.

¹⁵ On October 12, 2004, the applicant submitted an alternative site plan; Sheet C11 Alt; which proposed avoiding work in all significant shellfish habitat. When asked at the October 13, 2004 hearing if the alternative site plan was feasible, WCE representatives stated that they did not know; that the plan was preliminary and conceptual and needed further work. The alternative site plan was not included as part of the record plans, nor was it prepared or certified by a registered land surveyor or professional engineer.

Appendix A

WRITTEN SUBMISSIONS AND OTHER INFORMATION CONSIDERED BY CONSERVATION COMMISSION

Notice of Intent dated June 29, 2004 submitted by Weaver's Cove Energy, LLC (WCE); DEP Number SE 24-444 and accompanying plans

Notice of Intent dated June 29, 2004 submitted by Mill River Pipeline, LLC (MRP); DEP Number SE 24-445 and accompanying plans

Joint Permit Application for Section 10 and Section 404 Permits dated March 18, 2004 submitted by WCE and MRP to the United States Army Corps of Engineers, New England District

Applications for Section 401 Water Quality Certifications dated April 27, 2004, May 5, 2004, and May 7, 2004 submitted by WCE and MRP to the Massachusetts Department of Environmental Protection

Application for Chapter 91 Waterways Permit dated April 27, 2004 submitted by WCE and MRP to the Massachusetts Department of Environmental Protection

Application for Chapter 91 Waterways License dated May 26, 2004 submitted by WCE and MRP to the Massachusetts Department of Environmental Protection

Draft Environmental Impact Statement/Environmental Impact Report dated July 30, 2004; FERC Docket Number CP04-36-000/CP04-41-000; EOEA Number 13061

WCE and MRP Responses to Conservation Commission Questions dated September 3, 2004, September 22, 2004, October 1, 2004, and October 4, 2004

Certificate of the Secretary of Environmental Affairs on the Draft Environmental Impact Report dated October 1, 2004; EOEA Number 13061

Stamped NOI Plan Set dated October 7, 2004

WCE Letter to Commission titled Conceptual Alternative Shoreline Configuration, October 12, 2004; Plan Sheet C11 ALT; Preliminary Site Plan dated October 2004.

Record drawings for terminal and pipeline dated October 13, 2004

Public Comments

Massachusetts Division of Marine Fisheries Comments to Fall River Conservation Commission dated July 24, 2004

Massachusetts Division of Marine Fisheries Comments to Federal Energy Regulatory Commission/Massachusetts Executive Office of Environmental Affairs dated September 17, 2004

Shell Oil Products US Comments to Fall River Conservation Commission dated July 26, 2004

Massachusetts Office of Coastal Zone Management Comments to Federal Energy Regulatory Commission/Massachusetts Executive Office of Environmental Affairs dated September 20, 2004

Massachusetts Department of Environmental Protection Comments to Federal Energy Regulatory Commission/Massachusetts Executive Office of Environmental Affairs dated September 20, 2004

Massachusetts Riverways Program Comments to Federal Energy Regulatory Commission/Massachusetts Executive Office of Environmental Affairs dated September 17, 2004

NOAA Fisheries Comments to Federal Energy Regulatory Commission dated September 17, 2004

United States Environmental Protection Agency – Region One’s Comments to Federal Energy Regulatory Commission dated September 17, 2004

United States Army Corps of Engineers New England District’s Comments to Federal Energy Regulatory Commission dated September 17, 2004

Guidance Documents

Massachusetts Department of Environmental Protection’s Coastal Bank Delineation Policy 92-1

Massachusetts Department of Environmental Protection’s November 18, 1996 Wetlands Protection Program Policy

Massachusetts Department of Environmental Protection/Massachusetts Office of Coastal Zone Management’s March 1997 Stormwater Management Handbook

Massachusetts Department of Environmental Protection's May 2003 Erosion and Sedimentation Control Guidelines for Urban and Suburban Areas

United States Army Corps of Engineers, New England District's Highway Methodology Workbook Supplement: Wetland Functions and Values

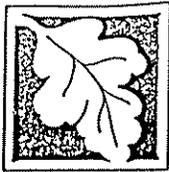
Meetings and Site Walks

Information provided during site walks conducted on July 26, 2004, August 4, 2004

Meeting with WCE and MRP on September 10, 2004

Public Hearings

Information provided during public hearings conducted on July 28, 2004, September 22, 2004, and October 13, 2004



E. Issuance (cont.)

Notary Acknowledgement

Commonwealth of Massachusetts County of Bristol

On this 2nd Day of November 2004 Year

Before me, the undersigned Notary Public, personally appeared

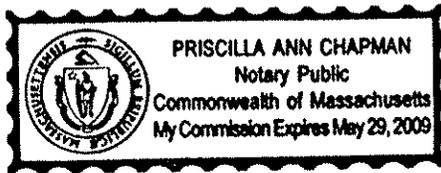
Charlotte Assad
 Name of Document Signer

proved to me through satisfactory evidence of identification, which was/were

notary's personal knowledge
 Description of evidence of identification

to be the person whose name is signed on the preceding or attached document, and acknowledged me that he/she signed it voluntarily for its stated purpose.

As member of Fall River City/Town Conservation Commission



Priscilla Ann Chapman
 Signature of Notary Public

Priscilla Ann Chapman
 Printed Name of Notary Public

Place notary seal and/or any stamp above

May 29, 2009
 My Commission Expires (Date)

This Order is issued to the applicant as follows:

by hand delivery on

by certified mail, return receipt requested, or

11-3-04
 Date

 Date

F. Appeals

The applicant, the owner, any person aggrieved by this Order, any owner of land abutting the land subject to this Order, or any ten residents of the city or town in which such land is located, are hereby notified of their right to request the appropriate DEP Regional Office to issue a Superseding Order of Conditions. The request must be made by certified mail or hand delivery to the Department, with the appropriate filing fee and a completed Appendix E: Request of Departmental Action Fee Transmittal Form, as provided in 310 CMR 10.03(7) within ten business days from the date of issuance of this Order. A copy of the request shall at the same time be sent by certified mail or hand delivery to the Conservation Commission and to the applicant, if he/she is not the appellant.

The request shall state clearly and concisely the objections to the Order which is being appealed and how the Order does not contribute to the protection of the interests identified in the Massachusetts Wetlands Protection Act, (M.G.L. c. 131, § 40) and is inconsistent with the wetlands regulations (310 CMR 10.00). To the extent that the Order is based on a municipal ordinance or bylaw, and not on the Massachusetts Wetlands Protection Act or regulations, the Department has no appellate jurisdiction.



WPA Form 5 – Order of Conditions

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

G. Recording Information

This Order of Conditions must be recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land subject to the Order. In the case of registered land, this Order shall also be noted on the Land Court Certificate of Title of the owner of the land subject to the Order of Conditions. The recording information on Page 7 of this form shall be submitted to the Conservation Commission listed below.

Conservation Commission

Detach on dotted line, have stamped by the Registry of Deeds and submit to the Conservation Commission

To:

Conservation Commission

Please be advised that the Order of Conditions for the Project at:

Project Location

DEP File Number

Has been recorded at the Registry of Deeds of:

County

Book

Page

for:

Property Owner

and has been noted in the chain of title of the affected property in:

Book

Page

In accordance with the Order of Conditions issued on:

Date

If recorded land, the instrument number identifying this transaction is:

Instrument Number

If registered land, the document number identifying this transaction is:

Document Number

Signature of Applicant