



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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*Patrick C. Lynch, Attorney General*

February 21, 2006

Lt. Colonel Andrew Nelson  
Deputy Commander and Deputy District Engineer  
United States Army Corps of Engineers  
New England District  
696 Virginia Road  
Concord, MA 01742-2751

Re: **Weaver's Cove Energy, LLC;**  
**ACOE File No. NAE-2004-2355/**  
**Application for Dredging Permit**

Dear Lt. Colonel Nelson:

I am writing to respectfully request that the ACOE reopen the public comment period concerning the above-referenced application for permits under Section 10 of the Rivers and Harbors Act, Section 103 of the Marine Protection, Research and Sanctuaries Act and Section 404 of the Clean Water Act in light of the recent disclosure of drastic changes that have been made to the project. As you are aware, these changes were not described in either the ACOE Public Notice, or at the hearings the ACOE conducted purportedly for the purpose of receiving comments from the citizens who will be affected by the project.

The ACOE's original Public Notice and its Revised Public Notice and Announcement of a Public Hearing regarding the application referred the general public to the Final Environmental Impact Statement for the project prepared by the Federal Energy Regulatory Commission and indicated that it would "serve as the baseline document for the Corps in performing its evaluation of the public interest factors described below." The FEIS to which the public was directed for an evaluation of expected environmental impacts from the project examined a project involving 100 to 120 transits per year through Narragansett Bay and Mt Hope Bay (based on 50 to 70 deliveries annually).

Subsequent to the ACOE's closure of the public comment period on the project the applicant unveiled plans (which obviously existed prior to and throughout the entire public comment process) in which the actual number of planned transits was at least triple the number described in the FEIS prepared by FERC and during the ACOE Public Hearing. The plans also involve vastly different types of vessels proposing to use the federal channel than those disclosed to the public to date.

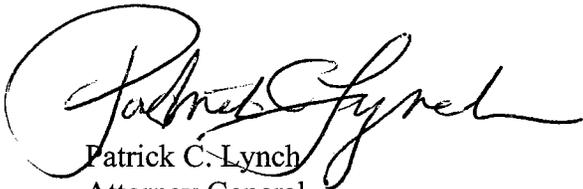
Lt. Colonel Andrew Nelson  
Deputy Commander and Deputy District Engineer  
United States Army Corps of Engineers  
February 21, 2006  
Page Two

The applicant's deliberate concealment of the actual number and types of vessels it proposes to use constitutes an obstruction of the regulatory process which, in the absence of corrective action by the ACOE, will deprive the general public of their statutory, regulatory, constitutional and inherent rights as citizens of the United States to have adequate and sufficient notice of the projects which require the issuance of ACOE permits. I trust you will concur that the ACOE's credibility is at stake, and that in this case it cannot allow the public to be fooled by a Public Notice containing what has now turned out to be misinformation. Indeed, it would be truly regrettable if the applicant were to be allowed to reduce the ACOE permitting process into a game of "hide the ball" by changing the project in such a substantial way after all opportunity for the affected citizenry to be heard has ended.

Now is the time to rectify an egregious abuse of the ACOE permitting process. I strongly urge you to abide by the representations you made to the citizens of Rhode Island during the Public Hearing to the effect that "All factors affecting the public will be considered in our evaluation." Tripling the number of bridge closures, security costs to state and local governments, traffic delays, interruptions of recreational and commercial uses of the federal channel are surely such factors affecting the public, yet only a reopening of the comment period would allow them to be described for you by those who will experience them.

Thank you for your consideration of this request.

Very truly yours,



Patrick C. Lynch  
Attorney General

cc: Honorable Jack Reed  
Honorable Lincoln Chafee  
Honorable Patrick Kennedy  
Honorable James Langevin



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I  
ONE CONGRESS STREET SUITE 1100  
BOSTON, MASSACHUSETTS 02114-2023

March 2, 2006

Christine Godfrey, Director  
Regulatory Division  
U.S. Army Corps of Engineers  
New England District  
Regulatory Division  
696 Virginia Road  
Concord, MA 01742-2751

RECEIVED  
MAR - 6 2006  
REGULATORY DIVISION

Re: Weaver's Cove Energy, LLC and Mill River Pipeline, LLC  
Public Notice Number 2004-2355 for Section 10/404/103 Permits

Dear Ms. Godfrey:

Region I of the U.S. Environmental Protection Agency (the "Region" or "EPA") has reviewed the U.S. Army Corps of Engineers' ("Corps") revised Public Notice for the Weaver's Cove Energy, LLC and Mill River Pipeline, LLC project, which requires Corps permits under Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act, and Section 103 of the Marine Protection, Research, and Sanctuaries Act. This proposed project would involve the construction of a liquified natural gas ("LNG") import terminal on a 73-acre site adjacent to the Taunton River in Fall River, Massachusetts. Aquatic impacts from the proposed project would result from the dredging of approximately 2.5 million cubic yards of material from within a footprint of 200 acres; and from the permanent filling of approximately 0.6 acres of intertidal and sub-tidal habitat associated with the replacement of an existing pier with a pile-supported jetty and mooring structures, and the installation of sheet pilings to stabilize and straighten approximately 2,650 feet of shoreline. In addition, the pipeline installation would temporarily alter approximately 14 intermittent and perennial streams, 3.0 acres of inland vegetated wetlands, 0.52 acres of intertidal habitat and 0.5 acres of subtidal habitat; and it would permanently convert approximately 0.03 acres of forested wetlands to scrub-shrub or emergent wetlands, and approximately 0.4 acres of scrub-shrub wetlands to emergent wetlands.

New England's air quality has benefitted greatly from the increased use of natural gas for electricity generation. However, in recent years, the demand for natural gas for electric

generation and heating has begun to exceed the capacity of the regional infrastructure to reliably meet that demand. As a result, the natural gas supply and distribution system must be enhanced to meet growing demand for this cleaner fuel and to maintain the environmental benefits gained over the last ten years, and EPA recognizes the need to bring additional natural gas supplies into the New England Region. A well-sited LNG facility that provides a new supply of natural gas to the region in an environmentally responsible manner can make a substantial contribution to maintaining our recent air quality gains and help New England utility companies continue to provide reliable heat and electricity to their customers. At the same time, it is important that such facilities satisfy all applicable environmental requirements. The Region has serious concerns about the environmental ramifications of the Weaver's Cove project as currently proposed, and the Corps will need to carefully evaluate these concerns in the context of its permitting decisions.

EPA recognizes and appreciates that several changes have been made to reduce the environmental impact of this project. The applicant has opted for ocean disposal of dredged material over upland disposal, which in this instance is environmentally preferable because it will reduce the duration of the dredging as compared to the original proposal. In addition, this shift in disposal options is accompanied by the adoption of some of the Region's recommended time-of-year construction restrictions to protect fishery resources in Mount Hope Bay and the Taunton River. The applicant has agreed to utilize a closed dredge bucket for part of the project and to limit scow overflows of dredged material to minimal quantities. Implementing these measures would reduce, though not eliminate, water quality impacts resulting from the dredging.

Notwithstanding these positive project changes, we recommend that additional improvements and project modifications are appropriate for consistency with the regulatory requirements of the permits sought by the applicant. We are interested in working with the applicant, the Corps, and relevant federal and state agencies to identify additional project modifications and compensatory mitigation.

Our comments on the application and public notice are as follows.

### **Environmental Setting**

The proposed LNG facility is located on the Taunton River, part of the greater Mount Hope Bay ecosystem. Due to its expansive shallow clean waters, freshwater input, and vegetated shorelines, Mount Hope Bay historically has been one of the more productive estuaries in the northeast. A wide range of fish species, including commercially important ones such as winter flounder, summer flounder and tautog, utilize Mount Hope Bay and the lower Taunton River as spawning and nursery habitat. Mount Hope Bay and the Taunton River estuary are part of the larger Narragansett Bay system, which has been designated an "estuary of national significance"

under EPA's National Estuary Program. The Taunton River is currently under a pending designation as a "Wild and Scenic River" by the U.S. Fish and Wildlife Service.

Unfortunately, due to a number of factors, fish stocks have declined (many species by greater than 80% compared to their historic levels) to extremely low abundances, dissolved oxygen (DO) levels routinely violate state water quality standards, nuisance species have proliferated, and mass mortality events of fish and shellfish have become routine (US EPA. 2002). The most recent data, collected in 2005, show that fish abundances remain at a small fraction of historic levels (Mike Scherer, Marine Research Inc., personal communication, 1/19/06).

The Taunton River currently supports Massachusetts' largest anadromous fish runs for a number of species (American shad, blueback herring, alewife and rainbow smelt), though numbers of returning fish are also dramatically reduced compared to historic levels. Anadromous fish from the Taunton River are used by state biologists in attempts to augment or restore anadromous fish runs in other rivers around the State. Thus, the significance of these resources extends well beyond just the Taunton River and Mount Hope Bay.

In addition to the Taunton River, the project would affect 3 perennial and 11 intermittent streams, and several wetlands located along the proposed northern and western pipeline routes. The streams range in width from 3 feet to 12 feet and are tributaries of the Taunton River. Thirteen wetland areas would be directly affected by the proposed pipelines. These wetland areas consist mostly of freshwater systems – shrub, emergent, and forested – but also include an area of estuarine (intertidal) wetlands associated with the western pipeline route that would cross the Taunton River. These streams and wetlands provide ecological functions such as wildlife habitat, water quality maintenance, and fish and shellfish habitat.

#### **Nature and Extent of Adverse Aquatic Impacts**

As noted above, the jetty and mooring construction would fill 0.6 acres of intertidal habitat and shallow sub-tidal habitat. The pipeline placement would temporarily alter three acres of inland vegetated wetlands and one acre of subtidal and intertidal habitat, and permanently alter 0.43 acres of forest and scrub-shrub wetlands. The dredging would cause the temporary loss of approximately 200 acres of soft bottom benthic habitat and associated organisms (from deepening the federal navigation channel and turning basin) and the permanent loss of 11 acres of winter flounder spawning habitat (from expanding the turning basin into currently undisturbed areas). Dredging would also disrupt normal anadromous fish migration into and out of the Taunton River and normal spawning by estuarine species.

#### *Impacts from the Jetty, Mooring, and Pipeline Construction*

Construction of the jetty and mooring would result in filling approximately 0.6 acres of intertidal and shallow sub-tidal habitat. The intertidal areas that would be affected are primarily mudflat,

while the sub-tidal areas that would be affected are comparable to the areas that would be affected by the proposed dredging. Both the intertidal and sub-tidal areas that would be lost provide finfish and shellfish habitat, and contribute to the overall value of the Taunton River/Mount Hope Bay estuary system. See below for a more complete description of these aquatic resources.

The construction of the northern and western pipelines would result in temporary alteration of 14 streams, approximately 3 acres of freshwater wetlands, and 1 acre of intertidal and sub-tidal habitat. Roughly 0.4 acres of forested and shrub wetlands would be permanently affected by conversion to shrub and/or emergent wetlands. In the permit application and supporting materials, the applicant asserts that these adverse impacts would not be significant because they are spread out along the pipeline routes, individually small in extent, and temporary. Also, the applicant intends to employ several techniques to minimize the risk of adverse impacts during construction and to speed natural recovery of these areas. We generally agree and recommend that the minimization techniques be incorporated into a Section 404 permit.

#### *Impacts from Dredging and Facility Operation*

According to the applicant, to accommodate LNG tankers at this site, the federal navigation channel must be deepened from 35 feet to 37-38 feet; north of the Braga Bridge, the dimensions of the federal channel would need to be enlarged; and the federal turning basin must be deepened from 35 feet to 41 feet and enlarged by approximately 19 acres on the west side of the Taunton River adjacent to the terminal site. This enlargement would involve new dredging to deepen the area from its existing 20 foot depth to a depth of 41 feet.

EPA has evaluated the impacts predicted from the dredging and operational components of this proposal within the context of the current condition of Mount Hope Bay and its aquatic resources. The proposed dredging would result in the temporary loss of approximately 200 acres of the benthic infaunal community, and the permanent loss of 11 acres of winter flounder spawning habitat in the lower Taunton River. Of these impacts, EPA views the loss of 11 acres of winter flounder spawning habitat as the most serious. Historically, winter flounder was one of the more abundant fish in Mount Hope Bay, but its prevalence since the mid 1980s has been reduced by over 85 percent (US EPA, 2002). The permanent loss of winter flounder spawning habitat may seem small in spatial extent when compared to the entire area of Mount Hope Bay, but not every acre of Mount Hope Bay has equivalent spawning habitat value. It has been well established that the lower portions of rivers are the preferred spawning habitat for winter flounder (Collette and Klein-MacPhee, 2002), thus the loss of 11 acres needs to be considered in the context of the lower Taunton River, not Mount Hope Bay in its entirety.

Additional impacts from the proposed dredging have the potential to disrupt normal anadromous fish migration and subsequent spawning activity in the Taunton River. During the EIS review process, EPA expressed concern about the potential impact of elevated total suspended solids,

light and noise from the dredging on normal anadromous fish migratory patterns. The temporary degradation of water quality and the temporary elevation of noise and light levels associated with the dredging have the potential to disrupt normal anadromous fish migration over the three-year construction schedule. Loss of one or multiple year classes of anadromous fish, resulting from poor spawning success or high juvenile mortality, would set back anadromous fish levels potentially for many years after the construction has been completed. In addition, winter flounder egg mortality would result from the dredging by the resuspension and subsequent deposition of sediments.

### **State Water Quality Standards**

We are concerned that, as proposed, the project may contribute to violations of state water quality standards, including existing and designated uses and criteria to protect those uses. The Taunton River and Mount Hope Bay are currently listed by the Commonwealth of Massachusetts on its Clean Water Act Section 303(d) list of impaired waters. Specifically, both water bodies are listed for non-attainment of dissolved oxygen (DO) criteria due to problems with organic enrichment and low DO concentrations. Recent monitoring data collected by Brayton Point Station documented that DO levels in Mount Hope Bay and the lower Taunton River fall well below state water quality standards (Dominion, 2005). Generally, the violations of the DO criteria occur when water temperatures are at their warmest in August and September. Dredging results in the resuspension of organic material and nutrients into the water column. The addition of nutrients into the water column can stimulate algal blooms. The organic material resuspended from the sediments and produced by these algal blooms decomposes, using oxygen from the water column in the process.

Corps permits are subject to water quality certification under CWA Section 401. The State is responsible for making this determination regarding the effects of the project on its water quality standards, including existing and designated uses.

### **Mitigation**

As proposed, EPA is concerned that the project may not incorporate all practicable and appropriate methods to minimize and compensate for the range of adverse aquatic impacts described above.

#### *Minimization Methods*

As discussed above, potential impacts of greatest concern from this project are associated with the proposed dredging. The Corps' Public Notice identifies several measures that would reduce some of the dredging impacts. First, the Public Notice identifies a time-of-year (TOY) restriction that would prohibit dredging from January 15 to July 31. This time frame was selected to protect winter flounder spawning (January 15 to May 31) and upstream migration of anadromous fish (March 1 to July 31). We agree that a ban on dredging from January 15 to July 31 is essential.

We continue to recommend, as we did in our comments on the EIS, that while dredge sequencing could allow for some work to occur in Mount Hope Bay proper after July 31, the TOY restriction for the lower Taunton River should be extended to October 31 to protect the juvenile anadromous fish from dredging related impacts during their outward migration. This window would also protect the young-of-the-year life stage of many demersal species, such as winter flounder, windowpane, tautog and hogchoker, which are present in the lower Taunton at this time of year. The applicant indicated in its October 15, 2004 response to the FERC staff's Request For Environmental Data (at page 7), that such a TOY restriction could be managed if 100% offshore disposal of dredged material proves feasible. According to the Public Notice, biological testing has shown that 97.6% of the material would be suitable for offshore disposal. We understand that in addition to the fisheries' considerations we have raised, the Corps will also be evaluating the practicability of extending the TOY restriction, including consideration of such factors as the technical feasibility of limiting the dredging and costs. If the applicant presents information that demonstrates either that October 31 could not be a manageable date, or that dredging during the July-October time frame would not seriously affect the juvenile anadromous fish during their outward migration, the Corps could determine a date between July 31 and October 31 that would be appropriate.

The Public Notice indicates that the majority of the dredged material will be placed at an approved ocean disposal site. The applicant had originally proposed upland disposal of the dredged material, which is a disposal option that EPA would normally find preferable to ocean disposal. However, in this particular situation, the processing time associated with dewatering the dredged material would substantially extend the duration of the dredging and its associated adverse effects. Allowing ocean disposal of material that passes the requisite chemical and biological testing will significantly minimize the duration of the dredging. Thus, EPA concurs with the selection of ocean disposal for material that has been tested and found suitable for such disposal.

The Public Notice proposes the use of a closed or "environmental" bucket on the dredges for the fine-grained surface sediments and conducting dredging without any significant scow overflow. EPA concurs with both of these measures as ways to minimize impacts from dredging.

#### *Compensatory Mitigation*

The applicant has proposed no specific compensatory mitigation plan for the impacts from the construction of the pipelines. To the best of our knowledge, the applicant does intend to create and restore a small area of salt marsh as well as a small area of freshwater wetland. Both these efforts would be located at or immediately adjacent to the LNG facility. It is unclear which expected adverse impacts these two creation efforts would address, and we suggest that the applicant clarify its intentions.

To compensate for dredging related impacts (and impacts from the jetty and mooring construction), the applicant proposes two separate mitigation efforts, one for shellfish and one for winter flounder. The applicant proposes to provide financial assistance to the Massachusetts

Division of Marine Fisheries for shellfish mitigation and to EPA for winter flounder mitigation. The winter flounder proposal consists of using funds to further reduce combined sewer overflows (CSO) in Fall River. EPA would like to review more information for the first proposal, but we believe that the second would be neither appropriate nor practicable mitigation.

With respect to the shellfish mitigation, the applicant proposes to fund the Commonwealth of Massachusetts to conduct a shellfish relay program and various reseeded efforts. Without substantially more details, the Region cannot determine if this effort would be sufficient to offset the potential impacts to shellfish resources.

We have several concerns about the proposed winter flounder mitigation. First, EPA cannot accept funds from an entity seeking a permit. Second, we do not believe that additional CSO control above and beyond that which the City is already legally required to provide would adequately offset the permanent loss of 11 acres of winter flounder spawning habitat. Winter flounder utilize very specific habitat areas, the lower or estuarine portions of rivers, for spawning. Loss of this habitat would result in reduced spawning opportunities and egg production. CSO control will provide general water quality improvements in Mount Hope Bay, but these general water quality improvements will come primarily from a reduction in fecal coliform bacteria and will have no tangible improvement for winter flounder spawning habitat or egg production.

During interagency meetings with the project applicant, it became apparent that a location for an in-kind, on-site replication of winter flounder spawning habitat was not available. Therefore, EPA encouraged the applicant to look for on-site opportunities to offset winter flounder larval mortality, because replicating spawning habitat was not practicable. In particular, we suggested compensating for the loss of egg production resulting from the loss of spawning habitat by increasing the survival of a later life stage. EPA is willing to assist the applicant and the other state and federal resource agencies to explore ways to provide appropriate compensatory mitigation for the loss of winter flounder spawning habitat.

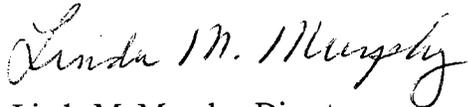
Currently, the applicant has not proposed any compensatory mitigation for anadromous fish impacts. As explained above, we recommend that such impacts be avoided by extending the TOY restriction. For any unavoidable impacts that remain, the applicant should develop appropriate and practicable compensatory mitigation. Again, we are ready to assist the applicant with this effort.

### **Summary**

We appreciate the opportunity to provide the Corps with our comments on the proposed project. Our letter raises a number of important concerns regarding the nature and extent of potential adverse aquatic impacts and makes recommendations for how these issues might be addressed. EPA stands ready to work with the applicant and all of the relevant state and federal resource agencies to incorporate additional measures to minimize the environmental impact of the proposal and to develop alternative compensation plans for remaining unavoidable adverse impacts. We

believe that sufficient changes could be made so that a modified project could receive the required permits. If you have any questions about these comments or EPA's concerns, please contact me or have your staff call Phil Colarusso at (617) 918-1506.

Sincerely,



Linda M. Murphy, Director  
Office of Ecosystem Protection

cc: USNMFS, Gloucester, MA  
USFWS, Concord, NH  
MADMF, New Bedford, MA  
MADEP, Boston, MA  
MACZM, Boston, MA

## Citations

**Collate, B.B. and G. Klein-MacPhee. 2002.** Fishes of the Gulf of Maine. Smithsonian Institution Press, Washington, p. 748.

**Dominion. 2005.** Dominion Brayton Point Station, 2004 Annual Monitoring Report, Sept. 1, 2005.

~~**US EPA. 2002.**~~ Clean Water Act NPDES Permitting Determinations for Thermal Discharge and Cooling from Brayton Point Station in Somerset, MA. NPDES Permit No. 0003654. EPA-New England. MA-0003654 Determinations Document. July 22, 2002



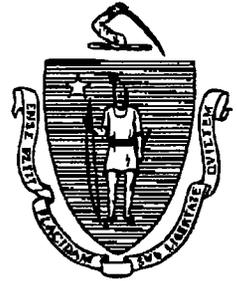
Paul J. Diodati  
Director

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**Division of Marine Fisheries**

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February 27, 2006

Ted Lento  
Regulatory Division  
US Army Corps of Engineers  
696 Virginia Road  
Concord, MA 01742-2751

Re: NAE -2204-2355, Weaver's Cove Energy LNG Import Terminal Project

Dear Mr. Lento:

The Division of Marine Fisheries (*Marine Fisheries*) has reviewed the Public Notice and supplemental material for Weaver's Cove Energy, LLC and Mill River Pipeline LLC to construct an LNG import terminal, associated pipelines and to conduct necessary dredging of the Massachusetts portion of the existing Federal Channel and Turning Basin located in the lower Taunton River and Mount Hope Bay, with respect to potential impacts to marine fisheries resources. We offer the following comments and recommendations for your consideration.

It is well established and documented that Mount Hope Bay and the Taunton River provide valuable habitat for a diverse assemblage of finfish and invertebrates. Winter flounder and many diadromous fish species use all or part of the Taunton River for passage, spawning, nursery, and forage habitat, in turn providing forage for other predatory species and helping to support important recreational fisheries. Various life stages of numerous other finfish species transit and/or inhabit the river during the year. In addition, the extremely productive shellfish habitat and resources found within and adjacent to the proposed project footprint have been characterized by *Marine Fisheries* as "Significant Shellfish Habitat" and the largest horseshoe crab spawning beach on the Massachusetts' side of Mount Hope Bay is located in the Taunton River upstream of the proposed facility.

Regarding potential impacts to marine fisheries habitat and resources, the applicants provide no relevant data or support for the general premise that this project will have only short-term and negligible impacts to the environment. Much of the information contained within the supplemental materials was presented in previous documents and contained numerous unsupported conclusions, faulty and/or missing analyses, and invalid

assumptions; this material has already been determined to be inadequate for the task at hand.

The following issues continue to be of great concern to *Marine Fisheries*:

- In the absence of supplemental data and spatially and/or temporally relevant research, estimates of the range and magnitude of potential negative impacts to finfish and shellfish presented cannot help but underestimate these effects. The analytical models used for this purpose may be conservative in their representation of environmental sensitivity; however, it is doubtful that dated and limited information used to drive them can accurately portray conditions within this river system.
- We note that the applicants describe the project area as containing *potential* shellfish habitat, despite evidence to the contrary from the agency charged with management of this resource. *Marine Fisheries*' estuarine study of the Taunton River and Mount Hope Bay (Curley et al., 1974), the 1985 stock assessment of Mount Hope Bay and the Taunton River, and the 2002 *Marine Fisheries* Shellfish Habitat maps all document the valuable shellfish habitat found within and around the project area. Substantial quantities of quahogs are found in the river and bay, and the cove on the south side of the proposed facility contains significant quantities of American oysters. Assertions that the value of these habitat areas is somehow diminished because shellfish in the river are not available for direct human consumption are irrelevant. Prior to the spread of diseases such as MSX in 1985, oysters were relayed from the project site. The Commonwealth has used the Taunton River as a source of quahogs for the contaminated relay and transplant program from 1907 to the present. In all cases, individuals of these species provide forage for other species and serve as brood-stock for downstream areas in Massachusetts and Rhode Island. Because of the ongoing relay program, pre-dredge abundance surveys are not necessarily indicative of habitat value and a one-time shellfish seeding effort cannot address the direct loss of habitat caused by dredging or the continuing impacts that are likely to result from deep-draft vessel passage through the river.
- The applicants fail to acknowledge the need for TOY restrictions to protect shellfish spawning. These periods are:
  1. Mid-June through mid-September for American oyster spawning (may occur twice per year);
  2. Mid-June through mid-September for quahog spawning (may occur twice per year); and
  3. May through October for soft-shell-clam spawning (may occur twice per year).
- The loss or alteration of winter flounder spawning and juvenile settlement habitat in the Taunton River and Mount Hope Bay has not been addressed in a meaningful way. The Southern New England/Mid Atlantic (SNE/MA) winter flounder stock is considered to be depleted by the Atlantic States Marine Fisheries Commission (ASMFC). Current spring estimates of relative

abundance for most year-classes are less than one-half of the 24-year average. Recent estimates (2004), place the SNE/MA stock at 13% of the fishery management plan's (FMP) biomass target level (S. Correia, personal communication). The Taunton River and Mount Hope Bay are classified as Essential Fish Habitat (EFH) by the New England Fisheries Management Council (NEFMC) and ASMFC classifies spawning areas such as these as Habitat Areas of Particular Concern (HAPC). In accord with this designation, the ASMFC Winter Flounder FMP recommends establishment of strict timeframes during which sediment dredge activities should be prohibited in spawning and nursery areas. Given the diminished status of this stock and documented impacts to successful reproduction that can result from increased sedimentation (e.g. decreased spawning success and increased incubation periods), a risk averse approach should be required (i.e. a January 15 – May 31 TOY restriction recommended by the State and Federal fisheries agencies). Discussions regarding appropriate compensatory mitigation in the event that this project moves forward must take into consideration that the common practice of applying out-of-kind/out-of-place mitigation such as salt marsh restoration does not address habitat loss and, when viewed on a larger scale, may in fact constitute an unsupportable cumulative loss of habitat.

- All documents continue to dismiss discussions of impacts to the many diadromous species that move through the area. In addition to alewife, blueback herring, American shad, and rainbow smelt, species such as sturgeon, American eel, white perch, hickory shad, tomcod, and lamprey all spawn and/or live in the Taunton River. Division biologists emphasize the need for risk averse management to protect these species.
- As a result of region-wide declines in population levels, *Marine Fisheries* recently placed a three-year ban on the harvest of river herring (blueback and alewife). These species spawn in seventeen tributaries of the Taunton River north of the Weaver's Cove site and many of these runs are declining or nearly depleted. In consideration of this severe closure action, appropriate TOY limits are required to protect these herring enroute to their spawning grounds, without which river herring population decline may be exacerbated.
- There is a failure to note that blueback herring and alewife runs occur in the same tributaries, but do not spawn at the same time; with blueback spawning in the Taunton River following after alewife spawning. Also, there is a major blueback herring spawning run located in Assonet Bay just north of Weaver's Cove.
- A *Marine Fisheries*' report has been listed as a reference for the Nemasket River alewife spawning season, but fails to note that the Nemasket River is approximately thirty miles upstream of the Weaver's Cove site. Because of the distance between the Nemasket River and Weaver's Cove, herring remain in the Taunton River and migrate downstream over a prolonged period.
- *Marine Fisheries* strongly disagrees with the recommendation for a March 15 start date for a rainbow smelt TOY. *Marine Fisheries*' Technical Series Report #5 (Chase and Childs, 2002) studied smelt in the Fore River in Weymouth and

based upon three years of observations, recommends a smelt TOY beginning in mid February or March 1<sup>st</sup> at the latest.

- Appropriate TOY windows for diadromous species of concern would be as follows:
  1. Inward migration
    - Alewife, mid-March through mid-June
    - Atlantic sturgeon, April through June
    - Blueback herring, mid-April through July
    - Rainbow smelt, March 1 through mid-May
    - White perch, mid-February through May
    - American eel/Elver (juveniles) inward migration, March through June
  2. Outward migration
    - Alewife, mid-June through September
    - Atlantic sturgeon, June through November
    - Blueback herring, September through early November
- As previously noted, the largest horseshoe crab spawning beach on the Massachusetts' portion of Mount Hope Bay is located approximately a mile north of the Weaver's Cove site. Crabs migrate to spawning beaches in May and remain through June. Spawning generally occurs on night tides with crabs remaining offshore or in channel areas during the day. In order to protect this regulated species, no activity which may impede crab migration in the river should occur from May through June.
- There is no meaningful discussion of actions to minimize and/or mitigate for the impacts likely to result by the regular passage of the deep draft LNG tankers and support vessels through the embayment. In describing the action of the propellers used on the tractor tugs, there is no acknowledgement that due to the position of the cycloid propeller under the tug, the force is directed downward toward the sediment. Additionally, citation of the Boston Harbor study of LNG tanker passage over the CAD cells fails to acknowledge several critical differences between the two areas and situations that render comparison of the two nearly meaningless:
  1. General depth in the area of CAD cell is 60' and the top of cover in the cell is some number of feet below that depth;
  2. Proposed depth in the Taunton River is 37';
  3. Cover material on top of the CAD cell is sand from the Cape Cod Canal with relatively little fine grain material;
  4. Sediments found in the area of Weaver's Cove are a mixture of sand, mud, and silt;
  5. Purpose of the passage study in Boston Harbor was to determine the likelihood of erosion of the cap and cell edge due to passage of the tanker above. Only two instruments were placed on the bottom along the route, both in CAD cells and no attempt was made to measure the disturbance along other parts of the route where depths and sediments types might better approximate those found in the Weaver's Cove area.
- Little effort has been made to adequately address 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 and a

comparison to other sources. It is noted that while billions of fish eggs and larvae will be destroyed in ballast tanks and hydrostatic testing, the number of fish that would have lived to maturity was minimal. There is a failure to discuss the importance of these billions of fish eggs, larvae, and juveniles to the food web and their importance to the fish, birds, and animals in the Taunton River/Mount Hope Bay ecosystem. The cumulative impact of 50 to 70 annual withdrawals of as much as 14-million gallons of water needs should have been 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.

- As required by the Massachusetts Secretary of Environmental Affairs, *Marine Fisheries*' request for 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 imposed upon the marine fisheries resources and habitats in the project area have not been addressed. As in previous documents, the applicants have done nothing more than provide a list of some of the many sources of impact to this embayment and fails to incorporate the additional impacts that may be caused by this new activity.

The supplemental materials provided to the Commonwealth were prepared as an attempt to address numerous and serious deficiencies noted in the SFEIR and other submissions. Regrettably, little or no attempt has been made to correct this precedent. Of greater concern is the recent announcement that marginally smaller vessels will now be used to ship LNG to the port, requiring three trips per week instead of one. The previously identified inadequacies are now magnified in the face of potentially greater cumulative and additive impacts. We strongly recommend that the applicants be directed to address these concerns within the context of the modified proposal.

Questions regarding this review may be directed to Vin Malkoski in our New Bedford office at 508-910-6318.

Sincerely,



Paul J. Diodati  
Director

Cc: Representative David B. Sullivan  
Mayor Edward Lambert, City of Fall River  
David Swearingen, FERC  
Brian Valiton, USACE  
Theodore Barton, Epsilon Associates  
Tim Timmerman & Phil Colarusso, US EPA  
Chris Boelke, NMFS  
John Felix, DEP  
Truman Henson & David Janik, MCZM  
Hickey, Whittaker, Sawyer, & Brady, MDMF

February 22, 2006

Colonel Curtis Thalken,  
Commander

Lt. Col. Andrew Nelson,  
Deputy Commander and Deputy District Engineer

Christine Godfrey,  
Chief, Regulatory Division

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

**RE: Weaver's Cover Energy LLC; Mill River Pipeline, LLC  
NAE# 2004-2355  
Denial of Applications for DA Permits**

Dear Colonel Thalken, Lt. Col. Nelson and Chief Godfrey:

The following Request for Action is being submitted on behalf and under the direction of the City of Fall River, Massachusetts. The City of Fall River requests that, pursuant to its authority under 33 CFR Part 325, the United States Army Corps of Engineers, New England District (USACE) deny the applications filed in March 2004 by Weaver's Cove Energy, LLC and Mill River Pipeline, LLC (WCE) to authorize the dredging, filling and placement of structures in waters of the United States, including the Taunton River and the federal navigation channel and turning basin in order to construct and operate a Liquefied Natural Gas (LNG) import terminal and storage facility. As described below, the applications do not represent the project as it is now configured, do not constitute a single and complete project, and are materially deficient in that what is proposed is both disingenuous (the smaller tankers described in the February 2, 2006 submission to the USACE do not exist<sup>1</sup>) and completely infeasible.

In the alternative, should the USACE determine that denial of the applications is not warranted at this time, the City of Fall River requests that the USACE, in accordance with 33 CFR § 325.2, provide a revised public comment period, including additional public hearings, to address what is essentially a new project proposal to be considered by the USACE.

<sup>1</sup> See <http://www.coltoncompany.com/shipbldg/worldsbldg/gas/>. As set forth in this compilation by Tim Colton and Maritime Strategies, LLC, the referenced list identifies all registered LNG tankers operating globally as well as the LNG tankers commissioned to be constructed as of December 2005.



WCE originally initiated its application process with the USACE in March 2004. In September 2004, the USACE held two public hearings on the applications, as part of a required and inclusive public participation and comment process. In response to the extensive comments submitted to the USACE by federal and state agencies, municipalities, business groups, non-governmental organizations, and the affected public, WCE radically altered its original proposal.<sup>2</sup> The USACE provided the public with the opportunity to participate and comment on this significant change by convening, on November 1, 2005, a revised public notice and comment period. Public hearings were conducted on December 14<sup>th</sup> and December 15<sup>th</sup>, 2005 and were well received and well-attended. The USACE then extended this public comment period from the original dates of November 1, 2005 - December 23, 2005 through February 8, 2006. The USACE made every reasonable effort through these public processes to ensure that: (1) all stakeholders were afforded the opportunity to participate, and (2) the USACE could itself gather as much relevant information as possible to assist in considering these applications. The City of Fall River is requesting that the USACE again exercise sound judgment and, if the applications are not denied outright, asks that the USACE provide the same public comment opportunities afforded on November 1, 2005 and accept comment fully considering the scope and extent of the change to the project purpose, the increased severity of impacts to human health, safety, welfare, and the environment, the lack of consideration of alternatives, and the overall infeasibility of the project.

The gravity of this request is appreciated by the City of Fall River. It has been necessitated by the February 2, 2006 submission of what appears to be a new, segmented project or, at the very least, a substantial change in the proposed project, without notice or opportunity for public review or comment. The City of Fall River has been an active participant in all public proceedings convened by the USACE and the clandestine manner in which this new information was provided to the USACE cannot be reified. While the denial of the pending applications appears to be the wholly justified course of action, the opening of a revised public comment period is, at a minimum, consistent with the USACE's prior practice in this docket and is absolutely necessary in light of the radical and radically negative proposal now being proffered by WCE.

On February 2, 2006, WCE submitted what was styled as a "Change of Information in Letter of Intent To Operate a Newly Constructed Waterfront Facility Handling LNG" to Captain

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<sup>2</sup> As described in the USACE November 1, 2005 Revised Public Notice, WCE proposed ocean disposal of the contaminated dredged materials, rather than upland placement of all but 60,000 cy (too heavily contaminated to meet the performance standards for ocean disposal) as the preferred alternative for disposal of the dredged materials.

Roy A. Nash, USCG. This was not a "change." It was a wholly new proposal to radically increase the number of LNG tanker trips traversing the Taunton River from 50 – 70 to 120 per year.<sup>3</sup> Given that these hypothetical smaller tankers have a carrying capacity of 55,000 m<sup>3</sup> rather than the 145,000 m<sup>3</sup> proffered in the original application, the 120 deliveries is completely suspect. 120 deliveries per year would decrease the total quantity of LNG delivered to new England by 650,000 m.<sup>3</sup> That decrease alters the original project purpose concerning deliverable quantities and represents either a substantial economic shortfall to WCE or a significant increase in costs to consumers.<sup>4</sup>

The effects on the project purpose do not stand alone. The increased number of tanker trips imposes substantial direct, indirect, and cumulative impacts that were never contemplated by the USACE and for which alternatives were never considered, as required by the 404(b)(1) Guidelines. The project reviewed and commented on in December 2005 is NOT the project now proposed to be implemented by WCE.

This new proposal is, as WCE expressly states, occasioned by the enactment of the Safe, Accountable, Flexible, Efficient, Transportation Equity Act – a Legacy for Users (SAFETEA-LU) on August 10, 2005, which preserves the Brightman Street Bridge. What is NOT said in the WCE submission is that this new proposal was well underway before the initiation by the USACE of the revised public comment period on November 1, 2005 and an extension of that comment period on December 23, 2005. The Marine Safety International Report underlying this change was completed on October 26, 2005 and could have been provided to the USACE prior to the November 1, 2005 Revised Public Comment Period.

This radical change affects all of the areas over which the USACE has jurisdiction. For example, the smaller tankers, the response of WCE to the impossibility that has existed since August 10, 2005, of bringing LNG into the Fall River site on conventional tankers, would have to be specially commissioned and constructed.<sup>5</sup> That means that the project cannot possibly fulfill its stated purpose within any realistic time period.

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<sup>3</sup> According to WCE spokesman Jim Grasso, as reported in Platt's LNG Daily, Volume 3/No 30 (Tuesday, February 14, 2006) WCE is proposing to unload a 55,000-cu-m vessel every three days and possibly one per day during peak periods. That increases the frequency of trips from 120 to 180, or 360 in-land waterway transits.

<sup>4</sup> According to Platt's LNG Daily, *ibid.* at page 4, Mr. Grasso declined to say how much more expensive it would be to carry LNG on the smaller ships or where the ships might come from. "We think we can still compete," Grasso said. "However, it's not going to alleviate the price of natural gas as much as it would without these barriers."

<sup>5</sup> As reported in Natural Gas Intelligence, February 14, 2006, the project concedes that the ships do not exist. According to WCE spokesman, Jim Grasso, special ships will have to be

Setting aside the question of when such tankers could become available, the proposal imposes new and significant, adverse impacts on the waters of the United States and on the public interest. The tankers themselves, as set forth in the Marine Safety International Report, will have only eight feet of horizontal clearance through the Brightman Street Bridge, cannot navigate in high wind conditions, and are too large to allow tug assistance. They must be headed directly at the western span of the new Brightman Street Bridge, a maneuver that the Report calls "inviting trouble." While the navigational logistics are primarily a matter for the Coast Guard to consider, the inherent dangers effectively undercut any possible conclusion that the project purpose will be fulfilled and increase the likelihood of grave accident and injury.<sup>6</sup>

The USACE, under the 404(b)(1) Guidelines, must directly consider the impacts resulting from this significant increase in untried and untested tanker trips on the waters of the Taunton River and Mount Hope Bay, which include, but are not limited to continual sediment suspension, re-suspension, and the resulting impacts upon water quality, finfish, shellfish, and benthos. The USACE must also consider continuing violations of water quality standards in two states.

Several examples of the public interest factors that will be affected are the continual state of alert and the impact on emergency planning and response agencies, the existence of mandatory exclusion zones every day of the year, land-based traffic impacts occasioned by the massive delays for bridge closings, air quality impacts resulting from mobile source idle times, and economic impacts occasioned by both traffic and shipping time delays.

The most significant impacts are, of course, the impacts to human health and safety that will be multiplied by orders of magnitude as the result of this increased number of vessel trips. The twelve hours necessary to traverse the waterways to Fall River will not change; in fact, the window of vulnerability could increase given the inherent navigational dangers identified in the Marine Safety International report. The opportunities for accidents, incidents,

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built. The smaller ships would require more frequent visits, more transportation costs, and greater security requirements that would "easily more than double the cost of the project."

<sup>6</sup> The simulations relied on by Marine Safety, Inc. did not employ the 55,000-cu-m ships described by WCE. No simulations have been run that duplicate the actual configurations of the tankers proposed to be used, which greatly increases the possibility of accidents, delays, and releases of LNG. According to the FEIS, the events most likely to cause a release of LNG are ship casualties, such as a vessel colliding with an LNG ship in transit or an LNG ship alliding with a structure while in transit, yet no actual testing has been done. The result is that while the dangers will increase, the magnitude cannot be calculated and there is no effective way to provide mitigation for these very significant impacts, as required by the National Environmental Policy Act, the Clean Water Act, and the USACE's implementing regulations.

and intentional attacks opened up by this new proposal cannot be "buried" by WCE. The stakes, in terms of human health and safety, are simply too high and the impacts cannot be mitigated.

In light of this new, extremely ill-advised proposal, the USACE should deny the applications. At a minimum, the USACE should provide a full reconsideration of this new proposal through a revised public comment period and new public hearings.

Sincerely,



Carol R. Wasserman

Director of Regulatory Strategies

cc: Mayor Edward J. Lambert, City of Fall River  
Thomas McGuire, Esq., Corporation Counsel  
Ted Lento, USACE  
Betsy Higgins, United States Environmental Protection Agency, New England Region  
Secretary Stephen Pritchard, Massachusetts Executive Office of Environmental Affairs