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TO:
 Ms. Crystal I. Gardner, Chief

FROM:
 Christopher A. D'Ovidio

COMPANY:
 U.S. Army Corps of Engineers
 North East District

DATE:
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Ted Lento

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Conservation Law Foundation

September 20, 2004

Ms. Crystal I. Gardner, Chief
Permits and Enforcement Branch
Regulatory Division
U.S. Army Corps of Engineers
North East District
696 Virginia Road
Concord, MA 01742-2751

RE: Weavers Cove Energy, and Mill River Pipeline LNG Proposal (File No. 2004-2355)

Dear Ms. Gardner:

The Conservation Law Foundation ("CLF") appreciates the opportunity to comment on the Weaver's Cove Energy's ("WCE") and Mill River Pipeline's ("MRP") application for dredging and filling permits for the proposed LNG facility and pipeline in Massachusetts.

Founded in 1966, CLF is a nonprofit, member-supported organization that works to solve the environmental problems that threaten the people, natural resources, and communities of Rhode Island, Massachusetts and other New England states. CLF's advocates use law, economics, and science to design and implement strategies that conserve natural resources, protect public health, and promote vital communities in our region.

CLF opposes the issuance of dredging and filling permits for WCE and MRP, and urges the U.S. Army Corps of Engineers ("Corps") to deny WCE and MRP's permit requests. As more specifically set forth below, the impacts to aquatic and other natural resources associated with these projects are significant, and WCE and MRP have failed in their burden to avoid and minimize those impacts, and to establish that their proposals are the least environmentally damaging alternative. Accordingly, the issuance of dredging and filling permits for these projects would be contrary to the public interest and would violate the Clean Water Act and the Section 404(b) Guidelines promulgated pursuant thereto.

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Conservation Law Foundation**INTRODUCTION**

Pursuant to both the Clean Water Act's Section 404(b) Guidelines and the Corps' public interest review, the environmental impacts of these proposed projects must be strictly scrutinized. As part of this scrutiny, the Corps must consider not only the direct impacts of the projects on wetlands and the aquatic environment and other related resources, it also must consider the proposed projects' *cumulative* and *secondary* impacts. 40 C.F.R. § 230.11. "Fundamental to [the Section 404(b)] Guidelines is the precept that dredge or fill material should not be discharged into the aquatic ecosystem, unless it can be demonstrated that such a discharge will not have an unacceptable adverse impact either individually or in combination with known and/or probable impacts of other activities affecting the ecosystems of concern." 40 C.F.R. § 230.1(c).

As the EPA has generally noted, "[a]quatic resources, including wetlands, play an important role in our lives. They perform valuable ecological, water quality, hydrologic and economic functions. Yet these areas are rapidly disappearing or being degraded to the point that their important benefits can no longer be realized." See Highlights of Section 404 Federal Regulatory Program to Protect Waters of the United States, EPA Office of Wetlands Protection (Oct. 1989). The importance of properly implementing the Section 404(b) Guidelines to protect the important and diverse role of wetlands is best illustrated by the facts that between 1986 and 1997, 98 percent of all recorded losses were to freshwater wetlands. See Status and Trends of Wetlands in the Conterminous United States: 1986 to 1997, U.S. Fish and Wildlife Service (Dec. 2000) at 10. "Collectively, 51 percent or 383,300 acres (155,200 ha) of all the freshwater wetlands lost to uplands resulted from urban expansion or rural development such as the construction of buildings, roads, bridges and other infrastructure in wetlands." *Id.* at 12.

I. WCE and MRP's proposed projects would have significant impacts on wetlands, wildlife, and other important natural resources.

With specific regard to the WCE and MRP LNG project, the direct and indirect impacts of the proposed projects would be significant. The project areas contain critical palustrine and estuarine wetlands, intertidal and subtidal areas, extensive wetlands resources, and undeveloped upland, all of which provide important wildlife habitat. These undeveloped areas are particularly important because of their increasing scarcity in the region. The value of the project area's wetland and tidal habitat is especially important. Despite the developed nature of much of the area, the tidal and wetland areas nonetheless serve as a natural resource which are of critical importance, as evidenced by their use by eagles for wintering and nesting purposes, by numerous important benthic species, and by fish as essential fish habitat (EFH).

Intact wetland and tidal and subtidal habitat provides many benefits to human society and to wildlife. Functioning ecosystems provide services that are essential to life. Some examples of the ecological benefits of this type of habitat include buffers to river waters, shore habitat

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for various coastal and upland species, groundwater recharge and filtration, oxygen production from plants, urban heat abatement, habitat for mosquito predators like bats and birds, habitat for beneficial insects like pollinators, and flood control. These benefits make up important ecological functions that we call "green infrastructure." As we learn more about ecosystems and their importance in human and animal well-being, we have come to realize the essential nature of this green infrastructure. In the same way that we carefully plan the gray infrastructure that makes up our important roadways, water service and energy supply; we believe that planners must take into account our green infrastructure with the same care.

The direct and indirect impacts of WCE's proposed filling of palustrine and estuarine wetlands, and dredging of intertidal and subtidal areas, must be strictly scrutinized, not only for the impacts which will result from the proposed project itself, but also for the cumulative effects of such dredging in light of other existing, and potentially new, impacts to the ecosystems of the Taunton River and Mount Hope Bay. For example, it is critical to note that within a short distance in Somerset, MA, Brayton Point Power Station's thermal discharges and entrainment and entrapment are significant contributors to the decline of Mount Hope Bay's ecosystem, and specifically winter flounder populations. Add to that the cumulative system impacts from urban runoff containing pesticides and the environmental releases of the latent pollution from years of industrial activity; specifically the pollution generated by the previous use of the project site by Shell. Now, add to all of those existing pollution sources the dredge spoils from these projects, which have not been sufficiently tested to determine the amounts and scope of pollutants that exist in the sediments.

The direct and cumulative impacts of WCE's project proposal on this critical river and bay require close attention. Furthermore, the WCE and MRP permit application do not include information necessary to determine the exact extent and nature of the projects, thus making it impossible for the Corps to make appropriate conclusions regarding the efficacy and environmental effects of the proposed projects.

It should be noted that FERC's Draft Environmental Impact Statement ("DEIS") for WCE dismisses the value of the wetlands impacted by the project. See page 4-61,62. These wetlands, intertidal and subtidal habitats, however, serve important wildlife functions which, pursuant to the 404(b) Guidelines and the Corps' public interest review, warrant serious consideration and protection. With specific regard to the proposed filling of salt marshes, the EPA has noted in comments to FERC's ADEIS:

While this is small total area of wetland impact, the specific justification for the impact and of alternatives is not explained...Unavoidable impacts to wetlands and other Waters of the United States will need to be mitigated through the provision of wetland creation or restoration activities. The ADEIS states that the project would create wetlands at an on or offsite location but fails to present any information about these options. See March 5, 2004 Comments of EPA (page 6) at Administrative Draft Environmental Impact Statement for the WCE LNG Project.

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Although relatively small in size, these areas are critically important breeding habitats for amphibians and are utilized by other wildlife including turtles and waterfowl. In addition to wildlife habitat functions, wetlands within the project area serve important water quality functions. Wetlands provide water quality improvements by trapping sediments, salts and heavy metals before they enter a larger water body.

NOAA and the MDMF, as well as Massachusetts Office of Coastal Zone Management and MADEP, have recommended that the filling of critical coastal wetland resources, land containing shellfish, sub-tidal habitats, and resources supporting the development of finfish and shellfish -- notably salt marshes -- be avoided. NOAA also commented that, if avoidance is impossible, a mitigation and restoration plan needed to be proposed and provided as part of the DEIS/DEIR.

The DEIS/DEIR does not respond to these comments, nor does the application to the Corps. The Massachusetts state water quality certifications and wetland applications filed by WCE propose filling of all of these resources areas, which provide essential habitat and juvenile fisheries support. The Section 10 and Section 404 permit application includes a functional analyses of salt marsh resources, which are designated as a special aquatic site under Section 404 of the Clean Water Act. The analysis states that no on-site inspection of the salt marshes was performed and concludes that the salt marshes proposed to be filled provide the following functions and values: finfish and shellfish habitat and juvenile population habitat, groundwater recharge/discharge, sediment and toxicant reduction, production export, and wildlife habitat.

Despite these determinations, the analysis concludes that because these resources are small, they are negligible; the project proponent argues that eliminating them would not be a significant impact.

Salt marshes generally are subject to special protection under a variety of federal and state programs administered by NOAA, the MDMF, Coastal Zone Management, the United States Environmental Protection Agency, the USACE, and the MADEP, because of their unique and irreplaceable value as a resource. Nowhere is this more critical than with the City of Fall River, where there are few of these resources remaining as the sad result of years of environmental degradation. To suggest that the small size of this remaining resources areas justifies eliminating them altogether is an abhorrent. In fact, they should be afforded higher levels of protection and expanded where possible through restoration efforts.

II. WCE and MRP inadequately describes their proposed dredging activities.

WCE estimates that the dredging portion of the project will include an estimated three years of continuous, twenty-four hour/day, seven day/week dredging of the Taunton River, with no time-of-year restrictions. The contaminated dredge sediments will be disposed upland, and decanted water will be discharged back to the Taunton River and adjacent coastal

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resources. The estimated dredge volumes range from 2.1 million cubic yards to 3.1 million cubic yards. Dredging is the primary component of the LNG project, yet the basic volumes of contaminated sediments have yet to be established and the estimated volumes vary significantly. WCE estimates 2.1 – 2.5 million cubic yards; FERC's DEIS estimates 2.8 – 3 million cubic yards; and NOAA Fisheries estimates 3.1 million cubic yards. Clearly, the volume of dredge material must be determined before the Corp's can render a lawful decision. Furthermore, the application does not address the following dredging issues:

A. Management of Dredged Sediments

WCE's application enumerates three potential methods for managing the dredged sediments:

1. In-water processing on scows at variable production rates,
2. Pug mill processing in coastal resources areas at variable production rates, and
3. Land-based placement and processing anywhere space may become available during construction on the southern portion of the site. "Anywhere" includes Waters of the United States, as defined by the USACE. The Application reserves any final process and production rate to the dredging contractor.

Again, without a clear understanding on how sediments will be managed, the Corps cannot issue a permit.

B. Alternative Dredging Methodologies

WCE's application describes alternatives for managing the dredged materials as "solely for illustrative purposes of the typical dredging and disposal alternatives, sequence, and inter-relationships." (App. at page 53). These potential alternatives are described as those which would be adequate to satisfy navigational requirements and dredging methodology alternatives, but ultimately fail to provide project-specific information. Without specific analysis of dredging alternatives, the Corps cannot issue a permit

C. Alternative Dredge Disposal Methodologies

WCE's application provides a list of potential disposal methodologies and possible disposal sites in Southeast New England. (App. at page 58). This list is erroneously used to rationalize the conclusion that land-based disposal is the only method available for the project. As more fully described below, without the proper consideration of definitive alternatives, the Corp cannot lawfully issue a permit.

III. WCE and MRP's alternatives analysis is significantly flawed, and cannot support a finding that its selected alternative(s) is the least environmentally damaging practicable alternative.

The Section 404(b) Guidelines, promulgated pursuant to Section 404 of the Clean Water Act, make clear that no permit to fill wetlands shall be issued "if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem." 40 C.F.R. § 230.10(a). See also 40 C.F.R. § 230.5(c); Executive Order 11990. "An alternative is practicable if it is available and capable of being done, after taking into consideration cost, existing technology, and logistics in light of the overall project purposes."

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Id. § 230.10(a)(2). Where, as here, the WCE and MRP project is not water dependent, a more stringent standard applies: “practicable alternatives that do not involve special aquatic sites are *presumed to be available unless clearly demonstrated otherwise.*” *Id.* § 230.10(a)(3) (emphasis added). If this presumption is not clearly rebutted by a permit applicant, no permit may be issued.

The above-stated “LEDPA” requirement described in the 404(b) Guidelines “reflects the wide range of water systems subject to 404 and the extreme sensitivity of many of them to physical destruction. These waters form a priceless mosaic. Thus, if destruction of an area of waters of the United States may reasonably be avoided, it should be avoided.” Guidelines for Specification of Disposal Sites for Dredged or Fill Material, 45 Fed. Reg. 85340 (1980). The strong presumption that lesser impacting alternatives exist for non-water-dependent projects is intended to “have the effect of forcing a hard look at the feasibility of using environmentally preferable sites.” *Id.* at 85339

The issuance of a 404 permit for these projects would be unlawful because WCE and MRP have failed to satisfy their heavy burden of proving that the proposed pipeline construction and LNG facility alternatives are the LEDPA. As supported by the facts below, they have failed to satisfy their burden of taking a “hard look,” *id.*, at the feasibility of lesser impacting alternatives, such as the numerous onshore and offshore proposals throughout the North East region, and the potential benefits that could accrue from comprehensive, well coordinated natural gas supply and demand management.

A. MCE’s project proposal is premised on inadequate data, and flawed and incomplete projections and modeling.

WCE has failed to provide adequate sediment sampling, and thus the Corps cannot intelligibly determine the preferred method of dredged material disposal. The option of dredging with upland disposal is WCE’s preferred method, however the method requires dredging to occur continuously year round, thus eliminating time-of-year restrictions in order to complete the project by 2007. Upon information and belief, the Brightman Street Bridge construction will not be completed until 2009-2010. Hence, these additional years allow for time-of-year restrictions to complete the dredging with upland disposal. Therefore, alternatives do exist for dredge material disposal options. Without this consideration by the Corps, an approval would be contrary to LEDPA.

In light of the foregoing, it is clear that WCE and MRP have failed in their burden to overcome the strong presumption that a lesser impacting alternative exists. WCE, MRP or FERC’s DEIS simply cannot support a finding that the proposed projects are the LEDPA, nor can it overcome the strong presumption that lesser impacting alternatives—such as proposed onshore and offshore LNG facilities as well as Canadian projects that will meet the same LNG supply objectives—are practicable. Any finding to the contrary would be arbitrary and capricious.

Conservation Law Foundation**CONCLUSION**

CLF has been actively engaged in the NEPA process for this proposed project, and has submitted comments to the Federal Energy Regulatory Commission (FERC). Among those criticisms, CLF has raised significant concerns relative to the quality and accuracy of FERC's alternatives analysis (including its analysis of alternative sites and systems). We have urged FERC not to approve the DEIS for these projects, and to require FERC to prepare a supplemental EIS addressing the numerous deficiencies and concerns identified by CLF and others. Should FERC fail to take this approach, the Corps should nonetheless demand that WCE and MRP conduct further LNG site analyses and take a harder look at lesser impacting alternatives.

The Section 404(b) Guidelines explicitly authorize the Corps to require permit applicants to supplement NEPA documentation with additional, more detailed information. 40 C.F.R. § 230.10(a)(4). We hope and expect that the Corps will exercise this authority, and that it will require WCE and MRP to (1) provide to the Corps any and all additional information and analyses pertaining to dredging and filling alternatives; and (2) conduct a new, updated analysis of site and system alternatives for LNG facilities and pipelines, consistent with concerns raised by the Corps, the City of Fall River, EPA and NOAA. CLF has reviewed the detailed and extremely thoughtful comments filed by the City of Fall River, MA on these issues and incorporates those comments by reference. The Corps also should conduct an additional public hearing to address these significant issues, to ensure that the public has a full and fair opportunity to understand, assess and comment upon the technical bases upon which WCE and MRP seek to justify their proposed project.

In summary, the impacts of these unnecessary proposals are significant, and WCE and MRP have failed to properly overcome their heavy burden of establishing that their proposal is the LEDPA and of conducting a true analysis of lesser impacting alternatives. Accordingly, the issuance of a 404 permit for this project, as currently proposed, would be grossly inconsistent with the public interest, and would violate the Clean Water Act and the Section 404(b) Guidelines. As always, the Conservation Law Foundation appreciates the opportunity to comment on this 404 dredging and filling permit application, as well as your attention to the issues raised herein.

Respectfully submitted,

Conservation Law Foundation

By: 

Christopher A. D'Ovidio, Director, Rhode Advocacy Center

By: 

Peter Shelley, Director, Massachusetts Advocacy Center

FEDERAL ENERGY REGULATORY COMMISSION

WEAVER'S COVE LNG PROJECT
Docket Nos. CP04-36-000 and CP04-41-000
DEIS PUBLIC MEETING COMMENTS
September 8, 2004 • Swansea, Massachusetts

Please mail comments to the address below.

Mail comments to each of the following addresses:

Magalie R. Salas, Secretary
Federal Energy Regulatory Commission
888 First Street, NE, Room 1A
Washington, DC 20426

Attention: Gas Branch 1, DG2E
Federal Energy Regulatory Commission
888 First Street, NE, Room 1A
Washington, DC 20426

*Mail your comments to be received
in Washington, DC on or before September 20, 2004*

REFERENCE DOCKET NOS. CP04-36-000 and CP04-41-000

COMMENTS: (Please print; use the additional sheet attached if necessary.)

I am opposed to the Weaver's Cove LNG Project for the following
reasons:

1) The proposed location for the LNG terminal is in close
proximity to a heavily populated area, posing a risk to hundreds
of citizens in the event of a mechanical failure, human error,
or malicious intent (such as a terrorist attack).

2) Tankers loaded with LNG pose a similar risk to every Bay
community along their path to the Weaver's Cove site.

3) In the event of an LNG catastrophe, there are not enough

Commentor's Name and Mailing Address (PLEASE PRINT)

Stanley G. Dimock

25 Poppasquash Road

Bristol, RI 02809-1001

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SEP 17 2004

REGULATORY DIVISION

WEAVER'S COVE LNG PROJECT
Docket Nos. CP04-36-000 and CP04-41-000
DEIS PUBLIC MEETING COMMENTS
September 8, 2004 • Swansea, Massachusetts

ADDITIONAL COMMENTS: PLEASE PRINT

medical burn facilities in the region to handle the potential
volume of injury victims.

4) Rolling safety zones surrounding the LNG tankers will
negatively impact productivity of commercial fishermen in the
area, and negatively affect the quality of life for recreational
boaters in Narragansett Bay and Mt. Hope Bay.

5) Potential bridge closures would create traffic nightmares for
our congested Bay communities.

6) LNG tankers will barely be able to squeeze underneath the Mt.
Hope Bridge, posing a danger to the structural integrity of this
historic and vitally necessary structure.

7) The technology exists to locate LNG terminals offshore, where
LNG's transport, delivery, and storage is far less hazardous to
the general population.

8) The Federal Government should adopt a regional energy strategy
to address New England's need for LNG and the siting of LNG

Commentor's Name (PLEASE PRINT)

facilities.

Stanley G. Dimock

Stanley G. Dimock 9/16/04

25 Poppasquash Road

Bristol, RI 02809-1001

CC: MEPA
CC: US Army Corps of
Engineers

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September 20, 2004

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

Re: Comments of Shell Oil Products U.S. on Weaver's Cove Energy L.L.C.
Application; File No. 2004-2355

Dear Mr. Lento:

Shell Oil Products US ("SOPUS") hereby respectfully submits its comments on the March 18, 2004 application of Weaver's Cove Energy L.L.C. and Mill River Pipeline L.L.C. (jointly, the "Applicants") for Army Corps of Engineers permits under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act to conduct dredging, install structures and discharge fill materials for the construction of a liquefied natural gas ("LNG") import terminal and natural gas pipeline facilities.

SOPUS' comments are in the form of a submission to the Army Corps of Engineers of its comments on the Draft Environmental Impact Statement ("DEIS") prepared by the staff of the Federal Energy Regulatory Commission ("FERC") that are concurrently being submitted to FERC. These comments succinctly explain SOPUS' concerns, which derive from SOPUS' ongoing obligation to conduct environmental remediation at the site where the Applicants propose to deposit between two and three million cubic yards of dredging spoils. The dredging plan would adversely affect the remediation and the site, and would create a significant risk of the release of light nonaqueous phase liquid ("LNAPL") to the Taunton River. We trust these comments will be useful to the Army Corps in its review of the Applicants' proposal. We have also included with this filing a copy of the comments submitted to FERC by Michael P. Bingham, the licensed site professional ("LSP") for the site pursuant to Massachusetts state law, in which Mr. Bingham addresses the adverse effect of the Applicant's proposed disposal of dredging spoils on the site.



U.S. Army Corps of Engineers

September 29, 2004

Page 2

SOPUS appreciates this opportunity to submit comments to the Army Corps. Please let me know if we can provide you with any further information.

Very truly yours,

Bracewell & Patterson, L.L.P.


Charles H. Shoneman

CHS/djr

190876.1

Attachments

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

)	DOCKET NOS. CP04-36-000
WEAVER'S COVE ENERGY, LLC)	CP04-41-000
)	
MILL RIVER PIPELINE, LLC)	CP04-42-000
)	CP04-43-000

**COMMENTS OF SHELL OIL PRODUCTS US ON
DRAFT ENVIRONMENTAL IMPACT STATEMENT**

Pursuant to the Commission's notice dated July 30, 2004, Shell Oil Products US ("SOPUS") hereby submits its comments on the Draft Environmental Impact Statement ("DEIS") prepared by the staff of the Federal Energy Regulatory Commission (the "Commission") on the liquefied natural gas ("LNG") import terminal and natural gas pipeline facilities proposed by Weaver's Cove Energy LLC and Mill River Pipeline (jointly, "Weaver's Cove") in these dockets.

**I.
INTRODUCTION AND SUMMARY**

As SOPUS explained in its previous submissions to the Commission, SOPUS is not opposed to the Weaver's Cove project. However, SOPUS has concerns due to its ongoing environmental remediation at the site where Weaver's Cove proposes to construct and operate its LNG terminal.¹ An affiliate of SOPUS previously owned the site and sold it to a third party, but SOPUS retains remediation obligations pursuant to Massachusetts state law requirements as set forth in the Massachusetts Contingency Plan ("MCP").

¹ See Comment on Filing of Shell Oil Company, filed in docket PF03-4 on December 11, 2003, and Shell Oil Products US Motion to Intervene, Protest and Request for Hearing, filed in these dockets on January 13, 2004, as amended January 14, 2004, and Reply of Shell Oil Products US, filed in these dockets March 17, 2004.

At present, site conditions are stable and SOPUS' remediation is proceeding in an effective and timely manner, but the remediation would be adversely affected by the dredging plan proposed by Weaver's Cove as part of its development of the LNG terminal. The dredging plan entails the placement of between two and three million cubic yards of dredging spoils on the site. This would complicate and delay the existing remediation in various ways. It is unclear how SOPUS would be able to continue with the remediation during terminal construction. The proposed construction activities require shutdown of and removal of components of the existing system, jeopardizing the containment of the light nonaqueous phase liquid ("LNAPL") plume and groundwater flow from the adjacent Taunton River.

Termination or interruptions to the site remediation could have significant adverse affects, as cessation of pumping of groundwater and the LNAPL plume could lead to migration of the LNAPL plume into the Taunton River. Construction would entail removing the existing bulkhead and replacing it with sheet piles. Removal of the bulkhead would expose LNAPL-saturated soil to the Taunton River and create the potential of a release into the river. The sheet piles would raise the water table, constrain water flow, and trap the LNAPL, which would render remediation more complex and lengthy. In addition, the sheet piles would redirect the flow of the LNAPL plume, potentially allowing it to escape the remediation system and migrate to and contaminate other parts of the site and, most significantly, the Taunton River. Furthermore, the composition of the dredging spoils includes a range of contaminants of concern that are also likely to exacerbate the current site conditions. SOPUS believes that Weaver's Cove has not adequately sampled the dredging spoils, analyzed their potential effects on the site, or accounted for the possible leaching of chemicals of concern into the groundwater. Attached to these comments as Exhibit A is a presentation further elucidating the current status of the remediation and the impact to the site from the proposed

placement thereon of the dredging spoils. SOPUS also directs the Commission's attention to the comments of Michael P. Bingham, the licensed site professional ("LSP") for the site, which were submitted to the Commission in a letter dated September 16, 2004. Mr. Bingham, who is very familiar with the conditions and remediation at the site, expresses his concerns about the effect of placing these large quantities of dredging spoils on the site.

The DEIS for the Weaver's Cove project does not adequately address the implications of the dredging plan for the ongoing remediation, the need for changes to the remediation arrangements, and the risk of increased degradation of the site. The DEIS proposes only to require Weaver's Cove to ascertain through additional soil sampling whether placement of the dredging spoils on the site would be consistent with the MCP. It does not propose any conditions making Weaver's Cove responsible for the adverse effects of the dredging spoils on SOPUS – not even for disruptions to the ongoing remediation. In addition, the DEIS contains erroneous assumptions regarding the use restrictions that the deed established for the site.

Clearly, SOPUS and Weaver's Cove disagree about the extent of the risk posed to the site by the dredging plan, and differ on how to address the dredging plan's impact on the site and SOPUS' ongoing remediation. But there should be no dispute about which party should bear the risk of these impacts – Weaver's Cove. As the party seeking authority from the Commission to undertake a major construction project at the site, Weaver's Cove should bear responsibility for the risk of adverse environmental effects and increased costs of environmental remediation. SOPUS respectfully requests that the Commission condition any order issued to Weaver's Cove as discussed herein, so as to (1) insulate SOPUS from costs and liability caused by the Weaver's Cove project, (2) require Weaver's Cove to bear responsibility for its project's impact on the environmental remediation taking place at the site, including necessary adjustments to the remediation, (3) make Weaver's Cove alone

liable for any release of contaminants at or from the site as a result of the project's activities, and (4) require Weaver's Cove to cooperate with the Massachusetts Department of Environmental Protection ("DEP") in taking appropriate steps, as determined by the DEP, to address the potential adverse environmental impacts of the project.

II. COMMENTS

A. **The DEIS Incorrectly Assumes that the Question of Whether the Placement of Dredging Spoils on the Site is Consistent with the Deed is to be Determined by the DEP Rather than the Terms of the Deed**

A threshold problem in the DEIS is its misinterpretation regarding the permissible uses of the site. Contrary to the DEIS' statements, the Massachusetts Department of Environmental Protection ("DEP") does not have authority over whether placement of dredging spoils on the site is consistent with the use restrictions for the site established in the deed. This serious error undermines the DEIS' discussion of the rights and obligations of the various parties and its proposed conditions for dealing with the impact of the Weaver's Cove dredging plan.

The use restrictions for the site are contained in Schedule D to the Quitclaim Deed. A copy has previously been filed in this proceeding,² and is included again as Exhibit B to the instant comments. The use restrictions establish the permissible uses for the site, authorizing certain uses and prohibiting others. Construction of an LNG terminal with placement of millions of cubic yards of dredging spoils on the site is not a permitted use for the site, and, accordingly, is "expressly prohibited" by the deed. Indeed, Weaver's Cove itself has acknowledged that use of the site for an LNG terminal is not consistent with the use restrictions in the deed, as it has requested that SOPUS agree to amend the use restrictions to allow construction and operation of the LNG terminal.

² See, e.g., March 17, 2004 Reply of Shell Oil Products US, Appendix B.

The DEIS incorrectly states that the DEP can decide whether placement of dredging spoils on the site is consistent with the deed. The DEIS states that "[u]nder the MCP, if the DEP decides that the dredged material may be placed on the site as a substitute for clean fill, the dredged material would conform with current use restrictions." DEIS at page 4-28. Similar statements are made on pages 4-30 and 4-97 of the DEIS.

Contrary to these statements in the DEIS, consistency of the placement of dredging spoils on the site with the deed restrictions is determined by the language of the deed, and is a contract issue that is not determined by the Massachusetts environmental regulator. In addition, the Commission is not authorized by the Natural Gas Act or any other statute to resolve disputes over the terms of deeds. Indeed, it is inconceivable that the Commission would adjudicate the terms of a deed, because such matters are far outside the Commission's jurisdiction. Furthermore, this mistake appears to be a foundation for other conclusions by the DEIS, and the mistaken impression caused by these errors may hamper resolution of the issue of whether Weaver's Cove can use the site for its proposed purpose. The Commission must correct this erroneous formulation of the parties' rights and clarify that it is not addressing, and cannot address, whether placing dredging spoils on the site is permitted by the use restrictions contained in the deed for the site.

B. The DEIS Erroneously Assumes that Weaver's Cove has Committed to Taking Appropriate Steps to Address the Ongoing Remediation Performed by SOPUS

The DEIS contains the unfounded assumption that Weaver's Cove has committed to taking appropriate measures to safeguard the existing remediation at the site. This assumption, which may partly explain the inadequate conditions proposed by the DEIS, rests on a misunderstanding of the remedial obligations at the site and the relationship between Weaver's Cove and SOPUS.

The DEIS states that Weaver's Cove "would implement modifications to the existing groundwater remediation system necessary to maintain the present site remediation program," which

modifications the DEIS says would "minimize any impacts on [LNAPL] recovery and site remediation." DEIS at page 4-28. The DEIS thus contains the assumption that Weaver's Cove has committed to taking on responsibility for implementing necessary changes to the remediation at the site.

Contrary to the assumption in the DEIS, it is SOPUS that is currently obligated to perform groundwater remediation at the site under the MCP, and that has committed extensive resources to satisfying the requirements of the remediation program. Weaver's Cove has not committed itself to assuming any obligation to "implement modifications to the existing groundwater remediation system." It may be that Weaver's Cove has made informal statements to the Staff indicating it will do this. Weaver's Cove has also represented to the Commission that it is negotiating the framework of an agreement with SOPUS to resolve various concerns relating to the impact of its dredging plan.³

Weaver's Cove is well aware that SOPUS wishes to conclude an appropriate arrangement resolving these issues. As it stands, however, Weaver's Cove has not reached any agreement with Shell to assume remedial activities, implement the necessary modifications to the remediation system, or otherwise provide appropriate assurances to Shell regarding the impact of the dredging plan.

C. Weaver's Cove, as the Applicant and Project Developer, Must be Responsible for the Environmental Impacts of its Project

SOPUS' concern is to ensure that Weaver's Cove take responsibility for the effect of its project, particularly its dredging plan, on the site. SOPUS assumes that the Commission shares this concern. The Commission's policy and practice has been to assign to applicants requesting authorization under the NGA responsibility for the environmental impacts of their projects.⁴

³ May 3, 2004 Response of Weaver's Cove Energy, LLC. at 4.

⁴ See, e.g., the conditions attached to the authorizing orders in *Southern Star Central Gas Pipeline, Inc.*, 102 FERC ¶ 62,165 (2003); *Islander East Pipeline Co., L.L.C.*, 100 FERC ¶ 61,276 (2002); and *Iroquois Gas Transmission System, L.P.*, 101 FERC ¶ 61,131 (2002).

Accordingly, the Commission should condition any authorization issued to Weaver's Cove so as to establish a framework for allocating to Weaver's Cove responsibility for the effects of its project, including the disruption to the current remediation, necessary modifications to the remediation system, and the assumption of risk for any contamination released at the site due to the dredging plan. It is not enough for the Commission merely to state that there will be no significant impact from the Weaver's Cove project; doing so would leave SOPUS at risk if there were ultimately an adverse impact.

The DEIS contains two proposed conditions that are in some way intended to address the impact of the Weaver's Cove project on SOPUS remediation, but they fail to properly assign the project developer full responsibility for the environmental impacts of its project. Proposed condition 18 provides that:

Weaver's Cove Energy shall prepare a plan for the discovery and management of contaminated soils and groundwater. This plan shall comply with applicable state and Federal regulations and should provide for management of contaminants at known sites and include procedures for the identification and management of unknown contaminants in other locations. The plan shall be filed with the Secretary for review and approval by the Director of the OEP prior to construction. (p. 4-15)

This proposed condition contains no standards by which Weaver's Cove is to conduct its "management" of contaminants. This condition would impose only procedural rather than substantive obligations, and is too vague to adequately assign responsibility to Weaver's Cove for the effect of depositing on the site dredging spoils with a range of contaminants.

The second proposed condition, condition 19, is as follows:

Weaver's Cove Energy file documentation with the Secretary prior to construction to verify that placement of the dredged material on the LNG terminal site is consistent with the MCP. If Weaver's Cove Energy is unable to verify the consistency of the proposed plan with the MCP, it should file a revised sediment placement plan that identifies alternative location(s) for disposal of the sediments. This plan should be developed in consultation with the relevant agencies and include a detailed assessment of the environmental impacts associated with the alternative location(s)

and demonstrate compliance of the alternative location(s) with applicable regulations. Weaver's Cove Energy should file the plan, if necessary, with the Secretary for review and approval by the Director of the OEP prior to construction.

The DEIS discussion regarding this proposed condition suggests that Weaver's Cove would be required to test the soil at the site to ascertain whether placement of the dredging spoils is consistent with the MCP. The proposed condition then merely requires Weaver's Cove to "file documents" with the Commission to verify consistency of the placement of dredging spoils on the site with the MCP. The bulk of the proposed condition then addresses the alternative plan Weaver's Cove would have to adopt for disposing of the dredging spoils off-site.

Proposed condition 19 is inadequate. It sets forth no standards for performing the sampling, no standards by which to judge the consistency with the MCP, and no designation of who is to verify Weaver's Cove's claims and in what manner. In addition, the verification appears to be a one-time event, *i.e.*, Weaver's Cove need only perform this verification once, and, if it manages to "file documentation" with the Commission that purports to verify compliance with the MCP, then it can proceed with depositing on the site the millions of cubic yards of dredging spoils without any further testing. Furthermore, the proposed condition appears to assign no responsibility to Weaver's Cove if it turns out that after Weaver's Cove satisfies this one-time test, it nevertheless causes a release of contamination at the site due to placement thereon of dredging spoils.

These proposed conditions do not establish the necessary framework for assigning to Weaver's Cove responsibility for its project, whether for disruption to and adjustments of the existing remediation at the site, or for averting or addressing a release of contaminants at or from the site. The Commission should not approve Weaver's Cove's application without expressly conditioning the authorization so as to: (1) insulate SOPUS from costs and liability caused by the Weaver's Cove project, (2) require Weaver's Cove to bear responsibility for its project's impact on the environmental

remediation taking place at the site, including necessary adjustments to the remediation, (3) make Weaver's Cove alone liable for any release of contaminants at or from the site as a result of the project's activities, and (4) require Weaver's Cove to cooperate with the Massachusetts DEP in taking appropriate steps, as determined by the DEP, to address the potential adverse environmental impacts of the project.

III. CONCLUSION

WHEREFORE, SOPUS requests that the Commission grant such relief as requested herein.

Respectfully submitted,

Pierre M. Espejo
Shell Oil Company
910 Louisiana Street, Room 1124
Houston, Texas 77002
(713) 241-2703

By: /s/ Charles H. Shoneman
Charles H. Shoneman
Gunnar Birgisson
Bracewell & Patterson, L.L.P.
A Registered Limited Liability Partnership
2000 K Street, N.W., Suite 500
Washington, D.C. 20006
(202) 828-5800

Attorneys for
SHELL OIL PRODUCTS US

September 20, 2004

CERTIFICATE OF SERVICE

Pursuant to Rule 2010 of the Commission's Rules of Practice and Procedure, I hereby certify that I have this day served a copy of the foregoing on all persons designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. this 20th day of September, 2004.

/s/ Charles H. Shoneman
Charles H. Shoneman

EXHIBIT A

MCP Compliance Concerns Associated with WCE Proposal

September 9, 2004

Current Site Conditions

- **Compliant** Tier IB site –Approved Phase V Status
- **Stable** groundwater and LNAPL conditions with pumping
- **Predictable** interactions of the COC plume with groundwater, stormwater and surface water
- **Statistically Robust** risk characterization
- **Effective and Timely** Response Action ongoing

Property Location Plan



Shell Remedial Investigation
has been comprehensive.

Taunton River

Monitoring Wells

Plume
Characterization

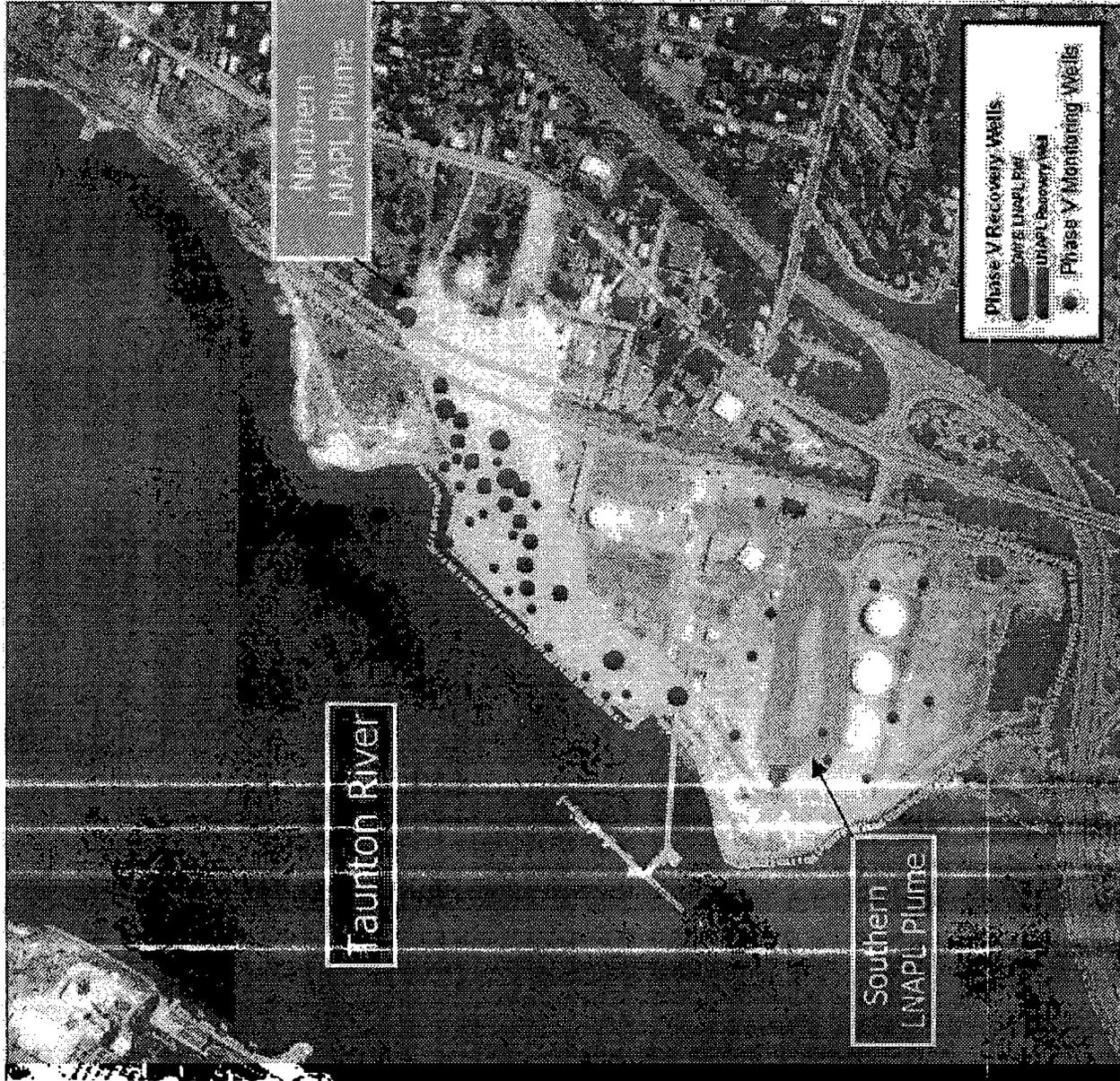
Stable while pumped
Well Defined
Predictable Location
Predictable Recovery

Two separate stable LNAPL plumes

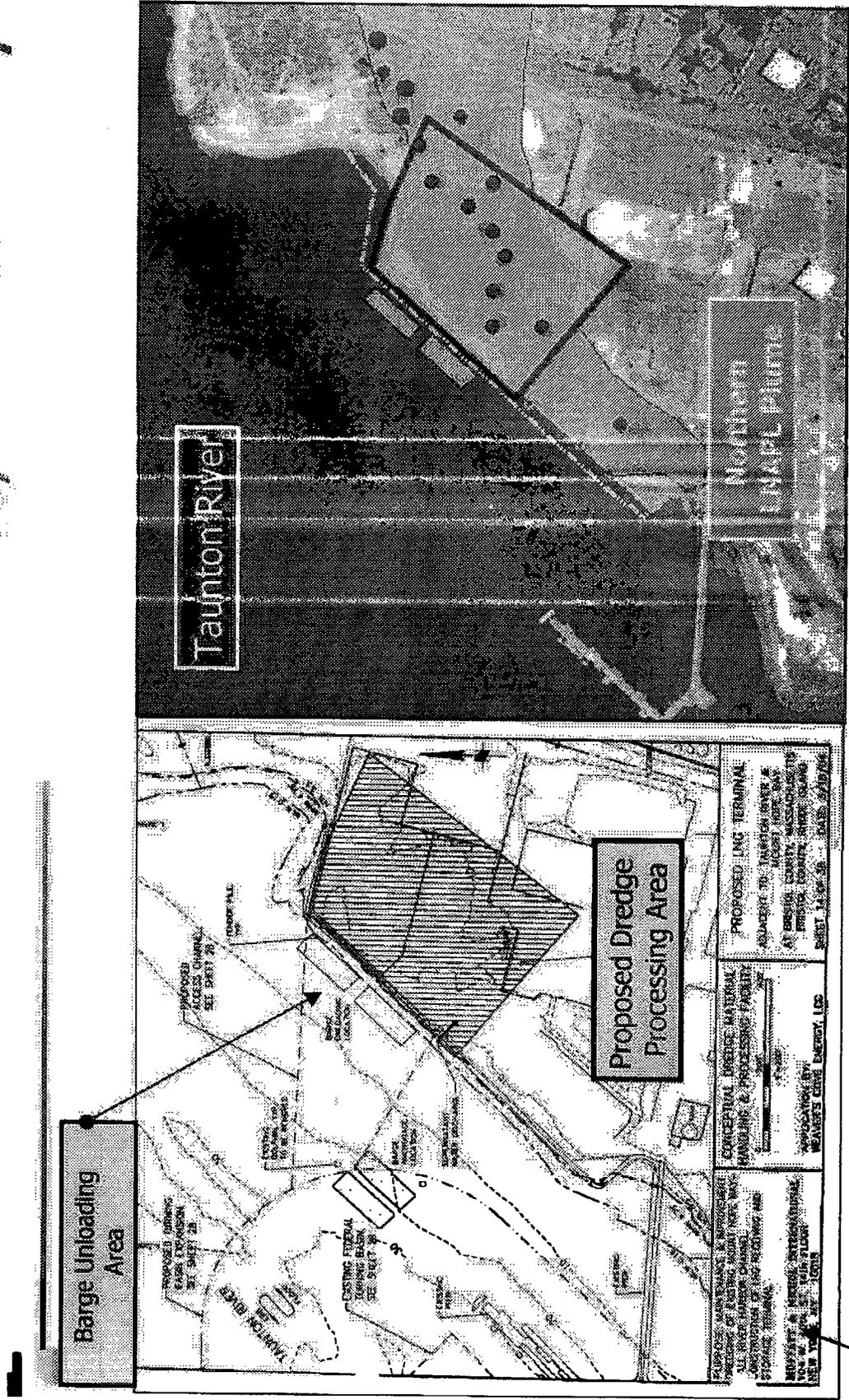
- Northern plume mobile diesel
- Southern Stable and immobile heavy oil

Recovery system Approved and Operational

- 1,150,000 gal. product recovered
- In operation since 1989
- Pumps GW at 30 gpm

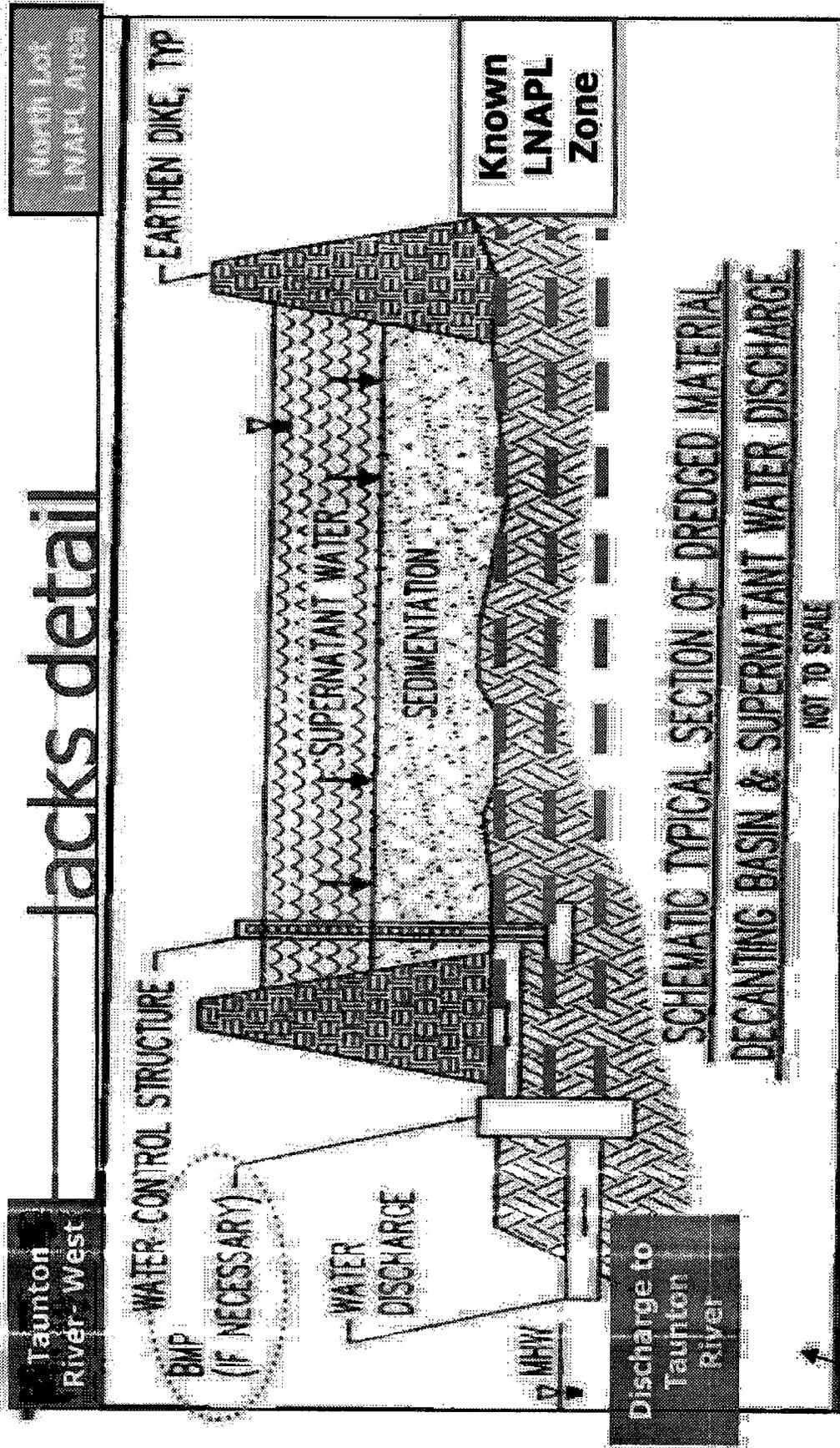


Dredge Processing Area Directly Threatens LNAPL Stability & Recovery



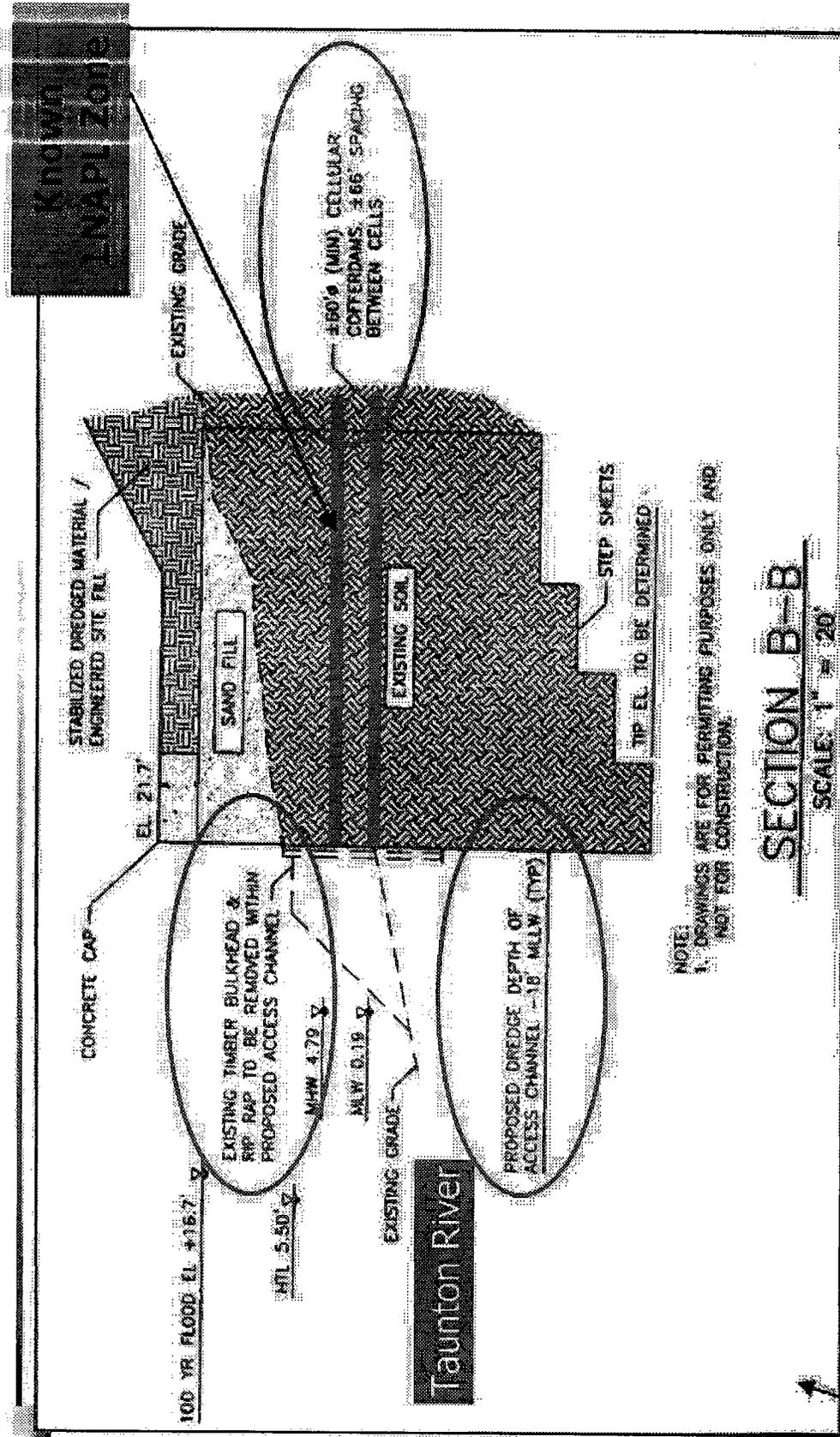
Source = WCE Army Corp of Engineers Joint Individual Permit Application, March 19 2004 6

WCE's Proposed Dredge Processing Area threatens LNAPL Plume & Jacks detail



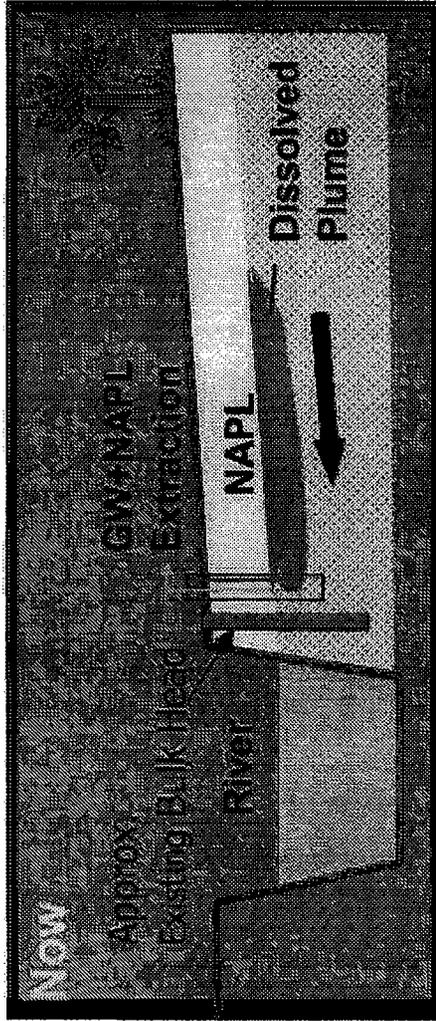
Source = WCE Army Corp of Engineers Joint Individual Permit Application, March 19 2004 7

WCE's Proposed Removal and Replacement of Bulkhead

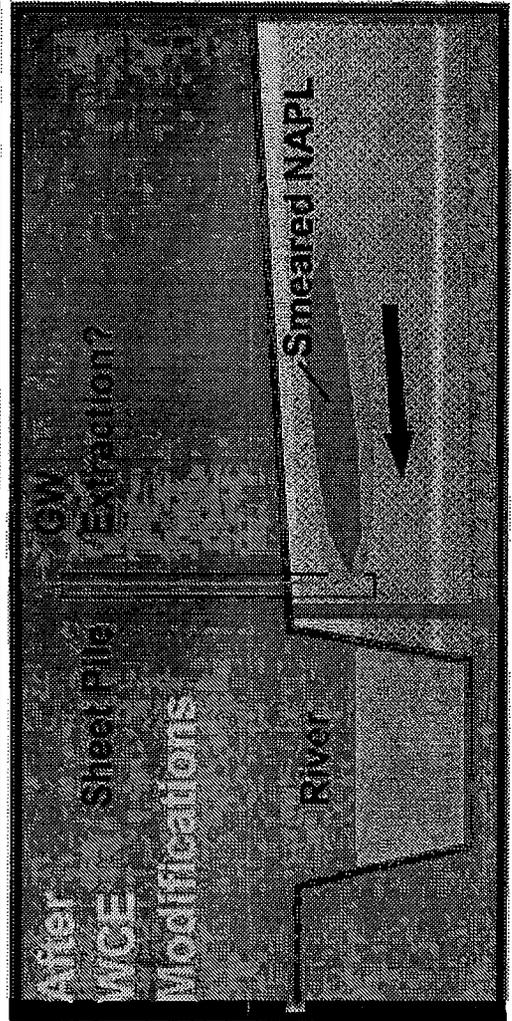


SECTION B-B
SCALE: 1" = 20'

Impaired Remediation due to GW Mounding



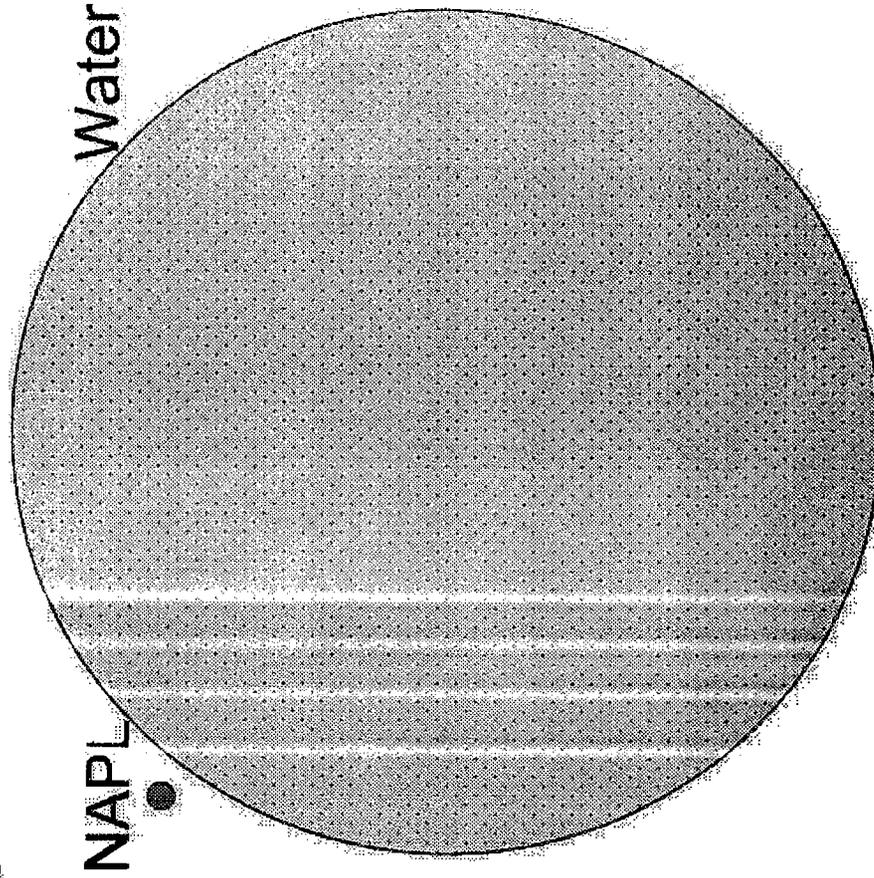
- NAPL and GW being simultaneously extracted
- NAPL and dissolved plume controlled



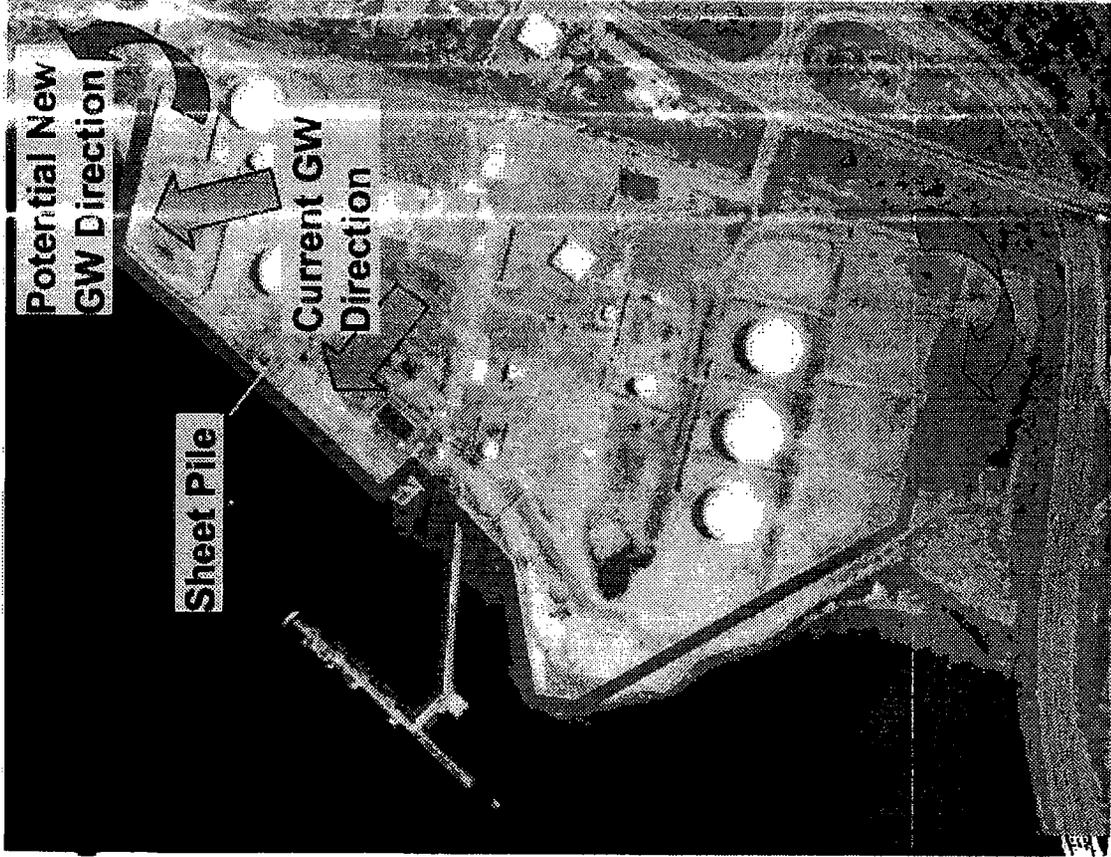
- NAPL smeared/trapped with water table rise
- NAPL 'unavailable' for recovery
- Soluble components in NAPL will now need to be remediated by GW extraction only

Why Recover NAPL?

- 1 L of NAPL contains the same number of BTEX molecules as a 1000 L of water
- Remediation of soluble components is efficient when NAPL can be recovered as a separate phase
- Once LNAPL is trapped in soil, removal of soluble components will be very inefficient and time consuming

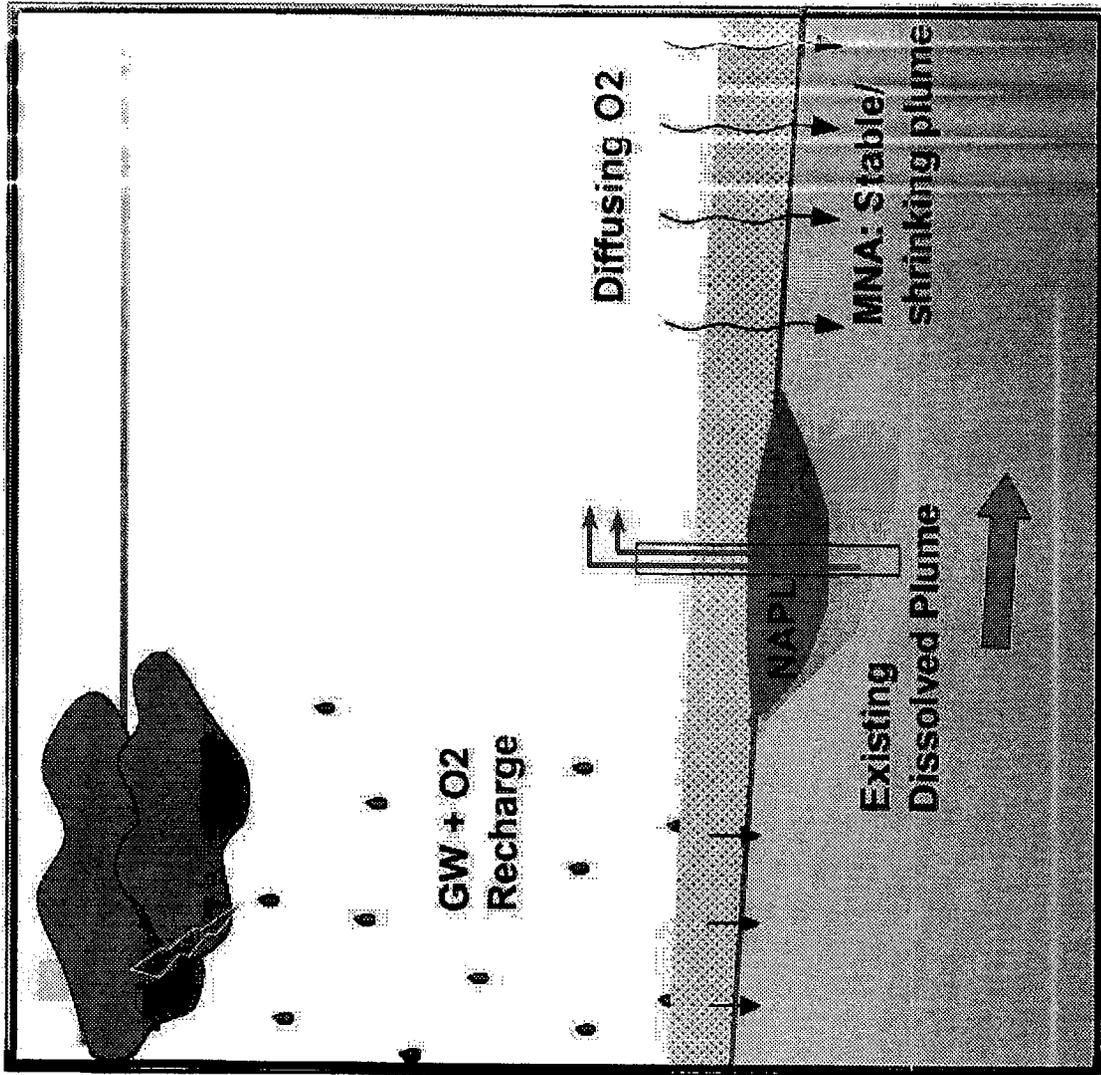


Flow Regime Redirected due to Sheet Piles



- Potential for impacted groundwater and/or NAPL to escape recovery from existing remediation network
- Groundwater/NAPL may migrate to currently 'unimpacted' areas including the Taunton River
- Uncertain time period to regain a stable flow regime - months to years
- Transient flow regime is highly unpredictable
- "Learn as you go" remediation system changes are environmentally unsound.

Condition Now



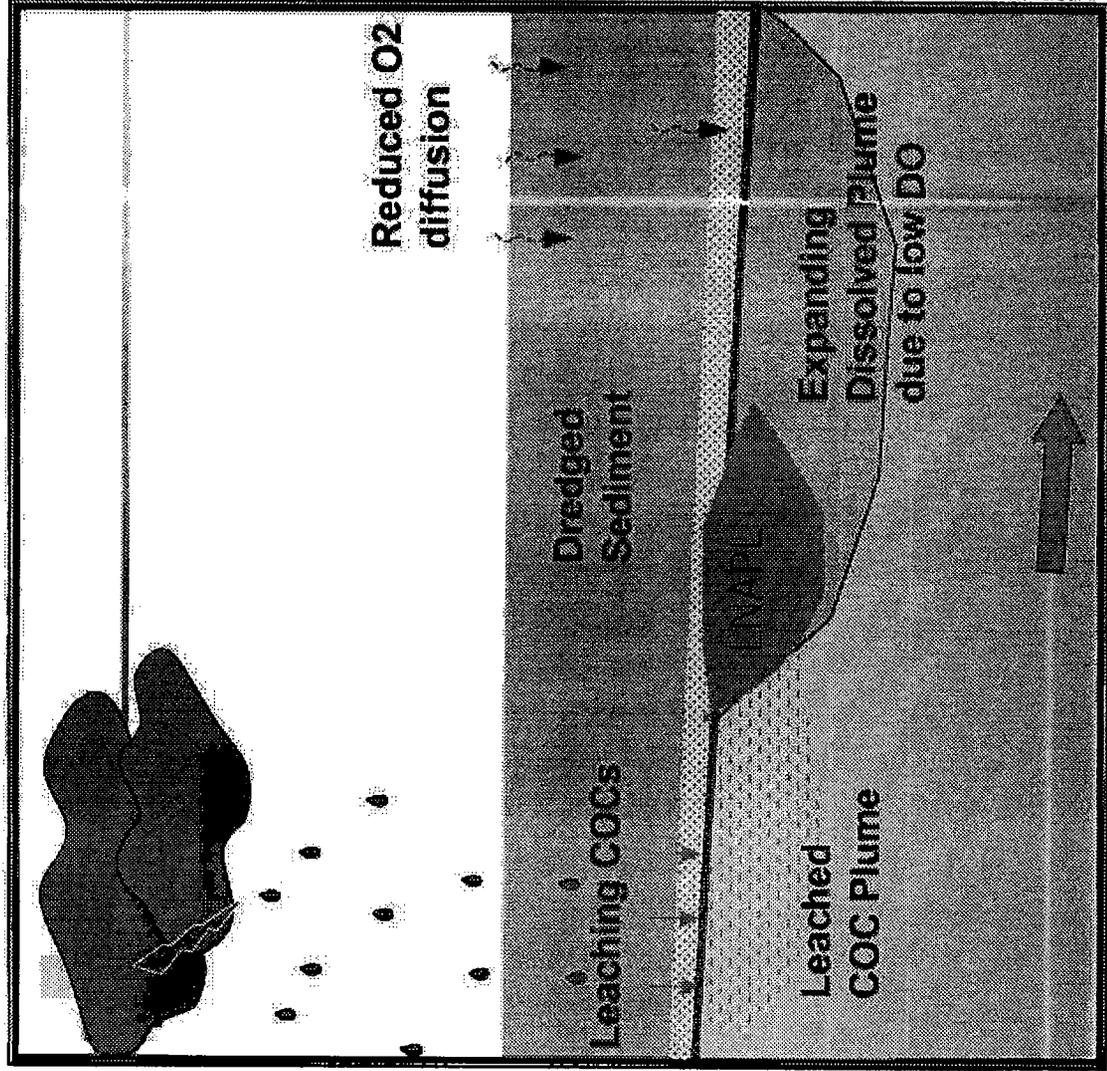
- NAPL + GW extraction at core of plume

- Monitored Natural Attenuation (MNA) is key mechanism in dissolved phase remediation

- Dissolved oxygen (DO) in GW is very important for MNA

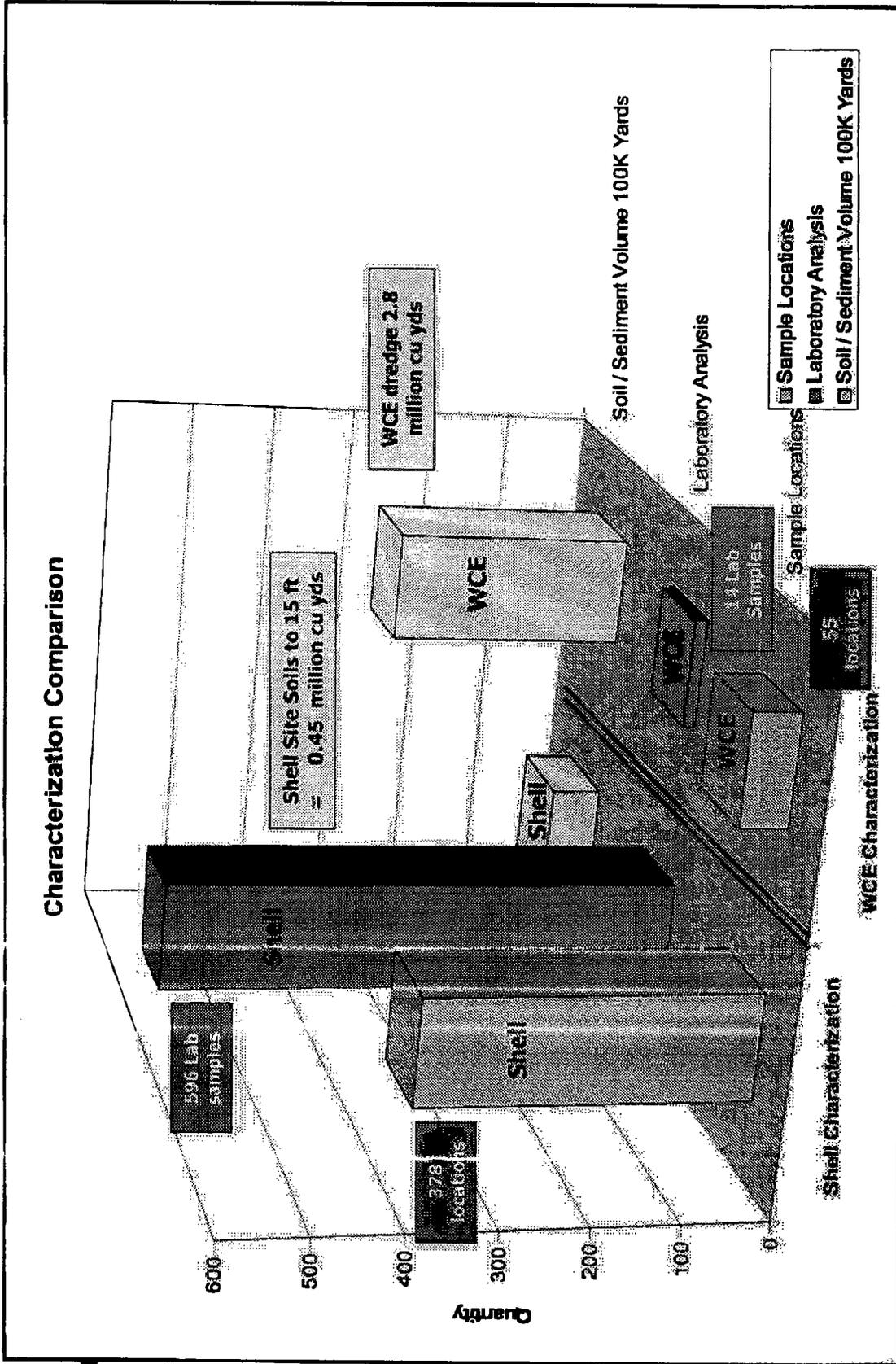
- MNA reduces need for GW extraction

Conceptual Model: WCE Proposal

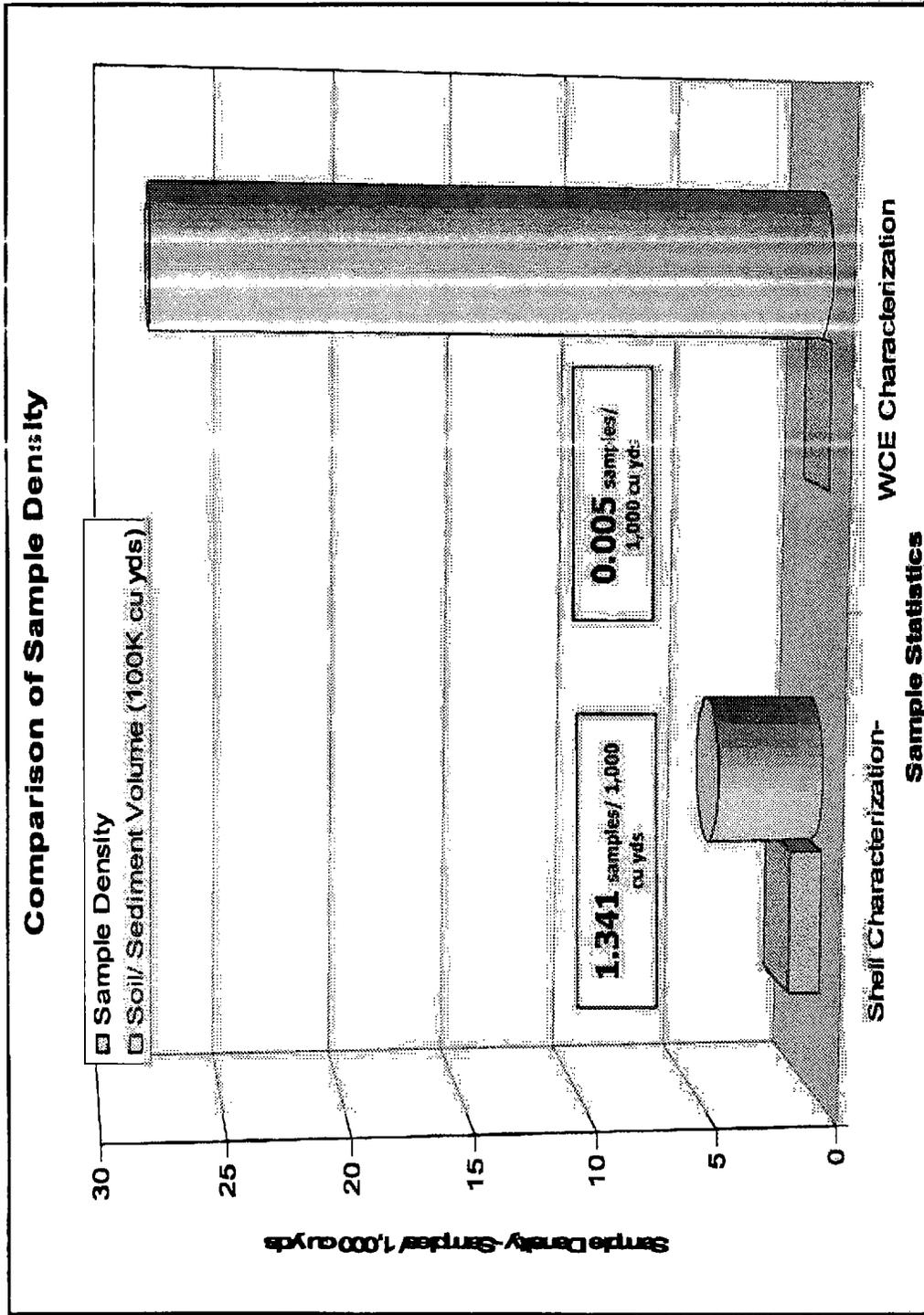


- Leaching of COCs to GW from dredged sediments
- Smearred NAPL: Remediation via dissolved phase only
- Reduced dissolved oxygen (DO) in GW could negatively impact MNA (major mechanism in dissolved BTEX remediation)
 - Decreased O2 diffusion
 - Reduced recharge through stabilized sediment
- Undefined, expanded GW extraction network to counter expanding plume

WCE Sediment Characterization is Inadequate



WCE Sediment Characterization is Inadequate



WCE Dredged Sediment Samples vs RCSS

Parameter	Maximum Detect (mg/Kg)	Percent Detect	Detection Frequency	RCS-1 (mg/Kg)	RCS-2 (mg/Kg)	Exceeds RCS-1	Exceeds RCS-2
Benzo (a) pyrene	2.5	79%	11 / 14	0.7	0.7	Yes	Yes
Benzo (b) fluoranthene	2.8	79%	11 / 14	0.7	0.7	Yes	Yes
Benzo (k) fluoranthene	2.9	73%	40 / 55	0.7	0.7	Yes	Yes
Naphthalene	5.7	71%	39 / 55	4	1000	Yes	No
Beryllium	1.2	100%	14 / 14	0.4	0.8	Yes	Yes
Lead	360	100%	14 / 14	300	600	Yes	No

Human health risks increased after WCE construction

	Shell		Weaver's Cove	
	ELCR	HI	ELCR	HI
Commercial Worker	7.604E-07	0.0437	4.11E-06	0.121
Utility Worker	5.81E-07	0.346	1.52E-06	0.0148
Trespasser 1 (6-13 yrs old)	3.101E-07	0.0784	1.915E-06	0.168
Trespasser 2 (13-30 yrs old)	5.441E-07	0.0404	2.237E-06	0.102

WCE Non Compliance Summary

- WCE Proposed activities do not comply with Response Action Performance Standards and the MCP:
 - Increased Human Health Exposure
 - Endanger Taunton River
 - Degrade site by adding COC
 - Lengthen remediation time
 - Increase remedy complexity
 - Change plume characteristics
 - Stable to unstable
 - Alter groundwater flow regime
 - Impair NAPL recovery
 - Affect dissolved plume
 - Harms natural attenuation processes
 - Leaching of chemicals of concern that could impact groundwater

EXHIBIT B

**SCHEDULE "D"
TO QUITCLAIM DEED**

CURRENT RESTRICTIONS

A. The Use of the Premises shall be limited to:

1. **Marine Industrial**; including, but not limited to, a terminal/facility for loading and off-loading of vessels (includes construction of the on-shore and off-shore facilities necessary for this use).
2. **Outdoor Storage** of construction equipment and related supplies and materials.
3. **Outdoor Storage** of vehicles prior to distribution or shipment.
4. **Fabrication, assembling, packaging, processing, storage or repair** of non-Hazardous Material or equipment.
5. **Warehousing and Distribution** of materials or equipment.
6. **Manufacture of Construction Materials**: (e.g., concrete, asphalt).
7. **Processing of Construction Materials**: (e.g., concrete, asphalt, brick).
8. **Storage of Liquid Asphalt** in tanks located on the Premises in accordance with all applicable laws and regulations.
9. **Modification of Property, Facilities and Infrastructure**: e.g., receipt of non-Hazardous Material as fill (including grading and shaping material approved by Massachusetts DEP as a substitute for clean fill); construction of internal roadways or parking areas; installation of utilities.
10. **Wholesale Sales or Leasing** (e.g., internal business) for sale or lease of industrial equipment/supplies.
11. **Intermodal Transport** (e.g., rail, water, highway) of material not including Oil or Hazardous Material.

(the "Permitted Uses"); provided that the foregoing shall not be construed to allow any use contrary to the restrictions set forth hereinbelow.

Notwithstanding anything herein to the contrary, use of the Premises by Occupants shall not include storage, fabrication, assembling, processing, packaging, or transport of Oil or Hazardous Material, provided, however, that storage of Oil or Hazardous Material is permitted if such storage is for Occupants' on-site consumption as a fuel to supply heat or power and is maintained in aboveground secondarily contained structures (e.g., double-walled aboveground storage tank(s)) with leak detection. Use of any tank with a capacity of ten thousand (10,000) gallons or more for storage of any Oil or Hazardous Material other than liquid asphalt shall be subject to the reasonable approval of Grantor. Grantor shall

maintain accurate records regarding any such storage of Oil or Hazardous Material, shall retain such records for a period of three (3) years, and shall make such records available to Grantor for Grantor's inspection and copying upon Grantor's request.

- B. Except for the Permitted Uses, all other uses of the Premises are expressly prohibited. The Permitted Uses shall be subject to the following:
1. Excavation associated with underground utility and/or construction which is likely to disturb soil, subsurface vapors, media or groundwater containing contaminants of concern shall be conducted in accordance with a Soil Management Plan and a Health and Safety Plan prepared and implemented in accordance with obligations of this Schedule prior to the commencement of such activity.
 2. A Soil Management Plan must be prepared by an LSP and implemented prior to the commencement of any activity that is likely to disturb soil, subsurface vapors, media or groundwater containing contaminants of concern on the Premises. The Soil Management Plan should describe appropriate soil excavation, handling, storage, transport, and disposal procedures and include a description of the engineering controls and air monitoring procedures necessary to ensure that workers and receptors in the vicinity are not affected by fugitive dust or particulates. On-site workers must be informed of the requirements of the Soil Management Plan, and the plan must be available on-site throughout the course of the project.
 3. A Health and Safety Plan must be prepared by a certified Industrial Hygienist and implemented prior to the commencement of any activity that is likely to disturb soil, subsurface vapors, media or groundwater containing contaminants of concern. The Health and Safety Plan should specify the type of personal protection (i.e., clothing, respirators), engineering controls and environmental monitoring necessary to prevent worker exposures to soil, subsurface vapors, media or groundwater containing contaminants of concern through dermal contact, ingestion, and/or inhalation. Workers must be informed of the requirements of the Health and Safety Plan, and the plan must be available on-site throughout the duration of the activity.
 4. The soil, subsurface vapors, media or groundwater containing contaminants of concern must remain in place and may not be relocated, unless such activity is first appropriately evaluated by an LSP who renders an Opinion which states that such relocation is consistent with maintaining a condition of No Significant Risk.
 5. Specifications for future buildings to be constructed at the site must incorporate slab-on-grade construction techniques, a sub-slab vapor barrier and an active sub-slab ventilation system. The plans for such a building must be prepared by a professional engineer licensed to practice in the Commonwealth of Massachusetts and must be evaluated by an LSP to ensure consistency with the assumptions utilized in the risk characterization.
 6. No groundwater from the Premises or water from any aquifer below the Premises shall be used for drinking, irrigation or any other purpose nor shall any wells be drilled on the Premises.

7. No soil shall be removed from the Premises to an off-site location unless such activity is first evaluated by an LSP who renders an Opinion which states that such relocation is consistent with maintaining a condition of No Significant Risk. The owner of the Premises shall be responsible for informing the contractor(s) of anticipated subsurface soil conditions related to worker exposure to such conditions. The Grantee and its successors and assigns shall, prior to undertaking such soil removal, enter into an agreement with the Grantor to indemnify the Grantor and its successors and assigns for any loss, cost, expense, suit, claim, damage, fine, penalty or liability arising from such soil removal (including its reasonable attorneys' fees, paralegal fees and costs incurred in connection therewith, at both the trial and appellate levels). The Grantor and its successors shall enter into any such agreement and give such consent within sixty (60) calendar days of a request therefore, but may refuse to do so if the Grantor or its successors determines, in its sole discretion, that the person or entity providing the indemnification or undertaking the added remedial work, if any, is not capable of doing so for financial or other reasons determined by Grantor.
8. Any structures built on the Premises shall be evaluated, and controls installed by the owner of the Premises if deemed necessary, to prevent the infiltration or accumulations of hydrocarbon vapors into these structures. The owner of the Premises shall not install basements or crawl spaces in any structure located on the Premises.
9. The owner of the Premises shall not, except at such owner's own expense and with a hold harmless and indemnification agreement acceptable to the Grantor, in its sole discretion, alter site conditions (land and/or improvements) so as to create more remedial activity, environmental exposure, or costs. The Grantor shall enter into any such agreement and give such consent within sixty (60) days of a request therefor, but may refuse to do so if it determines, in its sole discretion, that the person or entity providing the indemnification or undertaking the added remedial work, if any, is not capable of doing so for financial or other reasons determined by Grantor.
10. The owner of the Premises shall not
 - a. Use any part of the Premises as a residence, school, nursery, daycare, recreational area, and/or use at which a child's presence is likely;
 - b. Engage in any activities or uses which are inconsistent with maintaining a condition of No Significant Risk;
 - c. Engage in any activities or uses, which in the opinion of an LSP, shall present a greater risk of harm to health, safety, public welfare, or the environment than the Permitted Uses; and
 - d. Use any part of the Premises for agricultural purposes.
11. Until the Grantor gets a final Closure letter requiring no further monitoring, the Grantor shall retain the right to enter upon the Premises to conduct remediation, assessment, maintenance, and monitoring activities related to the environmental

remediation of the Premises which shall include all rights, duties and obligations as detailed in the Right of Entry Requirements attached to the Deed as Schedule "C."

- 12. Any development of the Premises for the uses permitted herein shall require construction and maintenance of an asphalt, concrete, clay or other impervious surface over the entire Premises or the construction and maintenance of another direct soil contact barrier appropriate to the use of the Premises and acceptable to the LSP and this shall be an obligation of the owner of the Premises at the time of any such development.

ACCEPTED AND AGREED:

JAY CASHMAN, INC.

By: 

Name: Jay Cashman

Title: Chairman of Board/Secretary

Date: Dec 14, 2000

ACCEPTED AND AGREED:

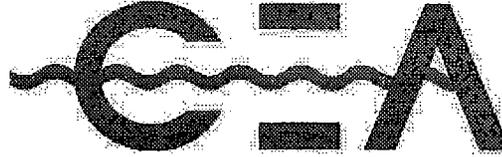
SHELL OIL COMPANY

By: 

Name: R. G. Becker
Director

Title: Corporate Real Estate & Facilities
Shell Oil Company

Date: December 12, 2000



September 16, 2004

CORPORATE ENVIRONMENTAL ADVISORS, INC.

Magalie R. Salas, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E., Room 1A
Washington, D.C. 20426

**Ref: Docket No. CP04-36-000
Weaver's Cove LNG Project
Fall River, Massachusetts**

Dear Ms. Salas:

My name is Michael P. Bingham. I represent Shell Oil Products US (Shell) as the Licensed Site Professional (LSP) of Record for the Fall River Marine Terminal at 1 New Street. The Massachusetts Department of Environmental Protection has assigned Release Tracking Number (RTN) 4-0748 to a release at this site. Weaver's Cove Energy, LLC (Weaver's Cove) is proposing to construct and operate a liquefied natural gas (LNG) facility on the site, which is the subject of a draft Environmental Impact Statement (Draft EIS) prepared at the direction of the Federal Energy Regulatory Commission (FERC).

A groundwater and light non-aqueous phase liquid (LNAPL) recovery system has been operating at the former petroleum distribution terminal since 1989. To date, over 1,150,000 gallons of petroleum product (LNAPL) have been recovered from the subsurface. In addition to source removal, the remedial system maintains hydraulic control of impacted groundwater and prevents movement of LNAPL and impacted groundwater to the Taunton River. As the LSP of Record for RTN 4-0749, I am tasked with ensuring that the regulations contained in the Massachusetts Contingency Plan (310 CMR 40.0000 - the MCP) are met and that human health, the environment, and public safety are protected.

The Draft EIS, dated August 2004, details the design process, alternative site selection, environmental analyses and community impact of the proposed LNG facility. I have reviewed the Draft EIS in detail, including Section 4.2 (Soils and Sediment) and Section 4.3 (Water Resources) relating to planned activities to be conducted during the construction of the proposed LNG facility.

The Draft EIS neither provides nor refers to any detailed plan for maintaining and appropriately modifying the existing remediation system during construction activities, notwithstanding the anticipated placement of over 2 million tons of dredged material on the site. Necessary modifications to the existing system would include raising the entire treatment system (including recovery wells, piping, and treatment shed) concurrently with the placement of dredge material on-site, while maintaining at all times at least the level of system effectiveness currently achieved. It is imperative that the treatment system remain fully operational and effective during the construction activities in order to prevent release of LNAPL or impacted groundwater to the Taunton River. Furthermore, the impact of the placement of dredge material on the performance of the remediation system has not been fully evaluated, and the preliminary determination of the potential for increased risk to human health or the environment is not adequate and does not meet the MCP requirements for Response Action Performance Standards (RAPS) as defined in 310

CMR 40.0191. Accordingly, as LSP of record for this site, I conclude that a revised Phase IV RIP¹ that is based on the Draft EIS will be insufficient to comply with the MCP and may fail to protect human health, the environment and public safety.

Sincerely,
Corporate Environmental Advisors, Inc.



Michael P. Bingham, L.S.P.
Senior Project Manager

CC:

Mr. Jaime Goncalves
Southeast Regional Office, MADEP
20 Riverside Drive
Lakeville, MA 02347

James Hunt
Director, MEPA
Executive Office of Environmental Affairs
100 Cambridge St. Suite 900
Boston MA 02114
Attn: MEPA Office

Robert W. Golledge, Jr.
Commissioner
Massachusetts Department of Environmental Protection
One Winter Street, 2nd Floor
Boston, MA 02108

¹ Although Weaver's Cove apparently expects to submit a revised Phase IV Remedy Implementation Plan (RIP) to the MADEP to address system modifications (see Draft EIS, page 4-40), Weaver's Cove has not discussed any of the proposed plans with myself (the LSP of Record) or with Shell (the responsible party under the existing RTN), and Weaver's Cove does not have authorization to modify the existing remedy on its own behalf.





Paul J. Diodati
Director

Commonwealth of Massachusetts

Division of Marine Fisheries

251 Causeway Street • Suite 400

Boston, Massachusetts 02114

(617) 626-1520

fax (617) 626-1509



July 23, 2004

Fall River Conservation Commission
1 Government Center
Fall River, MA 02722

Re: Weaver's Cove Energy LNG Import Terminal Project Notice of Intent

Dear Commissioners:

Marine Fisheries has reviewed the Notice of Intent (NOI) from Weaver's Cove Energy, LLC to conduct maintenance and improvement dredging and construct a liquefied natural gas (LNG) import terminal along the Taunton River in Fall River. We offer the following comments and resource information for your consideration.

The Taunton River provides valuable habitat for a diverse assemblage of finfish and invertebrates. In recognition of the extremely productive quahog (*Mercenaria mercenaria*), soft shelled clam (*Mya arenaria*), and American oyster (*Crassostrea virginica*) resources found within and adjacent to the proposed project footprint, these portions of the Taunton River have been characterized by *Marine Fisheries* as "Significant Shellfish Habitat" and are therefore afforded protection under the Wetlands Protection Act (310 CMR, 10.34). Many diadromous fish species including blueback herring (*Alosa aestivalis*), alewife (*Alosa pseudoharengus*), American shad (*Alosa sapidissima*), hickory shad (*Alosa mediocris*), gizzard shad (*Dorosoma cepedianum*), rainbow smelt (*Osmerus mordax*), white perch (*Morone americana*), striped bass (*Morone saxatilis*), American eel (*Anguilla rostrata*) and the endangered Atlantic sturgeon (*Acipenser oxyrinchus*) use all or some of the Taunton River for passage, spawning, nursery, and forage habitat. Many of these species provide forage for other predatory fish and may themselves be harvested by recreational and commercial fishermen. Finally, various life stages of numerous other finfish species such as winter flounder (*Pseudopleuronectes americanus*), Atlantic menhaden (*Brevoortia tyrannus*), tautog (*Tautoga onitis*), and bluefish (*Pomatomus saltatrix*) also transit and/or inhabit the river during the year.

The support material provided by Weaver's Cove LLC discusses some of these species and provides information on the various anthropogenic influences on their habitat. However, there are a number of unsupported assumptions and missing analyses. Specifically:

- *Marine Fisheries* is greatly concerned that the sediment modeling performed to evaluate potential fisheries impacts from dredging and construction is faulty and greatly underestimates these impacts. The very limited amount of field data collected for use in the model is inadequate when attempting to model for an activity that is proposed to occur year-round for up to three years. Additionally, there continues to be no inclusion of natural inputs such as rainfall, runoff, etc. The Taunton River receives inputs from many sources and the proposed dredging activity will contribute to the overall condition.

An Agency of the Department of Fisheries, Wildlife & Environmental Law Enforcement
David M. Peters, *Commissioner*

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- 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 (TOY) windows and project sequencing within the Taunton River are unacceptable. Appropriate TOY windows would be as follows:
 - Anadromous Species:
 - Alewife, Inward migration - Mid-March through Mid-June 15
 - Atlantic sturgeon, Inward migration - April through June
 - Blueback herring, Inward migration - April 15 through July 30
 - Rainbow smelt, Inward migration - March 1 through May 15
 - White perch, Inward migration - March through May
 - Alewife, Outward migration - June 15 through October 1
 - Atlantic sturgeon, Outward migration - June through November
 - Blueback herring, Outward migration - September through early November
 - Catadromous Species:
 - American eel - Elver (juveniles) inward migration - March 15 through June 15
 - Shellfish:
 - American oyster, Spawning (may occur twice per year) Mid-June through September 15
 - Quahog, Spawning (may occur twice per year) Mid-June through September 15
 - Soft-shell clam Spawning (may occur twice per year) May through October
 - Winter flounder
 - Spawning and larval development - Mid-January through May
 - Juvenile settlement and development - May through September
- As has been noted by *Marine Fisheries* and NOAA Fisheries in other correspondence, the description of potential winter flounder spawning habitat is incorrect and greatly underestimates the amount of area that may be permanently altered. The applicant's claims that the Turning Basin area is too deep for successful winter flounder spawning and egg deposition have no basis.
- The NOI does not address the non-excavation impacts of dredging. The placement, management, and removal of the various spuds, anchors, and chain sweeps needed to secure the barges and other vessels involved in a large dredging project may impact an area many times larger than the actual dredge footprint. This is of great concern for quahog habitat and resources found adjacent to the channel.
- There is a singular lack of discussion regarding the cumulative impacts that construction and operation of this facility will have on these highly stressed species and habitat. Planned dredging will result in the permanent loss of productive shellfish habitat and may further disrupt fish passage and spawning activity. Additionally, claims that dredging/construction impacts will be temporary in nature cannot be supported when discussing a nearly continuous three-year construction cycle, followed by the weekly passage of ships large enough to resuspend sediments along the entire portion of the Mount Hope Bay/Taunton River passage.
- 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. Such events have been observed following the passage of the smaller coal ships to Brayton Point and passage of LNG tankers through Boston Harbor. Wilber & Clarke (2001)¹ reported that the passage of very large vessels through dredged channels could increase suspended sediments up to 5x the background levels. 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. This issue is not addressed in the NOI.

- Previous documents provided by the applicant detailed the use of public landings and rights of way in the Mount Hope Bay area as staging areas for construction and dredging activities. The extent and duration of the loss of public access caused by these activities is not discussed in the NOI.
- Similarly, Mount Hope Bay supports extensive recreational boating and fishing activity during the warmer months that may be disrupted by the presence of large dredge barges and support craft.

Questions regarding this review may be directed to Vin Malkoski in our Pocasset office at (508) 563-1779, ext. 119.

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 & Eric Nelson, US EPA
Chris Boelke, NMFS
John Felix, DEP
Alexander Strysky, MCZM
Hickey, Whittaker, Sawyer, & Brady, MDMF

¹Literature cited: Wilber, D.H. and D.G. Clarke. 2001. *Biological effects of suspended sediments: a review of suspended sediment impacts on fish and shellfish with relation to dredging activities in estuaries.* *North American Journal of fisheries Management* 21:855-875.



The Commonwealth of Massachusetts
William Francis Galvin, Secretary of the Commonwealth
Massachusetts Historical Commission

August 31, 2004

Secretary Magalie R. Salas
Federal Energy Regulatory Commission
888 First Street, NE Room 1A
Washington, DC 20426

RE: Weaver's Cove Energy LLC and Mill River Pipeline, LLC, Fall River, Freetown, Somerset, & Swansea, MA. MHC #RC.33045. PAL #1540. EOA #13061. COE-NED-R-File #2004-2355.
FERC Docket #CP04-36-000 & CP04-41-000.

Dear Secretary Salas:

Staff of the Massachusetts Historical Commission (MHC), office of the State Historic Preservation Officer, have reviewed the Draft Environmental Impact Statement (DEIS) submitted by the Federal Energy Regulatory Commission for the proposed project referenced above, received by the MHC on August 2, 2004.

Subsequent to the receipt of the DEIS, MHC staff also received and reviewed the report, *Intensive (Locational) Archaeological Survey, Weaver's Cove LNG Terminal and Mill River Pipeline Laterals Project, Fall River, Freetown, Somerset, Swansea, Massachusetts*, prepared by the PAL and received by the MHC on August 16, 2004. The survey areas detailed in that report are called the Western Lateral and the Northern Lateral, which included the relocated meter station and pipeyard. MHC then received on August 26, 2004, a technical memorandum prepared by the PAL, reporting on reconnaissance-level evaluation of proposed pipeline alternatives (Northern Lateral, Country Club (Golf Course) Variation, and River Road Variation). In summary, MHC requests additional intensive (locational) archaeological survey for archaeologically sensitive portions of the pipeline route variations and the meter station. MHC is requesting avoidance and/or site examination archaeological surveys for two potentially significant archaeological sites.

As described in the intensive survey report, the results of the archaeological testing for the Western Lateral located two archaeological sites. The Wetland 3 Findspot (Swansea) consisted of an isolated find of a projectile point fragment. As an isolated find, it lacks research value and thus does not meet the National Register Criteria of Eligibility (36 CFR 60). The Slade Farmstead and Cemetery (Swansea) is an intact 19th-century domestic and agricultural site with an associated family cemetery. Presently, the proposed project would impact a portion of the archaeological site, including stone walls and bermed areas. The report recommends reconstructing the stone and earthen features that are proposed to be

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impacted. MHC requests that analysis be conducted to explore the feasibility to avoid impacting the site. Additional subsurface testing and documentation is necessary determine the significance of the portion of the Slade Farmstead and Cemetery that is presently proposed to be impacted. If the Slade Farmstead and Cemetery cannot be completely avoided, MHC requests that a site examination archaeological survey (950 CMR 70) be conducted. The goal of the survey is to provide sufficient information to evaluate the significance of the features proposed to be impacted, and to prepare written, graphic, and photographic documentation of the existing features in the project impact area.

The results of the intensive archaeological testing for the Northern Lateral and the relocated meter station and pipeyard located two new archaeological sites, and a known historic cemetery (Winslow Burial Ground, Freetown). The Head of the Cove 2 Site (Freetown) consisted of a low-density deposit of ancient chipping debris and a diagnostic Susquehanna projectile point. The site may be a continuation of a previously identified adjacent site that also evidenced disturbance. MHC concurs that because of a lack of integrity the Head of the Cove 2 Site does not meet the National Register Criteria of Eligibility (36 CFR 60). The Barnaby Swamp 2 Site (Freetown) consists of a low-density deposit of chipping debris, some recovered from undisturbed subsoils. The site is part of a large area inhabited by ancient Native Americans, and may be part of other, previously recorded archaeological sites. There is at present insufficient information to render an opinion of the significance of the Barnaby Swamp 2 Site. MHC requests that a site examination archaeological survey (950 CMR 70) be conducted. MHC is in receipt of a State Archaeologist's permit application from the PAL for site examination survey of the Barnaby Swamp 2 Site.

The intensive archaeological survey noted the presence of the previously identified Winslow Burial Ground (MHC #FRE.833) in Freetown. MHC concurs with the recommendations of protective fencing to avoid the cemetery, and in addition, requests that the location of the cemetery boundaries be noted on project alignment sheets for protection and avoidance. MHC also requests information (see below) concerning the visual effects of the meter station and pipeyard on the Winslow Burial Ground. The proposed pipeyard in this vicinity was not considered to be archaeologically sensitive.

Subsequent to the completion of the intensive survey report, there have been changes and modifications to the proposed pipeline routes (named the Northern Parcel Variation, Country Club [Golf Course] Variation, and the River Road Variation). Supplemental reconnaissance archaeological surveys were conducted by the PAL to evaluate the route changes. As reported in the supplemental reconnaissance survey technical memorandum, archaeologically sensitive areas were identified for the Northern Variation and Country Club (Golf Course) Variation. The River Road Variation was not considered to be archaeologically sensitive. MHC concurs that an intensive (locational) archaeological survey (950 CMR 70) be conducted for the newly identified archaeologically sensitive areas for the pipeline alternatives.

Concerning historical architectural resources, the Area of Potential Effect (APE) proposed by Epsilon Associates, Inc. (but not yet determined by FERC) in the DEIS summarizes an APE proposed in *LNG Terminal Application Volume III Exhibit F: Resource Report 4*. Concerning the DEIS's photographic simulations, MHC notes slight changes from earlier photographic simulation submissions: the addition of, slight adjustments to, and removal of some of the vantage points. The detailed photographic simulations in the DEIS together with the earlier supplied photographic simulations will assist FERC in determining the APE for visual effects. The MHC requests further information concerning the potential visual effects of the proposed pipeyard and meter station to the historic Winslow Burial Ground in Freetown. The project consultants should submit plans and elevation drawings of the meter station and photographic simulations for the meter station and pipeyard in relation to the historic cemetery.

The MHC respectfully reiterates its request for FERC's determination of the APE for the proposed project pursuant to 36 CFR 800.4(a)(1). While the proponent's consultant has proposed an APE for visual effects, it is FERC's responsibility under the Section 106 regulations to make this determination (36 CFR 800.4(a)(1)). FERC should take into consideration any comments regarding the APE from the public and interested parties, including but not limited to the local historical commission(s) (36 CFR 800.2). The MHC looks forward to receiving, reviewing, and commenting on FERC's determination of the APE for visual effects.

Once the APE is determined by FERC, any needed supplemental historic properties survey should be completed in order to identify all the historic properties within the APE that are listed or eligible for listing. The survey documentation provided earlier by Epsilon Associates, Inc., and summarized in the DEIS evidences considerable effort by the consultant and will greatly assist FERC in evaluating the National Register eligibility of historic properties in the APE, in consultation with the MHC (36 CFR 800.4(c)(1)). MHC staff will require a completed Form B, which can be downloaded from the MHC website at www.sec.state.ma.us/mhc, for each of the potentially-eligible properties within the APE in order to assist MHC in completing an eligibility opinion (36 CFR 800.4). The MHC requests the opportunity to review and comment on the scope of any supplemental historic properties survey that may be required.

MHC looks forward to continued consultation on this project. MHC will continue to review detailed results of the cultural resource investigations as the results become available, and in consultation with FERC and other consulting parties, offer our comments to avoid, minimize, or mitigate adverse effects to significant historic and archaeological resources.

These comments are offered to assist in compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (36 CFR 800), MGL c. 9, ss. 26-27C, the Secretary of Interior's *Standards and Guidelines for Archeology and Historic Preservation* (48 Fed. Reg. 190 (1983)), and MEPA (301 CMR 11). Please contact Edward L. Bell (Senior Archaeologist) or Ryan T. Maciej (Preservation Planner) of my staff if you have any questions or require additional information.

Sincerely,



Brona Simon
State Archaeologist
Deputy State Historic Preservation Officer
Massachusetts Historical Commission

xc:
Ted Gehrig, Weaver's Cove LLC
Theodore A. Barten, Epsilon Associates, Inc.
Taya Dixon, Epsilon Associates, Inc.
Deborah C. Cox, PAL
Crystal Gardner, USACOE-NED Regulatory, Attn. Ted Lento
Kate Atwood, USACOE-NED
Massachusetts Commission on Indian Affairs
THPO, Wampanoag Tribe of Gay Head (Aquinnah)
Assonet Band, Wampanoag Nation
Secretary Ellen Roy Herzfelder, Massachusetts EOE, Attn: MEPA Unit
Victor T. Mastone, Massachusetts Board of Underwater Archaeological Resources
Fall River, Freetown, Somerset, and Swansea Historical Commissions

Joint Processing Meeting Comment Form

APPLICANT: WEAVER'S Cove APPL. NUMBER: 04-02355

AGENCIES EPA F&WS NMFS MA CZM CT DEP RI DEM OTHER

PROJECT MANAGERS

ABBOTT ANACHEKA CASSULO DILORENZO ELLIOT GARDNER KEDDELL
 KOTELLY KULLBERG LEE LENTO MIRABELLA RAY ROSE
 SHEEHAN SNEERINGER VALITON _____

INDIVIDUAL PERMIT

No objection Minor modification, mitigation or conditions recommended
 Major modifications necessary Additional Information Required Further Review
 Concur with _____ Deny

ENDANGERED SPECIES ACT CONSULTATION

No Species present Regional Blanket Ltr. - No effect - closed
 Letter to concur/not likely to effect by _____ (closes consultation)
 Potential MAY EFFECT situation (additional consultation required)
 Time of year restriction. No work from _____ To _____ to protect _____ Species.

ESSENTIAL FISH HABITAT CONSULTATION (EFH)

No EFH present No adverse impact to EFH---(consultation not req'd)
 May adversely affect EFH - See conservation recommendations below
 May adversely affect EFH - Addt'l conservation recommendations are not req'd
 General Concurrence applies - Addt'l conservation recommendations below
 Expanded Consultation required due to nature and scope of project. NMFS requests extension of comment period until 30 days after receipt of detailed EFH Assesment

EFH CONSERVATION RECOMMENDATIONS:

Time of year restriction. No work from ___ / ___ / ___ To ___ / ___ / ___ To protect _____ EFH.
 Other (s) _____

SAMPLING PLAN/SUITABILITY DETERMINATIONS:

Concur Do Not Concur Conditional (capping plan, special mgmt)

FOR PROJECTS INVOLVING DISPOSAL OF DREDGED MATERIAL AT MBDS:

Pursuant to 40 CFR 325.2, EPA concurs that the disposal of dredged material at MBDS complies with ODA criteria at Part 227. Concur Do Not Concur

COMMENTS:

LETTER WITH COMMENTS BY: Sept 20 - Comment Period

SIGNATURE: [Signature] DATE: 8/25/04

(circle one) MA PGP IP

APPLICANT: Weaver's Cove APPL. NUMBER: 2004-2355

AGENCIES

- EPA
- F&WS
- NMFS
- MA CZM

PROJECT MANAGERS

- | | |
|-----------------------------------|-------------------------------------|
| <input type="checkbox"/> ANACHEKA | <input type="checkbox"/> KOTELLY |
| <input type="checkbox"/> GARDNER | <input type="checkbox"/> SARGENT |
| <input type="checkbox"/> LENTO | <input type="checkbox"/> SNEERINGER |
| <input type="checkbox"/> KEDDELL | <input type="checkbox"/> VALITON |

PGP

- Eligible as proposed
- Ineligible, IP req'd
- Eligible w/ modification, mitigation or conditions
- No resources
- Further Review

INDIVIDUAL PERMIT

- No objection Concur w/ _____
- Deny
- Minor modification, mitigation or conditions
- Major modifications
- Further Review

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- Other (s) _____

SAMPLING PLAN/SUITABILITY DETERMINATION

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COMMENTS: MODIFICATION PERMIT CONDITION MITIGATION REQ'D INFO

The project will reuse federal consistency

LETTER WITH COMMENTS BY: _____

SIGNATURE: Alex Stuker DATE: _____

(revised 8/16/04 by dmr)

(circle one) MA PGP IP

APPLICANT: Weaver's Cove

APPL. NUMBER: NAE-2004-2355

AGENCIES

- EPA
- F&WS
- NMFS
- MA CZM

✓ m d m f

PROJECT MANAGERS

- ANACHEKA
- GARDNER
- LENTO
- KEDDELL
- KOTELLY
- SARGENT
- SNEERINGER
- VALITON

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COMMENTS: MODIFICATION PERMIT CONDITION MITIGATION REQ'D INFO

LETTER WITH COMMENTS BY: _____

SIGNATURE: Eileen M. Feeney DATE: 8/25/04
(revised 8/16/04 by dmr)

(circle one) MA PGP **IP**

APPLICANT: Weavers Cove LLC. APPL. NUMBER: 2004-2355

AGENCIES

- EPA
- F&WS
- NMFS
- MA CZM

PROJECT MANAGERS

- | | |
|---|-------------------------------------|
| <input type="checkbox"/> ANACHEKA | <input type="checkbox"/> KOTELLY |
| <input type="checkbox"/> GARDNER | <input type="checkbox"/> SARGENT |
| <input checked="" type="checkbox"/> LENTO | <input type="checkbox"/> SNEERINGER |
| <input checked="" type="checkbox"/> KEDDELL | <input type="checkbox"/> VALITON |

PGP

- Eligible as proposed
- Ineligible, IP req'd
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- No resources
- Further Review

INDIVIDUAL PERMIT

- No objection Concur w/ _____
- Deny
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- Major modifications
- Further Review

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COMMENTS: MODIFICATION PERMIT CONDITION MITIGATION REQ'D INFO

Further Review

LETTER WITH COMMENTS BY:

SIGNATURE: Ch Bull DATE: 8/25/04
(revised 8/16/04 by dmr)



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
NORTHEAST REGION
One Blackburn Drive
Gloucester, MA 01930-2298

Ms. Crystal I. Gardner
Chief, Permits & Enforcement Branch
US Army Corps of Engineers
New England District
696 Virginia Road
Concord, MA 01742-2751

AUG 16 2004

Attn: Mr. Ted Lento

Dear Ms. Gardner:

This responds to your Public Notice dated August 3, 2004 (file number 2004-2355), requesting information on the presence of any federally listed threatened or endangered species and/or designated critical habitat for listed species in the vicinity of a proposed liquefied natural gas (LNG) terminal. The proposed site is adjacent to the Taunton River in Fall River, MA and Mount Hope Bay in Rhode Island. The project under review involves dredging, construction, and discharge of fill material related to the construction of the LNG terminal.

While several species of endangered and threatened whales and sea turtles are known to occur in the coastal waters of Massachusetts and Rhode Island, no federally listed or proposed threatened or endangered species and/or designated critical habitat under the jurisdiction of the National Marine Fisheries Service are known to exist in the Taunton River. Therefore, no further consultation pursuant to Section 7 of the Endangered Species Act of 1973, as amended, is required. Should project plans change or new information become available that changes the basis for this determination, then consultation should be initiated. If you have any questions about these comments or the consultation process in general, please contact Kristen Koyama at (978) 281-9328 ext. 6531.

Sincerely,

Mary A. Colligan
Assistant Regional Administrator
for Protected Resources

cc: Boelke, NER4
FERC

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AUG 17 2004

File Code: Sec 7 ACOE Mass. NSP

REGULATORY DIVISION





Paul J. Diodati
Director

Commonwealth of Massachusetts

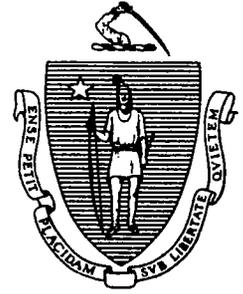
Division of Marine Fisheries

251 Causeway Street • Suite 400

Boston, Massachusetts 02114

(617) 626-1520

fax (617) 626-1509



September 17, 2004

Somerset Conservation Commission
140 Wood Street
Somerset, MA 02726

Re: Weaver's Cove Energy LNG Import Terminal Project Notice of Intent

Dear Commissioners:

The Division of Marine Fisheries (*Marine Fisheries*) has reviewed the Notice of Intent (NOI) from Weaver's Cove Energy, LLC to conduct maintenance and improvement dredging and construct a liquefied natural gas (LNG) import terminal along the Taunton River in Fall River. We offer the following comments and resource information for your consideration.

The Taunton River provides valuable habitat for a diverse assemblage of finfish and invertebrates. In recognition of the extremely productive quahog (*Mercenaria mercenaria*), soft shelled clam (*Mya arenaria*), and American oyster (*Crassostrea virginica*) resources found within and adjacent to the proposed project footprint, these portions of the Taunton River have been characterized by *Marine Fisheries* as "Significant Shellfish Habitat" and are therefore afforded protection under the Wetlands Protection Act (310 CMR, 10.34). Many diadromous fish species including blueback herring (*Alosa aestivalis*), alewife (*Alosa pseudoharengus*), American shad (*Alosa sapidissima*), hickory shad (*Alosa mediocris*), gizzard shad (*Dorosoma cepedianum*), rainbow smelt (*Osmerus mordax*), white perch (*Morone americana*), striped bass (*Morone saxatilis*), American eel (*Anguilla rostrata*) and the endangered Atlantic sturgeon (*Acipenser oxyrinchus*) use all or some of the Taunton River for passage, spawning, nursery, and forage habitat. Many of these species provide forage for other predatory fish and may themselves be harvested by recreational and commercial fishermen. Finally, various life stages of numerous other finfish species such as winter flounder (*Pseudopleuronectes americanus*), Atlantic menhaden (*Brevoortia tyrannus*), tautog (*Tautoga onitis*), and bluefish (*Pomatomus saltatrix*) also transit and/or inhabit the river during the year.

The support material provided by Weaver's Cove LLC discusses some of these species and provides information on the various anthropogenic influences on their habitat. However, there are a number of unsupported assumptions and missing analyses. Specifically:

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many sources and the proposed dredging activity will contribute to the overall condition.

- 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 (TOY) windows and project sequencing within the Taunton River are unacceptable. Appropriate TOY windows would be as follows:
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 - White perch - March through May
 - Outward migration
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 - Winter flounder
 - Spawning and larval development - Mid-January through May
 - Juvenile settlement and development - May through September
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- The NOI does not address the non-excavation impacts of dredging. The placement, management, and removal of the various spuds, anchors, and chain sweeps needed to secure the barges and other vessels involved in a large dredging project may impact an area many times larger than the actual dredge footprint. This is of great concern for quahog habitat and resources found adjacent to the channel.
- There is a singular lack of discussion regarding the cumulative impacts that construction and operation of this facility will have on these highly stressed species and habitat. Planned dredging will result in the permanent loss of productive shellfish habitat and may

further disrupt fish passage and spawning activity. Additionally, claims that dredging/construction impacts will be temporary in nature cannot be supported when discussing a nearly continuous three-year construction cycle, followed by the weekly passage of ships large enough to resuspend sediments along the entire portion of the Mount Hope Bay/Taunton River passage.

- 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. Such events have been observed following the passage of the smaller coal ships to Brayton Point and passage of LNG tankers through Boston Harbor. Wilber & Clarke (2001)¹ reported that the passage of very large vessels through dredged channels could increase suspended sediments up to 5x the background levels. 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. This issue is not addressed in the NOI.
- Previous documents provided by the applicant detailed the use of public landings and rights of way in the Mount Hope Bay area as staging areas for construction and dredging activities. The extent and duration of the loss of public access caused by these activities is not discussed in the NOI.
- Similarly, Mount Hope Bay supports extensive recreational boating and fishing activity during the warmer months that may be disrupted by the presence of large dredge barges and support craft.

Questions regarding this review may be directed to Vin Malkoski in our Pocasset office at (508) 563-1779, ext. 119.

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 & Eric Nelson, US EPA
Chris Boelke, NMFS
John Felix, DEP
Alexander Strysky, MCZM
Hickey, Whittaker, Sawyer, & Brady, MDMF

¹Literature cited: Wilber, D.H. and D.G. Clarke. 2001. *Biological effects of suspended sediments: a review of suspended sediment impacts on fish and shellfish with relation to dredging activities in estuaries.* *North American Journal of fisheries Management* 21:855-875.



COMMONWEALTH OF MASSACHUSETTS
 EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
 DEPARTMENT OF ENVIRONMENTAL PROTECTION
 METROPOLITAN BOSTON – NORTHEAST REGIONAL OFFICE

MITT ROMNEY
 Governor

ELLEN ROY HERZFELDER
 Secretary

KERRY HEALEY
 Lieutenant Governor

ROBERT W. GOLLEDGE, Jr.
 Commissioner

September 20, 2004

Magalie R. Salas
 Federal Energy Regulatory Commission
 888 First St., N.E., Room 1A
 Washington, DC 20426

RE: Weaver's Cove LNG Project
 Bristol County, Massachusetts
 FERC Reference Docket No. CP04-36-000
 EOEPA MEPA File No.13061

RECEIVED
 SEP 27 2004
 POLICY DIVISION

Dear Secretary Salas:

The Massachusetts Department of Environmental Protection (DEP) has reviewed the Draft Environmental Impact Statement / Draft Environmental Impact Statement Report (DEIS/DEIR) for the proposed Weaver's Cove Energy (WCE) Liquefied Natural Gas Project in Bristol County, Massachusetts. (FERC Reference Docket No. CP04-36-000 and EOEPA MEPA File #13061).

The proposed project will have substantial impact on the environment; especially in areas of air quality, water quality, wetlands, waterways, and dredge spoils management. It is the Department's opinion that the DEIS/DEIR is deficient in evaluating the extent of impacts and proposing alternatives to avoid or minimize the likely environmental impacts, and therefore a Supplemental Draft EIS should be required by FERC.

As proposed in the DEIS/DEIR, the project would involve the construction of a liquefied natural gas (LNG) terminal in the City of Fall River, and natural gas pipelines facilities in the City of Fall River, and the towns of Somerset, Swansea and Freetown. The proposed LNG terminal would be capable of handling LNG ships with cargo capacities up to 145,000 cu/meters of liquid natural gas. To accommodate the anticipated 50 to 70 ships per year, the project proposes dredging 2.6 to 3.1 million cubic yards of sediment from approximately 191 acres

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within Taunton River and Mount Hope Bay. Proposed dredging depth would be to 37 feet below mean lower low water (MLLW). LNG unloaded from the ships would be stored in the proposed 200,000 cu/meter containment storage tank.

The project also proposes using various open trench techniques to construct two 24-inch diameter natural gas pipelines totaling 6.1 miles. One of the proposed pipelines, the 3.6-mile Northern Pipeline, would connect to the Algonquin interstate pipeline system in Freetown. The second pipeline, the 2.5-mile Western Pipeline, would cross the Taunton River and connect to the Algonquin pipeline system in Swansea. Construction of two meter and regulation stations are proposed at the end of the pipelines in Freetown and Swansea. Both pipelines would have a design maximum pressure of 1,440 psig.

WCE has submitted several permit applications with supporting data and analysis affecting the regulatory matter discussed below which are currently under review. The Department's comments on the project are based on the DEIS/DEIR and those submissions are set out below. As additional data is submitted, the Department may revise or supplement this comments.

AIR QUALITY:

General Conformity Determination -

The WCE LNG project triggers the need for a General Conformity finding by the Federal Energy Regulatory Commission (FERC). A General Conformity determination is required by the federal Clean Air Act (CAA) for federal actions other than transportation actions. (Transportation actions, such as the approval of federally funded transportation plans, programs, and projects are covered by the Transportation Conformity requirements of the Clean Air Act.)

The requirements for General Conformity are contained in section 176(c)(1) of the CAA and in the General Conformity regulations promulgated by EPA in 1993 (40 CFR Part 51, Subpart W, and 40 CFR Part 93). In general, federal actions must support the goals of the State Implementation Plan (SIP) and be shown to not:

- Cause or contribute to new violations of any national ambient air quality standard (NAAQs) in any area;
- Increase the frequency or severity of any existing violation of any NAAQs; or
- Delay timely attainment of any NAAQs or interim emission reductions.

The General Conformity regulations apply to nonattainment areas where the estimated emissions from the action meet or exceed specified emission rates for each NAAQ. Eastern Massachusetts is currently classified as a serious nonattainment area for the one-hour ozone standard¹ and, therefore, the following emission rates contained in the General Conformity regulations apply to the proposed WCE project:

¹ As part of the 8-hour designation rule EPA amended 40 CFR 50.9 (National 1-hour primary and secondary ambient air quality standards for ozone) to provide that the one hour ozone standard will no longer apply to an area one year after designation of that area for the 8-hour ozone NAAQS. See 69 Fed. Reg. 23951, 23996 (April 30, 2004). For most areas, including all of Massachusetts, that date is June 15, 2005. Eastern Massachusetts was

- Ozone (volatile organic compounds (VOC) and nitrogen oxides (NOx) – 50 tons/year

In summary, the criteria for determining conformity for ozone nonattainment areas are as follows (See, 40 CFR Part 51.858):

- The total of the direct and indirect emissions from the project are included in the SIP;
- The total of the direct and indirect emissions from the project are fully offset within the same nonattainment area through revision to the SIP or a similarly enforceable measure that affects emission reductions so that there is no net increase in emissions of that pollutant;
- The state air agency makes a determination that the total of the direct and indirect emissions from the project would not exceed the emission budgets in the SIP; or
- The state air agency makes a commitment to a SIP revision to achieve the necessary reductions prior to the federal action.

Air Emissions Inventory for Weaver's Cove -

Appendix H of the DEIS/DEIR includes an emissions inventory for the WCE project and estimates that projected direct and indirect emissions will exceed the emission threshold for NOx and will, therefore, trigger the need for a General Conformity determination for this pollutant. (The project would generate up to 74.9 tons per year of NOx exceeding the 50-ton/year-review threshold.) It should be noted that the project is estimated to generate 14.0 tons/year of VOC, which is well below the 50-ton/year-review threshold for this pollutant.

The direct emissions are estimated to be generated from heaters, fire pumps, and emergency generators and total 33.4 tons/year of NOx. The indirect emissions will be generated from LNG trucks, ships, and tugs and total 41.5 tons/year of NOx.

Comments on the Preliminary General Conformity Determination -

The Preliminary General Conformity Determination for the WCE project indicates that the criteria that must be met to demonstrate conformity are either: 1) to demonstrate that the emissions would be offset by other emission reduction measures; or 2) to demonstrate that the emissions from the project do not exceed the emission budgets in the SIP for eastern Massachusetts. DEP agrees that these are the criteria that must be met for a positive conformity determination by FERC. However, the preliminary determination does not meet either of these criteria.

The analysis includes a comparison of the WCE project to the eastern Massachusetts 2007 NOx budget and concludes that the emissions from construction and mining equipment are not "regionally significant" and, therefore will not cause a new violation, increase the severity of an existing violation, or delay timely attainment of the one-hour ozone standard. For commercial marine vessels, the analysis indicates that the emissions could be up to 10.5% of the marine vessel emissions for eastern Massachusetts

and these emissions would be "regionally significant." The analysis then relies on dispersion analysis from the FERC application and concludes that the marine vessels would not cause a new violation of the NO₂ standard. In addition, this analysis concludes that the marine vessel emissions are relatively small compared to the eastern Massachusetts budget and will not cause a new violation, increase the severity of an existing violation, nor delay timely attainment of the one-hour ozone standard.

The preliminary conformity determination for the WCE project does not meet the requirements of the EPA's General Conformity regulations for ozone nonattainment areas because the criteria for determining conformity have not been met. First, the project's emissions are not included in the SIP. Second, the direct and indirect emissions are not offset. Finally, DEP has neither made a determination that the emission budget will not be exceeded nor made a commitment to a SIP revision. The reliance on a "regionally significance" test and a modeling analysis is incorrect and only appropriate for carbon monoxide and PM-10 nonattainment areas.

Need for Further Analysis and Mitigation -

To meet the requirements of the General Conformity regulations, the preliminary determination must be revised. Because the emissions from the project are not included in the SIP for eastern Massachusetts, the analysis should explore mitigation measures to offset the NO_x emissions from the project. Eastern Massachusetts is currently in nonattainment of the one-hour ozone standard and was classified as a moderate eight-hour ozone nonattainment area in April of 2004. DEP expects additional emission reductions will be needed to meet the eight-hour ozone standard by the 2010 attainment year deadline. Future FERC/MEPA filings for this project should include a detailed discussion of ways to mitigate the impact of this project since the SIP cannot accommodate increases in NO_x emissions and expect to demonstrate attainment of the public health standard.

Air Quality Permits

A Non-Major Comprehensive Plan (NMCP) Approval, 310 CMR 7.02(5), is required for the proposed shop fabricated natural gas fired hot water/glycol heaters that will provide heat to vaporize LNG for pipeline transmission. A Non-Major Comprehensive Plan Application (NMCPA) has been submitted to the Department and is currently under review. Both the DEIS/DEIR and the NMCPA indicate that the hot water/glycol heaters will be equipped with Ultra-Low NO_x Burners (ULNB), which represents Best Available Control Technology (BACT), and the LNG Terminal will be a minor source of air contaminant emissions as defined by EPA and DEP.

As part of the NMCPA, the WCE project proponents have provided a comprehensive Top-Down BACT analysis for the water/glycol heaters. The use of ULNB in lieu of Low NO_x Burners (LNB), as proposed in the original design and the Environmental Notification Form (ENF), will result in substantial NO_x emission reductions (9 ppmvd@3%O₂ versus 15 ppmvd@3%O₂). Furthermore, ULNB equipment does provide for beneficial pollution prevention (P2) in the design versus LNB with selective catalytic reduction (SCR). NO_x emissions for the LNB with SCR versus ULNB would be approximately 3.1 lb/hr less but it would result in approximately a 5.6 lb/hr increase of NH₃ and other criteria air contaminants. Although the Department has not

completed its review of the NMCPA and a final BACT decision has not been made, it appears the DEIS/DEIR sufficiently addresses this matter.

The DEIS/DEIR provides information in Table 4.11.1-7 Potential Air Quality Impacts from Operation of the Proposed LNG Terminal on the ambient air quality impacts from the operation of the LNG Terminal (LNG ships, tugs, water/glycol heaters, emergency generator and diesel fire pumps). The ambient air quality impacts, with inclusion of monitored background, predict that the Massachusetts and National Ambient Air Quality Standards (NAAQS) will not be exceeded. The PM₁₀ data indicates that the air quality impact, with monitored background included, relative to the NAAQS PM₁₀ 24-hour averaging period and annual average period will be respectively 95.3% and 76.0% of the NAAQS. The PM₁₀ 24-hour average total predicted impact is 143.0 ug/m³ in comparison to the 150 ug/m³ NAAQS. Furthermore, air quality dispersion modeling contained in the DEIS/DEIR and the NMCPA reveals that the PM₁₀ 24-hour average ambient impacts from operation of the LNG Terminal are primarily due to the design of the water/glycol heaters which contribute 45 ug/m³; all other equipment including LNG ships, tugs and trucks contribute 7 ug/m³.

In consideration that air quality modeling was "refined modeling" and the predictive nature of modeling, alternative water/glycol heater designs should be evaluated in future FERC/MEPA filings to reduce the PM₁₀ ground level impacts. Design changes such as, reducing PM₁₀ emission rates; increasing stack heights; combining stacks into a multi-flue stack; increasing stack gas exit temperature; increasing stack gas exit velocity; or other means to reduce the PM₁₀ ground level impacts need to be evaluated and one or more incorporated into the water/glycol heater equipment design. The Department will require that design modifications of water/glycol heaters to reduce PM₁₀ ground level impacts also be addressed in the NMCPA.

Neither the DEIS/DEIR nor NMCPA provides information concerning how odorant storage, pipeline odorant injection, spent odorant storage containers, etc. will be designed and managed to prevent the occurrence of a condition of air pollution due to the release of odorant to the ambient air. Future FERC/MEPA filings should include a detailed discussion of these issues. The Department also will require that this matter be addressed in the NMCPA. It is anticipated that the design will be based on the use of cylinders hard piped to the injection location to minimize any release to the ambient air.

Estimated sound impacts from the proposed LNG Terminal operation will result in less than a 2.0 dBA impact above background and are well within the Department's Noise Policy DAQC 90-001. The Department recommends that some activities that would occur during the on-site construction phase and generate elevated sound levels at off-site receptors, such as pile driving, should be limited to day-light hours Monday through Friday and no holidays.

DEIS Recommend Mitigation -

The Department concurs with the proposed mitigation and planning measures numbers 27-30 at 5-19 of the report regarding reductions in transportation and construction related emissions through low sulfur fuels and diesel retrofits and nuisance odor and noise abatement and response plans.

WETLANDS:

As currently proposed, the construction of the LNG terminal within the Fall River Designated Port Area (DPA) will involve the filling of approximately 1,800 square feet of salt marsh and the replacement of approximately 4,000 linear feet of coastal dune with a riprap revetment. The preamble for the section of the Wetlands Protection Act Regulations that pertains to Designated Port Areas (310 CMR 10.26(1)) states salt marshes, coastal dunes... "are not likely to be significant to marine fisheries, storm damage prevention or flood control." The provision does not reference other the wetland interests protected by the regulations to which these resources may contribute. (See, 310 CMR 10.01(2)).

The DEIS/DEIR provides only cursory information about the project's impact on the coastal dune. The report also provides information that concludes the salt marshes in this DPA are functioning in a manner to contribute to the protection of marine fisheries, storm damage prevention and flood control, as well as ground water supply, prevention of pollution and protection of wildlife habitat. For example, page 4-61 of Section 4.4 of the DEIS/DEIR states that WCE conducted a functional assessment of the salt marsh areas to be eradicated by the proposed construction of the LNG terminal. The assessment, based on *The Highway Methodology Workbook* (COE, 1993), states that the salt marshes provide groundwater recharge/discharge, fish and shellfish habitat, sediment/toxicant retention, nutrient removal, production export, sediment/shoreline stabilization, and wildlife habitat functions. Section 3.4 of the DEIS/DEIR states that an alternative configuration that avoids impacts to salt marsh is possible but contends that the alternative site layout is not a reasonable alternative to the proposed design. The reasons given for not recommending the alternative layout included higher costs for design and construction, and security concerns.

The wetland regulations provide a very high degree of protection to salt marshes and coastal dunes against any alteration or adverse impacts from construction related activities. The regulations also give different regulatory status to activities in resource areas within DPAs. The Department will take into consideration that the proposed alterations associated with this project are being conducted in a DPA in its evaluation of the regulatory approvals that may be required to implement the final project proposal. However, the information provided in the DEIS/DEIR is insufficient for the Department to evaluate the nature and extent of the potential impact of the current proposal on these resources and their respective contribution to protected interests. This information should be provided in supplemental FERC/MEPA submissions as well as additional information evaluating and comparing the construction alternatives that could avoid or mitigate impacts. This information will also be relevant to Water Quality Certification review. DEP also supports the recommendations stated in Section 5.2 (numbers 20 and 21) regarding the submission of wetlands mitigation and monitoring plans.

With respect to the alteration of the 0.21 acres of wetland impact at flag series 3, the Department agrees with the FERC recommendation in the DEIS/DEIR that the

proposed administration building and associated parking lot be redesigned to avoid the wetland impact.

Finally, it is noted in the DEIS/DEIR that hydrostatic testing of the LNG storage tank will require the withdrawal of 32 million gallons of water from either a municipal source or directly from the Taunton River. An additional 760,000 gallons of water from a municipal source or the Taunton River will be required to hydrostatically test the two proposed pipelines. The proposed hydrostatic testing activities will likely require the need for a Water Management Act Withdrawal Permit (310 CMR 36.00) from DEP, as well as a filing for a NPDES Permit from EPA and DEP. Future FERC/MEPA filings should discuss further details of this activity, including the location of possible withdrawal and discharge points being considered by the project proponent.

WATERWAYS:

Several aspects of the project will require a Chapter 91 License/Permit from the DEP Waterways Program. The project proponent is advised that a Chapter 91 License requires approval from the City's Planning Board and Zoning Board prior to a License being issued. In reviewing the DEIS/DEIR for waterways issues, it was noted the DEIS/DEIR does not incorporate any of the detailed plans showing the dredge footprint or profiles of the cut and final depths. Similarly, detailed plans of the LNG facility, pier, revetment, boat ramp, fill and shore side structures as well as the pipeline have not been included in the document. Further, the proposed "Safety Exclusion Zone" is 2 miles ahead and 1 mile astern while a fully loaded vessel is in route to the facility, yet the proposal does not include a "Safety Zone" while the vessel is off-loading. Future FERC/MEPA filings should discuss anticipated safe distances for vessels, either commercial or recreational, while the LNG is off-loading product. Also, future FERC/MEPA filings for this project should describe whether there would be an "exclusion zone" proposed around the facility itself and, if so, the anticipated dimensions of that zone. The discussion also should address whether in the course of off-loading, the active channel will be closed to any and all vessels, and if so, what would be the duration of closure.

In addition to the pipeline crossing the Taunton River, the DEIS/DEIR shows that the pipelines from the proposed LNG terminal would cross ten streams. Future FERC/MEPA filings should discuss whether any of the streams are navigable, and, if so, by what types of vessels and what would be the expected navigational impacts during construction and post-construction. If a stream is determined to be navigable the pipe crossing will be subject to Chapter 91 jurisdiction and an appropriate license will be required.

In accordance with the Waterways Regulations, 310 CMR 9.02, where a gas pipeline crosses over or under water and connects existing or new infrastructure facilities located on the opposite banks of the waterway, it is considered an infrastructure crossing facility. As described in the DEIS/DEIR, the pipelines from the LNG terminal to the existing gas pipeline distribution systems would constitute an infrastructure crossing facility where the pipes cross waterways subject to Chapter 91 jurisdiction, including the Taunton River and such other streams that meet the criteria at 310 CMR 9.04. The regulations at 310 CMR 9.12(2)(d) provide that the Department shall find an infrastructure crossing facility to

be non-water dependent unless the Secretary of the Environment finds that the facility cannot be otherwise located based upon a comprehensive alternatives analysis. In the event that the Secretary does not reach such a finding for any portion of the pipeline, it would be subject to the provisions at 310 CMR 9.55 which requires compensation and/or mitigation to ensure that all feasible measures are taken to avoid or minimize detriments to the water-related interests of the public.

The alternatives to cut and cover (open trenching) for the proposed pipeline under the Taunton River only explored horizontal directional drilling (HDD). There are other technologies that should be considered in future FERC/MEPA filings for this project including plowing, jetting, and water-to-water or water-to-land HDD.

It is noted in the DEIS/DEIR that open buckets will generally be used for the dredging operation. However, due to the fine sediments and the potential for re-suspension of dredged material in many areas, the use of an environmental bucket and/or other mitigation measures should be considered. A detailed discussion of this issue, as well as a general discussion of an environmental monitor and testing plan for the dredging operation, should be included in future FERC/MEPA filings for this project. DEP also supports the recommendation in the DEIS/DEIR report number 22 regarding the submission of mitigation measures for winter flounder.

The Department questions whether there will be a need to supplement city water with the water from the Taunton River for the proposed on-site fire suppressant system. If so, plans should be included in future FERC/MEPA filings showing the location of any intake pipe.

The project proponent also is advised that pursuant to 310 CMR 9.05(3)(m), demolition of existing licensed structures requires written approval by the Department and must be obtained prior to demolition.

UPLAND MANAGEMENT OF DREDGE SPOILS:

The WCE project proposes to manage between 2.6-3.1 million cubic yards of dredged spoils from the Taunton River by mixing the sediment with Portland cement and placing it on the project site for the purpose of raising the site's grade up to 100 feet above mean sea level, constructing a LNG containment berm, and building a landform as a visual barrier. The site is a listed contaminated site under M.G.L. c. 21E and is being regulated under the Massachusetts Contingency Plan, 310 CMR 40.0000 (Former Shell Terminal – Release Tracking No. 4-0749). A comprehensive response action consisting of a recovery system designed to prevent Non-Aqueous Phase Liquid (NAPL) from migrating into the river and ultimately to facilitate NAPL recovery is currently being operated at the site.

This proposed management of dredge spoils raises three major issues:

1. Potential impact of the placement of large volumes of material on current and future remedial response actions.
2. Compliance with the MCP in regard to limitations on the disposal or reuse of contaminated material at an MCP site.

3. Demonstrating that the volume of sediment proposed to be reused is necessary to accomplish essential site design, construction or operational objectives.

Potential Impact on Current Remediation and Site Conditions:

A comprehensive response action consisting of a recovery system designed to prevent Non-Aqueous Phase Liquid (NAPL) from migrating into the river and ultimately to facilitate NAPL recovery is currently being operated at the site. Based on information submitted to the U.S. Army Corps of Engineers, the dredge processing area is proposed to be located over the area of recovery wells and monitoring wells associated with the NAPL recovery system. It is estimated that the sediment processing will take as many as three years to complete, operating up to 24-hours per day. Pursuant to 310 CMR 40.0021, no person shall tamper with, alter, destroy, disturb or otherwise unlawfully interfere with any response action, including but not limited to, any recovery or control mechanism or system, or any monitoring device required pursuant to M.G.L. c. 21E and 310 CMR 40.0000. Therefore, a detailed plan should be included in future FERC/MEPA filings that identifies the procedures to ensure that the project does not interfere with the existing recovery system or that identifies alternative remedial approaches designed to achieve a Response Action Outcome pursuant to the 310 CMR 40.0000.

The existing timber bulkhead is proposed to be replaced with steel, inter-locking sheet piling. Currently, a timber bulkhead located along the northwest shoreline, combined with the NAPL recovery system, appears to be preventing the NAPL from discharging into the river. As part of the project, this timber bulkhead is to be removed and replaced with steel, interlocking sheet piles. If any activity conducted during the replacement of the bulkhead results in a release of NAPL to the river, or any other release, the person conducting that activity may be liable for response actions and other damages pursuant to M.G.L. c. 21E, Section 5. The proponent should include a detailed plan in future FERC/MEPA filings for this project that identifies the procedures that will be established to prevent the discharge of NAPL to the river during the replacement of the bulkhead.

In addition, the sheet piling is proposed to be driven significantly deeper than the existing timber bulkhead. The increased depth of the bulkhead may alter the groundwater elevation and flow direction. Further, the placement of the 2.5 million cubic yards of sediment and Portland cement is likely to change the permeability of the ground surface, which could also result in a change of groundwater elevation and flow direction. The changes in groundwater elevation may trap NAPL below the water table, interfering with NAPL recovery and the change in groundwater flow direction may result in a change in NAPL migration. The proponent must demonstrate that the deeper bulkhead and low-permeable material will not alter groundwater flow and the elevation of the water table in such a way as to alter the migration or the recovery of the NAPL, or develop a plan for an alternative remedial approach designed to achieve a Response Action Outcome pursuant to 310 CMR 40.0000. A groundwater flow model should be included in future FERC/MEPA filings that depicts current conditions and changes resulting from the replacement of the bulkhead and placement of the Portland cement/sediment mixture.

If the replacement of the bulkhead or placement of the Portland cement/sediment mixture results in a change of groundwater elevation or flow, the person responsible for

the resulting changes to site conditions may be liable for response actions and other damages pursuant to M.G.L. c. 21E, Section 5. The DEP requests FERC also include this in their Findings. The project proponent also should discuss in future FERC/MEPA filings the financial assurance measures that will be in place to ensure the performance of the response actions in the event implementation of the project results in a release or disruption of on-going remedial actions.

On page 4-30 of the DEIS/DEIR the applicant states the placement and reuse of the dredge at the site could improve the current site conditions by effectively isolating any soil with high lead concentrations and LNAPL. Future FERC/MEPA filings should identify the volume of dredge material necessary, with calculations, to isolate the soil hotspots.

The MCP Release Tracking Number (RTN) 4-12535 is identified on the Plan of Land, Assessor's Map X-3, Portion of Lot 11, North Main Street, Fall River, which is in the immediate vicinity of the proposed project. No other disposal sites were listed in the immediate vicinity of the proposed project. The WCE project proponent is advised that, if oil and/or hazardous material are identified during the implementation of this project that requires notification, notification pursuant to the Massachusetts Contingency Plan (310 CMR 40.0000) must be made to the Department. A Licensed Site Professional (LSP) may be retained to determine if notification is required and, if need be, to render appropriate opinions. The LSP may evaluate whether risk reduction measures are necessary or prudent if contamination is present.

Reuse of Contaminated Media in Compliance with the MCP:

WCE, as part of the process to obtain state and federal approval for navigational dredging, conducted a sediment sampling program. In addition, the Massachusetts Office of Coast Zone Management (CZM) collected additional samples. Based on 47 composite core samples collected by CZM and WCE, the sediment has been determined to be impacted by oil and/or hazardous material, such as; but not limited to, metals, polycyclic aromatic hydrocarbons (PAH) and polychlorinated biphenyls (PCB). The proposed placement of this contaminated sediment on the site must comply with the Massachusetts Contingency Plan (310 CMR 40.0000), including without limitation the provisions at 310 CMR 40.0030, Management Procedures for Remediation Waste. Before approving the sediments reuse, the provision at 310 CMR 40.0032 requires, in part, that the Department evaluate the types and extent of contamination within the sediment in comparison with the site's contaminant profile in order to prevent the occurrence of a release condition at the site that would require remediation or significantly increase contamination at the site. There is currently insufficient information to determine compliance with these provisions of the MCP. This should be addressed in future FERC/MEPA filings for this project.

The Department is concerned that the amount of samples collected may not provide sufficient data to adequately characterize the nature and source of contaminants in the sediment. The Department does not concur with the conclusions in the DEIS/DEIR that the sediment was comprehensively sampled or its evaluation of the significance of the concentrations of PAHs and metals in relation to MCP compliance for reuse of contaminated media. The project proponent should prepare a Conceptual Site Model demonstrating that a sufficient understanding of sediment deposition and potential

sources of contamination exists to justify the sediment sampling conducted to-date. If the Conceptual Site Model cannot be used to justify the sampling, a sampling plan should be prepared to fill data gaps identified by the Conceptual Site Model. The Conceptual Site Model, and if necessary the sampling plan, should be included in future FERC/MEPA filings for this project.

As part of the proposed re-use of the dredged sediment, WCE proposes to stabilize the sediment with Portland cement. Changing the general chemistry of the sediment by adding Portland cement (resulting in a change of pH) may change the leaching characteristics of some of the contaminants contained in the sediment. The proponent must demonstrate that the leaching characteristics are not altered by the addition of the Portland cement by conducting Toxicity Characteristic Leachability Procedure (TCLP) testing on a sufficient number of test samples. The results of the TCLP testing should be included in future FERC/MEPA filings for this project.

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

Demonstration of Reuse Need

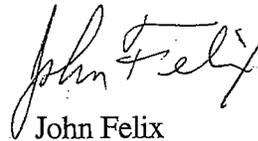
Upland reuse of dredged sediments is regulated under the provisions of 314 CMR 9.00 (Water Quality Certification). In order to be considered a valid reuse proposal, the proponent must demonstrate that the purposes for which the material is being reused are reasonable and consistent with the project's design, construction and operation, and that the volume of material proposed to be reused is the minimum amount necessary to accomplish those purposes. Sediment volume that exceeds those criteria will be considered solid waste, if proposed to be disposed upland, and will be subject to management pursuant to M.G.L. c. 111, s.150A and 150A1/2 and 310 CMR 16.00 and 19.000. The analysis in the DEIS/DEIR provides some information on how the sediment will be reused and states that the site is large enough to contain the total amount dredge/cement mix. Detailed information should be provided in future FERC/MEPA filings that demonstrate that those site grading and landform purposes are reasonable and consistent with the project's design and that the volume of sediment being allocated to each of proposed reuse purposes is necessary to accomplish its function. For example, the demonstration should discuss how the dimensions and volume of the berms correspond with federal safety standards, or other regulatory or engineering standards and whether there are alternative grading designs that would accomplish the project's needs with less sediment. The discussion should include an analysis of the physical properties of the stabilized dredge in relation to dimensions of the berms and landforms. DEP also supports the recommendation noted in the DEIS/DEIR report Section 5.2 (number 12) regarding the submission of site elevations, representative cross sections and the corresponding fill calculations.

Alternatives Analysis

The DEIS/DEIR recommends that the project proponent provide a revised sediment placement plan if it is unable to verify the consistency of the proposed plan with the MCP. Since consistency of the proposed reuse plan with the MCP has not been established and the volume of permittable sediment reuse has not been demonstrated, additional information on the alternatives to on-site upland management should be fully evaluated. Because of the significant potential environmental and project impacts of alternative scenarios to manage this large a volume of contaminated sediment, future FERC/MEPA filings should include a more detailed evaluation of the alternatives.

The DEP appreciates the opportunity to comment on this proposed project. Please do not hesitate to contact me at (617) 348-4045 if you have any questions regarding these comments.

Sincerely,



John Felix

Deputy Associate Commissioner

cc: Secretary Ellen Roy Herzfelder, EOE
Commissioner David O'Connor, Division of Energy Resources
Tim Timmerman, EPA New England, Region 1
Vincent Malkoski, Massachusetts Division of Marine Fisheries
Mayor Edward Lambert, City of Fall River
Brian Valiton, US Army Corps of Engineers
Chris Boelke, National Marine Fisheries Service
David Janik, Massachusetts CZM



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
 NATIONAL MARINE FISHERIES SERVICE
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 Gloucester, MA 01930-2298

SEP 17 2004

Magalie R. Salas, Secretary
 Federal Energy Regulatory Commission
 888 First Street, NE, Room 1A
 Washington, DC 20426

RECEIVED
 SEP 20 2004
 REGULATORY DIVISION

**Re: Weavers Cove Energy L.L.C. and Mill River Pipeline L.L.C., Fall River, Massachusetts -
 Docket No. CP04-36-000 and CP04-41-000**

Dear Secretary Salas:

The National Marine Fisheries Service (NOAA Fisheries) has reviewed the Draft Environmental Impact Statement (DEIS) for Weavers Cove Energy L.L.C. and Mill River Pipeline L.L.C. (Docket Nos. CP04-36-000 and CP04-41-000) for the construction of a Liquefied Natural Gas (LNG) import facility along the Taunton River in Fall River, Massachusetts. This DEIS also serves as the Draft Environmental Impact Report (DEIR) required pursuant to the Massachusetts Environmental Policy Act. The US Army Corps of Engineers (ACOE) has issued a Public Notice (NAE-2004-2355) for this project and is currently under review. NOAA Fisheries has served as a cooperating federal agency in the development of the DEIS.

According to the DEIS and the ACOE Public Notice, the proposed project will conduct dredging within an existing federal navigation channel, install structures, and discharge fill material in wetlands and waterways for the construction of the LNG import terminal and natural gas pipeline facilities. Specifically, the applicant has proposed to dredge approximately 2.5 million cubic yards of material from within a footprint of approximately 200 acres; replace a pier with jetty structure; install sheet pilings to stabilize and straighten approximately 2,650 ft of shoreline; and permanently fill approximately .04 acres of salt marsh habitat, .94 acres of intertidal habitat, and .17 acres of subtidal habitat.

A primary concern to NOAA Fisheries is the proposed dredging. This activity will remove a minimum of approximately 2.5 million cubic yards of material from the channel and turning basin with upland, on-site placement of material. The applicant has proposed the dredging of the Taunton River to occur continuously for a period of 36 months. At this time, NOAA Fisheries believes that the proposed project will result in substantial and unacceptable impacts on aquatic resources of national importance (ARNI). Within the ACOE review process, NOAA Fisheries is invoking the 404(q) elevation process pursuant to the Clean Water Act and our mutually agreed upon Memorandum of Agreement (MOA).

The Magnuson-Stevens Fishery Conservation and Management Act (MSA) and the Fish and Wildlife Coordination Act require federal agencies to consult with one another on projects such



this. Insofar as a project involves essential fish habitat (EFH), as this project does, this process is guided by the requirements of our EFH regulation at 50 CFR 600.905, which mandates the preparation of EFH assessments and generally outlines each agency's obligations in the relevant consultation procedure. We offer the following comments and recommendations on this DEIS pursuant to the National Environmental Policy Act (NEPA).

General Comments

The Taunton River/Mount Hope Bay Complex has been designated as EFH for 14 federally managed species, including the commercially and recreationally important winter flounder (*Pseudopleuronectes americanus*). The New England Fishery Management Council currently manages winter flounder under the Northeast Multispecies (Groundfish) Fishery Management Plan. As noted within the DEIS, Marine Research, Inc. (MRI) has been conducting annual surveys in Mount Hope Bay and the lower Taunton River in order to determine finfish species and lifestage occurrence associated with the Brayton Point Power Station permit stipulations. These surveys, which include both trawls and seine stations, show that winter flounder have been present within the project footprint during previous surveys in Mount Hope Bay (NEPCo and MRI, 1994, NEPCo and MRI, 1999). MRI's 1992 ichthyoplankton sampling in upper Mount Hope Bay found that winter flounder larvae accounted for 94% of the larvae collected between January and April (NEPCo and MRI, 1994). MRI's 1998 sampling indicated that winter flounder represented 67% of the larvae collected from February through mid-May (NEPCo and MRI, 1999). Furthermore, the EFH assessment within the DEIS and the ACOE Joint Section 10/404 Individual Permit Application (permit application) notes that there is presence of winter flounder within the project area, and the species has been identified specifically within the Taunton River (Chris Powell, personal communication, 9/2/04).

The proposed project area serves as an important winter flounder spawning and juvenile development habitat. According to the NOAA Technical Memorandum NMFS-NE-138 (EFH Source Document), winter flounder spawning has been known to occur on substrates of sand, silt, and mud at varying depths of less than 5 meters to depths of 45 meters on Georges Bank (Pereira et al. 1999). Furthermore, winter flounder spawning is temperature dependent and eggs have been collected in water temperatures of 10 degrees Celsius or less (Pereira et al. 1999). According to measurements associated with the Brayton Point Power Station NPDES permit renewal application, intake water temperatures in the Taunton River from 1981–2001 have been variable and the minimum monthly averages range from 0.7 to 1.3 degrees C (US Gen, 2001). As indicated within the EFH assessment within the DEIS, egg and juvenile life stages are expected to be present within the project footprint at these temperatures throughout the winter and spring.

Throughout our involvement as a cooperating federal agency, NOAA Fisheries has expressed concerns that suspended sediments resulting from the construction of the proposed project will have substantial and unacceptable impacts on winter flounder spawning habitat. We have maintained that time of year work restrictions should be implemented and utilized as a method to avoid adverse impacts on winter flounder eggs. The applicant has utilized the SSFATE modeling program to predict approximately 12 acres of adverse impact on winter flounder EFH resulting from dredging-induced suspended sediment. Moreover, inputs to the SSFATE model have

underestimated the habitat parameters of winter flounder spawning conditions and dredge operational requirements, and, therefore, the impacts on EFH are substantially underestimated. Without an adequate characterization of potential adverse effects, we feel the DEIS does not meet the goals and objectives under NEPA.

Anticipated impacts on winter flounder

Weaver's Cove, LLC has proposed dredging within the Taunton River and Mount Hope Bay continuously for approximately 36 months. While the applicant contends impacts will be temporary, elevated suspended sediment conditions within the area will preclude the use of the area for successful winter flounder spawning through potentially four spawning seasons. Due to the importance of this area as a winter flounder spawning area, NOAA Fisheries views these impacts, while "temporary," to be substantial and unacceptable. At this time, we maintain that adverse impacts on winter flounder spawning habitat have not been fully accounted for due to insufficient inputs into the SSFATE model. Based on comments provided by NOAA Fisheries, the applicant appears to have utilized sufficient inputs to the SSFATE model for winter flounder spawning depth and winter flounder egg burial depth. However, NOAA Fisheries maintains that the rate of winter flounder embryo development as well as assumed sediment loss from dredging operations (bucket loss) have not yet been accounted for adequately within the model.

Winter flounder spawning depth

In earlier versions of the dredging modeling report, NOAA Fisheries noted that the depth of winter flounder spawning areas had been underestimated. We had previously recommended that the applicant utilize a depth of eight meters for inputs into the SSFATE model in order to account for variability in depth of winter flounder spawning areas. While spawning occurs within deeper waters, winter flounder spawning is most common in waters of eight meters or less. The EFH Source document indicates variability in the depth of winter flounder spawning habitats, and that winter flounder "spawning can occur at depths of less than five meters to more than 45 meters on Georges Bank" (Pereira et al. 1999). While winter flounder spawning occurs at these shallower depths, a review of the EFH Source Document describes evidence of spawning activity in deeper environments. Due to the wide variability of this spawning activity, NOAA Fisheries maintains that utilizing a <5 meter depth for winter flounder spawning as an input to the SSFATE modeling program does not adequately assess the potential impacts on the resource. By utilizing greater depths that account for this variability of winter flounder spawning depths, the aerial extent of EFH impacts will increase and thus indicate greater impacts on EFH. While the ACOE permit application identifies a number of model runs with a variety of depths, it currently appears that the applicant has utilized the 8-meter depth as recommended. Should additional SSFATE model runs be generated for this project, the applicant should continue to assume an 8-meter depth rather than areas less than 5 meters to account for variability in winter flounder spawning.

Winter flounder egg burial depth

Within the ACOE permit application, the applicant discusses the use of a 0.5-mm threshold depth of sediment deposition for impacts on winter flounder eggs in the SSFATE model, per earlier

recommendations by NOAA Fisheries. Throughout the ACOE permit application, however, there are a number of references indicating the use of a 1.0-mm burial threshold. As stated within the EFH Source Document, winter flounder eggs range in size from 0.74-0.85 mm in diameter (Pereira et al. 1999). At sediment deposition depths greater than 0.5-mm, winter flounder eggs can be adversely affected due to suffocation. Based on our review of the anticipated effects, it appears that the applicant has assumed the 0.5-mm threshold depth for the model as recommended. Should additional SSFATE model runs be generated for this project, the applicant should continue to utilize the 0.5-mm threshold rather than the 1.0-mm threshold.

Winter flounder egg incubation period

The SSFATE modeling program describes the maximum duration of exposure of winter flounder eggs to suspended sediment that would have adverse effects. This maximum duration of exposure is related to impacts on embryonic development in winter flounder. The SSFATE modeling program employed a maximum duration of exposure of winter flounder eggs to suspended sediment as being 21 days. This 21-day rate of embryo development for winter flounder eggs presented within the SSFATE model assumes normal winter conditions. The EFH Source document describes protracted embryo developments taking upwards of 31 days (Pereira et al. 1999). NOAA Fisheries provided earlier comments that the rate of embryo development for winter flounder eggs is temperature dependent and embryo hatching can be protracted for up to 40 days in a laboratory setting (Nelson, Personal communication, 2003). NOAA Fisheries maintains that the 21 day development period value does not allow for temperature variability and delayed incubation periods and, therefore, underestimates the potential dredging impacts on winter flounder embryos. Based on our review of the SSFATE modeling results, the applicant continues to optimize the embryo incubation period through the use of the 21-day input. FERC concludes on page 4-77 of the DEIS that, had the applicant changed the model to include 40 days as requested by NOAA Fisheries, impacts on winter flounder spawning habitat would have been greater.

Percent loss of material from dredging operations

NOAA Fisheries has previously recommended that the applicant utilize an estimate of 2 percent bucket loss for inputs into the SSFATE model. As presented within the ACOE permit application, Weaver's Cove has used a .66 percent input for modeling purposes. The applicant contends that a .66 percent bucket loss rate can be assumed for the proposed project based on studies performed for a recent Boston Harbor dredging project that included a significant portion of "improvement" dredging. NOAA Fisheries maintains that a .66 percent bucket loss rate is not appropriate for the proposed dredging project. As a considerable portion of the proposed dredging is "maintenance," it is anticipated that material will be silty and have higher water content than firm, consolidated "improvement" materials. As indicated in the ACOE permit application, 85 percent of materials are expected to be silty. Consolidated materials are expected to contain less water and, therefore, contribute less to suspended sediment loading of the waterway. In our opinion, the use of a .66 percent value for bucket loss underestimates the amount of suspended sediment that will result from this dredging project.

Scow/barge overflow

Scow/barge overflow has been utilized primarily in cases where suspended sediments are a concern during transit to, and at, the proposed dredged material disposal site. As the barge is filled beyond capacity, existing water displaced by the dredged material is expelled into the waterway. In the case of Weaver's Cove, the use of barge/scow overflow will require less dewatering of material and more efficient handling of material when placed on site. While this technique may be acceptable in certain situations, it represents an introduction and elevation of suspended sediment at the dredge site. To date, this additional source of suspended sediment has not been included within the SSFATE modeling calculations. While the applicant is not proposing barge/scow overflow for dredging within the turning basin during the winter flounder spawning season, the applicant does propose the use of this technique within the remainder of the Taunton River during the winter flounder spawning season. While this additional source of suspended sediment has not been addressed in the SSFATE modeling calculations, NOAA Fisheries assumes that potential impacts on winter flounder spawning habitat would be increased.

Results of the SSFATE modeling program

According to the DEIS, the applicant has attempted to utilize a dredging methodology to minimize adverse impacts on winter flounder. This dredging methodology is used in conjunction with the SSFATE modeling program to identify and characterize approximately 12 acres of impacts on winter flounder habitat. As stated above, NOAA Fisheries believes that the anticipated impacts from this dredging methodology is based on insufficient inputs into the SSFATE model. Upon review of the SSFATE modeling results within the ACOE permit application, NOAA Fisheries has determined the following:

- According to the DEIS, the dredging of native sediments within the turning basin will impact 6.18 acres of winter flounder spawning habitat. Dredging techniques include the use of a maximum 26-yard open bucket with barge overflow allowed from May through December, and a maximum 15-yard open bucket with no barge overflow allowed from January through April. However, inputs to the SSFATE model include a low estimate of .66% dredged material loss rate and assume 21 days incubation for winter flounder eggs. NOAA Fisheries believes that impacts on EFH have been underestimated.
- According to the DEIS, the dredging of surficial sediments within the turning basin will impact 5.87 acres of winter flounder spawning habitat. Dredging techniques include the use of a maximum 26-yard open bucket with barge overflow allowed from May through December, and no barge overflow allowed from January through April. However, inputs to the SSFATE model include a low estimate of .66% dredged material loss rate and assume 21 days incubation for winter flounder eggs. NOAA Fisheries believes that impacts on EFH have been underestimated.
- According to the DEIS, the dredging upstream of the Braga Bridge will impact .002 acres of winter flounder spawning habitat. Dredging techniques include the use of a maximum 26-yard open bucket year round with barge overflow allowed year round. However, inputs to the

- SSFATE model assume a 21-day incubation period for winter flounder eggs. Furthermore, the applicant is proposing barge/scow overflow to occur during the winter flounder spawning season, yet has failed to account for this additional source of sediment in the model. NOAA Fisheries believes that impacts on EFH have been underestimated.
- According to the DEIS, the dredging of the Taunton River within Rhode Island waters includes the use of a maximum 15 cubic yard open bucket year round with barge overflow allowed year round. However, this combination of dredging techniques has not been analyzed for impacts within the ACOE permit application. NOAA Fisheries believes that impacts on EFH have been underestimated.

At this time, NOAA Fisheries has concluded that insufficient inputs have been used in the SSFATE model and that the use of barge/scow overflow as a dredging technique has not been included in the calculations. We feel that the 12 acres of anticipated impact on winter flounder spawning habitat is not an accurate depiction of foreseeable impacts and that the applicant has not yet analyzed the full impact on winter flounder. Therefore, we believe that there will be greater than 12 acres of impact on EFH.

Juvenile development of winter flounder

Upon hatching, winter flounder larvae are expected to remain in close proximity to hatching site, and young-of-year flounder are expected to remain in shallow inshore waters (Pereira et al., 1999). As indicated within the EFH assessment, winter flounder larvae are expected to be present within the project area from February-May, and young-of-year, juveniles, and adults are expected to be present throughout the year. The EFH assessment notes that larval stages of winter flounder may be adversely affected by sediment deposition resulting from dredging operations, yet concluded that the minimum effects threshold has not been exceeded for this life stage. NOAA Fisheries does not agree with this determination. Moreover, based on insufficient inputs to the SSFATE model as stated above, NOAA Fisheries maintains that adverse impacts on juvenile life stages of winter flounder have not been adequately characterized. Activities that have an impact on EFH that are more than minimal should be avoided.

Permanent loss of winter flounder habitat

According to the DEIS, there will be approximately 11 acres of permanent loss of winter flounder spawning and juvenile development habitat resulting from the deepening and widening of the turning basin. While the expansion of this area may be necessary to fulfill the project purpose, there will be substantial impacts on winter flounder EFH within the Taunton River. Loss of this habitat will contribute to the cumulative adverse impact on winter flounder habitat within the Mount Hope Bay/Taunton River complex. It is important to note that winter flounder EFH in this area is currently affected by a number of anthropogenic impacts, most notably the Brayton Point Power Station in Somerset, Massachusetts.

Site Development

According to the DEIS and the ACOE Public Notice, there will be a permanent loss of approximately 1.15 acres of aquatic habitat, including approximately .04 acres of salt marsh habitat, .94 acres of intertidal habitat, and .17 acres of subtidal habitat. Salt marsh and intertidal mudflats have been designated by the US Environmental Protection Agency as "Special Aquatic Sites" pursuant to Section 404 (b)(1) of the Federal Clean Water Act (40 CFR section 230.41; 40 CFR section 230.42), due to their importance to the aquatic ecosystem. Shallow subtidal areas serve as feeding habitat and shelter for a number of juvenile fish species. Permanent loss of these habitats will contribute to the overall degradation of habitat within the Mount Hope Bay/Taunton River complex.

Cumulative Impacts

Section 4.13 of the DEIS provides a description of past, present, and future actions within the Taunton River and Mount Hope Bay that could cumulatively impact aquatic resources and habitats. FERC concludes that while the construction and operation of the Weaver's Cove LNG Project could contribute cumulatively to impacts on aquatic resources, the impacts will be relatively short-term and/or minor in comparison to those from non-point sources of pollution or from operation of facilities such as the Brayton Point Power Plant. Based on our comments above, NOAA Fisheries maintains that this conclusion is based on a level of impact that has not yet been adequately characterized. Furthermore, the fact that there are greater impacts within the area does not negate the fact that the proposed project will have a substantial impact on aquatic resources. NOAA Fisheries has determined that the proposed project will contribute to the cumulative impact on aquatic resources within the Taunton River and Mount Hope Bay, and adverse effects should be avoided.

Essential Fish Habitat Conservation Recommendations

As noted within the DEIS, the proposed project will potentially impact EFH designated under the MSA for the following species: haddock (larvae), red hake (larvae, juveniles, and adults), winter flounder (all life stages), windowpane flounder (all life stages), Atlantic sea herring (larvae, juveniles, and adults), bluefish (juveniles and adults), summer flounder (larvae, juveniles, and adults), scup (all life stages), black sea bass (juveniles and adults), King mackerel (all life stages), Spanish mackerel (all life stages), Little skate (eggs, juveniles, and adults), and Winter skate (eggs, juveniles, and adults).

The applicant has based its analysis of impacts on EFH on the SSFATE model and determined that adverse effects on EFH are minimal. As substantiated above, the adverse impacts on EFH have been underestimated. NOAA Fisheries believes that the SSFATE model, and, therefore, the EFH assessment, underestimates the impacts on winter flounder spawning and juvenile development

habitat. In order to avoid, minimize, and mitigate adverse effects on EFH, NOAA Fisheries recommends pursuant to Section 305(b)(4)(A) of the MSA that FERC adopt the following EFH conservation recommendations:

- 1) No in water silt-producing activity should occur between January 15-May 31 of any year to protect winter flounder spawning and juvenile development from increased sedimentation due to dredging. Impacts on winter flounder egg and juvenile life stages may be avoided through the implementation of this work restriction.
- 2) Mitigation should be required to offset the permanent loss of 11 acres of winter flounder spawning and juvenile development habitat resulting from the expansion of the turning basin. The applicant should develop a mitigation plan that replaces lost functional values of winter flounder EFH. Mitigation ratios should be specific to the specific type of work proposed.
- 3) Mitigation should be required to offset the 1.15 acres of permanent fill within intertidal, salt marsh, and subtidal areas resulting from site development. At this time, a draft salt marsh mitigation plan has been developed for this project. NOAA Fisheries recommends that mitigation include intertidal and subtidal areas, in addition to salt marsh. Mitigation ratios should be specific to the specific type of work proposed.

Please note that Section 305(b)(4)(B) of the MSA requires FERC to provide NOAA Fisheries with a detailed written response to these EFH conservation recommendations, including a description of measures adopted by FERC for avoiding, mitigating, or offsetting the impact of the project on EFH. In the case of a response that is inconsistent with NOAA Fisheries' recommendations, Section 305(b)(4)(B) of the MSA also indicates that FERC must explain its reasons for not following the recommendations. Included in such reasoning would be the scientific justification for any disagreements with NOAA Fisheries over the anticipated effects of the proposed action and the measures needed to avoid, minimize, mitigate, or offset such effects pursuant to 50 CFR 600.920(k).

Please also note that a distinct and further EFH consultation must be reinitiated pursuant to 50 CFR 600.920(l) if new information becomes available or the project is revised in such a manner that affects the basis for the above EFH conservation recommendations.

Fish and Wildlife Coordination Act Recommendations

The Taunton River serves as an important migratory pathway for a number of anadromous fishery resources such as Alewife (*Alosa pseudoharengus*), blueback herring (*Alosa aestivalis*), rainbow smelt (*Osmerus mordax*), and American shad (*Alosa sapidissima*). These resources serve as prey for a number of federally managed fishery resources, and direct or indirect impacts on them should be considered adverse effects on EFH. Furthermore, Mount Hope Bay and the Taunton River serve as habitat for the commercially and recreationally important Northern quahog (*Mercenaria mercenaria*), American (eastern) oyster (*Crassostrea virginica*), and soft-shelled clam (*Mya arenaria*). These and other shellfish species serve as forage for fishery resources in the area and serve as important linkages within the marine ecosystem.

Anadromous fishery resources

As stated above, the Taunton River serves as habitat for a number of anadromous fishery resources. These anadromous fishery resources serve as prey for a number of federally managed species, and are considered a component of an EFH assessment pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, as well as a concern as non-EFH trust resources that are covered under the Fish and Wildlife Coordination Act. American Shad, blueback herring, alewife, and rainbow smelt have been designated as aquatic resources of national importance pursuant to section 906(e)(1) of the Water Resources Development Act of 1986. While the DEIS states that anadromous fishery resources migrating through the area will not be adversely affected by dredging operations, NOAA Fisheries remains concerned that construction activities and associated sediment plumes have the potential to impair migration of anadromous species. Chiasson (1993) found an increase in swimming activity of rainbow smelt when suspended sediments were present. In a laboratory study, Wildish and Power (1985) found that rainbow smelt avoided suspended sediment when concentrations were in excess of 20 Mg/L. The ACOE permit application does not analyze rainbow smelt for adverse impacts, however, anticipates that peak concentrations within the Taunton River will exceed this threshold during dredging operations. Furthermore, sublethal effects to estuarine fishes can include decreased feeding, impacts from lowered oxygen levels, as well as impacts on gills and associated respiratory impacts (Wilber and Clarke, 2001).

The dredge-modeling program assumes a suspended sediment minimum effect threshold of 600ml/L for juvenile and adult blueback herring, alewife, and American shad. While the applicant maintains that suspended sediment in the river will be below this minimum effects threshold, NOAA Fisheries maintains that the assumed suspended sediment in the water column has been underestimated within the project footprint. Therefore, potential impacts on anadromous fishery resources within the Taunton River have not been fully accounted for. In order to take a risk averse approach for the conservation of anadromous fishery resources within the Taunton River, NOAA Fisheries recommends that no work should be conducted between March 1-July 31 of any year to avoid adverse impacts on upstream spawning migrations of Alewife, Blueback Herring, Rainbow Smelt, and American Shad. Downstream migrations of anadromous fishery resources in the Taunton River generally occur and need protection between June 15 and October 31 of any year. Alternatives should be developed and analyzed that avoid adverse impacts on downstream migrations of these aquatic resources of national importance.

Shellfish resources

The DEIS and ACOE permit application note that the project area serves as habitat for shellfish species including the Northern quahog (*Mercenaria mercenaria*), American (eastern) oyster (*Crassostrea virginica*), and soft-shelled clams (*Mya arenaria*). Shellfish from portions of this area, once depurated, are a viable food source and are suitable for human consumption. Furthermore, shellfish resources serve as prey for a number of federally managed fish species and adverse impacts are considered indirect adverse effects on EFH. The proposed dredging project has potential impacts on shellfish resources through both direct losses from dredging operations as well as sediment-related impacts prior to and during spawning periods. The DEIS states that the

proposed project will permanently affect 84 acres of quahog habitat due to dredging of the federal navigation channel and turning basin. Once removed, reestablishment of shellfish within the project area would be problematic due to consistent turbidity resulting from increased vessel traffic. The DEIS describes a mitigation plan for shellfish resources within the project site, including a shellfish harvesting program and a shellfish seeding program. While this may serve to offset permanent loss of shellfish habitat, NOAA Fisheries recommends that this mitigation proposal be developed, reviewed, and approved by federal and state resource agencies prior to the issuance of license or permit.

Dredge material volumes

The DEIS and the ACOE public notice describe the assumption of a one-foot overdredge allowance for the dredging portion of this project. In our opinion, the allowance of a one-foot overdredge underestimates the amount of material to be removed from the project footprint. In other projects with similar depths within federal navigation channels, the ACOE has argued for industry standards that utilize allowances of a two-foot overdredge to account for the imprecise nature of dredging operations. In order for a presentation of a more realistic picture of dredge volumes that will need disposal, we have recommended that a two-foot overdredge be anticipated in the calculation of dredging volumes. In this case, the overdredge volume should be estimated at approximately 922,000 cubic yards and a total volume of dredged material in excess of 3 million cubic yards. This additional volume of material should be accounted for in the overall volume of material that needs to be disposed. Accurate volumes of dredged material need to be accounted for in order to identify reasonable disposal options.

Offshore disposal of material

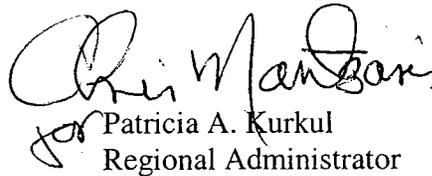
Based on recommendations by NOAA Fisheries and other resource agencies, a dredging plan should be developed which adequately protects aquatic resources of national importance as identified above. This plan should include time of year work restrictions for winter flounder, as well as for anadromous fishery resources, as referenced in above comments and recommendations. In order to utilize recommendations for the protection of living marine resources, it is foreseeable that offshore disposal of dredged material may be proposed for this project. NOAA Fisheries supports the Tier III analysis currently being pursued by the ACOE. Based on the results of this analysis, the use of an offshore disposal area should be evaluated for this project. This evaluation should include foreseeable impacts on living marine resources at the dredge site, as well as at the offshore disposal area. NOAA Fisheries recommends that this alternative be analyzed within the Final Environmental Impact Statement and prior to the issuance of an ACOE authorization.

Conclusions

Based upon the above rationale, we conclude that this project will have substantial and unacceptable direct, indirect, and cumulative impacts on aquatic resources of national importance. While the SSFATE model has determined that there will be approximately 12 acres of temporary impact on winter flounder EFH, NOAA Fisheries believes that this level of impact has been underestimated and may be significantly greater. At this time, we believe that these adverse impacts on EFH may be avoided through the use of appropriate time of year work restrictions.

Furthermore, this project will result in approximately 12.15 acres of permanent alteration of habitats. In order to avoid substantial and unacceptable impacts on winter flounder EFH, NOAA Fisheries recommends that no work occur between January 15–May 31 of any year. In order to provide protection for upstream spawning migrations of anadromous fishery resources within the Taunton River, we recommend that in-water silt producing activity be avoided between March 1–July 31 of any year. In order to protect downstream migrations of anadromous fishery resources, which need protection between June 15–October 31, we recommend that alternatives be proposed and analyzed within the EIS. In order to offset the permanent loss of 11 acres of winter flounder spawning habitat and the permanent loss of intertidal, subtidal, and salt marsh habitats, we recommend that mitigation be required. In order to offset the permanent loss of 84 acres of shellfish habitat, a mitigation plan should be developed and presented to state and federal agencies for approval. We look forward to your response to our EFH conservation recommendations as well as all other recommendations pursuant to both Section 305(b)(4)(B) of the MSA and 50 CFR 600.920(k). Should you have any questions about this matter, please contact Christopher Boelke at 978-281-9131.

Sincerely,


for Patricia A. Kurkul
Regional Administrator

CC: USACE – Christine Godfrey
USEPA – Robert Varney
USFWS- Michael Bartlett
MADMF- Paul Diodati
MACZM – Susan Snow-Cotter
MADEP- John Felix
RI CRMC- Grover Fugate
RI DFW – Michael Lapinsky

References

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Town of Somerset Conservation Commission

Magalie R. Salas, Secretary
Federal; Energy Regulatory Commission
888 First St. N.E. Room 1A
Washington, DC 20426

**Reference: Weaver's Cove, LLC. and Mill River LLC.
Docket No. CP04-36-000; and CP04-41-000;**

**Town of Somerset Comments on Draft Environmental Impact
Statement/Draft Environmental Impact Report Concerning Issues
Raised by NOAA Fisheries and the Massachusetts Division of Marine
Fisheries**

The Conservation Commission of Somerset, MA is in the hearing process under the Massachusetts Wetland Protection Act for Weaver's Cove LLC and Mill River, LLC while no final decision has been made by the Commission we wish to share the following comments gathered at our public meetings regarding the proposal. We have not concluded our hearing and anticipate that many of the issues may be resolved through that process. However, these are the concerns regarding the dredging of Mt. Hope Bay and the Taunton River for the use of the proposed Weaver's Cove LNG terminal that we have as of this time. The extensive dredging of these waters will cause at least a significant temporary and potentially a permanent impact on the Taunton River ecosystem. We are concerned that these changes will have a significant impact on the fish and shellfish population of the Mt. Hope Bay and Taunton River. We cite concerns already brought up by NOAA and Massachusetts Department of Marine Fisheries. (Included are copies of the documents.)

In addition we feel that Weaver's Cove has not performed an adequate study of the Mt. Hope Bay and Taunton River as of this time. Other than core sampling and analysis, (which we feel have been too few to adequately assess the proposed dredged area), Weaver's Cove has relied on review of previous reports and analyses that in some cases are 5-10 years old. Also, at least for the direct purpose and needs of the Town of Somerset Conservation Commission permitting process, Weaver's Cove has not provided for us detailed data regarding the Somerset portion of the proposed dredging process there has been no information given on the analysis of sediment that will be disturbed for the pipeline crossing in Somerset.

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Noted in the FERC DEIS is data regarding the toxins in the sediment, in addition to the disruption of the bottom, increasing turbidity, and disrupting spawning migration and grounds, no mention is made of the potential impact on the long term health of the fish and shellfish species if exposed to these toxins.

The Commission is concerned with the estimated amount of dredge material, the Notice of Intent to Somerset estimates 1.3 million cubic yards of dredge but the volume of 2.1 to 2.5 million cubic yards was estimated in the Project EENF. NOAA estimates 3.2 million cubic yards all of which will be brought on open barges through our jurisdiction without proposing adequate measures to minimize or eliminate suspended sediments from entering the Taunton River and no alternatives to on-site disposal should it be necessary. There will be impact to salt marsh in conjunction with the pipeline crossing in Somerset. The applicant to date has not presented specific justification for these impacts or shown the Commission any alternatives to the impact they may have explored.

The town of Somerset recommends that supplementary DEIS/DEIR be prepared using the proper material volumes for maintenance and improvement dredging, requiring the appropriate standards for improvement dredging providing the results for public review and comment. Suspended Sediment Fate and Transport Modeling based on those volumes be done and results provided for public review and comment.

Our Notice of Intent and the DEIS implies that there will be no suspension of dredging during fish migration periods just adjustment to size of dredging bucket and no scow overflow we are concerned this may not be sufficient to protect the integrity of what is one of the states largest anadromous fish runs. The turning basin and channel dredge would permanently impact 191 acres of river bottom and by deepening impact the needed shallow habitat of winter flounder. Both NOAA and MA Div. of Marine Fisheries recommended specific project sequencing that this is necessary for critical life stages of winter flounder and MDMF felt that avoidance and mitigation of potentially permanent impacts upon finfish and shellfish species necessitated the suggested time-of-year restrictions. **We share the concerns of the EPA, NOAA, and Division of Marine Fisheries of the negative impacts of the proposal on sensitive fish, shellfish and the habitat for these species at critical periods of spawning and migration.**

The town of Somerset recommends that a supplementary DEIS/DEIR be prepared which incorporates NOAA's input assumptions, runs the model, and provides the results for public review and comment.

The town of Somerset recommends that a supplementary DEIS/DEIR be prepared which incorporates and implements the comments and recommendations of NOAA and the MDMF and includes a proposed mitigation plan for any unavoidable impacts, for public review and comment.

¹ EPA comments on DEIS for Weaver's Cove T.L.Timmermann

NOAA identified leatherback and Kemp's ridley sea turtles, which are federally endangered species as within the vicinity of the project. NOAA Fisheries also identified green sea turtles and loggerhead sea turtles, which are federally threatened species, as within the project vicinity. The MDMF and MA Natural Heritage identified Atlantic sturgeon a state listed endangered species as potentially within the vicinity of the project as well as oyster catchers, roseate turns, and least terns, also state listed endangered species, as potentially within the vicinity of the project.

Under Section 6 of the Endangered Species Act, a Biological Assessment of these identified species must be performed as part of the NEPA and MEPA reviews. None was performed, but the DEIS/DEIR asks that it stand in the place of this requirement.

The Town of Somerset recommends that a supplementary DEIS/DEIR be prepared that incorporates the required Biological Assessment and that it be submitted to the natural resource oversight agencies and to the public for review and comments. The town also recommends that NOAA and the U.S. Department of Fish and Wildlife reject the DEIS/DEIS as being a sufficient substitute for these required assessments.

Within Somerset, the Taunton River is heavily used for recreation. We have swimmers, boaters, fishermen, wind surfers, jet skiers, and water skiers/tubers. Once this river bottom is disrupted and centuries of buried toxins are released we are concerned that the River will become a health hazard to our residents and visitors. The Center for Disease Control, American Academy of Pediatrics, the American Academy of Family Practice all have warnings and recommendations against exposure to lead and mercury. These toxins are found in the core sampling of the sediment. These toxins can cause birth defects, decrease in intelligence especially if pregnant women or young children are exposed to them.

We understand FERC has authority and the power to site a facility anywhere they feel beneficial to fuel suppliers but it is our hope FERC would take into effect the overall environmental impacts of a proposal. To date we have not been assured this ecosystem can survive the stress of impact from the citing of this facility under the Weaver's Cove present proposal as outlined in the DEIS/DEIR that it is lacking in significant respects, it does not meet the requirements set forth by NEPA or MEPA there is inadequate information to evaluate the scope and extent of both temporary and potentially permanent impacts, no genuine evaluation of alternatives to the project as proposed.

Therefore, Somerset requests that the Commission, the Massachusetts Executive Office of Environmental Affairs, and the U.S. Army Corps of Engineers, act upon the recommendations contained in these comments.

Respectfully submitted,

Somerset Conservation Commission

Timothy Turner, Chair

Ronald Lassonde, Vice chair

Robert Camara

Robert LeComte

Karen Smigel, MD

Thomas Vezina

Christina A. Wordell, secretary/agent

September 3, 2004

Magalie R. Salas, Secretary
Federal Energy Regulatory Commission
888 First St., N.E., Room 1A
Washington, DC 20426

Re: Docket No. CP04-36-000

Dear Secretary Salas,

Please find below my questions and comments pertaining to the Weaver's Cove LNG proposal for Fall River Massachusetts. The Draft Environmental Impact Statement, published by the Federal Energy Regulatory Commission (FERC), is an extremely poor document and it is obvious that your agency did very little work in regards to this project. Due to the lack of information contained in the document one could sail an LNG tanker through the huge holes in your report.

Please find below my questions and comments pertaining to the DEIS. Your regulations require you to hold a public comment period. I certainly trust that you will not only hold a comment period but will answer each and every question that I and others submit to you. If you ignore the concerns and questions of the citizens of this area I will request, through my Congressional delegation, that henceforth your agency's name be changed to Friends of Energy Raping Corporations. In this way you will still be able to use the FERC initials but your new name will reflect your true nature. Thank you for your anticipated cooperation in this matter.

DEIS Page 1

"The staff concludes that approval of the proposed project with appropriate measures as recommended, would have limited adverse environmental impact."

I have been reading the concerns made by many agencies such as Coastal Zone Management (CZM) and it appears crystal clear that this DEIS is choosing to ignore the suggestions made by experts in the field.

A letter dated August 9, 2004 from the Massachusetts Division of Marine Fisheries stated, "Many of the Marine Fisheries comments and concerns have not been adequately addressed by the applicants during the review process and remain unchanged since the beginning of this effort."

Question: How can FERC state that the project would have limited adverse environmental impact when CZM, Marine Fisheries, EPA, and the DEP have listed numerous concerns and the DEIS has not addressed these concerns?

Question: Why is FERC ignoring agencies such as Marine Fisheries? (There will be specific questions on multiple issues to follow)

DEIS Page ES-2

The DEIS points out that the construction of the terminal would affect a total of 67.6 acres. Then the DEIS states, "The project would also require the dredging of up to 2.6 million cubic yards of sediment from the Taunton River & Mt. Hope Bay." The amount of riverbed disturbed will be 191 acres.

Over and over the DEIS downplays the hazards from the dredging. CZM said that the dredging operation and the dredge material will present a, "large potential for environmental impacts."

Question: Why is FERC trying to downplay the hazards while experts state that there are potential environmental impacts?

DEIS Page ES-3

The DEIS tells us that the dredging will impact the river and the bay and that the suspended sediment impacts would be temporary and localized to the dredging area.

This is a good example of the DEIS making a statement without any information at all.

Question: What does the DEIS mean by saying that the suspended sediments will be localized?

Question: When the DEIS states that the sediments will be localized how many feet will the sediment spread, 100, 200, 300 feet?

Question: When the DEIS states that the impact will be temporary how long is temporary?

In addition the DEIS states on page 4-16 that greater than 50% of the sediment passes a #200 sieve and that the sediment is dominated by silt and clay.

Question: What modeling was used that proved that silt would not travel long distances within the water when disturbed by dredging?

Question: Did FERC take into account tide, river flow, bad weather, when it stated that the impact to the bay and river would be localized during dredging?

CZM is concerned that the limited range of environmental conditions utilized as model inputs: i.e., one month, is insufficient to evaluate the impacts of a project that will extend well outside of that time period.

Question: How can the FERC justify "one month modeling" as producing a true picture of what takes place in the river and bay? (This is similar to judging fuel mileage for a car by using only highway driving. One month modeling is erroneous, foolish and gives a distorted picture.)

Question: When will FERC require a true picture of the bay and the river by requiring that a model be done during the four seasons?

DEIS Page ES-5

The DEIS states, "The mayor and some city councilors of Fall River have expressed opposition to the project."

FERC is clearly attempting to downplay any opposition to this project and they are deceiving the public by printing a half-truth. The truth of the matter is that the DEIS has purposely left out the opposition by Congressman Frank, Congressman McGovern, 7 of the 9 city councilors, the entire local state delegation, the Massachusetts Committee on Homeland Security and Federal Affairs, a resolution opposing the plan by the entire State Senate and House of Representatives, the political bodies in the Massachusetts Towns of Freetown, Swansea and Somerset. In addition the political bodies in the Rhode Island towns of Tiverton, Newport, Bristol, Portsmouth and Jamestown. This list does not include many city wide organizations and state wide organizations against the plan.

Question: Why did FERC choose to mislead the public by purposely leaving out the true opposition to this plan?

Question: Why did FERC say some city councilors when the agency knows full well that a majority of the councilors, 7 of 9, voted on two occasions against the plan?

DEIS Page ES-5

The DEIS stated: "There is, however, a concern that an incident at the LNG terminal could exceed the current response capacity of the Fall River Police and Fire Departments. Weaver's Cove Energy would coordinate with local fire departments to develop an emergency response plan used in the event of an incident."

During a major event there is a good possibility that the employees of Weaver's Cove would be either dead or suffer incapacitating injuries. This would end any coordination between the local fire and police departments and the onsite workers. Good examples to look at would be the recent gas line fire, which would be small compared to an LNG disaster, in Belgium and the horrendous fire at the Skikda LNG facility in Algeria.

Question: Why is FERC not demanding a worse case scenario study?

Question: Once a major incident takes place onsite how does FERC expect the Weaver's Cove staff to coordinate anything with the local safety personnel when the workers are dead or dying?

Question: Why would FERC force a community such as Fall River to accept an LNG facility when the community has pointed out they do not have the resources to handle such a dangerous facility?

DEIS Page ES-5

The DEIS states: "We have determined that the potential impacts of the project would not have a disproportionately high or adverse effect on environmental justice areas near the proposed LNG terminal and Federal navigation channel."

FERC's statement that this project will not have a disproportionately high or adverse effect on environmental justice is a blatant lie. Fall River qualifies in many categories when it comes to environmental justice.

- 1. Fall River is a poor community where a very high percentage of the people live below the poverty level.**
- 2. Fall River has a very large immigrant population.**
- 3. The percentage of people with a college degree is in the 10% range, well below the state average.**
- 4. Fall River currently is home to the state's largest landfill which has polluted the groundwater. Located across the river is the largest air polluter in New England, the Brayton Point Power Plant. In the recent past Fall River had a municipal incinerator that was forced to close due to the toxins it was releasing into the atmosphere. In addition Fall River was home to the Globe Manufacturing Company that at one time was throwing over a million pounds of contaminants into the air.**

Furthermore to the east of the Weaver's Cove site there is a low income section of the city. To the south of the site FERC does not recognize this area as low income, they have chosen to ignore an elderly high rise and other low income housing in this area.

Question: How can FERC say that placing a potential fire hazard in a low income neighborhood is not an environmental injustice?

Question: Why did FERC ignore the low income population directly south of the Weaver's Cove site? (That area contains an elderly high rise known as Homes Apartments, and an elderly complex on Wellington Street. Both complexes are subsidized by the government. In addition, the Norfolk / Suffolk Street area is mostly low income and some minorities have moved into the area)

Question: Will FERC correct their misinformation about the low income area south of the Weaver's Cove site?

DEIS Page ES-6

FERC discusses "Thermal Radiation" and says, "We evaluated the thermal radiation and flammable vapor dispersion exclusion zones of the proposed LNG terminal. The analysis found that no excluded uses were within the exclusion zones of the proposed LNG terminal."

This statement by FERC is complete bunk! They ignore 2 extremely important items:

1. They ignore the real possibility of a large spill, either from the tanker or the terminal. The calculations FERC uses, on purpose, is based on a small spill.

2. Not only do they ignore information from Dr. Fay, Dr. Haven, William Lehr of NOAA, but they ignore a report they themselves commissioned, the ABS Report. Many experts along with the ABS Report say that a large spill would not only create an enormous vapor cloud but that cloud could travel 6,000 to 18,000 feet away from the spill. In addition the ABS report states that the thermal radiation harmful to humans from a large pool fire could extend out to 2,500 feet.

The regulations must be updated prior to siting any new LNG facilities.

Question: Why does FERC continue to ignore experts who say that the current regulations dealing with the distance for the thermal radiation zone is too small?

Question: Why does FERC continue to ignore experts who say that the current regulations dealing with the distance for the vapor dispersion exclusion zone is too small?

Question: Why is FERC ignoring the report it commissioned, the ABS Report?

Question: Why is FERC ignoring the intent of the United States Congress when that political body said that LNG facilities should be sited in remote areas?

Question: Why is FERC not updating their antiquated regulations so that the citizens of this country will be properly protected?

DEIS Page ES-7

“....the likelihood of a cargo containment failure and subsequent LNG spill from a vessel casualty – collision, grounding or allision – is highly unlikely.”

Once again FERC is using faulty reasoning to force an LNG terminal in a highly populated neighborhood. There are several points that the DEIS totally disregards:

- 1. The volume of one container of one LNG tanker is so great that a major spill, however rare, could occur and the result would be catastrophic.**
- 2. FERC’s argument is that an accident or terrorist attack is unlikely. The legitimate argument is that by siting an LNG terminal in a densely populated area FERC will be increasing the odds that a catastrophe will occur by human error or terrorist attack.**
- 3. The term “highly unlikely” means absolutely nothing in this post 9/11 world.**

Question: Where is the risk analysis report that FERC uses to say an accident is highly unlikely? (This report must be produced and given to the public before this project is allowed to go forward)

Question: Could FERC please calculate the chances of 2 planes taking down the Twin Towers in New York? HOW UNLIKELY WAS THAT?

Question: Why is FERC willing to increase the odds of having thousands of people burnt to death?

DEIS Page ES-7

“...the perceived threat of a terrorist attack is a primary concern of the local population and requires that resources be directed to mitigate possible attack paths.”

Once again we have FERC creating the target and then they say that a terrorist attack can be prevented. Furthermore FERC’s statement is incorrect on two accounts.

- 1. Not only is the local population concerned about terrorist attack but terrorist experts, naval authorities and others have this same concern.**

A. William Pope, U.S. State Department Deputy Coordinator for Counter-Terrorism said recently, "We have every reason to believe they (terrorists) will also be attracted to one of the softest targets of all, commercial shipping."

B. Alexey Muraviev of Curtin University of Technology in Perth, told a maritime security conference that intelligence experts believed ships were far more vulnerable to an al-Qaeda attack than commercial airlines. Targets could include cruise ships, oil supertankers, LNG-carriers and chemical tankers.

C. Rear Admiral Kevin Eldridge, commander of the U.S. Coast Guard's 11th District off California said when he was asked about the possibility of an attack on U.S. shores, "It's likely enough for us to put a lot of effort into planning for it. Frankly, if we have a vessel in our port that has a problem, it's too late."

D. In 1979 the U.S. General Accounting Office (GAO), which acts as the investigative arm of Congress, researched the LNG issue. GAO Director J. Dexter Peach testified before the Senate and said, "We believe remote siting is the primary factor in safety."

**E. September 9, 2003 Congressional Research Service Report
"Because LNG infrastructure is highly visible and easily identified, it can be vulnerable to terrorist attack."**

Question: Why is FERC choosing to ignore many experts in the field of terrorism who say LNG tankers are terrorist targets?

Recently (September 1, 2004) FERC held a hearing in Bristol R.I. A question was asked of Coast Guard Captain Mary Landry on how difficult is it to intercept a boat laden with explosives. She said, "It's very, very difficult to intercept a small boat with explosives...."

Question: Why is FERC saying that a terrorist attack can be mitigated while the person in charge of the protection of the vessel said it would be "very, very difficult...."?

2. FERC again chooses to ignore another aspect that has many of the citizens worried on the South coast, human error. Recently a gas pipeline fire killed 5 police and fire personnel and many civilians in Belgium. Human error caused the fire.

Question: Where is FERC's study dealing with the chances of human error?

Question: How does one prevent human error when a person is tired, is distracted, had a fight with their spouse?

State of the Art is a phrase that Weaver's Cove continues to spew out to the public like it was some godsend that would prevent every problem. In August 2004 a natural gas storage facility in Texas caught fire and a 3 mile radius had to be evacuated. The reason for the fire was a state of the art valve the closed in correctly!

Question: How will FERC guarantee the safety of the people of the South Coast from terrorist activity when experts say it is difficult to do?

Question: How will FERC guarantee the safety of the people of the South Coast from human error when they know it is impossible?

Question: How will FERC guarantee the safety of the people of the South Coast from state of the art equipment that will fail at some point?

DEIS Page ES-7

The DEIS briefly discussed alternative locations for an LNG import terminal. The DEIS states, "Although there are perceived safety and environmental advantages to locating an LNG terminal offshore, there are environmental, economic, and technical factors that make an offshore LNG terminal impractical as an alternative to the facilities proposed for the Weaver's Cove LNG Project."

As usual FERC plays with words to brush off the facts facing this proposal. FERC states that there are perceived safety and environmental advantages to locating offshore. FERC's DEIS is full of these sly and misleading statements. FERC knows full well that locating a dangerous facility either remotely or offshore is definitely safer than locating it 1,000 feet from family homes.

Billiton LNG International, a large energy firm from Australia would like to locate a LNG facility in California. Stephen Billiot, the V.P. had this to say: "We understand California's concern for its coastline and its communities. Although LNG's excellent safety record is well documented, we are siting this much needed LNG facility far offshore and away from populated centers to ensure the highest level of protection for the California coast and public safety."

Here we have a V.P. of an LNG firm siting their facility offshore due to public safety concerns! It appears that Billiton LNG International believes that offshore facilities are not only feasible but doable.

There are now many companies moving forward with plans to locate offshore. According to Bob Nimocks, president of Zeus Development Corporation, "With such super majors as ChevronTexaco, ExxonMobil, Shell and ConocoPhillips working on offshore receiving and regasification terminals, the technology for offshore LNG facilities is advancing rapidly."

Question: Why is FERC ignoring the rapid development of offshore technology?

Question: What peer reviewed study can FERC site that states an offshore facility is "impractical"?

DEIS Page ES-9

REASONS FOR DECISION – "The project would make use of an existing industrialized site within a designated port area, which was previously used as a petroleum products storage and distribution terminal." "the safety features that would be incorporated into the design and operation of the LNG terminal and the LNG vessels." "the operational controls to be imposed by

the local pilots and Coast Guard to direct the movement of LNG vessels, and the security provisions to deter attacks by potential terrorists.”

FERC ignores that the state and federal government have limited resources to properly protect the tanker and terminal. During testimony before the Massachusetts Homeland Security Committee the head of the Massachusetts State Police admitted that he does not currently have the resources to properly protect a tanker coming into Fall River. To get those resources the State Police will have to be given funds that will come from such areas as education, health, and housing. FERC is displaying a lack of concern for the poor of this state by forcing a huge burden upon the people of Massachusetts.

FERC is also ignoring the experts in the field. Captain Landry has clearly stated that it is very difficult to protect a tanker from terrorist attack. All the safety features in the world cannot guarantee safety.

FERC uses logic like a drunken sailor. Rationalizing that placing a huge public danger a thousand feet away from families is alright because it is an industrialized site and formerly stored petroleum products is ludicrous. FERC knows full well that the amount of LNG to be stored will dwarf what was previously stored there. Furthermore FERC realizes that the LNG will burn much hotter than what was previously stored at the site. FERC realizes that LNG can and will form a vapor cloud that can and will travel 6,000 feet to 18,000 feet offsite.

Question: FERC speaks of safety features. Will FERC guarantee that these safety features will not malfunction like the safety valve in Texas did in a recent gas fire?

Question: Why does FERC continue to ignore the fact that operational controls are easily by-passed by a determined attacker?

DEIS Page 1-2

FERC states that it is responsible for authorizing onshore LNG facilities and said that, “Our principal purpose in preparing this EIS are to: identify and assess the potential impacts on the natural and human environment that would result from the implementation for the proposed actions” and that they are to look at alternatives, mitigation, facilitate public involvement.

The DEIS that FERC published is a horrendous document. FERC has made statement after statement without proof. Potential impacts are brushed off with vague statements and little fact. When federal and state agencies make recommendations FERC ignores their concerns. As far as public involvement, FERC either takes our comments and questions without properly replying or they sit stoned faced as we hit them with question after question.

DEIS Page 1-4

“If EOEa decides that the EIS did not resolve all issues sufficiently Weaver’s Cove may be required to prepare a supplemental draft or final EIR.”

FERC continues to play the puppet for Weaver’s Cove. If the Executive Office of Environmental Affairs decides the EIS is inadequate Weaver’s Cove “may” be required to do a supplemental draft. This is asinine. FERC is making sure that Weaver’s Cove is

protected not only from public concerns, but they are now protecting them from Environmental Agencies!

Question: Who has the authority to force Weaver's Cove to prepare a supplemental draft or final EIR if EOEAs concerns are not resolved?

DEIS Page 1-5

FERC argues that LNG terminals must be built and up and running as soon as possible. FERC says that storage capacity is adequate now but after 2005 additional natural gas infrastructure will be needed.

FERC should be working on LNG projects that can be up and running in 3 to 4 years. The Weaver's Cove project will not be operating until 2009 or 2010 due to bridge construction.

Question: Why does FERC continue to say that the Weaver's Cove terminal will be operating by 2007 when they know that the Brightman Street Bridge Project will delay the opening of the terminal by at least 2 to 3 years?

Question: Why is FERC pushing for a project that will not assist in the projected gas shortage that will take place in 2005?

DEIS Page 2-19

The DEIS speaks about the height of the earthen slopes built by using the dredged material mixed with Portland Cement.

Question: What will the weight of the berm be per square foot?

Question: Will the berm cause a compaction of the soil below and how much compaction?

Question: With the added pressure from the berm onto the land what affect will it have on the ground water and contamination within the groundwater?

Question: Will the added pressure from the berm change the directional flow of the groundwater?

DEIS Page 2-27

"Using Weaver's Cove Energy estimated dredge volume (2.6 million cubic yards, which include 1 foot of over dredge)..."

Question: Why does FERC allow Weaver's Cove to use a 1 foot over dredge calculation when many agencies, including the EPA, state that a 1 foot over dredge is inconsistent with the two foot over dredge factor the Army Corps of Engineers use?

DEIS Page 2-31

FERC states that Weaver's Cove will use the open-cut construction method when laying a pipe across the Taunton River.

According to the EPA, Horizontal Directional Drilling (HDD) has become the standard for pipeline crossings. Of course FERC is allowing Weaver's Cove to damage the Taunton

River by allowing the open-cut method. Reason: this will save Weaver's Cove money! FERC claims that to use HDD you need room on either side of the river for the operation. Funny, FERC thinks the tiny parcel of land for the LNG bomb is loads of room!

DEIS 2-32

The DEIS states that Weaver's Cove proposes to begin construction by late 2004

With a federal agency, FERC, working for the Oil and Gas Industry, I can understand how Weaver's Cove can predict starting construction by late 2004. With the power the Oil and Gas Industry and the Baker Botts law firm have it makes sense. This prediction is also made with a horrendous document, the DEIS, backing it.

DEIS 2-33

The DEIS states that the in-service date will be late 2007.

Question: Once again with the Brightman Street Bridge Project several years behind schedule how can an in-service date of 2007 be given?

Question: Does FERC take any time at all to check the validity of what Weaver's Cove tells them? (It appears that the FERC should cut those puppet strings)

DEIS 2-36

The DEIS states that the storm water in the containment spill system will be pumped to the storm water management system.

Question: What exactly will the storm water management system do with the water?

Question: Will the storm water be pumped to the Fall River Waste Water Treatment plant?

Question: Will the storm water be released to the Taunton River?

Question: If the storm water is released to the Taunton River will it be treated prior to release?

Question: If the storm water is allowed to stay on site will there be some type of mosquito prevention?

DEIS 3-1 Alternatives

The DEIS looked briefly at alternatives such as offshore. It discussed fixed or floating structures. It pointed out that an offshore facility would prevent trucks from being used to fill up peak shaving facilities.

The DEIS did a poor job looking at alternatives to the Weaver's Cove site. For instance the DEIS totally ignored the fact that by having an offshore facility in no way hurts the peak shaving capabilities in New England. An offshore facility would add to the supply going into the major gas lines and the Everet facility would service additional trucks for the peak shaving facilities. This is just plain common sense that once again FERC seems to ignore.

An important point is that an offshore facility can be up and running sooner than the Weaver's Cove facility. In addition an LNG terminal could be located on an island off the coast of Massachusetts such as Martha's Vineyard or one of the Elizabeth Islands. This is exactly what the state of Florida is doing. They are locating an LNG plant in the Bahamas and the gas line will then run under the ocean to Florida.

Question: Why is FERC discounting an offshore facility when the technology for such a terminal exists and many companies are now proposing offshore facilities?

Question: Why does FERC avoid the obvious when they know that the Everet facility can take up the additional trucks needed for peak shaving facilities while an offshore facility would feed directly into the pipeline?

Question: Did FERC look at placing a terminal on an island? (There is no mention of this)

DEIS Page 3-12

The DEIS states that we cannot evaluate the feasibility of an offshore facility within the timeframe of the Weaver's Cove Project.

"...the current level of information and limited operational experience is not sufficient to justify consideration of this energy application of offshore technology as a seasonable alternative to the Weaver's Cove LNG project."

At this point it is quite obvious that FERC is doing everything in their power to discount not only the safety hazards, the environmental problems, the socio-economic problems, but is now willing to lie.

- 1. To say that we have limited operational experience is ridiculous. The oil and gas industry has tremendous experience in offshore drilling and platforms. This knowledge can easily be transferred to offshore LNG terminals.**
- 2. There are a number of companies going forward with offshore plans.**
- 3. There are a number of construction companies that say that offshore facilities can and will be built.**

The Excelerate Energy Company said, "Energy Bridge vessels are engineered to offload natural gas while moored to the buoy system, which has been proven in the challenging environment of the North Sea in over a decade of use."

Question: Why does FERC say that offshore technology is not proven when energy companies say the technology is proven?

Question: Why does FERC say that it cannot fully evaluate the feasibility of an offshore LNG terminal due to the timeframe of the Weaver's Cove project? (FERC knows that the project cannot be operational due to the Brightman Street Bridge Project)

Question: Has FERC informed companies such as Excelerate Energy, Aker Kvaerner, ChevronTexaco, Shell, ExxonMobil and ConocoPhillips that their plans for building offshore facilities will not work?

DEIS Page 3-14

“Based on the proposed project design, we have applied a thermal exclusion zone with a radius of 1,000 feet from the center of the LNG storage tank.”

FERC displays their callous disregard for the safety of the citizens of Fall River and Somerset. Here we have a federal agency ignoring the Constitution of the United States when it calls for the protection of the citizens and their property.

FERC ignores scientific experts that say exclusion zones under current regulations are totally inadequate.

FERC ignores the intent of Congress when they called for the siting of LNG facilities in remote areas.

FERC is basing their thermal exclusion zone on a small incident.

Most of all FERC disregards the ABS Report, a report they commissioned. FERC is intentionally missing two points made clear in the ABS Report.

1. If there is a failure at the LNG tank and a fire does break out, the height of the flame could reach over 1,000 feet in the air according to FERC’s own report. If this is the case the damage to human being from the heat could extend out up to 2,500 feet. Well beyond FERC’s puny thermal exclusion zone. Even Gordon Shearer, the CEO of Weaver’s Cove, told a group of citizens what would happen if an LNG tank failed. He said, “It would be the world’s largest roman candle.”

2. FERC disregards what the experts and the ABS report says about the gas cloud. All seem to agree that the gas cloud, if it does not ignite, could extend thousands of feet which means the thermal exclusion zone must extend with it. This is common sense which FERC seems to lack.

Question: Why is FERC ignoring scientists who say that thermal exclusion zone is too small?

Question: Why is FERC ignoring that if the LNG tank fails it would be the world’s largest Roman candle, as described by Gordon Shearer of Weaver’s Cove Energy?

Question: Why did FERC commission a report, the ABS Report, if they are not going to use it?

DEIS Page 3-17

“We have not identified any significant environmental justice concerns related to the operational impacts or environmental affects of the proposal.”

I have covered this ridiculous statement in detail. Look at DEIS ES-5.

I do have a few more comments on this point. FERC, by allowing the construction of this huge LNG tank, will hurt the future growth and beautification of the city's waterfront.

Question: Does FERC believe Fall River can use the LNG Tank in a tourist brochure? (Come see the bomb along the waterfront while you can!)

Question: Why is FERC ignoring the cumulative impacts on the citizens of Fall River from various environmental hazards?

DEIS Page 3-42

HDD, Weaver's Cove did not conduct geotechnical borings, only borings for sediment.

Weaver's Cove made a decision not to use HDD based upon their sediment borings. This is ridiculous; the only true way to test the feasibility of using HDD is by geotechnical borings.

Question: Why isn't FERC requiring geotechnical borings?

DEIS Page 4-22 Dredging

"However, average mercury concentrations exceeded the ER-M and PEL values."

ER-M (Effects Range Median) a criterion representing the median (50th percentile) sediment concentration, above which biological effects frequently occur.

PEL (Probable Effects Level) a criterion representing concentrations above which adverse biological effects are frequently expected.

FERC is certainly consistent in ignoring important data.

By allowing dredging during the summer months FERC will not only endanger the aquatic life but will also endanger humans. The mercury will be released into the water and negatively affect the people using the river. The problem is that the activity on the Taunton River increases during the summer and that includes swimming, boating, and fishing.

FERC tries to brush off this problem by saying that the sediment back wash will not travel far in the river. This is nonsense since they admit that the sediment is silt like and we all know that silt, when disturbed, will travel long distances. Combine this with wave action in the river, tidal action, currents, and bad weather effects, this all adds up to spreading the contaminants long distances.

There are many problems with the dredging operation besides the mercury contamination.

The Division of Marine Fisheries has many concerns when it comes to the dredging operation. As a matter of fact the Division of Marine Fisheries said, "Many of the Marine Fisheries comments and concerns have not been adequately addressed by the applicants during the review process and remain unchanged since the beginning of this effort."

As far as the modeling used by Weaver's Cove and accepted by FERC, Marine Fisheries has this to say, "The very limited amount of field data collected for use in the model is

inadequate when attempting to model for an activity that is proposed to occur year-round for up to three years.”

Marine Fisheries goes as far as saying that this is unacceptable: “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 (TOY) windows and project sequencing within the Taunton River are unacceptable.”

Marine Fisheries states, “...the description of potential winter flounder spawning habitat is incorrect and greatly underestimates the amount of area that may be permanently altered. The applicant’s claims that the Turning Basin area is too deep for successful winter flounder spawning and egg deposition have no basis.”

Marine Fisheries talks about non-excavation impacts: “The placement, management, and removal of the various spuds, anchors, and chains sweeps needed to secure barges and other vessels involved in this large dredging project may impact an area many times larger than the actual dredge footprint. This is a great concern for quahog habitat and resources found adjacent to the channel.”

Coastal Zone Management (CZM) said, “...the modeled scenarios used to evaluate potential water quality and biological impacts did not evaluate worst-case scenarios and therefore do not represent the full breath of potential impacts.”

CZM agrees with Marine Fisheries and is concerned about the limited range of environmental conditions utilized as model inputs (i.e., one moth) is insufficient to evaluate the impacts of a project that well extend well outside of that time period. CZM felt that the model used:

- 1. Overestimated the extent of useable winter flounder spawning habitat.**
- 2. Did not address the permanent loss of winter flounder habitat due to the deepening of certain areas (e.g., the Turning Basin)**
- 3. Did not address the importance of the loss of winter flounder habitat in this system in light of the extremely low abundance of winter flounder in this area relative to historic population levels and current fisheries management efforts to help restore the fishery.**
- 4. Underestimated the temporary damage to winter flounder spawning habitat.**
- 5. Underestimated potential burial effects to oysters in the vicinity of the proposed dredge site.**

CZM wants Weaver’s Cove to refine the model parameters related to winter flounder and anadromous fish impacts so that a more complete evaluation of potential impacts can be presented in the DEIS.

CZM wants more information on dredge volume and wants a reasonable bulking factor.

CZM is concerned that if the southern parcel is not able to hold all of the dredged material they want to know what other site has been targeted to take the dredged material.

CZM, like other agencies, is concerned about a possible over-dredge. They want an evaluation of other proposed disposal sites.

CZM is concerned about future dredging and the disposal of the dredge material offshore. CZM said there has been no testing done for offshore disposal.

The National Oceanic and Atmospheric Administration (NOAA) is "...concerned that suspended sediments resulting from the construction and operations associated with the proposed project will have adverse effects on Essential Fish Habitat (EFH) and living marine resources.

NOAA states that, "...the volumes of dredged material have been underestimated and, therefore, a reasonable assessment of disposal options has not yet been presented."

In a memo written by NOAA it states, "...the applicant has stated that winter flounder spawning only occurs in water depths less than five meters." NOAA then cites "Technical Memorandum NMFS-NE-138 (EFH Source Document)" and says that "spawning can occur at depths of less than five meters to more than 45 meters on Georges Bank."

NOAA is concerned that the one foot over dredge that Weaver's Cove is using may not be realistic. Using the industry standard of a two foot over dredge should be used.

NOAA states, "we are concerned that the total volume of dredged material to be handled has been underestimated."

NOAA concludes by saying that it "remains concerned that the proposed project will have adverse effects on a number of living marine resources, including commercially and recreationally important resources under federal and state stewardship."

EPA states that the one foot over dredge is inconsistent with the Army Corps of Engineer's two foot calculation.

EPA wants the modeling to reflect multiple river flow conditions "...to assess the range of impacts that may occur throughout the course of dredging operation."

EPA is concerned about the TOY issue and the impact that year-round dredging will have on winter flounder and shellfish.

FERC sent a letter on July 30, 2004 to NOAA telling the agency that FERC feels that the Weaver's Cove Project will not have an adverse effect on EFH. Their conclusion is based on Weaver's Cove Energy's modeling results!!!

Question: Has FERC studied the negative impacts that the dredging would cause such as the release of poisons and chemicals into the Taunton River?

Question: The DEIS does not mention the public beach located several hundred feet north of the Turning Basin and the negative impacts it will experience due to the dredging. Why?

Question: Why is there no mention of possible effects on people who utilize the water during the dredging operation? (Especially with the release of mercury into the water)

Question: Marine Fisheries said that many of their concerns have not been addressed. When will FERC address these concerns using reliable data?

Question: Marine Fisheries, NOAA, CZM and the EPA all sited faulty modeling or faulty calculations when it came to the dredging operation. What data can FERC provide (NOT WEAVER'S COVE STUDIES) to prove all these agencies wrong?

Question: Marine Fisheries said the amount of field data collected is in adequate. Will FERC require more field data or will they allow the animal life to be severely impacted by the poor modeling?

Question: It is obvious that the mitigation proposed by Weaver's Cove for the dredging operation will not lessen the severe impacts to the fish and shellfish populations. Will FERC allow year round dredging knowing that it will not only endanger the spawning area of the winter flounder but will also impact the fishing economy of Southern New England?

Question: Will FERC require worst case scenarios, as suggested by CZM, in regards to water quality and biological impacts to the Bay and the Taunton River?

Question: Will FERC force Weaver's Cove to correct the error, found by CZM, such as the overestimation of winter flounder spawning habitat?

Question: Will FERC force Weaver's Cove to correct the error, found by CZM, such as the permanent loss of winter flounder habitat due to the deepening of certain areas (e.g., the Turning Basin)?

Question: Will FERC force Weaver's Cove to correct the error, found by CZM, such as not addressing the importance of the loss of winter flounder habitat in this system in light of the extremely low abundance of winter flounder in this area relative to historic population levels and current fisheries management efforts to help restore the fishery?

Question: Will FERC force Weaver's Cove to correct the error, found by CZM, such as underestimating the temporary damage to winter flounder spawning habitat?

Question: Will FERC force Weaver's Cove to correct the error, found by CZM, such as underestimating the potential burial effects to oysters in the vicinity of the proposed dredge site?

Question: If the site is not able to accommodate all the dredged material, what other locations have been targeted for the dredge material?

Question: How can the suspended sediments not impact the fish and shellfish life in the Bay and river? (Without a good model and with the lack of data presented by Weaver's Cove there is no answer to this question)

On page 4-77 the DEIS talks about the dredging procedure and how FERC will seek comments from NOAA, Marine Fisheries, and other state and federal agencies related to

the dredging activities. The DEIS then states, “These agencies have not formally commented to the FERC on Weaver’s Cove Energy’s revised dredging program.

Question: How can FERC say they have received no comments on the revised dredging when I have in my possession letters from these agencies dated June 8, 2004, August 9, 2004, siting their concerns about the dredging activity?

DEIS Page 4-73

Weaver’s Cove will consider funding a one-time shellfish seeding program and funding a shellfish-harvesting program.

Weaver’s Cove is very generous and FERC bows to their generosity. After they dig up the sediment and destroy countless fish eggs, destroy countless shellfish, ignore TOY, introduce toxins (mercury) back into the river and bay, Weaver’s Cove “will consider” funding a one-time shellfish seeding program. This takes the proverbial fish cake!

DEIS Page 4-76

The sediment plume is confined primarily to the dredged area.

FERC ignores the sediment test results that say that most of the river bottom is silt and clay. Silt travels easily in the water when it is disturbed. The FERC official must have been rolling on the floor when he wrote that the sediment plume will be confined to the dredge area!

Question: How can FERC make this statement when there is not enough data?

Question: With a lack of knowledge on various inputs to the river during storms, heavy rain etc. what information, since there is a lack of it, does FERC use to justify this ridiculous statement?

DEIS Page 4-77

The EPA and other agencies are concerned about the winter flounder egg habitat. Weaver’s Cove proposes to use a different dredging bucket.

This report should be used on the “John Stewart Show”. At least somebody will get some laughs out of it. Weaver’s Cove will use a different type of bucket!

Question: Not only should there be TOY for the animal life within the water but where is the TOY for the human life during the summer months?

DEIS Page 4-139

The DEIS said that, “We received a scoping comment from the President of the Fall River City Council (City of Fall River, 2003) requesting funding for the training of firefighters...” etc. In addition this letter contained an amount of money (\$250,000) and a request for new vehicles.

Mentioning the letter from a city councilor who is trying to get money and equipment from Weaver’s Cove if they locate in Fall River clearly displays the FERC’s bias in this project.

Question: Why did FERC mention the only letter from a public official that was requesting money from Weaver's Cove while never mentioning, in the same detail, letters from many public officials that state that this facility will be too expensive for the city, state and surrounding area?

Question: Why did FERC state on their e-library site that several state representatives oppose the project when the truth was that it was the Massachusetts Homeland Security and Federal Affairs Committee? (Again it is plain for anyone to see what FERC is trying to do)

DEIS Page 4-204

FERC recommends that "Weaver's Cove Energy develop an Emergency Response Plan (including evacuation) as part of its Facility Security Plan, and coordinate procedures with local emergency planning groups, fire departments, state and local law enforcement, and the U.S. Coast Guard." FERC wants evacuation routes mapped out, procedures to notify residents and recreational users within areas of potential hazards, locations for permanent sirens and other warning devices.

Someone once said that if you can fill a room with monkeys and typewriters one of those monkeys is bound to write something. I believe it has happened. A group of monkeys in Washington D.C. got together and wrote what they call a Draft Environmental Impact Statement.

FERC, over and over, has been telling the people of Southern New England that there is a thermal exclusion zone. This means the heat from an LNG fire, no matter how large, will not go beyond that line. They have told us that there is a vapor exclusion zone. This means the gas cloud from an LNG spill, no matter how large, will not go beyond that line set by the vapor exclusion zone.

Then we have in the DEIS the FERC telling the public that sirens must be installed, and that evacuation routes must be laid out, etc.

Question: Why is there a need for evacuation routes when a gas cloud from an LNG spill cannot go further than 900 feet?

Question: Why is there a need for sirens when both the tanker and tank have an exclusion zone that magically stops not only the gas vapor cloud, but the heat generated by an LNG fire?

Question: With all this talk of security, will FERC earmark funds for all the communities that will bear the burden for security out of FERC's own budget?

Question: How does one evacuate people from dead end streets while an LNG fire is raging in their neighborhood?

Question: The Fall River Police and Fire Department have made it known they do not have the resources to protect the people of Fall River from a catastrophe. How does having Weaver's Cove working with them change this?

DEIS Page 4-232

“On January 30, 1980, DOT issued the final rule that established Federal Safety Standards for LNG Facilities. Part 193.2057 requires the establishment of thermal exclusion zones around the facility and Part 193.2059 requires flammable vapor dispersion exclusion zones in order to protect people who live or work near the facility” The report then states that these exclusion zones was obtained by these exclusion zones.

BULL! FERC knows that the exclusion zones do not accomplish the intent of Congress. The DOT regulations ignore what Congress called for when siting an LNG facility. To locate an LNG facility in the middle of a neighborhood and say that an imaginary line will stop the heat and the gas vapor from reaching the homes of thousands of people is insane.

DEIS Page 4-234

Conclusions on Safety Issues

“Rather, safety is a determination of the acceptability of risk which considers: 1. the probability of events; 2. the effect of mitigation; and 3. the consequences of events.”

The DEIS looks at accidental causes and states that with experience, structural design, operational controls, an accident is highly unlikely. When it looks at intentional attacks it says there is little guidance but downplay it by siting the numerous targets in the U.S. And then the DEIS says that the risks can be mitigated.

Question: Acceptable risks? Acceptable for whom? Will Pat Wood III, Chairman of FERC, be living in a wooden three tenement home 1,300 feet away from the LNG tank?

Question: Is the risk acceptable to the thousands of families living within a mile radius of the tanker route or the LNG tank itself? (It is obvious that the risk is acceptable for Washington D.C. bureaucrats who have ties to the Oil and Gas industry)

Question: How did FERC measure human error or equipment failure? (A gas fire in Texas was caused by a valve that properly closed)

Question: Since FERC and the DOT are not the government how were they able to ignore the true government, Congress, and promulgate regulations that do not call for remote siting?

Question: How can FERC downplay a possible terrorist attack by saying there are already numerous targets in the U.S.? How can FERC play Russian roulette with the people of Southern New England?

Question: How can we mitigate a problem when the Coast Guard Captain in charge of security said it will be very, very difficult to stop a terrorist attack?

FERC talks about mitigation and how all the problems can be solved. What they are really saying is that the taxpayer will be put in harms way and at the same time spend millions of dollars to provide security. In the meantime the U.S. deficit skyrockets and locally the commonwealth and the city had to cut back services. FERC has no problem spending millions in public funds as long as it helps their friends in the Gas and Oil industry.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian Pearson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Brian Pearson
886 Cherry St.
Fall River, MA 02720



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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OFFICE OF THE
REGIONAL ADMINISTRATOR

September 20, 2004

Magalie R. Salas, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E., Room 1A
Washington, DC 20426

Re: Weaver's Cove LNG Project Draft Environmental Impact Statement, Doc Nos. CP04-36-000 and CP04-41-000, Corps of Engineers File Number 2004-2355, CEQ # 04037, EPA Number FRC-B03011-MA

Dear Secretary Salas:

In accordance with our responsibilities under the National Environmental Policy Act (NEPA), Section 404 of the Clean Water Act, and Section 309 of the Clean Air Act, we have reviewed the Draft Environmental Impact Statement (DEIS) for Weaver's Cove Energy's proposed Liquefied Natural Gas (LNG) project in Fall River, Massachusetts.¹

The DEIS details the Weaver's Cove Energy proposal to construct and operate an LNG terminal including a ship unloading facility, LNG storage tank, vaporization equipment, LNG truck loading stations and ancillary facilities, two new 24-inch diameter natural gas pipelines totaling 6.1 miles in length, and two meter and regulation stations. Construction of the project will require over 3 million cubic yards of sediment to be dredged from the federal navigation channel (and an expanded vessel turning basin) in the Taunton River and Mount Hope Bay. Weaver's Cove Energy proposes to transport the dredged material to the project site where it would be processed and used as fill material on a waterfront brownfield site that was previously in service as a marine petroleum products storage and distribution terminal. The proposed dredging would be conducted over a continuous three year period and would be privately financed by Weaver's Cove Energy.

New England's air quality has benefitted greatly from the increased use of natural gas for electricity generation, and EPA recognizes the need to bring additional natural gas supplies into the New England Region. 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

¹ This letter serves as our comment on the DEIS, the Draft Environmental Impact Report prepared under the Massachusetts Environmental Policy Act, and the Corps of Engineers' public notice for a Rivers and Harbors Act Section 10 permit and Clean Water Act Section 404 permit for the project.