

**UNITED STATES OF AMERICA  
BEFORE THE  
DEPARTMENT OF COMMERCE**

**Weaver’s Cove Energy, LLC** )  
**Mill River Pipeline, LLC** )  
*Appellants,* )  
)  
**vs.** )  
)  
**Massachusetts Office of** )  
**Coastal Zone Management** )  
)  
*Respondent.* )

**Case No.** \_\_\_\_\_

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**JOINT RESPONSE OF WEAVER’S COVE ENERGY, LLC  
AND MILL RIVER PIPELINE, LLC TO RESPONDENT’S APRIL 8, 2008 LETTER  
REGARDING SUPPLEMENTATION OF THE CONSOLIDATED RECORD**

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On April 8, 2008, Respondent Massachusetts Office of Coastal Zone Management (“MCZM”) filed a letter (“Supplementation Request”) with the National Oceanic and Atmospheric Administration (“NOAA”) in the above-captioned appeal, requesting that the record for this appeal be supplemented with: (a) the Change of Information in the Letter of Intent filed by Weaver’s Cove Energy, LLC (“Weaver’s Cove”) with the U.S. Coast Guard (“USCG”) on March 21, 2008 (the “COI Letter”), and (b) a letter sent by Weaver’s Cove to Commissioner Laurie Burt of the Massachusetts Department of Environmental Protection on March 28, 2008 regarding Weaver’s Cove’s alternative offshore berth proposal (the “Offshore Berth Proposal Letter”). Weaver’s Cove and Mill River Pipeline, LLC (“Mill River”)(together “Appellants”) hereby submit this joint response to the Supplementation Request. In this joint response, Appellants request that the Secretary disregard MCZM’s claims regarding the COI Letter and the

Offshore Berth Proposal Letter in deciding this appeal. Appellants also request that the Secretary decline to supplement the record with the Offshore Berth Proposal Letter.

**A. COI Letter**

The COI Letter proposes to the USCG several changes to Weaver's Cove's LNG vessel transit plan in response to the USCG Letter of Recommendation ("LOR") issued October 24, 2007 and which was included in the record for this appeal on January 2, 2008. These changes are pertinent to the USCG review of Weaver's Cove's LNG vessel transit plan, but are not material with respect to the instant appeal under the CZMA. With respect to the COI Letter, MCZM makes two related, erroneous assertions that merit correction. First, MCZM claims that the COI Letter "could significantly alter the proposed activities comprising the Project." Supplementation Request at 1. MCZM also claims that the changes to Weaver's Cove's LNG vessel transit plan discussed in the COI Letter mean that "the type and extent of dredging activities necessary in Mt. Hope Bay and the Taunton River remains unknown." *Id.* at 2. However, these claims should be disregarded because they are unfounded and contradicted by the record. They should also be disregarded because the LNG vessel transit plan proposed in the COI Letter does not in any way affect the dredging activities under consideration in this appeal.

As Appellants have demonstrated on the record before the Secretary of Commerce ("Secretary") in this appeal, the extent of dredging that Weaver's Cove proposes to undertake for the Project, and the effects thereof, are known. Weaver's Cove has not proposed any changes to the dredging activities which were certified to MCZM as consistent on January 4, 2007, *see* Federal Consistency Certification (WCE Br. App. at A-1), and are now the subject of this appeal. *See* WCE Br. at 16-22; WCE Reply Br. at 7-14; Appellants' Joint Supp. Br. at 27-33; Appellants' Joint Supp. Reply Br. at 10-11. Further, in the course of showing that the Project is

consistent with the objectives of the Coastal Zone Management Act (“CZMA”), Appellants have demonstrated that these effects will be temporary, minor and mitigatable by more than a preponderance of the evidence. *See* WCE Br. at 16-22; WCE Reply Br. at 7-14; Appellants’ Joint Supp. Br. at 27-33; Appellants’ Joint Supp. Reply Br. at 10-11. Nothing in the COI Letter lends support to any contrary conclusion.

Moreover, as shown in its Supplemental Brief, using smaller size LNG ships than originally proposed does not necessitate any changes to the dredging plan under consideration in this appeal. *See* Appellants’ Joint Supp. Reply Br. at 10, n. 11 (same amount of dredging for smaller ships will increase the length of the tidal window that the ships can utilize to transit the waterway). *See also* USCG, LOR, at 21 (recognizing that Weaver’s Cove’s dredging plan was not changed when Weaver’s Cove proposed the use of smaller LNG vessels because the proposed dredging depth serves to “mitigate risks to navigation safety”). Had the changes to the LNG vessel transit plan proposed in the COI Letter required any alteration of the proposed dredging program, that fact would have to have been noted in the COI Letter, and a supporting analysis addressing the impact of any alternations to the dredging program on the proposed LNG vessel transit plan would have been included. Simply put, the COI Letter contains no alternations to the dredging plan on review here, or any suggestion that any such changes would be forthcoming. Therefore, the COI Letter does not and cannot render the scope of Appellants’ dredging activities either altered or unknown, and only serves to demonstrate that Weaver’s Cove continues to move forward to obtain all necessary approvals for the Project. *See also* Appellants’ Joint Supp. Br. at 2, n. 1; Appellants’ Joint Supp. Reply Br. at 6.

Finally, the COI Letter puts to rest any notion that the USCG's LOR constitutes any basis on which to conclude that the USCG review of Weaver's Cove's LNG vessel transit plan is either at an end or at a standstill. The appeal of the LOR proceeds, *see also* Appellants' Joint Supp. Reply Br. at 4-6, and, as noted by MCZM, the USCG has received from Weaver's Cove a revised LNG vessel transit plan proposal in the form of the COI letter for its consideration, *see also id.* at 6.

**B. Offshore Berth Proposal Letter**

The Offshore Berth Proposal Letter is an informational document advising that Weaver's Cove is considering the feasibility of an alternative location for the LNG vessel berth. The offshore berth would receive LNG vessels delivering LNG to the terminal that was approved by the Federal Energy Regulatory Commission in July 2005, *see Weaver's Cove Energy, LLC*, 112 FERC ¶ 61,070 (2005). The alternative location for the berth would place it in Mount Hope Bay, and the LNG would be transported from the offshore berth to the LNG terminal site by pipelines located beneath Mount Hope Bay and the Taunton River. The Secretary should decline to include the Offshore Berth Proposal Letter as part of the record because it is not relevant to the issues under consideration in this appeal, despite MCZM's claim to the contrary, Supplementation Request at 1-2.

Similar to its assertions about the COI Letter, MCZM assertions that the proposal discussed in the Offshore Berth Proposal Letter could somehow change the activities on review in this appeal, specifically with regard to dredging, are simply wrong for two reasons. First, as MCZM explicitly recognizes and admits, "Weaver's Cove has not withdrawn its prior plans" and will continue to fully pursue those plans. *Id.* at 2. This is also evident from the Offshore Berth Proposal Letter itself, which states that "Weaver's Cove is continuing to pursue the permits

necessary to construct and operate the LNG terminal as approved by FERC.” Moreover, the offshore berth alternative proposal is just that — a proposal. The fact that Weaver’s Cove may apply to FERC for the approval of an alternative project does not change any aspect of the Project at issue in this appeal that has already been approved by FERC. Accordingly, the Offshore Berth Proposal Letter is not relevant to this appeal because nothing on review by the Secretary here, including the dredging activities, has changed as a result of the offshore berth alternative proposal.

Appellants’ position is fully supported by the law governing this appeal. Under the CZMA and the implementing regulations, the only activities on review on appeal before the Secretary are those activities certified to the state by the Appellant, and then objected to by the state. *See, e.g.*, 16 U.S.C. § 1456(c)(3)(A) (Secretary reviews federally licensed or permitted activity objected to by the state); 15 C.F.R. §§ 930.120-122 (same); *Decision and Findings in the Consistency Appeal of the Korea Drilling Co., Ltd.* (Jan. 19, 1989), at 4-5 (“The activity that the [federal] agency is authorized to license or permit [when the Secretary sustains an appeal] is the one that the State coastal management agency reviewed for consistency.”). Thus, in this appeal, the only activities on review are the dredging activities to be undertaken in connection with the construction and operation of the proposed facilities for which Weaver’s Cove and Mill River originally sought state concurrence, and that were then objected to by MCZM, *see* Letter from MCZM to Weaver’s Cove (July 6, 2007) (WCE Br. App. at A-2). Because the offshore berth alternative proposal does not in any way affect or modify these activities, and the Offshore Berth Proposal Letter clearly states Weaver’s Cove’s intention to pursue the activities on appeal here, that letter and the underlying proposal have no legal or factual significance with respect to this

appeal. Therefore, MCZM's attempt to improperly broaden the scope of this appeal and cloud the record with an entirely different proposal should be rejected.

For the foregoing reasons, Appellants request that the Secretary disregard MCZM's claims regarding the COI Letter and the Offshore Berth Proposal Letter. Appellants also request that the Secretary decline to supplement the record with the Offshore Berth Proposal Letter.

Respectfully submitted,



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