

SECTION 8.0 STATUTORY AND REGULATORY STANDARDS AND COMPLIANCE

8.1 National Park Service Special Use Permit

The Airport pre-dates the CCNS, which was created by Public Law 87-126 in 1961. As part of the land acquisition for the CCNS, the Commonwealth of Massachusetts authorized the Deed of Conveyance for the Province Lands in 1962. The deed restriction in the conveyance title recognizes the pre-existing lease between the Commonwealth of Massachusetts and the Town of Provincetown for the Airport facilities and access roads. After that lease expired a Special Use Permit was used to authorize operations of the Airport within the National Park Service lands. In the past, twenty-year Special Use Permits have been issued and reissued between the NPS and the Provincetown Airport Commission to establish policies, procedures and other terms under which Airport operations and improvements are carried out. The NPS has directed this form of agreement change to a Memorandum of Agreement for the purposes of coordinating airport operations. The Provincetown Airport Commission is currently working cooperatively toward finalizing this Memorandum of Agreement. The use of NPS land requires that NEPA be met when analyzing and reviewing potential changes to the Airport.

8.2 NEPA / MEPA Process

A combined Environmental Impact Report (EIR) and Environmental Assessment (EA) document has been prepared to meet the requirements of the Massachusetts Environmental Policy Act (MEPA) and the National Environmental Policy Act (NEPA). The Draft document was distributed on May 31, 2007.

The FAA National Environmental Policy Act (NEPA) Implementing Instructions for Airport Actions (Order 5050.4B) and FAA Environmental Impacts: Policies and Procedures (Order 1050.1E) provide the instructions for FAA compliance with NEPA. Additionally, the NPS DO-12 Handbook and Director's Order have been reviewed so that the FEIR/EA would satisfy both FAA and NPS NEPA requirements. The NPS comments on the DEA/EIR and subsequent coordination meetings have been considered in the preparation of the final document.

The MEPA Scope and comments on the NPC/Draft EIR/EA have guided the evaluation on the state level pursuant to the Massachusetts Environmental Policy Act (MEPA).

This FEIR/EA is also part of the DRI submission pursuant to the Cape Cod Commission regulations, as discussed in Section 8.13.

8.3 Coastal Zone Management Program Federal Consistency Review

The Coastal Zone Management Act of 1972 established a program that gives coastal states funding to implement plans to manage coastal resources. Although the Massachusetts Coastal Zone Management Office (MCZM) is not a permitting agency it has the authority to review federal actions within the

coastal zone for consistency with CZM policies. The Coastal Zone is defined to include all of Barnstable County but excludes federal lands (301 CMR 21.05).

A separate CZM Consistency Review letter was submitted for the Terminal Apron Reconstruction Project in February of 2008. The CZM office concurred that the project was consistent with CZM policies as shown on the letter dated April 2, 2008, included in Section 10.1

A CZM Consistency Review letter has been submitted for the remaining CIP projects to MA CZM along with the FEIR/EA. A copy of the submission is included in Section 9.7.

8.4 Americans with Disabilities Act

The Americans with Disabilities Act of 1990 (ADA) guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, state and local government services and telecommunications. The Rehabilitation Act of 1973, the Air Carrier Access Act of 1986, and the Architectural Barriers Act of 1968 also relate to individuals covered by the ADA. The US Department of Transportation has issued an Accessibility Policy Statement pledging a fully accessible multimodal transportation system. FAA Advisory Circular 150/5360-14 implements the objectives set forth in the ADA as well as the Architectural Barriers Act.

The existing parking lot and terminal building are in compliance with access requirements for individuals with disabilities. The proposed parking area and terminal building project elements of the CIP will be in full compliance with the ADA and other related statutes.

8.5 Clean Air Act

The Clean Air Act regulates air emissions from area, stationary, and mobile sources. The Act has been amended several times, most recently in 1990. This law authorizes the U.S. Environmental Protection Agency to establish National Ambient Air Quality Standards (NAAQS).

The amendments establish three categories of areas in which air quality is better than ambient air quality standards. According to information from the NPS, the CCNS is designated a Class II area.

Non-attainment areas are areas which do not meet national ambient air quality standards. For projects within non-attainment areas or maintenance areas, Federal agencies must complete a determination for conformity with the State Implementation Plan (SIP).

The process for assessing the air quality impact of FAA proposed actions is discussed in Air Quality Procedures for Civilian Airports and Air Force Bases, April 1997, and FAA Order 1050.1. The proposed CIP projects are not located within a non-attainment area and will not exceed 180,000 GA annual operations or more than 1.3 million passengers. Therefore, a NAAQS Assessment is not required.

8.6 DOT Act Section 4(f)

Section 4(f) of the Department of Transportation Act of 1966 (recodified as 49 USC Section 303(c)) states that land from a publicly owned park, recreation area, wildlife or waterfowl refuge, or land of a historic site can be used for a transportation project only if:

- there is no prudent and feasible alternative that would avoid using the resource, and
- the project includes all possible planning to minimize impacts.

A use may be direct (physical) or indirect (constructive). A direct use occurs when there is an actual physical taking of a Section 4(f) property. A constructive use occurs when adverse indirect impacts would substantially impair the use of the resource. Typically, the most common constructive use resulting from an airport project relates to visual and noise impacts.

After coordination with the National Park Service (October 31, 2007 comment letter on NPC/Draft EA/EIR), FAA has determined that the projects will be evaluated for Section 4(f). A Section 4(f) Evaluation is included in Section 9 of the FEIR/EA.

8.7 Executive Order 11988 Floodplain Management

Executive Order 11988 requires federal actions to avoid or minimize impacts to the 100 year floodplain. While at least a portion of each CIP project will occur at elevations below the 100-year floodplain, 10 to 11 feet above mean sea level, none of the CIP projects are anticipated to have any adverse affect on the flood storage capacity relative to the ability of these low-lying areas to temporarily retain and release coastal waters during and following a flooding event at the Airport or within the surrounding CCNS lands.

Project alternatives have been considered that will avoid adverse effects and incompatible development in the floodplains. The proposed projects will not displace flood waters nor will they minimize the area available for flood storage because of the proposed wetland mitigation. A Statement of Findings is provided in Section 9.

8.8 Executive Order 11990 Protection of Wetlands

Executive Order 11990 requires federal actions to avoid or minimize impacts to wetlands. Wetland impacts associated with the proposed projects have been avoided and minimized to the extent possible. Mitigation is proposed for unavoidable impacts.

Environmentally preferred alternatives have been selected for CIP projects so as to minimize the destruction, loss, and/or degradation of wetlands and other resource areas. The selected alternatives include all practicable measures to minimize harm to wetlands and also incorporate substantial mitigation in order to restore and enhance the natural and beneficial values of the wetlands encountered within the Airport. See Section 7.0 for details on mitigation plans. Furthermore, all projects will be carried out in accordance with the Massachusetts Wetlands Protection Act regulations minimum performance standards, Provincetown Wetlands Bylaw, the Federal Clean Water Act (33 U.S.C. 1251, et seq.), and the minimum performance standards under the CCC RPP to the fullest extent practicable.

A Statement of Findings is provided in Section 9

8.9 Executive Order 12898 Environmental Justice

Executive Order 12898 requires federal actions to address Environmental Justice in Minority Populations and Low-Income Populations. The MassGIS Environmental Justice (EJ) data layer indicates two EJ areas in downtown Provincetown. The proposed CIP projects will not impact minority or low-income populations.

8.10 Federal Endangered Species Act of 1973, as amended

Consultation has been carried out with the U.S. Fish and Wildlife Service (FWS) regarding federal listed endangered species. The New England Field Office indicated that beaches north and west of the project are known to support Federally-Threatened piping plovers. At the time, the FWS was not able to make a determination as to whether the projects would adversely affect piping plovers. The FWS requested copies of all environmental documents and the NPC/Draft EIR/EA was sent to the FWS NERO. No comment on the Draft was received. The FEIR/EA was sent to the FWS. The NPS has indicated that they treat all State-listed species (as listed by NHESP) the same as any Federally-Threatened or Endangered species, and, in addition to minimizing impacts, will seek to further their protection along with promoting their recovery and security on a Federal level. Coordination will continue with NPS and NHESP regarding protection of listed species.

8.11 National Historic Preservation Act of 1966 and Archeological Resources Protection Act of 1979

Section 106 of the National Historic Preservation Act (NHPA) requires Federal agencies to consider the effects of their undertaking on properties on or eligible for inclusion in the National Register of Historic Places.

The Archaeological Resources Protection Act (ARPA) prohibits unauthorized excavation of archaeological resources on Federal or Indian lands.

FAA compliance responsibilities pursuant to these Acts include consultation, determination of action as an undertaking, determination of area of potential effect, evaluation and findings.

Initial written consultation was carried out with the Massachusetts Historical Commission (MHC), State Historic Preservation Officer, and the Tribal Historic Preservation Officer of the Wampanoag Tribe of Gay head (Aquinnah) in January of 2005 during the preparation of the 2005 Master Plan. Additional written consultation was completed with MHC in March and April of 2007 during preparation of the NPC/Draft EIR/EA. NPS commented on Section 106 issues in their comment letter on the NPC/Draft EIR/EA. The CCNS concurs with MHC that no historic structures are present in the immediate area of potential effect. The CCNS park archaeologist has determined that no archaeological testing is necessary for the fence or taxiway lights project. Agency correspondence is included in Section 10. NPS comments letters are provided in Section 13.

Additional coordination was carried out with MHC (by phone to confirm their April 2, 2007 determination), the Wampanoag Tribe of Gay Head (Aquinnah) (written) and the Mashpee Wampanoag Tribe (written) prior to completion of the FEIR/EA. This FEIR/EA includes all comment letters received. No comment letters were received from either of the Tribal Historic Preservation Officers. As indicated in Section 11, MHC and the two tribes will receive copies of the FEIR/EA.

8.12 US ACOE Section 404 Permit

The CIP project is subject to review by the U.S. Army Corps of Engineers (ACOE) pursuant to Section 404 of the Clean Water Act. After a site visit to review wetland boundaries, the ACOE determined it has jurisdiction based on the presence of “waters of the United States” and/or “navigable waters of the United States”. The Jurisdictional Determination is included in Section 10.1.

An application for an individual Section 404 permit will be submitted. Coordination has been carried out with the Corps regarding the location, type, and amount of mitigation and will be further refined throughout the permitting process. The project, and associated mitigation and monitoring requirements, will comply with the Corps mitigation policy. A discussion of the permitting requirements is provided in Section 6.1.

8.13 Cape Cod Commission DRI Process

The CIP, as a project requiring an EIR, is categorically deemed to be a DRI under the Cape Cod Commission Act, Section 12(i), and is subject to review by the CCC. Such projects are reviewed for consistency with performance standards contained in the CCC’s Regional Policy Plan. Prior to the submission of the NPC/Draft EIR/EA, the Airport Commission initiated a joint MEPA/CCC review.

The CCC held a hearing on June 27, 2007 to gather information for the joint CCC/MEPA review. A DRI application was submitted to the CCC at the time of the submission of the FEIR/EA. After the FEIR/EA is issued a Certificate by MEPA, CCC will hold a Public Hearing on the DRI application.

8.14 DEP Section 401 Water Quality Certificate

Pursuant to the Federal Clean Water Act, any project that would impact wetlands requires a Water Quality Certificate to ensure that the project is in compliance with state water quality standards and regulations. The Water Quality Certificate is issued by DEP. The Airport is located within the CCNS, and as such all waters (and wetlands) in and adjacent to the CCNS are designated Outstanding Resource Waters (ORWs) pursuant to 314 CMR 4.06, Cape Cod Coastal Drainage Area.

An application for an individual Section 401 permit or a Variance will be submitted. A detailed discussion of the permitting requirements is provided in Section 6.1.

8.15 MA Wetlands Protection Act and Provincetown Bylaw

An Abbreviated Notice of Resource Area Delineation (ANRAD) was filed with the Provincetown Conservation Commission. The ANRAD was amended after additional delineation. The delineated wetland boundaries were reviewed in the field and the boundaries were approved by the Commission,

as shown on figures in this document. The ANRAD was granted a 3 year extension in January 2010 and is still valid.

Notice of Intent filings will be submitted for individual projects, or groups of projects, depending on the project design and construction schedules. An Order of Conditions was issued for the Terminal Apron Reconstruction Project. Section 6 discusses the permitting phasing for the projects.

Additional discussion of the permitting process is provided in Section 6.1.

8.16 MA Endangered Species Act

The CIP projects are located within areas mapped as both Priority Habitat of Rare Species and Estimated Habitat of Rare Wildlife and Certified Vernal Pools as designated by the NHESP. The CIP projects will require review under the Massachusetts Endangered Species Act. Consultation has been initiated with staff at NHESP and will continue. A request for MESA Project Review will be submitted when the FEIR/EA is submitted. If NHESP issues a determination of No Take, with conditions, the process will be complete.

Additional discussion of the permitting process is provided in Section 6.1.

8.17 Executive Order 385 and CCC Regional Policy Plan

State Executive Order 385 Planning for Growth, encourages economic development that is consistent with the goals of protecting environmental quality and preserving environmental resources. Executive Order 385 requires state agency actions to consider local and regional growth management plans. The CIP projects will be reviewed as a DRI for compliance with the CCC RPP.

8.18 National Pollution Discharge Elimination System (NPDES)

The NPDES Storm Water Program requires operators of large and small construction sites to obtain authorization to discharge stormwater under an NPDES construction storm water permit. This program is administered jointly by the Environmental Protection Agency (EPA) and the Massachusetts DEP. A Notice of Intent will be filed with the U.S. Environmental Protection Agency for an NPDES Construction Management General Permit 72 hours prior to the start of construction. The contractor will be required to prepare a Stormwater Pollution Prevention Plan and adhere to the plan to control stormwater and prevent the movement of sediment from the construction site.

Operation of the Airport is subject to the NPDES Stormwater Multi-Sector General Permit. According to the NPDES Program, airports are listed under Category vii – “Transportation facilities with Standard Industrial Codes 40, 41, 42, 43, 44, 45, and 5171, which have Cleaning Operations or Airport Deicing Operations.” The Airport is Sector S, Air Transportation Facilities, and its Standard Industrial Code is 4580, “airports, flying fields, and surfaces.” Those areas of the Airport that discharge to “waters of the United States” are subject to NPDES jurisdiction. For Provincetown Municipal Airport, this means those areas that are tributary to the wetlands onsite.

In compliance with the NPDES Program, the Airport developed a SWPPP in October 2000, revised in July 2002. The SWPPP describes the drainage system at the Airport, identifies potential pollution sources that might enter the drainage network and impact downstream receiving waters, and lists BMPs for decreasing impacts.

