

 **REPUBLIC OF CROATIA**

**DUBROVNIK-NERETVA COUNTY**

 Administrative Department for

 Physical Planning, Construction and

 Environmental Protection

 Vukovarska 16, Dubrovnik

CLASS: UP/I-351-01/10-01/02

REG. NO.: 2117/1-23/1-12-13-20

Dubrovnik, 25 November 2013

 Pursuant to Article 79, paragraph 2 of the Environmental Protection Act (Official Gazette 110/07) and Article 30, paragraph 3 of the Regulation on environmental impact assessment (Official Gazette 64/08, 67/09), regarding a request submitted by Hrvatske vode, Water Management Department for the Dalmatian Basins, Vukovarska 35, 21000 Split, Dubrovnik-Neretva County, Administrative Department for Spatial Planning, Construction and Environmental Protection issues, in the repeated evaluation of the need for environmental impact assessment for the project “Stabilization of the Banks of the Mala Neretva and Protection of the Area behind the Banks”, the Administrative Department for Physical Planning, Construction and Environmental Protection of Dubrovnik-Neretva County issues the following

**DECISION**

Environmental impact assessment is not required for the planned project “Stabilization of the Banks of the Mala Neretva and Protection of the Area behind the Banks”.

**Justification**

 The developer, public institution Hrvatske vode, Water Management Department for Dalmatian Basins, Split, Vukovarska 35 (hereinafter: “the party”) submitted on 6 August 2010 a request for evaluation of the need for environmental impact assessment for the project “Stabilization of the Banks of the Mala Neretva and Protection of the Area behind the Banks”. The request contains:

* Information on the developer;
* Information on the project and description of project characteristics;
* Information on the location of the project and its description;
* Presentation of alternatives;
* Description of the project’s likely significant environmental impacts;
* Proposal of analysed environmental protection measures

 Inspecting the request, this body identified that the planned project belongs to the list of projects specified in Annex III of the Regulation on environmental impact assessment for which this body performs evaluation of the need for EIA. This body also identified that the request contains all the required information and evidence as specified by Article 28 of the Regulation on environmental impact assessment.

 The following was been identified:

* The location of the project encompasses the right bank of the Mala Neretva from the dam in Opuzen to the place where the Crepina forks (app. 4.2 km) and the left bank from the dam in Opuzen to the Prag pumping station (app. 4.9 km);
* The planned project foresees:
* improvement of the left and right banks, including the widening and repair of damaged carriageway, development of sideways, trimming of bank slopes, development of berths and development of a bank revetment;
* Providing protection from floods to parts of the town of Opuzen, the settlement of Vlaka and the Vidrice area in the municipality of Slivno, and to parts of agricultural land by the left and right banks of the Mala Neretva which is not encompassed by soil improvement (drainage) measures;
* Removal of private illegally built structures usurping the water estate;
* The planned project lies in the area of the National Ecological Network HR5000031, Neretva Delta, areas important for wild taxa and habitat types, and HR100031, Neretva Delta, internationally important area for birds.

 Since the project is planned in the area belonging to the ecological network, on 6 August 2010 the party submitted to this body a screening request pursuant to the Nature Protection Act (Official Gazette 70/05, 139/08, 57/11). Under that procedure, a prior expert opinion of the State Institute for Nature Protection (SINP) was obtained (Class: 612-07/10-29/145, Reg. No.: 366-07-03-10-2, 10 September 2010), stating that the possibility of significant adverse impacts of the project on the integrity and conservation objectives of the ecological network areas can be excluded and that the main assessment of the project with assessment of alternative solutions is not required. Based on these facts and the above-mentioned opinion of the SINP, this body issued a Confirmation (Class 351-01/10-01/56, Reg. No..: 2117/1-23/1-10-10-05, dated 6 October 2010) that the project “Stabilization of the Banks of the Mala Neretva and Protection of the Area behind the Banks” won’t have any significant impact on the conservation objectives and integrity of the ecological network areas and that the main assessment of the project with assessment of alternative solutions is not required.

 The notice on the request for evaluation of the need for EIA (Class: 351-01/10-01/02, Reg. No.: 2117/1-23/1-10-10-02) posted on 11 October 2010 on the official web site of Dubrovnik-Neretva County and on the notice boards of Dubrovnik-Neretva County, the Town of Opuzen and the Municipality of Slivno. The request for opinion about the evaluation of the need for EIA (Class: 351-01/10-01/02, Reg. No.: 2117/1-23/1-10-10-03, dated 11 October 2010) was submitted to:

* Ministry of Regional Development, Forestry and Water Management, Directorate for Water Management, Ulica grada Vukovara 220, Zagreb;
* Ministry of Agriculture, Fisheries and Rural Development, Directorate for Agricultural Land, Ulica grada Vukovara 78, Zagreb;
* Public Institution for Management of Protected Natural Values in Dubrovnik-Neretva County, Branitelja Dubrovnika 41, Dubrovnik;
* Ministry of Culture, Directorate for Nature Protection, Runjaninova 2, Zagreb;
* Town of Opuzen, Trg kralja Tomislava 1, Opuzen; and
* Municipality of Slivno, Podgradina 41, Opuzen.

 Concerning the requested opinions and published notice, opinions from all the bodies from which they had been requested were received:

* The Ministry of Regional Development, Forestry and Water Management, Directorate for Water Management stated that the planned project will have no adverse environmental impact since the area of project impact lies only in the region which has already been stripped of natural values. With proper organization and control of the construction site, potential risks for the aquatic environment can be prevented. Since adverse environmental impacts are also not expected during operation, environmental impact assessment is not required.
* The Ministry of Agriculture, Fisheries and Rural Development, Directorate for Agricultural Land stated that, since the project will have no significant environmental impact, the preparation of an Environmental Impact Study is not required.
* The Public Institution for Management of Protected Natural Values in Dubrovnik-Neretva County stated that the planned project encompasses part of the riverbank which has already been significantly degraded in terms of natural characteristics, whereas the lower part of the course, which contains the vegetation required for the shelter for fish fry and stay and nesting of birds, is not within the project scope. Therefore, significant adverse environmental impacts are excluded.
* The Ministry of Culture, Directorate for Nature Protection stated that, since an adverse impact of the project on the ecological network areas and their conservation objectives cannot be excluded, environmental impact assessment is required.
* The Town of Opuzen stated that environmental impact assessment is not required, without any special justification of its opinion.
* The Municipality of Slivno stated that environmental impact assessment is not required since the strongest impact is expected during the performance of works, which gives importance to the technology used by the contractor and to the site management design.
* Concerning the notice published on the official web site of Dubrovnik-Neretva County and on the notice boards of Dubrovnik-Neretva County, the Town of Opuzen and the Municipality of Slivno, not a single opinion was submitted.

 Based on the factual findings and particularly taking account of the opinions received from the competent bodies, which are dominated by the opinion that environmental impact assessment for this project is not required, this body issued a decision on 8 December 2010 (Class: 351-01/10-01/02, Reg. No.: 2117/1-23/1-10-10-10) that the environmental impact assessment was not required.

 The Croatian Society for the Protection of Birds and Nature, Osijek filed a complaint to the above decision on 3 January 2011. On 29 May 2012, the Ministry of Environmental and Nature Protection reached a decision (Class: UP/II-351-02/11-21/11, Reg. No.: 517-04-12-2) revoking the above decision reached by this body and sending the matter into a repeated procedure.

 In its guidelines, the second-instance body states that in the repeated procedure the first-instance body shall act according to Article 37.a, paragraph 4 of the Nature Protection Act, which lays down that the opinion of the then competent authority – Ministry of Culture, Directorate for Nature Protection – about the obligation to conduct the main assessment of the project with regard to the ecological network is binding when reaching a decision about the evaluation of the need for EIA. Taking action in the repeated procedure, this body reconsidered the entire file and concluded that the opinion of the Ministry of Culture, Directorate for Nature Protection obtained in this procedure does not represent the opinion under Article 37.a, paragraph 4 of the Nature Protection Act. Namely, in the separately conducted screening procedure, this body, which is pursuant to Article 37.a, paragraph 2 of the Nature Protection Act competent for that procedure, had not even reached the opinion specifying the obligation of conduct the main assessment which would be binding in reaching the decision about evaluating the need for EIA. Pursuant to paragraph 3 of the same Article, and based on the prior opinion of the SINP, it had issued the certificate about the project being appropriate for the ecological network, as specified in the justification of the revoked decision. For that reason, the provision of Article 37.a, paragraph 4 of the Nature Protection Act could not be applied, i.e. action as instructed by the second-instance body could not be taken. Based on the above and based on the identified fact that the substantive law had been adequately applied in the relevant procedure, this body reached a decision in the repeated procedure (Class: 351-01/10-01/02, Reg. No.: 2117/1-23/1-10-10-15, 2 July 2012) that the environmental impact assessment was not required.

 The Croatian Society for the Protection of Birds and Nature, Osijek filed a complaint to the above decision on 30 July 2012. On 26 August 2013, the Ministry of Environmental and Nature Protection reached a decision (Class: UP/II-351-02/11-21/10, Reg. No.: 517-04-13-2) revoking the revoked decision and sending the matter into a repeated procedure.

 In its justification, the second-instance body states that the first-instance body had failed to justify the reasons why it identified that the EIA was not required for this specific project, i.e. had failed to provide reasons why it did not accept the opinion of the Ministry of Culture, Directorate for Nature Protection which stated that one could not exclude an adverse impact of the project on the areas and conservation objectives of the ecological network and the Ramsar area, in particular on the living world present there, because of which EIA is required.

 In its guidelines, the second-instance body instructs the first-instance body that it shall, when reaching the decision, take account of potential direct and indirect impacts of the project on the environment, including humans, plants and animals, landscape, material assets and cultural heritage, taking into account their interactions, and that it shall reach a decision according to which EIA is required, with this procedure also including appropriate assessment for the ecological network.

 Acting in a repeated procedure, this body reviewed all the facts mentioned in the request and all the opinions submitted about the need for EIA. It identified that the project is planned on the part of the riverbank which has already been stripped of the natural values by developing a local road and a berm along the watercourse, by lining the slopes with concrete, by developing illegal parking areas, illegal berths and steps and by developing concrete sluice gates. The project foresees the removal of structures usurping the water estate; the construction of a footway along the existing road, by means of which the flood defence level will be achieved; widening the road and repairing road damage (cracks and settlement); repairing the existing berm; and constructing a new revetment and lining the slope from the top of the carriageway to 1.00 m above sea level, i.e. to -0.30 m above sea level at mooring sites. In this way, an important part of the riparian vegetation required as the shelter for fish fry and for slowing down the river flow rate will be retained. The course of the Mala Neretva which passes next to agricultural land is outside of the project’s scope. Based on the above factual findings and taking account of potential impacts on humans, plants and animals, landscape, material assets and cultural heritage, and taking account of the opinions of the competent bodies dominated by the view that the EIA is not required, it is identified that the project won’t have any significant adverse impact on the above mentioned environmental components.

 Concerning the potential impact on the conservation objectives and integrity of the ecological network, plants and animals and habitats, it is important to note that pursuant to the Nature Protection Act (Official Gazette 70/05, 139/08) the environmental network screening procedure has been performed and that a certificate has been issued confirming that the main assessment was not required. The certificate was issued pursuant to Article 37.a, paragraphs 2 and 3 of the Nature Protection Act, based on the prior expert opinion of the SINP, which this body was obliged to request. This opinion states that the possibility of significant adverse impacts on the integrity and conservation objectives of the ecological network areas can be excluded and that the main assessment with assessment of alternative solutions is not required. The validity of the issued certificate cannot be disputed in this procedure.

 Based on the procedure taken, on the factual findings and identified fact that the substantive law had been adequately applied in the relevant procedure by applying Article 79, paragraph 2 of the Environmental Protection Act and Article 30, paragraph 3 of the Regulation on environmental impact assessment, the decision as specified in the disposition was reached.

**LEGAL REMEDY**

 A complaint against this Decision can be filed to the Ministry of Environmental and Nature Protection, Zagreb within 15 days from its receipt. The complaint shall be submitted to this Administrative Department in writing, in person or by regular post. A verbal complaint to the minutes can also be made. An administrative fee in the amount of HRK 50.00 shall be paid for the complaint.

Acting Head

 Nikolina Šišić, LL.B.

To be delivered to:

1. Hrvatske vode Zagreb, Water Management Department for Southern Adriatic Basins

Vukovarska 35, 21000 Split

1. Croatian Society of/for the Protection of Birds and Nature
2. Records
3. Files