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January 30, 2009

CERTIFICATE OF THE SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS  
ON THE  
EXPANDED ENVIRONMENTAL NOTIFICATION FORM

PROJECT NAME : Ten-Year Town-Wide Dredging and Beach Nourishment Plan  
PROJECT MUNICIPALITY : Yarmouth  
PROJECT WATERSHED : Cape Cod  
EOEEA NUMBER : 14354  
PROJECT PROPONENT : Town of Yarmouth  
DATE NOTICED IN MONITOR : December 24, 2008

Pursuant to the Massachusetts Environmental Policy Act (M.G.L. c. 30, ss. 61-62I) and Sections 11.06 and 11.11 of the MEPA Regulations (301 CMR 11.00), I have reviewed this project and hereby determine that it **does not require** further MEPA review. In a separate Draft Record of Decision also issued today, I have proposed to grant a Waiver from the requirement to prepare a Mandatory Environmental Impact Report (EIR) for the project. This Certificate sets forth the issues that must be addressed by the Proponent during permitting and discusses recommendations that were submitted on the project during the MEPA comment period.

Project Description

As described in the Expanded Environmental Notification Form (EENF), the project consists of the implementation of the Town of Yarmouth's Ten-Year dredging and beach nourishment plan (the Plan). The Plan is a comprehensive effort to consolidate and manage 37

existing dredging or beach nourishment sites within the Town. Each of these 37 sites have already completed a full permit application and review process with the applicable local, State and Federal authorities on an individual basis. The project is designed to provide the Town with more effective ways to manage these ongoing maintenance beach nourishment and dredging activities.

The EENF includes a discussion of the following areas and sites, broken down into Critical Geographic Areas (CGA) and specific sites:

#### North and South Facing Beaches

- Bass Hole – Gray’s Beach (#1)
- Bay Road (#2)
- Bayview Street (#3)
- Baxter Avenue (#4)
- Berry Avenue (#5)
- Columbus Avenue (#6)
- Crosby Street (#7)
- Glenwood Street (#8)
- Grove Street (#9)
- Homer Avenue (#10)
- Malfa Road (#11)
- New Hampshire Avenue (#12)
- River Street (#13)
- **Short Wharf Creek Beach (#14)**
- Akin Avenue Town Landing (#15)
- Vermont Avenue (#16)
- Vernon Street (#17)
- Windmill Park (#18)
- Wilbur Park (#19)

#### Englewood Dredging

- *Pine Island Entrance Channel (#20)*<sup>1</sup>
- *Englewood Entrance Channel (#21)*
- *Englewood Basin (#22)*
- *Englewood Boat Ramp (#23)*

#### Bass River

- *Navigational Channel and Mooring Basins (#24)*
- West Dennis Beach (#25)
- South Middle Beach (#26)
- Bass River Beach (#27)

#### Parkers River

- *Parkers River Dredging (#28)*
- Seaview Beach (#29)
- Parkers River Beach (#30)

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<sup>1</sup> Dredging projects are noted in *italics*. All other projects are classified as beach nourishment projects

- Seagull Beach Dune (#31)
- Thatchers Beach (#32)

#### Mill Creek

- *Mill Creek Dredging* (#33)
- Mill Creek / Standish Way (#34)
  - Millway Beach (#34a)
  - Colonial Acres Beach (#34b)

#### Inland Ponds

- Dennis Pond (#35)
- Little Sandy Pond (#36)
- **Wings Grove Park at Long Pond** (#37)

### Jurisdiction

The project is undergoing review pursuant to Sections 11.03 (3)(a)(1)(b) and 11.03(3)(b)(3) because the project requires a State Agency action and the project has the potential to alter ten acres or more of other wetlands (e.g. Land Under Ocean and Land Containing Shellfish) and will require dredging of 10,000 or more cubic yards of material. The project will require a Chapter 91 (c.91) Waterways Dredge Permit and a Section 401 Water Quality Certificate from the Massachusetts Department of Environmental Protection (MassDEP). The project will be required to file under the provisions of the Massachusetts Endangered Species Act (MESA) with the Massachusetts Division of Fisheries and Wildlife Natural Heritage and Endangered Species Program (NHESP). The proponent must also obtain approval from the United States Army Corps of Engineers (U.S. ACOE). The project will require an Order of Conditions from the Yarmouth Conservation Commission. The project may also be subject to Office of Coastal Zone Management (CZM) federal consistency review.

Because the proponent is not seeking financial assistance from the Commonwealth for the project, MEPA jurisdiction extends to those aspects of the project that are within the subject matter of required or potentially required state permits and that may cause Damage to the Environment as defined in the MEPA regulations. In this case, MEPA jurisdiction exists over wetlands, waterways, and tidelands, and rare species.

### Project History

The Proponent filed an Environmental Notification Form (ENF) with the MEPA office on December 15, 2008 that was subsequently noticed in the December 24, 2008 Environmental Monitor. Upon review of the ENF, it was determined that the cumulative impact of the consolidated projects exceeded a mandatory EIR threshold for potential wetland impacts. Subsequent to this discovery, the Proponent sought to request a full waiver from the preparation of a mandatory EIR through the preparation of supplemental information concerning the proposed activities. The Proponent filed and circulated additional supporting materials on January 16, 2009. These supporting documents, in addition to the materials presented in the ENF, were sufficient to deem the submission an Expanded ENF (EENF) in accordance with the

MEPA regulations. An extended review period of 37 days was held for the project in accordance with 301 CMR 11.11.

### Review of the EENF

#### Wetlands, Waterways and Tidelands

According to the supplemental documentation provided on the EENF, the cumulative project impacts are estimated to be: 173,927 square feet (sf) of Land Under Ocean; 19,877 sf of Barrier Beaches; 93,628 sf of Coastal Beach; 170,152 sf of Riverfront Area; 162,290 sf of Fish Runs; and 326,664 sf of Land Containing Shellfish. These estimates were culled from a review of the historic MassDEP and ACOE permit applications submitted for each specific project site. Information included in the EENF does note that additional impacts may be incurred as specific project components are undertaken; however these additional impacts would only occur subsequent to additional site investigations to quantify final volumes of nourishment or dredging, and prior to State permit approvals.

Comments received from CZM indicate that this comprehensive permit process will result in a more flexible, cost-effective and successful approach to the Town's regular, ongoing maintenance dredging and sediment management efforts. As noted previously, each individual dredging and beach nourishment site has been individually permitted through local, State, or federal processes (as applicable). Sites to be included in the Plan's permitting process will be restricted to projects that are categorized as maintenance dredging and do not require an individual permit from the U.S ACOE. Each site included in this filing is located on town-owned property; no beach nourishment is proposed on private property. Improvements to associated beach structures such as jetties, groins, sinks, boat ramps, etc., are not included as part of this project. The Proponent will be required to seek permits for the Plan from applicable individual permitting agencies.

I note that the information provided in the EENF of was adequate for general comments on the scope and breadth of the various project components. As requested by both MassDEP and NHESP, more detailed site plans that meet the application submission requirements will be required for their respective permit approval processes. As requested by the Cape Cod Commission, the permitting applications should remove the dredging of Mooring Basin 1 from the Plan, as this area of dredging is not presently proposed, despite being shown on documentation included in the EENF. The Proponent should use the guidance presented in the MassDEP and NHESP comment letters, in addition to permit application requirements, to determine the level of detail necessary when comprehensive c. 91, Section 401 Water Quality Certificate, and MESA permit approvals are sought. MassDEP has indicated that grain-size analyses, dredge material handling protocols, and erosion and sedimentation control Best Management Practices (BMPs) may need to be established to meet permitting requirements. In addition, according to Table 1 of the EENF, it also appears that additional data gathering will be required for the Bass River Navigation Channel (#24) dredging, Seagull Beach Drive (#31) beach nourishment, and Mill Creek/Standish Way (#34) beach nourishment. I remind the Proponent that the c.91 comprehensive permit application should specifically address how beach nourishment activities will not impede public use of the intertidal zone.

*Marine Fisheries* has indicated that the project sites lie within or abut mapped shellfish habitat which is afforded protection under the Wetlands Protection Act (310 CMR 10.34). *Marine Fisheries* has also identified the dredge sites as winter flounder (*Pseudopleuronectes americanus*) spawning habitat. Several of the dredge and beach nourishment locations serve as diadromous fish passage, migration and spawning habitat, as well as horseshoe crab (*Limulus polyphemus*) spawning habitat. Furthermore, the EENF noted that MassDEP mapped eel grass beds may be located near some of the dredging locations. Permitted dredging should be conditioned to avoid impact to eel grass beds.

The Town of Yarmouth has a recommended shellfish resource management strategy as outlined in Table 1 in the EENF. These shellfish habitat recommendations should be considered during the comprehensive permit process to further enhance shellfishing resources. Table 1 of the EENF also lists a variety of time-of-year (TOY) restrictions established during the historic permitting processes for some of the dredging and beach nourishment projects. The Proponent should review the TOY restrictions proposed in the *Marine Fisheries* comment letter to determine consistency with historic TOYs as well as for the consideration and incorporation of new TOYs into the comprehensive permit process.

### Rare Species

According to comments received from NHESP, several of the proposed project sites are located within *Priority Habitat* and *Estimated Habitat* as indicated in the 13<sup>th</sup> Edition of the Massachusetts Natural Heritage Atlas and therefore require review through a direct filing with NHESP for compliance with MESA (321 CMR 10.00). Several sites are mapped as habitat for State-listed species, including species of birds, plants, turtles, and invertebrates such as dragonflies. Of particular concern for NHESP are known nesting sites for Piping Plovers (*Charadrius melodus*) and Least Terns (*Sternula antillarum*). The Proponent has consulted NHESP prior to filing the ENF regarding potential project impacts as well as the request for approval of a 10-year permit. The Proponent has indicated a willingness to establish information sharing protocols with NHESP to ensure that NHESP staff can examine beach nourishment sites prior to deposition of materials within sensitive habitat areas. As indicated in their comment letter, NHESP typically approves dredging and beach nourishment projects for a maximum of a three-year period. I encourage the Proponent and NHESP to work together during the MESA review process to address outstanding rare species concerns and collaborate on efforts to assist the Proponent in the consolidation and streamlining of the permitting process.

I note the guidance provided by NHESP for information that should be provided during the MESA review process including specific detail on the location, volume, and design specifications (elevation, slope, plantings, and fencing) of the proposed nourishment of these sites. While Table 1 within the EENF does identify some TOY restrictions for beach nourishment activities, the Proponent should identify TOY restrictions for each beach nourishment site located within *Priority* or *Estimated Habitat* during the MESA review process.

Reporting/Monitoring

I acknowledge the reservations expressed by some commenters about the length of the proposed Plan's comprehensive permit. I trust that during the permitting process the Proponent will investigate ways to incorporate appropriate monitoring and reporting requirements to allow for information sharing amongst interested agencies. MassDEP has indicated that they will require a dredging and beach nourishment activities summary report be submitted to the Department for review. I recommend that the Proponent explore how this reporting requirement may be expanded to address additional project information sharing requests from other interested parties (i.e. NHESP, Division of Marine Fisheries (*Marine Fisheries*), Cape Cod Commission). I encourage the Proponent to consult with respective permit granting authorities prior to submitting permit applications to ensure that sufficient information will be contained in the application documents and proposed monitoring and reporting protocols.

Public Benefit Review

I have concluded that this water-dependent project will provide adequate public benefit in accordance with 301 CMR 13.04(1). A Public Benefit Determination (PBD) will be issued within 30 days of the issuance of the Final Record of Decision (FROD) approving the request for a waiver from the preparation of a mandatory EIR. Should a FROD not be issued, the PBD will be issued within 30 days of the issuance of a Certificate on the Final EIR.


Conclusion

Based on a review of the information provided by the Proponent and after consultation with the relevant public agencies, I find that the potential impacts of this project do not warrant further MEPA review. Outstanding issues may be addressed during the permitting process.

I have also issued today a Draft Record of Decision (DROD) proposing to grant a Waiver from the requirement to prepare an EIR for the project. The DROD will be published in the next edition of the Environmental Monitor on February 11, 2009 in accordance with 301 CMR 11.15(2), which begins the public comment period. The public comment period lasts for 14 days and will end on February 25, 2009. Based on written comments received concerning the DROD, I shall issue a Final Record of Decision or a Scope within seven days after the close of the public comment period, in accordance with 301 CMR 11.15(6). If the Full Waiver is not approved based on comments received on the DROD, then this Certificate on the EENF will be re-issued with a Scope for an EIR.

January 30, 2009

Date

  
for Ian A. Bowles

Comments received:

- 01/13/2009 Division of Fisheries and Wildlife – Natural Heritage and Endangered Species Program
- 01/20/2009 Office of Coastal Zone Management
- 01/22/2009 Division of Fisheries and Wildlife – Natural Heritage and Endangered Species Program (2<sup>nd</sup> letter)
- 01/23/2009 Massachusetts Department of Environmental Protection – SERO
- 01/23/2009 Cape Cod Commission
- 01/23/2009 Division of Marine Fisheries

IAB/HSJ/hsj