



The Commonwealth of Massachusetts
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Deval L. Patrick
GOVERNOR

Timothy P. Murray
LIEUTENANT
GOVERNOR

Ian A. Bowles
SECRETARY

Tel: (617) 626-1000
Fax: (617) 626-1181
<http://www.mass.gov/envir>

February 6, 2009

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

PROJECT NAME : Licensing of Two Existing Decks and Construction of a
Proposed Addition
PROJECT MUNICIPALITY : Edgartown
PROJECT WATERSHED : Cape and the Islands
EOEA NUMBER : 14359
PROJECT PROPONENT : Frank Pellegrino, TSTE, Seafood Shanty Realty Trust
DATE NOTICED IN MONITOR : January 7, 2009

Pursuant to the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-62I) and Section 11.06 of the MEPA regulations (301 CMR 11.00), I determine that the above project **does not require** the preparation of an Environmental Impact Report (EIR).

According to the Environmental Notification Form (ENF), the proposed project consists of the Chapter 91 Licensing of two previously constructed decks earlier, which were built to provide outside seating, and the proposed enlarging an of an existing restaurant office space on the second floor of the existing building. The proponent also plans to enclose a waste management and outside storage area of the restaurant and bar facility in order to improve the vistas from a public way.

The project is undergoing review pursuant to Sections 11.03(3)(b)(5) of the MEPA regulations because the project requires a State agency action of a Chapter 91 License and involves a new or existing unlicensed non-water dependent use of waterways or tidelands. The project will require a Chapter 91 License from the Massachusetts Department of Environmental Protection (MassDEP). The project received a Negative Determination of Applicability for the

two existing decks on January 12, 2006 from the Martha's Vineyard Conservation Commission stating that a Notice of Intent would not be required. A second Negative Determination of Applicability was issued by the Martha's Vineyard Conservation Commission for the proposed second floor addition on November 16, 2007, also stating that a Notice of Intent would not be required.

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 which may cause Damage to the Environment as defined in the MEPA regulations. In this case, MEPA jurisdiction exists over waterways and tidelands.

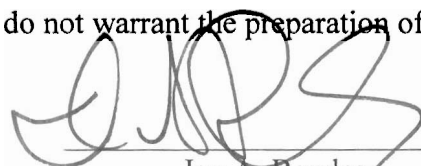
The project site encompasses filled tidelands adjacent to the Edgartown Harbor. The existing structure on site contains a restaurant and bar. As described attachments in the ENF, the Edgartown Marine Advisory Committee and the Edgartown Planning Board concur that the project will not interfere with the Edgartown Municipal Harbor Plan's Public Access Agenda for the Village Waterfront Area. In addition, the Edgartown Marine Advisory Committee and the Edgartown Planning Board agree that the town's historic vistas will not be impacted. The project, therefore, appears to be in compliance with the goals of the Edgartown Harbor Plan.

The Division of Marine Fisheries (DMF) has stated that the project site lies within mapped shellfish habitat for quahogs (*Merccenaria mercenaria*) and bay scallops (*Argopecten irradians*) which are afforded protection under the Wetlands Protection Act (310 CMR 10.34). I advise the proponent to consult with DMF if questions arise regarding provisions for avoiding, minimizing and mitigating impacts to these protected species.

MassDEP has stated in its comments that the existing decks and the proposed two story addition to the restaurant are considered nonwater-dependent uses, and the standards outlined in 310 CMR 9.00 for Non Water-Dependent projects must be addressed by the proponent.

Pursuant to 301 CMR 13.02, I am declining to require an additional Public Benefit Review for the project. I am satisfied that the project's impacts to tideland resource areas can be adequately addressed during the permitting processes. Therefore, based on a review of the information provided by the proponent and after consultation with relevant public agencies, I find that the potential impacts of this project do not warrant the preparation of an EIR.

February 6, 2009
Date



Ian A. Bowles

Comments received:

01/15/2009 Massachusetts Division of Marine Fisheries
01/27/2009 Massachusetts Department of Environmental Protection - SERO