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July 17, 2009

DRAFT RECORD OF DECISION

PROJECT NAME : Ten-Year Comprehensive Dredging and Beach  
Nourishment Plan  
PROJECT MUNICIPALITY : Edgartown and Oak Bluffs  
PROJECT WATERSHED : Islands  
EOEEA NUMBER : 14425  
PROJECT PROPONENT : Towns of Edgartown and Oak Bluffs  
DATE NOTICED IN MONITOR : June 10, 2009

Pursuant to the Massachusetts Environmental Policy Act (M.G.L.c.30, ss. 61-62I) and Section 11.11 of the MEPA Regulations (301 CMR 11.00), I have reviewed this project and hereby **propose to grant a waiver** from the categorical requirement to prepare an Environmental Impact Report (EIR). In a separate Certificate also issued today, I have set forth the outstanding issues related to the project that can be addressed by permitting agencies.

Project Description

As described in the Expanded Environmental Notification Form (EENF), the project consists of the implementation of a ten-year maintenance dredging and beach nourishment plan (the Plan) for the Towns of Edgartown and Oak Bluffs. The Plan is a comprehensive effort to consolidate and manage 24 existing dredge sites and 22 existing beach nourishment sites and their associated permits within both towns. Each of these 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 Towns with a more effective way to manage these ongoing beach nourishment and dredging activities.

The EENF included a discussion of the following areas and sites:

## Cape Pogue Bay

- *The Gut - DCPG (#1)* <sup>1</sup>
- *The Narrows – DCPN (#2)*
- *Dike Bridge Approach - DCPDB (#3)*
- *Future Dredge Outside Cape Pogue Pond – Future (#3)*
- Cape Pogue Elbow C-G - NSELB (#1)
- Cape Pogue North Gut A&B – NSNG (#2)
- Cape Pogue Narrows Trails – NSNT (#3)
- Cape Pogue Narrows Beach – NSNB (#4)
- Cape Pogue Dike Bridge (OVR Trails) - NSDB (#5)

## Edgartown Harbor

- *Eel Pond (EP) - DEPC (#4)*
- *Eel Pond Ramp – DEPR (#5)*
- *Lighthouse – DLH (#6)*
- *Inner Harbor - DIH (#7)*
- *Collins Beach - DCB (#8)*
- *Caleb’s Pond - DCP (#9)*
- *Katama Boat Ramp & Channel – DKBR (#10)*
- *Katama Bay – DKB (#11)*
- Eel Pond Barrier Island – NSEPBI (#6)
- Eel Pond Barrier Beach – NSEPBB (#7)
- Eel Pond Alternate Froelich (Private) – NEPALT (#8)
- Eel Pond Alternative #2 (Private) – NEPALT2 (#9)
- Lighthouse (Fuller) Beach - NSFBS (#10)
- Gardner Property (Alternate) – NSGP (#11)
- Nourishment Site E (Private) – NSE (#12)
- Nourishment Sites A-D, F (Private) – NSA-D,F (# 13)
- Norton Point – NSNP (#14)

## Edgartown Great Pond

- *Great Pond Ramp (Wilson’s Landing) - DGPR (#18)*
- *Great Pond Channel - DGPC (#15)*
- *Great Pond Seasonal Excavation – DGPC (#15 )*
- *Great Pond Sluiceway – DGPSL (#16)*
- *Herring Creek Restoration Dredging - DHCR (#17)*
- *Herring Creek Restoration Excavation – DHCR (#18)*
- South Beach – NSSB (#15)
- Butlers Cove Alt Dis (Private) – NSBC (#16)
- Great Pond Ramp – NSGPR (#17)

## Sengekontacket Pond

- *Borrow Area #1 - DBA1 (#13)*

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

- *Borrow Area #2 – DBA2 (#14)*
- *Little Bridge - DLB (#12)*
- *Future Dredge in Sengekontacket – Future (#1)*
- *Future Dredge in Sengekontacket – Future (#1A)*
- *Future Dredge Outside Sengekontacket – Future (#2)*
- *Sylvia State Beach (Oak Bluffs) - NSSYL (#19)*
- *State Beach Alternative – NSSB (#20)*
- *Bend in the Road Beach – NSBITR (#18)*
- *Cow Bay Dunes (Private) – NSCBD (#21)*
- *Cow Bay Future Nourishment (Private) – NSCBF (#22)*

### Jurisdiction

The project is undergoing review pursuant to Sections 11.03(1)(a)(1) and 11.03(3)(a)(1)(b) because the project requires a State Agency action and the project includes the direct alteration of 50 or more acres of land and has the potential to alter ten acres or more of other wetlands (e.g. Land under Ocean and Land under Salt Ponds). The proponent is attempting to combine all current Chapter 91 Permits, Water Quality Certificates, Army Corps Permits and Orders of Conditions for the above projects into one ten-year comprehensive permit for dredging and beach nourishment. 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). It will require a filing with the Massachusetts Division of Fisheries and Wildlife's Natural Heritage and Endangered Species Program (NHESP) under the provisions of the Massachusetts Endangered Species Act (MESA). The proponent must also obtain approval from the United States Army Corps of Engineers (ACOE). It may require compliance with the National Pollutant Discharge Elimination System (NPDES) General Permit for stormwater discharges from a construction site. The project will require Orders of Conditions from the Edgartown and Oak Bluff's Conservation Commissions, and, on appeal only, a Superseding Order of Conditions from MassDEP. 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, tidelands, and rare species.

### Waiver Request

The Proponent filed an Expanded Environmental Notification Form (EENF) with the MEPA Office on June 1, 2009 that was subsequently noticed in the June 10, 2009 Environmental Monitor. Upon review of the EENF, it was determined that the cumulative impact of the consolidated project exceeded a mandatory EIR threshold for potential land alteration and wetland impacts. In the EENF, the proponent requested a full waiver from the preparation of a mandatory EIR, and on June 24<sup>th</sup> and 26<sup>th</sup>, it provided supplemental information concerning its proposed activities. This supplemental information, in addition to the materials presented in the

EENF, was sufficient to determine that the submission of the EENF met the MEPA regulations. An extended review period of 37 days was held for the project in accordance with 301 CMR 11.11. The waiver request was discussed at the MEPA consultation/scoping session for the project which was held on June 16, 2009.

#### Standards for All Waivers

The MEPA regulations at 301 CMR 11.11(1) state that I may waive any provision or requirement in 301 CMR 11.00 not specifically required by MEPA and may impose appropriate and relevant conditions or restrictions, provided that I find that strict compliance with the provision or requirement would:

- (a) Result in an undue hardship for the proponent, unless based on delay in compliance by the proponent; and,
- (b) Not serve to avoid or minimize Damage to the Environment.

#### Determinations for an EIR Waiver

The MEPA regulations at 301 CMR 11.11(3) state that, in the case of a waiver of a mandatory EIR review threshold, I shall at a minimum base the finding required in accordance with 301 CMR 11.11(1)(b) stated above on a determination that:

- (a) The project is likely to cause no Damage to the Environment; and,
- (b) Ample and unconstrained infrastructure facilities and services exist to support those aspects of the project within subject matter jurisdiction.

#### Findings

Based upon the information submitted by the proponent and after consultation with the relevant state agencies, I find that the waiver request has merit and that the proponent has demonstrated that the proposed project meets the standards for all waivers at 301 CMR 11.11(1). I find that strict compliance with the requirement to prepare a Mandatory EIR for the project would result in undue hardship for the proponent. The project includes the consolidation of 24 dredging projects and 22 beach nourishment projects into one ten-year comprehensive permit. Of particular relevance to this waiver is that each individual project has already been independently permitted by the appropriate local, state and federal authorities. Furthermore, those projects subject to this proposed comprehensive permitting process do not include improvement dredging or those projects that would require an Individual Permit from the ACOE.

I also find that compliance with the requirement to prepare an EIR for the project would not serve to avoid or minimize Damage to the Environment. In accordance with 301 CMR 11.11(3), this finding is based on my determination that:

1. The project is not likely to cause Damage to the Environment:

- Each of the project's components has been historically approved through applicable local, state and federal environmental permitting processes.
- The project does not include any new improvement dredging or projects that would require an Individual Permit with the ACOE.
- The Towns of Edgartown and Oak Bluffs are the project proponents and each beach nourishment site is located on land controlled and maintained by the Town, or private property with public access easements.
- The project does not include any improvements to existing beach structures such as jetties, groins, boat ramps, etc.
- The project will not include beach nourishment at Pay and Inkwell Beaches. The proponent will remove references to beach nourishment at these locations from future permitting applications.
- Several of the project sites are mapped as habitat for state-listed species, including species of birds and plants, in the 13<sup>th</sup> Edition of the Massachusetts Natural Heritage Atlas. Therefore, the project will require review through a direct filing with NHESP for compliance with MESA (321 CMR 10.00). The proponent will work with NHESP during the MESA review process to address outstanding rare species concerns (notably impact to nesting sites for Piping Plovers and Least Terns).
- The proponent will be required to obtain individual comprehensive permits from MassDEP (a c.91 Permit and 401 Water Quality Certificate) and NHESP (MESA review). Individual permits will be prepared utilizing the guidance provided in comment letters submitted on the EENF provided by MassDEP, NHESP, and the Massachusetts Division of Marine Fisheries (DMF). This guidance included a discussion of future data gathering requirements, the establishment of time-of-year (TOY) restrictions, and plan details. It is anticipated that each of these comprehensive permits will include conditions to ensure compliance with applicable regulations and standards.
- The proponent will establish monitoring and reporting protocols for the dredging and beach nourishment activities. It will work with the interested parties to determine how the protocols can be used to gauge overall project success and determine the requirements of future dredging and beach nourishment projects.

2. Ample and unconstrained infrastructure facilities and services exist to support those aspects of the project within subject matter jurisdiction:

- The project does not require any new infrastructure. It will result in a continuation of ongoing beach nourishment and maintenance dredging activities, which are intended to provide safe navigable boating channels and enhanced beach areas.

### Conclusion

Based on these findings, I have determined that this waiver request has merit, and I am issuing this Draft Record of Decision (DROD), which will be published in the next edition of the Environmental Monitor on July 22, 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 August 5, 2009. Based on written comments received concerning the DROD, I shall issue a Final Record of Decision (FROD) or a Scope within seven days after the close of the public comment period, in accordance with 301 CMR 11.15(6).

July 17, 2009

Date

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Ian A. Bowles

Comments received:

Massachusetts Department of Environmental Protection – Southeast Regional Office  
(MassDEP/SERO), 6/11/09

Edgartown Dredge Department, 6/15/09

Edgartown Dredge Department, 6/24/09

Edgartown Dredge Advisory Committee, 6/26/09

Massachusetts Coastal Zone Management Office, 6/30/09

Division of Fisheries and Wildlife – Natural Heritage and Endangered Species Program, 7/8/09

Massachusetts Division of Marine Fisheries, 7/10/09

MassDEP/SERO, 7/10/09

Edgartown Dredge Department, 7/16/09

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