



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>

July 24, 2009

DRAFT RECORD OF DECISION

PROJECT NAME : Plum Island and Salisbury Beach Nourishment (previously reviewed as Near-Shore Dredged Material Disposal off Plum Island Beach)
PROJECT MUNICIPALITY : Newbury, Newburyport and Salisbury
PROJECT WATERSHED : North Coastal
EOEA NUMBER : 13503
PROJECT PROPONENT : Department of Conservation and Recreation
DATE NOTICED IN MONITOR : June 24, 2009

Pursuant to the Massachusetts Environmental Policy Act (MEPA) (G.L.c.30, ss. 61-62H) and Section 11.11 of the MEPA regulations (301 CMR 11.00), I have reviewed the Notice of Project Change (NPC) and hereby **propose to grant a waiver** from the requirement to prepare a mandatory Environmental Impact Report (EIR).

Project Description

The Department of Conservation and Recreation (DCR) is proposing to change the disposal area for the dredged material to two eroded beach areas, totaling about 22 acres, on Plum Island (about 2,500 feet of beach between the State Groin #1 and the Newburyport Turnpike) and Salisbury Beach (about 1,400 feet of beach between Fowler and Murray Street). Dredged material will be pumped via temporary pipelines extending for 3,600 feet along Plum Island and 3,800 feet in Salisbury. During the construction, the temporary pipeline, which is expected to be approximately 22 to 24 inches in diameter, will be placed along the beach between mean high water (MHW) and the toe of the existing dunes, and will be removed when construction is

complete. The newly nourished dune areas at both sites are expected to be planted with dune grass and protected from wind and foot traffic with sand/snow fencing along the dune toe and laterally at frequent intervals.

MEPA Jurisdiction and Permitting Requirements

The project is undergoing review pursuant to Section 11.03(3)(a)(1)(b) and (3)(b)(4) of the MEPA regulations because it involves alteration of ten or more acres of wetlands (in this case, coastal beach, coastal dune, and land under the ocean) and the disposal of 10,000 or more cy of dredged material. The project will require a Chapter 91 Permit and a 401 Water Quality Certification from the Department of Environmental Protection (DEP). The proposed project is subject to federal consistency review by the Office of Coastal Zone Management (CZM) and, therefore, must be found to be consistent with CZM's enforceable program policies. The project will also require Orders of Conditions from the Conservation Commissions in Newbury, Newburyport and Salisbury.

Because the proponent is DCR, a state agency, MEPA jurisdiction for this project is broad and extends to all aspects of the project that are likely, directly or indirectly, to cause Damage to the Environment, as defined in the MEPA regulations.

Summary of Potential Environmental Impacts

As described in the NPC, the project will impact 654,953 square feet (sf) of coastal beach (including 276,767 square feet of intertidal impacts within the coastal beach); 79,412 sf of coastal dune; 165,024 sf of land under the ocean; and 2,700 linear feet of fish run.

Waiver Request

The proponent has requested a waiver from the requirement to prepare an EIR. A NPC was submitted in conjunction with this request that identifies the environmental impacts of the project change and describes measures to be undertaken by the proponents to avoid, minimize and mitigate project impacts.

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 the project, when subject matter jurisdiction is broad in scope, or those aspects of the project within subject matter jurisdiction, when jurisdiction is limited to the subject matter of state agency permits.

Findings

Based upon the information submitted by the proponent and after consultation with the state permitting 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 submit a mandatory EIR would result in an undue hardship for the Proponent **and** would not serve to avoid or minimize Damage to the Environment. In accordance with 301 CMR 11.11(3), the latter finding is based on my 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 the project, or those aspects of the project within subject matter jurisdiction.

Specifically, requiring the submission of an EIR would result in undue hardship resulting from delays that would allow continued beach erosion. The annual rate of erosion has been estimated at 13 feet annually, far in excess of the long-term average for the region. Any delay in moving forward with the project may result in devastating impacts to private properties and public roadways and utilities that are located in the immediate vicinity of the proposed beach nourishment areas. Because DCR has developed an approach to this project that has examined and will minimize and mitigate all potential adverse impacts, requiring the submission of an EIR would result in further expense and delay without further avoiding or minimizing impacts to the environment. Moreover, the project has been approved to be funded under the American Recovery and Reinvestment Act and any delay in construction beyond the upcoming dredging season may result in the loss of this funding and indefinite postponement of the project.

The NPC has served to adequately document the likely environmental impacts of the direct placement of dredged material along beach and dune areas at Plum Island and Salisbury Beach and post-construction management will be performed in accordance with approved beach management plans for these sites. These beach management plans will establish guidelines for coastal resource protection through appropriate management practices for conducting sustainable recreation planning, facility improvements, and maintenance activities. DCR has an approved

beach management plan for Salisbury Beach and the Town of Newbury and the City of Newburyport anticipate that their beach management plans for Plum Island will be finalized prior to implementation of the Federal Navigation Project for the dredging of Newburyport Harbor. I also note that the relevant state resource and permitting agencies have participated in the development and review of these beach management plans. Therefore, I find that the project, as proposed in the NPC, which entails the beneficial reuse of dredged material for beach and dune nourishment will serve to minimize impacts to natural resources and, as a result, is likely to cause no Damage to the Environment.

Conclusion

I have determined that this waiver request has merit, and am issuing this Draft Record of Decision (DROD), which will be published in the next edition of the Environmental Monitor on August 12, 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 26, 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). I hereby propose to grant the waiver requested for this project, from the requirement to prepare a mandatory Environmental Impact Report (EIR), subject to the above findings.

July 24, 2009
Date

Ian A. Bowles

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