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March 7, 2008

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

PROJECT NAME : Proposed Chatham Beach/Dune Restoration
PROJECT MUNICIPALITY : Chatham
PROJECT WATERSHED : Cape Cod
EEA NUMBER : 14174
PROJECT PROPONENT : Robert and Pamela Kindler
DATE NOTICED IN MONITOR : February 6, 2008

Pursuant to the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-62H) and Section 11.03 of the MEPA regulations (301 CMR 11.00), I hereby determine that this project **does not require** the preparation of an Environmental Impact Report (EIR).

As described in the Environmental Notification Form (ENF), the project involves beach nourishment to restore the width and height of a barrier beach on a total of four parcels (approximately 5.75 acres in total area) located along the Chatham Harbor shoreline, just south of Minister's Point. Beach nourishment will consist of approximately 6,000 cubic yards (cy) of clean, fine to medium sand to cover an area approximately 0.86 acres in size. Approximately 3,000 square feet (sf) of the constructed dune will be planted with beach grass (*Ammophila breviligulata*) 18" on center. The grass will be planted between the six and eight foot elevations on the landward side of the dune. Portions of the beach nourishment will be located partially below Mean High Water (MHW). The project will serve to restore and improve the natural flood control and storm damage prevention functions of this barrier beach.

The project site contains a variety of coastal wetland resource areas. Wetland resource areas that will be directly altered by the beach nourishment project include permanent alteration of approximately 37,460 sf of Coastal Beaches, Barrier Beaches, and Land Subject to Coastal Storm Flowage. There will be some impact to the intertidal region, as sand will be placed within the intertidal area, in an effort to restore the height and width of the former beach and dune ecosystem. Recent storm and tidal events have deposited sand within the adjacent salt marsh system. The project site is south of a series of bulkheads and sloped rip-rap revetments. The bulkheads are slated for replacement (EEA No. 14061) with sloped rip-rap revetments, which should improve existing scour conditions and loss of sediment supply to the project site.

The project is undergoing MEPA review pursuant to Section 11.03(3)(b)(1)(a) because the project requires a State Agency Action and will involve the alteration of coastal dune and beach. The project requires a new Chapter 91 (c.91) Waterways License from the Massachusetts Department of Environmental Protection (MassDEP) and a permit from the United States Army Corps of Engineers (U.S. ACOE) (a Programmatic General Permit – Category II). The project requires an Order of Conditions from the Town of Chatham Conservation Commission, or in the case of appeal, a Superseding Order of Conditions from MassDEP. A consistency statement from the Office of Coastal Zone Management may also 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 may have significant environmental impacts and that are within the subject matter of required or potentially required state permits. In this case, MEPA jurisdiction exists over wetlands, waterways and tidelands.

Wetlands, Waterways and Tidelands

The ENF indicates that the project will permanently impact 37,460 sf of Coastal Beaches, Barrier Beaches, and Land Subject to Coastal Storm Flowage. Approximately 6,000 cy of compatible fill material will be deposited on-site, with final elevations determined based on slopes suitable for bird nesting habitats. Pedestrian access will be maintained from the landward areas through the use of symbolic fencing to guide pedestrians through the vegetated slopes and potential bird habitat. The project should comply with the performance standards for work within the coastal resource areas at 310 CMR 10.27, 10.28 and 10.29. MassDEP has noted in their comment letter that the project may, as a form of mitigation, be required to provide easements for public lateral access along the shoreline below the existing high water mark. MassDEP has indicated that this issue will be addressed during the c.91 permitting process.

The project site is located opposite the new Chatham inlet formed during an April 2007 storm. This area of Chatham Harbor is in a state of transition, with storms and daily tides leading to increases in erosion and increases in tidal and storm surges. The Office of Coastal Zone Management (CZM) has recognized in their comment letter the unique nature of this project and that the resource areas of this system are changing on a daily basis. CZM has also acknowledged that the area below MHW slated for alteration has only recently been created by

the erosion resulting from the new inlet. This area has not yet been colonized by shellfish and other organisms common to this type of inter-tidal habitat.

According to the comment letter submitted by the Division of Marine Fisheries (*Marine Fisheries*), the project site abuts mapped shellfish habitat for soft shelled clams (*Mya arenaria*) which is afforded protection under the Massachusetts Wetlands Protection Act. Additionally, eelgrass (*Zostera marina*) beds are located offshore of the site. Portions of Pleasant Bay, Chatham Harbor and nearby Strong Island are *Marine Fisheries* mapped horseshoe crab spawning beaches. *Marine Fisheries* has recommended that all work below the extreme high-tide line or any silt-producing work be prohibited from May 1st through July 31st to protect horseshoe crab spawning habitat. Care should also be taken during the construction period to not increase turbidity near eelgrass beds in proximity to the project site.

The proponent has indicated that as per the NHESP conditions, the beach and dune shall be monitored and renourished, as necessary in the future, consistent with the terms of the c.91 permit. The applicant will be required to allow monitoring by a qualified shorebird biologist to determine the use of the site by state-listed shorebirds. The Order of Conditions issued by the Chatham Conservation Commission has also required that at a minimum, photographs should be taken of the site twice a year, for the purpose of documenting the fluctuating conditions of the beach and the success of the project. Pictures will be taken from the same fixed point for the purposes of comparison over time. The proponent is reminded that they may be required to amend existing permits or obtain new permits for any subsequent beach nourishment, as necessary.

Rare Species

The project site, or a portion thereof, is located within *Priority Habitat* and *Estimated Habitat* as indicated in the *Massachusetts Natural Heritage Atlas* (12th Edition). The Natural Heritage and Endangered Species Program (NHESP) reviewed the project in conjunction with the Massachusetts Wetlands Protection Act Regulations and the Massachusetts Endangered Species Act (MESA). Based on a review of the information submitted and information contained in the NHESP database, NHESP determined that the project, as currently proposed, must be conditioned to avoid adverse effects to the Resource Area habitats and to avoid a prohibited "take" of state-listed species. These conditions, as outlined in the NHESP comment letter, include time-of-year restrictions, designation of allowed planting areas, and monitoring requirements by a qualified shorebird biologist. The project must comply with these conditions.

Construction Impacts

The proposed project should be constructed in accordance with conditions within applicable state and local permits. The proponent should establish construction guidelines and work protocols for the project, including designation of work limits, construction equipment access routes, establishment of construction periods (based on tides, habitat impacts, etc.), clean up protocols, and designation of materials stockpiles and staging areas. The ENF has indicated that the staging area and temporary construction access (ten feet wide) will be located

at the north end of the project area on the Holmes property. This staging area and access point is the same as that described in EEA No. 14061. The proponent should seek to coordinate construction periods between these two projects to reduce potential environmental impacts.

Based on the information in the ENF and after consultation with relevant public agencies, I find that no further MEPA review is required at this time. The project may proceed with obtaining required State permits.

March 7, 2008

Date


Ian A. Bowles

Comments received:

02/20/2008 Office of Coastal Zone Management
02/25/2008 Massachusetts Division of Fisheries and Wildlife – Natural Heritage and
Endangered Species Program
02/26/2008 Division of Marine Fisheries
02/26/2008 Massachusetts Department of Environmental Protection – SERO

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