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May 9, 2008

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

PROJECT NAME : Stage Harbor Channel – Hardings Beach/Cockle Cove
PROJECT MUNICIPALITY : Chatham
PROJECT WATERSHED : Cape Cod
EOEEA NUMBER : 14196
PROJECT PROPONENT : Town of Chatham
DATE NOTICED IN MONITOR : March 12, 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** further MEPA review. In a separate 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 involves the re-permitting of the Federal navigation project at Stage Harbor by the Town of Chatham. The proponent is seeking to permit the continued maintenance dredging of the Federal navigation channel and prospective dredged material disposal sites. The project will enable

continued maintenance dredging of up to 150,000 cubic yards (cy) annually of clean sand from the Stage Harbor Channel. Dredging will be performed by either the Town of Chatham utilizing the Barnstable County Dredge, a qualified private contractor, or by the United States Army Corps of Engineers (U.S. ACOE) utilizing the hopper dredge *Currituck*. The channel is an authorized Federal Navigation Project with channel dimensions of up to ten feet deep Mean Low Water (MLW) by 150 feet wide. Potential dredged material disposal sites include two nearshore sub-aqueous sites (referred to as SAE and SAW in the EENF), as well as upland beach nourishment sites at Cockle Cove and Hardings Beach (referenced as HBE and HBW). The current sub-aqueous site (SAE), the upland beach nourishment at Cockle Cove and HBE are currently, or have historically, been permitted. Additional area on Hardings Beach (HBW) is proposed for beach nourishment to enhance beach conditions in the more actively used public portions of the beach. The second, more westerly sub-aqueous site (SAW) is seeking permitting approval because it lies near the western end of Hardings Beach and will assist in the natural downdrift nourishment of the public beach.

The total area of Land Under Ocean (LUO) associated with the two sub-aqueous disposal sites and the Federal navigation channel is approximately 42 acres in area. The identified upland beach nourishment sites, classified as Barrier Beach under the Wetlands Protection Act, are anticipated to be permitted for potential maximum nourishment area of up to 35 acres. Within the EENF, the proponent has indicated that the maximum permitted dredge volume for a single dredge incident would be 150,000 cy. This would translate to impacts between 100,000 sf and 300,000 sf of land per year. Historical dredging data provided in the EENF notes that dredging in excess of 100,000 cy in a one year period has not occurred in over 20 years, and is not anticipated in the near future. The channel has not been dredged since 2000 and as such the Town of Chatham is anticipating an initial dredge volume of approximately 50,000 cy.

Project History

Portions of the project site have been subject to past MEPA review under EEA Nos. 445, 7639, 11008, and 12437. The current proposal is designed to incorporate a high degree of flexibility in the management of both the channel maintenance and the placement of dredged material for shoreline protection. Several factors, including funding sources and the complex nature of shoaling and coastal dynamics will influence the frequency, volume, and location of material deposition. Permits will reflect this desired level of flexibility to allow the Town to react to the needs of the users of Stage Harbor.

The Cockle Cove beach nourishment site underwent MEPA review (EEA No. 12347) and obtained its required permits with no known negative environmental effects. Natural migration of the sand placed at Cockle Cove has continued to nourish the downdrift beaches at Ridgevale Beach, as designed, enhancing both the public recreational opportunities as well as providing improved shorebird nesting habitat. This beach nourishment area will be compiled into the current MEPA filing and associated future State permits.

Jurisdiction

The project is undergoing review pursuant to Section 11.03 (3)(a)(1)(b) 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, Barrier Beaches, and Land Containing Shellfish). 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 Chatham 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 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, and rare species.

Review of the EENF

Wetlands, Waterways and Tidelands

According to the EENF, the cumulative project has the potential to impact up to 1,820,336 sf of Land Under Ocean, 1,546,885 sf of Barrier Beaches, and 1,270,336 sf of Land Containing Shellfish. These assumptions are based upon a worse-case scenario and do not assume the limitations imposed by the 150,000 cy per year dredging limit. As part of the EENF, the proponent included results of an eelgrass survey, and an excerpt from the U.S. ACOE Environmental Assessment of the dredge and disposal area. The proponent has noted that additional water quality and sediment testing, if necessary, will be provided in accordance with permitting regulations for required state permits.

CZM has commented that it concurs with the findings in the EENF that the project will help improve navigation and safety within the Stage Harbor channel. The project will also help to address the ongoing erosion problem at Hardings Beach and Cackle Cove. CZM has stated that they are supportive of this project and the Town's ongoing efforts to develop a comprehensive sediment management plan for the Stage Harbor complex and to obtain the associated regulatory permits.

Information presented in the EENF regarding the presence of eelgrass beds near or within the SAW disposal site conflicts with that noted by MassDEP and their Eelgrass Mapping Project. As part of the permitting process, the proponent should contact Charles Costello, MassDEP-Boston, to discuss the methodology and results of the eelgrass survey conducted on behalf of the Town of Chatham.

MassDEP has requested that as part of the Notice of Intent and MassDEP permits, plans should be developed that include coordinate positions at the corners of the sub-aqueous disposal sites and a methodology to appropriately delineate these disposal areas to ensure that disposal occurs in the correct locations. Furthermore, the proponent should provide survey transects within the proposed beach nourishment areas to portray existing and proposed nourishment conditions as part of the State and local permitting plans. This will also assist in confirming the relationship of upland beach nourishment sites to potential shorebird nesting habitat.

The project includes a provision to potentially place dredged material on privately owned beaches located between the public Hardings and Cockle Cove beaches. The Waterways Regulations at 310 CMR 9.40(4) note the requirements for easements for public access below the existing high water mark. As part of the c.91 Permit Application, the proponent will be required to justify the need to include nourishment of private beaches as part of the overall project.

According to the Division of Marine Fisheries (MarineFisheries), the project dredge site lies within or abut mapped shellfish habitat for quahogs (*Mercenaria mercenaria*), bay scallops (*Argopecten irradians*), American oysters (*Crassostrea virginica*), surf clams (*Spisula solidissima*), and soft shelled clams (*Mya arenaria*) which is afforded protection under the Massachusetts Wetlands Protection Act (310 CMR 10.34). The Chatham Shellfish Constable, in a letter included in the EENF, states that dredging as proposed will not impact active shellfisheries.

Marine Fisheries has identified the Stage Harbor/Monomoy system as the site of the largest concentration of spawning horseshoe crabs (*Limulus polyphemus*) in the Commonwealth and Stage Harbor channel connects to state's two largest horseshoe crab spawning areas. Information gleaned from the MEPA site consultation session included anecdotal evidence that horseshoe crabs prefer the eastern side of the Stage Harbor channel and associated beaches to the western side of the channel where upland beach nourishment and sub-aqueous disposal areas are located. I encourage state permitting authorities to consider placement of a time of year restriction from May 1 to June 30 to protect spawning horseshoe crabs as a permitting condition.

Additionally, MassAudubon has provided constructive comments on potential future collaborative efforts to enhance and monitor the success of the beach nourishment projects with regard to shorebird habitat and horseshoe crab spawning. I encourage the Town of Chatham to continue to work with MassAudubon, sharing resources and working together to ensure the overall success of the project. Possible areas of collaboration, as presented in the MassAudubon comment letter include upland disposal site strategies, avoiding conflict between nesting birds and public use of the beaches, and horseshoe crab spawning surveys.

Rare Species

According to comments received from NHESP, the project site is located within *Priority Habitat* and *Estimated Habitat* as indicated in the 12th Edition of the Massachusetts Natural Heritage Atlas. The proposed project will occur within the habitat of the Least Tern (*Sterna*

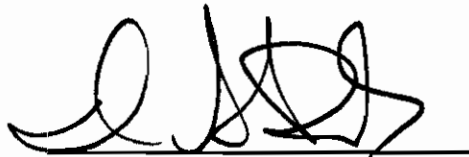
antillarum), Common Tern (*Sterna hirundo*), Piping Plover (*Charadrius melodus*), and Roseate Tern (*Sterna dougalii*). The project will require a direct filing with NHESP for compliance with the Massachusetts Endangered Species Act (MESA 321 CMR 10.00). NHESP has indicated that while it supports the nourishment of beaches, the work will need to be conditioned to avoid a prohibited "take" of state-listed species. Possible conditions to be mandated as part of MESA review are likely to include, but are not limited to, timing restrictions, specific design constraints (e.g. elevation, slope, etc.), as well as requirements for long-term monitoring and protection of state-listed species at these sites. Resolution of outstanding rare species issued may be resolved through the MESA review process. As noted previously, I encourage the proponent to work with MassAudubon to limit direct impact to shorebird habitat and evaluate opportunities to provide habitat enhancement in conjunction with the project.

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.

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 May 21, 2008 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 June 4, 2008. 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.

May 9, 2008

Date



Ian A. Bowles

Comments received:

03/26/2008	Massachusetts Board of Underwater Archaeological Resources
03/26/2008	Office of Coastal Zone Management
04/24/2008	Cape Cod Commission
04/25/2008	Division of Marine Fisheries
04/28/2008	Division of Fisheries and Wildlife
04/29/2008	MassAudubon
04/29/2008	Massachusetts Department of Environmental Protection - SERO

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