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June 12, 2009

DRAFT RECORD OF DECISION

PROJECT NAME : Sengecontacket Inside Channel  
PROJECT MUNICIPALITY : Oak Bluffs  
PROJECT WATERSHED : Islands  
EEA NUMBER : 14413  
PROJECT PROPONENT : Town of Oak Bluffs  
DATE NOTICED IN MONITOR : May 6, 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 includes the continuation of the Sengecontacket Regional Dredging Program for a previously permitted and existing navigational channel inside Sengecontacket Pond. The project includes the dredging of 57,000 cubic yards (cy) of material from an approximate area of 832,000 square feet (sf) within a channel running from the Little Bridge Inlet to the Big Bridge Inlet, and an additional area outside the Little Bridge channel. Dredged materials will be reused as beach nourishment. The project includes a combination of maintenance and improvement dredging in the interest of safe navigation and improved coastal resiliency to storms and flooding on Joseph A. Sylvia State Beach, Pay Beach, and Inkwell Beach. Anticipated wetland resource area impacts are estimated to include 832,000 sf of Land Under Salt Ponds and Land Containing Shellfish, 2,700 linear feet (lf) of Barrier Beach and 600 lf Coastal Beaches.

MEPA Jurisdiction and Required Permits

The project is undergoing review pursuant to Sections 11.03(3)(a)(1)(b) and

11.03(3)(b)(3) because the project requires a State Agency action and it has the potential to alter ten acres or more of other wetlands (e.g. Land Under Salt Ponds and Land Containing Shellfish) and will require dredging of 10,000 or more cubic yards of material. 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); filing 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); approval from the United States Army Corps of Engineers (U.S. ACOE); an Order of Conditions from the Oak Bluffs Conservation Commission (and, on appeal only, a Superseding Order of Conditions from MassDEP); and federal consistency review by the Office of Coastal Zone Management (CZM).

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, and tidelands, rare species and greenhouse gases.

#### Waiver Request

The Proponent has requested a waiver from the requirement to prepare an EIR. An EENF was submitted in conjunction with this request that identifies the environmental impacts of the project 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 those aspects of 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 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 continuation of a previously permitted dredging and beach nourishment project.

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:

- The project has been historically approved through applicable local, State and federal environmental permitting processes.
- The Town of Oak Bluffs is the project Proponent and each beach nourishment site is located on land controlled and maintained by the Town or State.
- The project does not include any improvements to existing beach structures such as jetties, groins, sinks, boat ramps, etc.
- The project site is mapped as habitat for State-listed species, 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.
- The Proponent will be required to obtain individual comprehensive permits from MassDEP (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 Division of Marine Fisheries (*Marine Fisheries*). 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.

2. Ample and unconstrained infrastructure facilities and services exist to support the project, or 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 enhance beach areas.

Conclusion

Based on these findings, 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 June 24, 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 July 8, 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). 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.

June 12, 2009

Date

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Ian A. Bowles

## Comments received:

05/22/2009 Division of Marine Fisheries  
05/29/2009 Massachusetts Board of Underwater Archaeological Resources  
06/05/2009 Division of Fisheries & Wildlife – Natural Heritage and Endangered Species  
Program  
06/05/2009 Massachusetts Department of Environmental Protection – SERO

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