



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>

June 12, 2009

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

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 (MEPA) (M.G.L. c. 30, ss. 61-62I) and Sections 11.06 and 11.11 of the MEPA Regulations (301 CMR 11.00), I have reviewed this project and hereby determine that it **does not require** further MEPA review. In a separate Draft Record of Decision (DROD) also issued today, I propose granting 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 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 submitted supplemental information sufficient to constitute an EENF in accordance with the MEPA regulations with a request for a Waiver from the requirement to complete an EIR for the project. An extended review period of 37 days was held for the project in accordance with 301 CMR 11.11.

Review of the EENF

Wetlands, Waterways and Tidelands

According to the supplemental documentation provided on the EENF, the cumulative project impacts are estimated to be: 832,000 square feet (sf) of Land Under Salt Pond and Land Containing Shellfish; 2,700 sf of Barrier Beaches; and 600 sf of Coastal Beach.

In addition to the maintenance dredging of previously authorized areas, the project proposes improvement dredging in the form of dredging to -5 feet below Mean Low Water (MLW) which is two feet deeper than originally permitted. Approximately 51,000 cy of the total 57,000 cy of beach compatible sand which will be hydraulically pumped to Sylvia State Beach, while the remaining 6,000 cy will be trucked to Inkwell and Pay Beaches. The project is proposed to enhance the sediment-starved beaches and protect against continuous storm damage and flooding. In addition, endangered shorebird habitat will be enhanced. The project area is located on town- and state-owned property; no beach nourishment is proposed on private

property. Improvements to associated beach structures such as jetties, groins, sinks, boat ramps, etc., are not included as part of this project.

The Proponent should use the guidance presented in the MassDEP and NHESP comment letters, in addition to permit application requirements, to determine the level of detail necessary when comprehensive c. 91, Section 401 Water Quality Certificate, and MESA permits are sought. I remind the Proponent that the c.91 comprehensive permit application should specifically address how beach nourishment activities will not impede public use of the intertidal zone.

The Division of Marine Fisheries (*Marine Fisheries*) has indicated that the project site lies within mapped shellfish habitat for quahogs (*Mercenaria mercenaria*) and bay scallops (*Argopecten irradians*) which is afforded protection under the Wetlands Protection Act (310 CMR 10.34). *Marine Fisheries* has also identified the dredge site as winter flounder (*Pseudopleuronectes americanus*) spawning habitat. Sengecontacket Pond serves as passage, migration and spawning habitat for alewife herring (*Alosa pseudoharengus*). *Marine Fisheries* recommends a time-of-year (TOY) restriction prohibiting dredging in Sengecontacket Pond from January 15 through June 15 of any year. Additionally, *Marine Fisheries* recommends that all dredged material used as beach nourishment should not be placed in the intertidal area, but rather, placed above the Mean High Water (MHW) line. I ask that MassDEP incorporate conditions as appropriate in any permits issued for the project to address the concerns and recommendations of *Marine Fisheries*.

Comments from the Board of Underwater Archaeological Resources (the Board) indicate that the project is unlikely to impact submerged cultural resources. However, it is possible that there are submerged cultural resources in the project area. If heretofore-unknown submerged cultural resources are encountered during the course of the project, the Proponent should take steps to limit adverse effects and notify the Board, as well as other appropriate agencies, in accordance with the Board's *Policy Guidance for the Discovery of Unanticipated Archaeological Resources* (updated 9/28/06).

Rare Species

According to comments received from NHESP, the project site is located within *Priority Habitat* and *Estimated Habitat* as indicated in the 13th Edition of the Massachusetts Natural Heritage Atlas and therefore requires review through a direct filing with NHESP for compliance with MESA (321 CMR 10.00) and its implementing regulations. NHESP anticipates that the project will need to be conditioned to avoid a "take" of state-listed species. NHESP reminds the Proponent that MESA review is not complete and that no alteration or work associated with the proposed project shall occur until NHESP has made its final determination. I refer the Proponent to the guidance provided by NHESP for information that should be provided during the MESA review process including proposed timeframes for work activities, and specific detail on the location, volume, and design specifications (elevation, width, and slope) of these nourishment areas.

I encourage the Proponent and NHESP to work together during the MESA review process to address outstanding rare species concerns and collaborate on efforts to assist the Proponent in the consolidation and streamlining of the permitting process.

Greenhouse Gas Emissions

The project is subject to the EEA Greenhouse Gas Policy and Protocol because it requires the preparation of a mandatory EIR. This is a dredging project that will not result in significant emissions of Greenhouse Gases (GHG) and therefore falls within the de minimis exception of the policy. The Proponent was not required to prepare an analysis of GHG emissions or identify measures to mitigate GHG emissions.

Public Benefit Review

I have concluded that this water-dependent project will provide adequate public benefit in accordance with 301 CMR 13.04(1). A Public Benefit Determination (PBD) will be issued within 30 days of the issuance of the Final Record of Decision (FROD) approving the request for a waiver from the preparation of a mandatory EIR. Should a FROD not be issued, the PBD will be issued within 30 days of the issuance of a Certificate on the Final EIR.

Conclusion

I am satisfied that the EENF has adequately described the general nature of the proposed project and proposed measures to avoid and minimize, or mitigate environmental impacts. Based on a review of the information provided by the Proponent and after consultation with the relevant public agencies, I find that the potential impacts of this project do not warrant further MEPA review. Outstanding issues may be addressed during the permitting process.

I have issued a DROD proposing to grant a Waiver from the requirement to prepare an EIR for the project. The DROD will be noticed in the June 24, 2009 issue of the *Environmental Monitor* for a 14-day public comment period ending July 8, 2009 in accordance with 301 CMR 11.15(2). Based on written comments received concerning the DROD, I shall either issue a Final Record of Decision (FROD) or a Scope for an EIR if the Full Waiver is not approved within seven days after the close of the public comment period, in accordance with 301 CMR 11.15(6).

June 12, 2009

Date


for 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

IAB/PPP/ppp