



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 17, 2009

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

PROJECT NAME : Ten-Year Comprehensive Dredging and Beach
Nourishment Plan
PROJECT MUNICIPALITY : Edgartown and Oak Bluffs
PROJECT WATERSHED : Islands
EOEEA NUMBER : 14425
PROJECT PROPONENT : Towns of Edgartown and Oak Bluffs
DATE NOTICED IN MONITOR : June 10, 2009

Pursuant to the Massachusetts Environmental Policy Act (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 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 consists of the implementation of a ten-year maintenance dredging and beach nourishment plan (the Plan) for the Towns of Edgartown and Oak Bluffs. The Plan is a comprehensive effort to consolidate and manage 24 existing dredge sites and 22 existing beach nourishment sites and

their associated permits within both towns. Each of these sites have already completed a full permit application and review process with the applicable local, state and federal authorities on an individual basis. This project is designed to provide the Towns with a more effective way to manage these ongoing beach nourishment and dredging activities.

The EENF included a discussion of the following areas and sites:

Cape Pogue Bay

- *The Gut - DCPG (#1)* ¹
- *The Narrows – DCPN (#2)*
- *Dike Bridge Approach - DCPDB (#3)*
- *Future Dredge Outside Cape Pogue Pond – Future (#3)*
- Cape Pogue Elbow C-G - NSELB (#1)
- Cape Pogue North Gut A&B – NSNG (#2)
- Cape Pogue Narrows Trails – NSNT (#3)
- Cape Pogue Narrows Beach – NSNB (#4)
- Cape Pogue Dike Bridge (OVR Trails) - NSDB (#5)

Edgartown Harbor

- *Eel Pond (EP) - DEPC (#4)*
- *Eel Pond Ramp – DEPR (#5)*
- *Lighthouse – DLH (#6)*
- *Inner Harbor - DIH (#7)*
- *Collins Beach - DCB (#8)*
- *Caleb's Pond - DCP (#9)*
- *Katama Boat Ramp & Channel – DKBR (#10)*
- *Katama Bay – DKB (#11)*
- Eel Pond Barrier Island – NSEPBI (#6)
- Eel Pond Barrier Beach – NSEPBB (#7)
- Eel Pond Alternate Froelich (Private) – NEPALT (#8)
- Eel Pond Alternative #2 (Private) – NEPALT2 (#9)
- Lighthouse (Fuller) Beach - NSFB (#10)
- Gardner Property (Alternate) – NSGP (#11)
- Nourishment Site E (Private) – NSE (#12)
- Nourishment Sites A-D, F (Private) – NSA-D,F (# 13)
- Norton Point – NSNP (#14)

Edgartown Great Pond

- *Great Pond Ramp (Wilson's Landing) - DGPR (#18)*
- *Great Pond Channel - DGPC (#15)*
- *Great Pond Seasonal Excavation – DGPC (#15)*
- *Great Pond Sluiceway – DGPSL (#16)*
- *Herring Creek Restoration Dredging - DHCR (#17)*

¹ Dredging projects are noted in *italics*. All other projects are classified as beach nourishment projects.

- *Herring Creek Restoration Excavation – DHCR (#18)*
- *South Beach – NSSB (#15)*
- *Butlers Cove Alt Dis (Private) – NSBC (#16)*
- *Great Pond Ramp – NSGPR (#17)*

Sengekontacket Pond

- *Borrow Area #1 - DBA1 (#13)*
- *Borrow Area #2 – DBA2 (#14)*
- *Little Bridge - DLB (#12)*
- *Future Dredge in Sengekontacket – Future (#1)*
- *Future Dredge in Sengekontacket – Future (#1A)*
- *Future Dredge Outside Sengekontacket – Future (#2)*
- *Sylvia State Beach (Oak Bluffs) - NSSYL (#19)*
- *State Beach Alternative – NSSB (#20)*
- *Bend in the Road Beach – NSBITR (#18)*
- *Cow Bay Dunes (Private) – NSCBD (#21)*
- *Cow Bay Future Nourishment (Private) – NSCBF (#22)*

Jurisdiction

The project is undergoing review pursuant to Sections 11.03(1)(a)(1) and 11.03(3)(a)(1)(b) because the project requires a state agency action and the project includes the direct alteration of 50 or more acres of land and has the potential to alter ten acres or more of other wetlands (e.g. Land under Ocean and Land under Salt Ponds). The proponent is attempting to combine all current Chapter 91 Permits, Water Quality Certificates, U.S. Army Corps Permits and Orders of Conditions for the above projects into one ten-year comprehensive permit for dredging and beach nourishment. 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). It will require a filing with the Massachusetts Division of Fisheries and Wildlife's Natural Heritage and Endangered Species Program (NHESP) under the provisions of the Massachusetts Endangered Species Act (MESA). The proponent must also obtain approval from the United States Army Corps of Engineers (ACOE). It may require compliance with the National Pollutant Discharge Elimination System (NPDES) General Permit for stormwater discharges from a construction site. The project will require Orders of Conditions from the Edgartown and Oak Bluff's Conservation Commissions, and, on appeal only, a Superseding Order of Conditions from MassDEP. The project may also be subject to Massachusetts Office of Coastal Zone Management (MCZM) 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 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, tidelands, and rare species.

Project History

The proponent filed an Expanded Environmental Notification Form (EENF) with the MEPA office on June 1, 2009 that was subsequently noticed in the June 10, 2009 Environmental Monitor. It has requested a full waiver from the preparation of a mandatory EIR. The materials presented in the EENF were sufficient to meet the requirements for preparation of an EENF in accordance with Section 11.05 of the MEPA regulations. 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 documentation provided on the EENF and the supplemental information received on June 24th and June 26th, the project's impacts from dredging are estimated to be confined to an area of approximately 1,171,165 square feet (sf)/26.88 acres of Land under Salt Ponds (LUSP) for which 106,115 cubic yards of material will be dredged. The dredging volume includes a one-inch over dredge. The dredging area within salt ponds includes approximately 299,936 sf of fish runs. The proponent has estimated that the project will also impact an area of approximately 706,524 sf of Land under the Ocean (LUO) by removing 92,850 cubic yards of dredged material. The dredging would provide nourishment to a 2,380,552 sf/54.65 acre area. This nourishment area is comprised of 99,217 sf of Coastal Beach/Tidal Flat; 243,645 sf of Coastal Dunes; 1,517,114 sf of Coastal Beach above Mean High Water (MHW); and 40,576 sf of Coastal Beach below MHW. The proponent has estimated that approximately 480,000 sf of yet to be determined wetland resource areas would be affected by future nourishment areas at existing nourishment sites if additional material is remaining from its dredging activities. It has estimated that the project will provide approximately 200,000 cubic yards of dredged material for beach and dune nourishment. These estimates were culled from a review of the historic MassDEP and ACOE permit applications submitted for each specific project site by the proponent. Information included in the EENF does note that additional impacts may occur as specific project components are undertaken. However, these additional impacts would only occur subsequent to additional site investigations to quantify the final volumes of nourishment or dredging, and prior to state permit approvals.

Comments received from MCZM indicate that this comprehensive permit process will result in a more flexible, cost-effective and successful approach to the town's regular, ongoing maintenance dredging and sediment management efforts. As noted previously, each individual dredging and beach nourishment site has been individually permitted through local, state, or federal processes (as applicable). Sites to be included in the Plan's permitting process will be restricted to projects that are categorized as maintenance dredging and do not require an individual permit from the ACOE. Most of the nourishment sites included in this filing are located on town-owned property. However, publicly funding dredging of nourishment sites located on private property will require public access easements according to 310 CMR 9.40(4)(a). According to MassDEP, much of the dune and beach nourishment placement will be located technically outside of Chapter 91 jurisdiction, i.e. above the MHW line. Improvements

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

The information provided in the EENF and in supplemental submissions was sufficient to allow for general comments on the scope and breadth of the various project components. MassDEP expects to address any outstanding environmental issues during the Chapter 91 permitting and the Section 401 Water Quality Certification processes, including requiring site specific time of year (TOY) restrictions and other mitigation, as recommended by NHESP and the Massachusetts Division of Marine Fisheries (DMF). As requested by both MassDEP and NHESP, more detailed site plans that meet the application submission requirements will be required for their respective permit approval processes. The proponent should use the guidance presented in the MassDEP and NHESP comment letters. In addition to permit application requirements, the proponent should coordinate with the permitting agencies to determine the level of detail necessary when comprehensive Chapter. 91, Section 401 Water Quality Certificate, and MESA permit approvals are sought. In addition, it also appears that updated plans for the following proposed beach nourishment sites should be provided to NHESP: Cape Pogue Elbow, Narrows, Dike Bridge, Eel Pond, Fuller Beach, Nourishment Areas A-D and F, Norton Beach, South Beach, Sylvia State Barrier Beach, and other potential future nourishment areas identified in the supplemental information. I remind the proponent that the Chapter 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 (DMF) has indicated that the project sites lie within or abuts mapped shellfish habitat which is afforded protection under the Wetlands Protection Act (310 CMR 10.34). It has also identified the dredged sites as winter flounder spawning habitat. Several of the dredge and beach nourishment locations serve as diadromous fish passage, migration and spawning habitat, as well as horsehoe crab spawning habitat. Furthermore, the EENF noted that MassDEP mapped eel grass beds may be located near some of the dredging locations. Permitted dredging should be conditioned to avoid impact to eel grass beds. The proponent should provide DMF with the GIS layers identifying all dredge and nourishment locations with the specific footprints delineated as well as sediment testing sites, the results identified, and any town-designated shellfish habitat, propagation locations, and private aquaculture sites. It should establish maximum sediment volumes at all dredge and disposal locations.

In the EENF, the proponent identified the potential sequencing of dredging projects and time-of-year (TOY) restrictions. The EENF also listed a variety of TOY restrictions established during the historic permitting processes for some of the dredging and beach nourishment projects. The proponent should review the TOY restrictions proposed in DMF's comment letter to determine consistency with historic TOYs as well as for the consideration and incorporation of new TOYs into the comprehensive permit process. The proponent should update this information when it is undergoing the permitting process.

Rare Species

According to comments received from NHESP, several of the proposed project sites are located within *Priority Habitat* and *Estimated Habitat* as indicated in the 13th Edition of the Massachusetts Natural Heritage Atlas and therefore require review through a direct filing with NHESP for compliance with MESA (321 CMR 10.00). On June 25, 2009, the NHESP sent a letter to the proponent requesting additional information that is required to determine whether or not the proposed project will result in an adverse effect to the resource area habitat of state-listed wildlife and to determine whether the project will result in a “take”. On July 8, 2009, the NHESP also requested that updated plans for beach nourishment sites and a shorebird monitoring and protection plan for beach nourishment areas should be developed and submitted to it for written approval. The proponent should provide this information to NHESP. Several sites are mapped as habitat for state-listed species, including species of birds and a plant. Of particular concern for NHESP are known nesting sites for Piping Plovers and various Terns. As indicated in their comment letter, NHESP typically approves dredging and beach nourishment projects for a maximum of a three-year period. 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.

The NHESP has provided guidance to the proponent regarding the information that should be provided during the MESA review process, including specific details on the location, volume, and design specifications (elevation, slope, plantings, and fencing) of the proposed nourishment of these sites. While the EENF does identify some TOY restrictions for beach nourishment activities, the proponent should also identify TOY restrictions for each beach nourishment site located within *Priority* or *Estimated Habitat* during the MESA review process.

Reporting/Monitoring

I ask that during the permitting process the proponent investigate ways to incorporate appropriate monitoring and reporting requirements to allow for information sharing amongst interested agencies. I recommend that the proponent explore how this reporting requirement may be expanded to address additional project information sharing requests from other interested parties (i.e. NHESP and DMF). I encourage the proponent to consult with respective permit granting authorities prior to submitting permit applications to ensure that sufficient information will be contained in the application documents and proposed monitoring and reporting protocols.

Greenhouse Gas Policy

The Ten-Year Comprehensive Dredging and Beach Nourishment Plan are subject to the MEPA Greenhouse Gas Emissions Policy and Protocol: <http://www.mass.gov/envir/mepa/downloads/GHGPolicyRev1108.pdf> because it requires an EIR. The policy requires project proponents to quantify the direct and indirect CO₂ emissions from the project site’s current status and compare it to a set of scenarios that compare the CO₂ emissions associated with the building operations according to the current applicable building

code build out with the proponent's preferred mitigation measures and a build out with the maximum practical mitigation.

MassDEP and DOER have acknowledged that this project will produce minimal greenhouse gas emissions and will likely fall within the Policy's de minimis exception, and I agree. However, MassDEP has recommended that the proponent should take voluntary steps to reduce emissions produced during the construction period by considering the use of low-sulfur fuel in dredging equipment and equipment used to transport sediment for beach nourishment projects.

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.

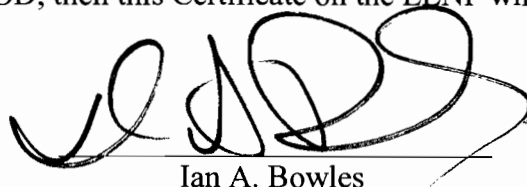
Conclusion

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 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 July 22, 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 5, 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). 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.

July 17, 2009

Date



Ian A. Bowles

Comments received:

Massachusetts Department of Environmental Protection – Southeast Regional Office
(MassDEP/SERO), 6/11/09
Edgartown Dredge Department, 6/15/09
Edgartown Dredge Department, 6/24/09
Edgartown Dredge Advisory Committee, 6/26/09

Massachusetts Coastal Zone Management Office, 6/30/09

Division of Fisheries and Wildlife – Natural Heritage and Endangered Species Program, 7/8/09

Massachusetts Division of Marine Fisheries, 7/10/09

MassDEP/SERO, 7/10/09

Edgartown Dredge Department, 7/16/09

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