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August 21, 2009

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

PROJECT NAME : Phinney's Harbor Monument Beach Marina
Reconfiguration
PROJECT MUNICIPALITY : Bourne
PROJECT WATERSHED : Buzzards Bay
EEA NUMBER : 14444
PROJECT PROPONENT : Town of Bourne Selectmen
DATE NOTICED IN MONITOR : July 8, 2009

Pursuant to the Massachusetts Environmental Policy Act (M.G. L. c. 30, ss. 61-62I) and Section 11.06 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 includes the licensing of a Marina Reconfiguration Zone within Phinney's Harbor by the Town of Bourne in which all past, current, and future marina activities will be licensed. The project includes the maintenance and improvement dredging of the mooring basin, marina reconfiguration and expansion, reconfiguration of a boat ramp, regrading and paving of the existing parking lot, and beach nourishment activities. Maintenance dredging depths will be consistent with those previously approved and permitted, while improvement dredging areas will be lowered to depths consistent with adjacent seafloor contours. Dredge depths vary from -4 Mean Low Water (MLW) to -8 MLW within the mooring basin. Beach nourishment areas have been identified as the Electric Avenue (EEA No. 12296), Grey Gables (EEA No. 12687) and Monument Beach

(EEA No. 13765) areas within the Town of Bourne. Beach nourishment activities have been previously reviewed under MEPA and permitted by applicable local and State permitting authorities. Dredge spoils unsuitable for beach nourishment purposes will be disposed of at the Bourne landfill for use as daily cover under a Massachusetts Department of Environmental Protection (MassDEP) Beneficial Use Determination (BUD).

Phinney's Harbor provides access to the Cape Cod Canal and Buzzards Bay. The project site contains a Town-operated marina, mooring fields, parking areas and the adjacent Monument Beach. The ENF, and subsequent information provided by the Proponent during the MEPA comment period, indicates that a total of 9,950 cubic yard (cys) of material will be dredged over a footprint of 99,700 square feet (sf). The Proponent has estimated the square footage of permanent structures associated with the project (i.e. fixed piers, piles, boat ramp, rip rap) at 11,397 sf, and temporary structures (i.e. seasonal floats, seasonal breakwater) at 10,686 sf. The project will impact approximately 4.36 acres of Land Under Ocean and Land Containing Shellfish. The project will also impact Coastal Beach and Land Subject to Coastal Storm Flowage.

Jurisdiction

The project is undergoing review pursuant to Sections 11.03(3)(b)(1)(f) and 11.03(3)(b)(6) of the MEPA regulations because the project requires a State Agency Action and will result in the alteration of ½ or more acres of other wetlands and the expansion of a pile-supported structure of 2,000 sf or more in area. The project will require a Chapter 91 (c.91) License and a Section 401 Water Quality Certificate (401 WQC) from MassDEP. The project will require a Section 404 Permit from the U.S. Army Corps of Engineers. Federal Consistency Review from the Office of Coastal Zone Management (CZM) may also be required. The project has received an Order of Conditions from the Bourne Conservation Commission.

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 which may cause Damage to the Environment as defined in the MEPA regulations. Pursuant to 301 CMR 11.01(2)(a)(3), because the c.91 License is required, jurisdiction over the project is functionally-equivalent to broad scope jurisdiction.

Wetlands, Waterways and Tidelands

The project consists of several distinct components that will have direct impacts to wetlands, waterways and tidelands. These project elements include: dredging activities; beach nourishment activities; expansion and reconfiguration of marina-related piers, floats and boat ramps; and parking area and stormwater upgrades. As noted by CZM, the project will help concentrate and improve public access and recreational activities at this facility, provide better management opportunities, and minimize potential impacts from these activities.

I applaud the planning efforts put forth to date by the Town of Bourne Shore and Harbor Committee to evaluate a marina plan that meets the facilities and recreational needs of the Town of Bourne. I encourage the Town of Bourne to supplement this work with the preparation of a formal written plan for Phinney's Harbor (and other marinas as necessary) to memorialize the Town's goals and action plan to meet local marine needs. CZM has recommended that the Town develop a Marina Management Plan to help guide current and future marina operations. Information is available in CZM's Marina Guidance Document to assist in this effort. Additionally, as recommended by the Cape Cod Commission, I encourage the Proponent to integrate a long term Harbor Management plan element as part of their local Comprehensive Plan.

Dredging

The ENF and supplemental materials provided during the MEPA comment period estimate that a total of 9,950 cys of material will be dredged from the marina configuration area within Phinney's Harbor. Approximately 8,250 cys of this material is classified as maintenance dredging and will be dredged to historically permitted depths. An additional 1,700 cys of material is classified as improvement dredging and is associated with work in areas that have historically not been permitted for dredging activities. The improvement dredging areas are associated with a portion of the new boat ramp alignment and an area in the central portion of the pier and float layout. Improvement dredging will be performed to depths that allow for alignment with maintenance dredging contours.

Dredging activities will result in the temporary disturbance to several wetland resource areas including Land Under Ocean, Coastal Beaches, and Land Containing Shellfish. Impacts to Coastal Beach are associated with the creation of dewatering basin to prepare materials for use in beach nourishment activities. The dewatering basin is in the same location and the same size as that used for dredging activities completed as part of EEA No. 13765.

The ENF indicates that dredging activities will be performed using the Barnstable County Dredge (Cod Fish). The Cod Fish is a hydraulic cutterhead dredge, using mechanical agitation and suction to dredge material and pump it to a receiving dewatering area. To minimize impact to shellfish resources, the area in and around the work zone has been opened to shellfishing to reduce the population that could be impacted by the project. The ENF has also indicated that during the dredging period, the Bourne Shellfish Warden will be onsite to monitor the removal and relocation of any shellfish from the dewatering basin. I note that MassDEP has requested additional information on dredging protocols as part of the c.91 licensing process. I expect that these protocols will include Best Management Practices (BMPs) to limit impact to water quality and wetland resource areas during the dredging period.

Beach Nourishment

Dredge spoils from Phinney's Harbor will be used for both beach nourishment purposes and as daily cover at the Bourne Landfill. Sediment testing and grain size analyses performed to date indicate that approximately 4,300 cys of material is suitable for beach nourishment, while

the remaining 5,650 cys are not-suitable for nourishment purposes and will therefore be used as daily cover in accordance with the Bourne Landfill BUD.

Approximately 300 cys will be placed at Electric Avenue (EEA No. 12296), 1,500 cys will be placed at Grey Gables (EEA No. 12687), and 2,500 cys will be placed at the adjacent Monument Beach (EEA No. 13765). As noted previously, these beach nourishment locations have been previously reviewed in accordance with MEPA and permitted by appropriate State Agencies and local authorities. Beach nourishment activities should be performed in accordance with the applicable permits, including all conditions pertaining to time of year, locations, elevations, etc. The Town of Bourne should confirm that all permits remain valid for each receiving beach prior to commencing dredging activities.

Marina Expansion and Reconfiguration

The project includes the expansion of the existing pier and float system to accommodate an additional 49 boat slips, for a site total of 111. Additionally, a new boat ramp will be constructed to eliminate safety and maneuverability challenges associated with the existing ramp. The Proponent has estimated the square footage of permanent structures associated with the project (i.e. fixed piers, piles, boat ramp, rip rap) at 11,397 sf, while temporary structures (i.e. seasonal floats, seasonal breakwater) at 10,686 sf. Wetland resource areas impacted by these permanent and temporary structures include Land Under Ocean, Coastal Beach and Land Containing Shellfish. While the ENF indicates that the temporary structures (i.e. floating breakwater, seasonal floats) will be permitted through a Section 10A Harbormaster Permit, it was contemplated at the MEPA site visit that these structures may be permitted in the c.91 licensing process to avoid yearly permitting requirements.

The project also includes the construction of a new public boat ramp. Relocation of boat ramp facilities will allow for safer launching of boats by avoiding vehicle conflicts with Emmons Road and the Toby's Island Bridge. The boat ramps will be flanked by floats and piles to allow boaters to tie up their vessels after launch for boarding. As presently proposed, the Town intends to keep the existing boat ramp in place and supplement the ramp with a 30-foot by 12-foot handicapped-accessible float. The existing boat ramp's usage would be limited to those launching non-motorized craft (i.e. kayaks, small sailing dinghies). The Town should consider whether a handicapped-accessible float could be provided in conjunction with the new boat ramp and float system, in lieu of the proposed plan. This would provide an opportunity for mitigation of project-related impacts through habitat restoration subsequent to removal of the existing boat ramp.

Parking and Stormwater Improvements

The project includes the expansion of the existing paved parking area into an unpaved area currently used informally for overflow parking. Based upon information shared at the MEPA site visit, this unpaved parking area tends to be fully occupied during the peak summer months. The project will regrade and repave the existing parking lot and grade and pave the adjacent informal parking area. An additional 63 new parking spaces will be created, for a site total of 156. New impervious area associated with the new paved parking area is estimated at

0.96 acres. In conjunction with the parking expansion, additional stormwater improvements will be made on the project site. New catch basins with deep sumps will be constructed and connected to the existing tidal stormwater system on-site. I encourage the Proponent to prepare an Operation and Maintenance plan to ensure routine maintenance of these stormwater structures. Finally, the Proponent should confirm whether the preparation of a Stormwater Pollution Prevention Plan (SWPPP) in accordance with the NPDES Construction General Permit will be required for the project.

Chapter 91 Licensing

The project will require a c.91 License for the proposed marina improvements. Mass DEP has indicated that the Proponent has filed an application in accordance with 310 CMR 9.00; however additional information will need to be provided during the permitting process to facilitate review. Additional items requested include clarification of out-of-water improvements associated with the project within filled tidelands, clarification of maintenance and improvement dredging areas, dredging protocols, information on marina fueling facilities, and a contingency plan to address potential fuel dock-related spills. The Proponent should use the comments provided by the MassDEP Waterways Program as guidance for supplementing their existing c.91 application.

Pursuant to 301 CMR 13.02, I am declining to require an additional Public Benefit Review for the project. Furthermore, as a water-dependent project, it is presumed that this project will provide adequate public benefit in accordance with 301 CMR 13.04. I am satisfied that the project's impacts to tideland resources can be adequately addressed during the permitting process.

Habitat

The Division of Marine Fisheries (*Marine Fisheries*) has indicated that the project site lies within mapped shellfish habitat which is afforded protection under the Massachusetts Wetlands Protection Act (310 CMR 10.34). Additionally, the waters of Phinney's Harbor and surrounding embayments have been identified as winter flounder (*Pseudopleuronectes americanus*) spawning habitat. Due to the decline in winter flounder stocks and the loss of flounder spawning habitat, *Marine Fisheries* has recommended that all dredging and silt producing activities be prohibited from January 15 through May 31. The Proponent should incorporate such time of year (TOY) restrictions as a fisheries impact mitigation measure within its permit applications.

The Monument Beach and Gray Gables Beach nourishment areas have been identified by *Marine Fisheries* as horseshoe crab (*Limulus polyphemus*) spawning beaches. To avoid impacts to spawning process and nesting areas, permits should be conditioned to prohibit the placement of beach fill on these beaches from May 1 through July 31.

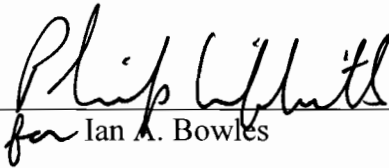
In response to *Marine Fisheries*' comment, the Proponent has revised the dredging footprint within Dredge Area #2 to provide a 25-foot offset from the top of slope to the MLW line to further reduce the potential for intertidal impacts from dredging.

Underwater Resources

The Board of Underwater Archaeological Resources (BUAR) has noted that while there is no historical record of any underwater archaeological resources in the project area, the BUAR cannot conclude that there are in fact no such resources within the project boundaries. Should heretofore-unknown submerged cultural resources be encountered during the course of the project, the BUAR expects that the Proponent will take steps to limit adverse effects and notify the BUAR in accordance with the *Policy Guidance for the Discovery of Unanticipated Archaeological Resources*.

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 to State permitting.

August 21, 2009
Date


for Ian A. Bowles

Comments received:

07/27/2009 Division of Marine Fisheries
07/28/2009 Board of Underwater Archaeological Resources
07/28/2009 Office of Coastal Zone Management
08/06/2009 Cape Cod Commission
08/11/2009 Massachusetts Department of Environmental Protection - SERO

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