



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>

August 22, 2008

FINAL RECORD OF DECISION

PROJECT NAME : Town of Harwich Proposed Maintenance Dredging and Beach Nourishment
PROJECT MUNICIPALITY : Harwich
PROJECT WATERSHED : Cape Cod
EEA NUMBER : 14246
PROJECT PROPONENT : Town of Harwich
DATE NOTICED IN MONITOR : May 21, 2008

Pursuant to the Massachusetts Environmental Policy Act (MEPA) (G.L.c.30, ss. 61-62I) and Section 11.11 of the MEPA regulations (301 CMR 11.00), I have reviewed the Expanded Environmental Notification Form (ENF) and hereby **grant a waiver** from the requirement to prepare a mandatory Environmental Impact Report (EIR).

Project Description

As described in the Expanded ENF the project entails maintenance dredging in Allen Harbor, Herring River, Wychmere Harbor and Saquatucket Harbor and use of the dredged material as beach nourishment along Nantucket Sound in the Town of Harwich. The proposed dredging and beach nourishment are a continuation of ongoing maintenance activities that have been previously permitted. With the exception of the Herring River entrance channel, authorizations for past maintenance dredging and beach nourishment are well documented. The Town of Harwich (the proponent) is seeking to combine multiple permits into a single Town-wide permit to facilitate management of dredging projects and related permits, and to provide more flexibility in distribution of dredge materials.

MEPA Jurisdiction

The project requires a 401 Water Quality Certification and a Chapter 91 Permit from the Massachusetts Department of Environmental Protection (MassDEP). The project requires an Order of Conditions from the Town of Harwich (and, on appeal only, a Superseding Order from MassDEP). The project requires a Section 404 permit from the US Army Corps of Engineers and may be subject to Coastal Zone Management (CZM) federal consistency review. The project may require a National Pollutant Discharge Elimination System (NPDES) permit for construction activities. The project must be conditioned to avoid adverse effects on state-listed shorebirds, or it may result in a "take" and require a Conservation and Management Permit from the Division of Fisheries and Wildlife, Natural Heritage and Endangered Species Program (NHESP).

The project is not seeking financial assistance from the Commonwealth. Therefore, MEPA jurisdiction is limited to the subject matter of required state agency permits and extends to water quality, wetlands, waterways and tidelands, land and state-listed species.

Summary of Potential Environmental Impacts

The project will result in alteration of Land Under Ocean, due to dredging of approximately 26 acres of navigable channels, and will alter Coastal Beaches through nourishment of four miles of beach. Potential environmental impacts include impacts to eelgrass beds, state-listed shorebirds, fish migration, spawning and juvenile development, and submerged cultural resources.

Summary of Proposed Mitigation Measures

The Town of Harwich has committed to a range of measures to avoid and minimize or mitigate impacts, which include:

- A Construction Protocol and other conditions to address NHESP concerns (conditions related to protection of state-listed species have been incorporated into the Order of Conditions issued October 9, 2007);
Time of year restrictions and other conditions to address concerns of the Division of Marine Fisheries (DMF) relating to protection of marine resources including fish migration, spawning and juvenile development; and
- Other conditions to avoid and minimize or mitigate impacts as provided for in existing permits.

I expect that MassDEP, in developing the single Town-wide permit for dredging and beach nourishment will incorporate conditions from previous permits as well as any additional mitigation requirements, as appropriate, based on review of this Expanded ENF and comments received.

Waiver Request

The proponent has requested a waiver from the requirement to prepare an EIR. An Expanded ENF 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 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 state permitting 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 submit a mandatory EIR would result in an undue hardship for the Proponent and would not serve to avoid or minimize Damage to the Environment. In accordance with 301 CMR 11.11(3), the latter finding is based on my determination that:

- (a) the project is likely to cause no Damage to the Environment

The Order of Conditions and other permits previously issued for the project have been conditioned to avoid any significant environmental impacts. I am satisfied that the proposed single Town-wide permit from MassDEP, which will consolidate existing permits, will include conditions as appropriate to ensure that environmental impacts are avoided and minimized or mitigated to the maximum extent feasible. In addition, I note that MassDEP, the Office of Coastal Zone Management (CZM), and Town of Harwich, Office of the Harbormaster support the consolidated permit approach as a means to improve the Town's maintenance dredging and sediment management program.

The Division of Fisheries and Wildlife, Natural Heritage and Endangered Species Program (NHESP) has conditioned the project to avoid an adverse effect on state-listed species habitat, as further detailed in its determination letter dated September 27, 2007 (included as a comment letter on the Expanded ENF). The Expanded ENF indicates that NHESP conditions have been incorporated into the Order of Conditions for the project issued October 9, 2007. I am satisfied that the project will cause no Damage to the Environment provided that the project complies with the NHESP and DMF requirements, and other restrictions and conditions of state and local permits; and

(b) 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

I have determined that this waiver request has merit, and issued a Draft Record of Decision (DROD), which was published in the August 6, 2008 edition of the Environmental Monitor in accordance with 301 CMR 11.15(2), which began the public comment period. The public comment period lasted for 14 days and ended on August 20, 2008. No comments were received on the DROD. Based on written comments received concerning the Expanded ENF and Waiver request, and consultation with the permitting agencies, I hereby **grant** the waiver requested for this project, from the requirement to prepare a mandatory Environmental Impact Report (EIR), subject to the above findings and conditions.

August 22, 2008

Date



for Ian A. Bowles, Secretary

Comments Received on Expanded ENF:

6/06/08 Office of Coastal Zone Management
6/09/08 Division of Marine Fisheries
6/09/08 **Board of Underwater Archaeological Resources**
6/10/08 Department of Environmental Protection, Southeast Regional Office
6/18/08 Town of Harwich, Office of the Harbormaster
6/30/08 Division of Fisheries and Wildlife, NHESP
7/01/08 Division of Marine Fisheries

Comment received on DROD: None

IAB/AE/ae