



# *The Commonwealth of Massachusetts*

*Executive Office of Environmental Affairs*

*100 Cambridge Street, Suite 900*

*Boston, MA 02114-2524*

MITT ROMNEY  
GOVERNOR

KERRY HEALEY  
LIEUTENANT GOVERNOR

ROBERT W. GOLLEDGE, JR.  
SECRETARY

Tel. (617) 626-1000  
Fax. (617) 626-1181  
<http://www.mass.gov/envir>

November 9, 2006

CERTIFICATE OF THE SECRETARY OF ENVIRONMENTAL AFFAIRS  
ON THE  
NOTICE OF PROJECT CHANGE

PROJECT NAME : Maraspin Creek Maintenance Dredging Project  
PROJECT MUNICIPALITY : Barnstable  
PROJECT WATERSHED : Cape and Islands  
EOEA NUMBER : 13408  
PROJECT PROPONENT : Town of Barnstable  
DATE NOTICED IN MONITOR : October 10, 2006

Pursuant to the Massachusetts Environmental Policy Act (G. L., c. 30, ss. 61-62H) and Section 11.06 of the MEPA regulations (301 CMR 11.00), I determine that this project **does not require** the preparation of an Environmental Impact Report (EIR). However, significant issues remain to be addressed in project permitting.

### Background

As described in the December 2004 Environmental Notification Form (ENF) submitted for this project, the Maraspin Creek Maintenance Dredging Project involves the phased (Phase I, Phase II) maintenance dredging of an existing 60 ft-wide navigation channel (approximately 1,600 linear feet (lf)) located within a 3.5-acre area of Maraspin Creek in Barnstable. Maraspin Creek is a tidal estuary and provides a navigable accessway to Millway Marina and Barnstable Harbor. The project involves the removal of approximately 20,000 cubic yards (cy) of dredged material that the proponent proposes for re-use as beach nourishment, restoration of two sections of an eroding dewatering area berm constructed as part of the proponent's previous Blish Point (EOEA #12008) maintenance dredging project, and upland beneficial reuse.

Phase I involved the maintenance dredging of the outermost areas of the entrance channel to an elevation of – 5MLW. The Phase I dredged material (approximately 5,000 cy) will be used for beach nourishment along Millway Beach and the reconstruction of the Blish Point dewatering area berm. Phase I project activities have been completed by the proponent. In Phase II, the proponent proposed to maintenance dredge both the inner and outer portions of the Maraspin Creek navigation channel to an elevation of – 6 MLW. As described in the ENF, a final determination for the re-use of the Phase II dredged material (approximately 15,000 cy) as beach nourishment and/or beneficial upland reuse material will be made at the conclusion of the proponent's sediment sampling and chemical analyses.

The project requires a Chapter 91 License and a Water Quality Certificate from the Department of Environmental Protection (MassDEP); and an Order of Conditions from the Barnstable Conservation Commission (and hence a Superseding Order of Conditions from MassDEP if the local Order were appealed). The project will also require a General Program Category II Permit from the U.S. Army Corps of Engineers. The project may require a 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 issues that may cause Significant Damage to the Environment and that are within the subject matter of required state permits. In this case, MEPA jurisdiction is limited to issues related to land alteration, tidelands, water quality, wetlands, and associated issues.

### Notice of Project Change

As described in this Notice of Project Change (NPC) submittal, the project change involves a 370 lf extension of the proposed Phase II dredging limits and a corresponding increase (29,600 square feet (sf)) in the proposed dredging area. The proponent has also identified a number of additional preferred land-based placement and reuse options for the project's resultant dredged material including; 1) dune nourishment at the Sandy Neck Public Beach, 2) dune nourishment at Sandy Neck, and/or 3) placement at the Blish Point Sediment Containment Area.

### Sandy Neck Area of Critical Environmental Concern

The project site is located within the Sandy Neck/Barnstable Harbor Area of Critical Environmental Concern (Sandy Neck ACEC). I note that this area was designated an ACEC in 1978 in recognition of its significant natural resources including an extensive salt marsh habitat, habitat for 9 species of endangered , threatened or special concern, and one of the largest barrier beach systems in New England.

According to the comments received from the Department of Conservation and Recreation (DCR), the NPC submittal describes a proposed increase to the parameters of the previously authorized maintenance dredge area.

Any proposal to extend a maintenance dredge area may be considered an improvement dredging activity and thus may not be permissible within ACECs, pursuant to MassDEP's Waterways Regulations (310 CMR 9.40(1)(b)(1)). In their comments, MassDEP has indicated the proposed extension of the dredging footprint will not qualify for a minor permit modification to the proponent's Chapter 91 Permit (No. 10244). The proponent must consult with MassDEP in developing its design and dredging plans for the proposed project to ensure that the final project design complies with MassDEP's regulations for maintenance dredging within ACECs.

According to the comments received from the Division of Marine Fisheries (DMF), the project site contains mapped habitat for blue mussels (*Mytilus edulis*), soft shelled clams (*Mya arenaria*), and surf clams (*Spisula solidissima*). The habitat areas for winter flounder (*Pseudopleuronectes americanus*) and the horseshoe crab are also located within the project area. The DMF has requested that all in-water work be prohibited within a Time of Year (TOY) restriction of January 15 – July 15 to protect winter flounder and horseshoe crab spawning and juvenile development. The proponent should consult with DMF regarding the proponent's proposed dredging and dredge disposal activities within the project area.

### Wetlands Resources

The Town proposes to fill in a section of the previously altered Cottage Area coastal dune system with approximately 7,500 cubic yards (cy) of dredge material (approximately 104,000 sf) and re-vegetate same with American Beach Grass (*Ammophila breviligulata*) to alleviate ongoing flooding and improve storm damage prevention. This portion of the proposed project activities will impact approximately 3,600 square feet (sf) of salt marsh (*Spartina patens*) resource area and eliminate one of two existing vehicular accessways to the cottages located at the eastern end of Sandy Neck. According to the comments received from the Cape Cod Commission (CCC), this proposed coastal dune restoration work may not provide significant protection to the existing seasonal cottages structures from coastal storms, and does not appear to serve as a necessary measure to preserve access to the seasonal cottages. Under the 2002 revisions to the Regional Policy Plan, use of dredge material from publicly funded dredging projects to provide coastal storm protection is supported by CCC where it can be demonstrated that the additional coastal storm protection will benefit multiple private properties.

The proponent will need to provide an in-depth analysis of the Cottage Area location and the wetland resource values to satisfactorily demonstrate the ability of the proposed dune restoration to provide flood and storm protection as a public benefit, and to assess alternative dune restoration layouts to further avoid or minimized impacts to salt marsh resource areas.

The proponent should work closely with the Barnstable Conservation Commission, the Cottage area residents, the Sandy Neck Park Manager and others to implement a maintenance plan for the Cottage Area dune restoration portion of the project to prevent the future continued use of the dune restoration area by vehicular traffic and to ensure the success of the proponent's proposed dune re-vegetation/restoration efforts. The proponent should formally establish the new access route to the Sandy Neck cottages.


### Historic Resources

According to comments received from the Massachusetts Historical Commission (MHC), the upland portions of the project site proposed for sediment re-use as beach nourishment are located adjacent to inventoried structures and archaeological resources within the Sandy Neck Cultural Resources District (BRN.A) listed in the State and National Registers of Historic Places. The Blish Point Sediment Containment Area is also located adjacent to an inventoried archaeological resource area. The proponent should consult with the Massachusetts Historical Commission (MHC) in further developing its design and construction plans for the proposed project to avoid, minimize and mitigate the project's potential impacts to structures and archaeological resources located within the Sandy Neck Cultural Resources District.

Based on the information provided by the proponent and consultation with relevant public agencies, I conclude that no further MEPA review is required. The proposed maintenance dredging project area does not appear to contain significant shellfish beds, rare species habitat, or other resources. The proposed project change is not likely to result in negative impacts to the Barnstable Harbor ACEC.

However, while I am not requiring an EIR for this project, the proponent will need to address the comments received on the ENF and the NPC submittals during the permitting process, particularly with respect to the delineation of maintenance dredge area, the use of the dredged material for beach nourishment and coastal dune restoration, and mitigation of construction impacts.

November 9, 2006  
DATE



Robert W. Golledge, Jr., Secretary

Comments received:

10/18/06	Massachusetts Historic Commission (MHC)
10/30/06	Department of Environmental Protection (MassDEP) - SERO
10/30/06	EOEA – Office of Coastal Zone Management (MassCZM)
10/30/06	Department of Conservation and Recreation (DCR)
10/30/06	Massachusetts Division of Marine Fisheries
11/02/06	The Cape Cod Commission (CCC)

NPC #13408  
RWG/NCZ/ncz