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November 21, 2008

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SECRETARY

DRAFT RECORD OF DECISION

PROJECT NAME : Sengekontacket Pond Dredging, Beach Nourishment, & Dune Restoration  
PROJECT MUNICIPALITY : Edgartown  
PROJECT WATERSHED : Islands  
EOEA NUMBER : 14138  
PROJECT PROPONENT : Town of Edgartown  
DATE NOTICED IN MONITOR : October 22, 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 this project and propose to grant a Phase 1 Waiver (as defined below), allowing the reconstruction of the eroded dune along Cow Bay Beach as part of Phase 1 of the Sengekontacket Dredging Project to proceed to the state permitting agencies prior to completion of the Environmental Impact Report (EIR) for the entire project.

Project Description

The NPC was submitted for MEPA review on October 9, 2008. The project change consists of reconstruction of the eroded frontal dune along Cow Bay Beach as part of Phase 1 of the Sengekontacket Dredging Project. The proponent identified several reasons for allowing this element of the project to proceed as part of Phase 1. The review of the sediment cores from the lower half of the Sengekontacket channel indicated that the sediments are not compatible for the nourishment of the Cow Bay beach and dune. The material from Borrow Area #1 was compatible with Cow Bay Beach, and the Town can secure significant cost savings and efficiencies by extending the Bend-in-the-Road Beach project, which is nearing completion, to Cow Bay Beach. The NPC also indicated that the Cow Bay dunes provide little to no storm damage protection or flood control for the surrounding wetlands or upland properties and that there continues to be a threat of overwash into Trapps Pond.

Sediment will be pumped by the Town-owned hydraulic dredge from Borrow Area #1 through a pipe to the nourishment site on Bend in the Road Beach where it will be dewatered in a dewatering pit/trench. The dredge pipe will run under the Big Bridge and along Sylvia State

Beach to Bend-in-the-Road Beach to avoid impacts on salt marsh or other resource areas. Dewatered material will be transported via rubber-tired dump trucks to the Cow Bay beach. The dune will be constructed entirely above MHW.

The NPC indicated that the project will impact approximately 4.02 acres of land. On November 6, 2008, the proponent clarified the impacts associated with this phase of the project and indicated that this project will impact 1 acre of barrier beach and 2.2 acres of coastal dune for a total of 3.2 acres. Approximately 27,000 cubic yards (cy) of material will be dredged from Borrow Area #1 for use at Cow Bay.

The dredging associated with Phase 1 will require an amended Chapter 91 License and amended Section 401 Water Quality Certificate from the Department of Environmental Protection (MassDEP). Restoration of the dune will require an Order of Conditions from the Edgartown Conservation Commission. The project may be subject to Federal Consistency review from the Massachusetts Coastal Zone Management (MCZM) Office. Comments from state agencies, including MassDEP and MCZM, indicated support for the project and the Phase 1 Waiver. Comments from the Natural Heritage and Endangered Species Program (NHESP) indicated that the project will be conditioned through the permitting process to minimize impacts to rare species including a reduction in dimensions of the proposed dune restoration, the establishment of time-of-year (TOY) restrictions, and the development of a rare species monitoring plan.

### Project History

The Environmental Notification Form (ENF) was submitted in November of 2007. The project consisted of the dredging of approximately 85,000 to 100,000 cy from 13.9 acres of Land under a Salt Pond (LUSP) within the existing navigational channels within Sengekontacket Pond. The project included both maintenance (2.2 acres) and improvement dredging (11.7 acres). The proponent is proposing to utilize the dredged material as beach nourishment on 13.6 acres of adjacent coastal and barrier beaches. The dredged material will be utilized on Bend-in-the-Road and Cow Bay Beaches. The channel to be dredged is 6,060 linear feet long, 100 feet wide, and approximately 6-feet deep. The dredging area would be excavated to -6 feet at Mean Low Water (MLW). It will be hydraulically dredged and the sand will be pumped to the disposal site through submerged and floating lines. The project will provide navigation improvements for boating, storm damage protection, flood control, and improved water quality within the ponds, which may improve shellfish habitat. The proposed project area is approximately 27.5 acres. On December 26, 2007, I determined that the project required a mandatory EIR.

A previous NPC with a request for a Phase 1 Waiver was filed in March, 2008. It requested that renourishment of the eroded Bend-in-the-Road Beach be allowed to proceed prior to the submission of the Draft EIR. It proposed to renourish these areas by pumping material

from a 150,000 sf area within Borrow Area #1 in Sengekontacket Pond. The NPC indicated that Borrow Area #1 had been dredged previously and that the Town had valid permits from MassDEP and the U.S. Army Corps of Engineers (ACOE) for maintenance dredging. A Final Record of Decision (FROD) granting the Phase 1 Waiver was issued on May 23, 2008.

### Categorical Inclusion

The project is included for the preparation of a mandatory EIR pursuant to Section 11.03 (3)(a)(1)(b) of the MEPA regulations because it alters 10 or more acres of wetlands. The Certificate with the Scope for the EIR was issued on December 26, 2007.

### Jurisdiction

This project will require a Chapter 91 License and a Section 401 Water Quality Certificate from the Department of Environmental Protection (MassDEP). The proponent should submit a filing in compliance with the Massachusetts Endangered Species Act (MESA) and continue to consult with the Natural Heritage & Endangered Species Program (NHESP). The project may need to obtain a Federal Consistency review from the Massachusetts Coastal Zone Management (MCZM) Office. It may need a Section 404 Individual Permit from the U.S. Army Corps of Engineers. An Order of Conditions will be required from the Edgartown Conservation Commission for work within a resource area. Because the proponent is not seeking financial assistance from the Commonwealth for the project, MEPA jurisdiction is limited to those aspects of the project within the subject matter of required or potentially required state permits (wetlands, waterways, habitat, water quality, and stormwater) that may cause Damage to the Environment as defined in the MEPA regulations.

### Waiver Request

On October 9, 2008, the proponent requested that I grant a Phase 1 Waiver to allow for the reconstruction of the eroded frontal dune along Cow Bay Beach to proceed in advance of completion of the EIR. The waiver request was submitted with the NPC. The NPC provided an Expanded ENF level of detail such that the MEPA Office could accept and consider the waiver request. As proposed, Phase 1 consists of placing approximately 27,000 cy of compatible dredged material from Borrow Area #1 for use at Cow Bay.

### Criteria for a Phase I Waiver

Section 11.11 of the MEPA Regulations provides that I may waive any provision or requirement of 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 undue hardship to the proponent, unless based on

delay in compliance by the proponent; and b) not serve to minimize or avoid damage to the environment.

In the case of a partial waiver of a mandatory EIR review threshold that would allow the proponent to proceed to Phase 1 of the project prior to preparing an EIR, this finding shall be based on one or more of the following circumstances: 1) the potential environmental impacts of Phase 1 are insignificant; 2) ample and unconstrained infrastructure and services exist to support Phase 1; 3) the project is severable, such that Phase 1 does not require the implementation of any other future phases; and 4) the agency action on Phase 1 will contain conditions that ensure due compliance with MEPA.

### Findings

Based upon the information submitted by the proponent and after consultation with the relevant state agencies, I find that:

1. The Town of Edgartown has mobilized the dredging equipment to undertake the Bend-in-the-Road Beach portion of the project, which is adjacent to the Cow Bay Beach portion of the project. There continues to be substantial erosion of both beaches and the dune system in this area. Therefore, to not allow the Town of Edgartown to realize the economy of undertaking both components of the Phase 1 Waiver may cause an undue hardship.
2. The potential impacts of the project are insignificant. According to the proponent, the 27,000 cy of compatible dredged material will be pumped from a 46,020 sf area in Borrow Area #1, which is outside the limits of the previously proposed project. Borrow Area #1 has been dredged before and is considered maintenance dredging by the proponent. The dredge pipe will run under the Big Bridge and along Sylvia State Beach to Bend-in-the-Road Beach where it will be dewatered in a dewatering pit/trench. Dewatered material will be transported via rubber-tired dump trucks to Cow Bay and sand will be placed on one acre of barrier beach and 2.2 acres of coastal dune. By utilizing the Big Bridge pipeline route, the project will avoid any impacts on marsh and other resource areas.
3. The proponent will improve the Cow Bay dune above MHW by providing it with additional sand to prevent an overwash into Trapps Pond.
4. The Phase 1 dredging area is limited to a 196,020 sf area within Borrow Area #1 for both the Cow Bay and Bend-in-the-Road Beaches. Approximately 3.2 acres of beach and dune would receive approximately 27,000 cubic yards of compatible material at Cow Bay. The project will be confined to work within these resource areas.
5. The proponent will restore the dune area to a height of about three to five feet above existing

conditions and connects the renewed dune at Cow Bay to the existing dune at Bend-in-the-Road Beach. The proponent will plant beach grass on top of the proposed dune.

6. Ample and unconstrained infrastructure exists.
7. The project will provide storm damage protection, increased areas of beach and dune, an increased recreational area, and increased habitat for endangered shore birds. It is consistent with the Town of Edgartown's Ten Year Dredge Master Plan.
8. The proponent will provide Time-of-Year Restrictions (TOYR) to protect winter flounder (January 15<sup>th</sup> through May 31<sup>st</sup>). No beach nourishment will occur between April 1<sup>st</sup> and August 31<sup>st</sup> to protect shore birds during mating season.
9. The proponent has committed to provide the DEIR by August of 2009.
10. The project is severable. Phase 1 does not require the implementation of any other future phase of the project or restrict the means, by which potential environmental impacts from any other phase of the project may be avoided, minimized or mitigated.
11. MassDEP has sufficient permitting authority to ensure due compliance with the MEPA Regulations prior to the commencement of any other phases.

Based on these findings, it is my judgment that the waiver request has merit and meets the tests established in Section 11.11. Therefore, I propose to grant the Phase 1 Waiver requested for the Phase 1 Reconstruction of Eroded Frontal Dune along Cow Bay Beach, subject to the above findings. This DROD shall be published in the next issue of the *Environmental Monitor* for a fourteen-day comment period, after which I shall reconsider, modify, or confirm the waiver.

November 21, 2008

Date

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Ian A. Bowles

Comments received:

MassWildlife, 11/6/08  
Woods Hole Group, 11/6/08  
MassDEP/SERO, 11/7/08  
MCZM, 11/6/08  
MassDEP/SERO, 11/14/08  
MassDEP/SERO, 11/14/08

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