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April 25, 2008

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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 : March 26, 2008

Pursuant to the Massachusetts Environmental Policy Act (MEPA) (G.L.c.30, ss. 61-62H) 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 Phase 1 Renourishment of Bend-in-the-Road Beach 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 March 13, 2008. The proponent is requesting that it be allowed to phase this project by renourishing Bend-in-the-Road Beach before the EIR is submitted. The proposed Phase 1 will renourish about 1.7 acres with approximately 9,800 cubic yards (cy) of compatible material. The dredged material will be pumped from an area of 150,000 sf within Borrow Area #1 in Sengekontacket Pond. Borrow Area #1 is approximately 16.9 acres and has been dredged in the past. Therefore, the dredging of Borrow Area #1 is considered maintenance dredging. The proponent will only dredge an area of 150,000 sf/3.44 acres, which is outside the limits of the original ENF. The dredge pipe will run under the Big Bridge and along Sylvia State Beach to Bend-in-the-Road Beach. It will discharge sand onto the beach and the protective dunes. The dune area, which will be impacted by Phase 1, is approximately 23,957 sf of dune. This dune area will receive about 2,000 cy of dredged material. Phase 1 is anticipated to begin in October of 2008 and end before April of 2009.

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, the Secretary determined that the project required a mandatory EIR.

### 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 state permits (wetlands, waterways, habitat, and stormwater) that may have significant environmental impacts.

### Waiver Request

On March 10, 2008, the proponent requested that I grant a Phase 1 Waiver to allow for the Renourishment of Bend-in-the-Road 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 9,800 cy of compatible dredged material on about 1.7

acres of beach and dune.

### Criteria for a Phase I Waiver

Section 11.11 of the MEPA Regulations provides that the Secretary 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 the Secretary finds 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 potential impacts of the project for Phase 1 are insignificant. According to the proponent, the 9,800 cy of compatible dredged material will be pumped from a 150,000 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. It will discharge sand to approximately 1.7 acres of beach and dune. By utilizing the Big Bridge pipeline route, the project will avoid any impacts on marsh and other resource areas.
2. The proponent will improve the Bend-in-the-Road Beach by widening it by approximately 30 to 35 feet to the MLW line.
3. The Phase 1 dredging area is limited to a 150,000 sf area within Borrow Area #1. Approximately 1.7 acres of beach and dune would receive approximately 9,800 cubic yards of compatible material. The project will be confined to work within these resource areas.
4. The proponent will restore the dune area to a height of about five feet and connect the new

dune to the existing dunes on either side of Bend-in-the-Road Beach. The proponent will plant beach grass on top of the proposed dune.

5. Ample and unconstrained infrastructure exists.

6. The project will provide storm damage protection, increased areas of beach and dune, an increased recreational area for a popular bathing beach, and increased habitat for endangered shore birds. It is consistent with the Town of Edgartown's Ten Year Dredge Master Plan, and the Renourishment of Bend-in-the-Road Beach was originally developed as a stand alone project.

7. 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.

8. The proponent has committed to provide the DEIR by April of 2009.

9. 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.

10. 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 Renourishment of Bend-in-the-Road 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.

April 25, 2008

Date

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Ian A. Bowles

Comments received:

MassWildlife, 4/9/08

MA Division of Marine Fisheries, 4/14/08

MassDEP/SERO, 4/15/08

MassDEP/SERO, 4/16/08

MCZM, 4/16/08

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