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June 19, 2009

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

PROJECT NAME : Proposed Resource Area Improvements at Mill Creek
PROJECT MUNICIPALITY : Chatham
PROJECT WATERSHED : Cape Cod
EEA NUMBER : 14418
PROJECT PROPONENT : Town of Chatham
DATE NOTICED IN MONITOR : May 20, 2009

Pursuant to the Massachusetts Environmental Policy Act (MEPA) (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).

Project Description

As described in the Environmental Notification Form (ENF), the project involves dredging of the shoaled Mill Creek channel entrance in conjunction with sand by-pass dredging and excavation along the updrift shoreline to the channel jetty, and placement of all dredged and excavated material on nearby beaches for beach maintenance and habitat restoration. Approximately 14,900 cubic yards (cy) of material will be dredged from an area of 124,750 square feet (sf) and 4,600 cy of material will be excavated from an area of 19,200 sf and the combined material will be utilized as beach nourishment and for the extension of the shoal landward to prohibit competition with the reopened channel. Dredging will be conducted by a combination of mechanical and hydraulic dredging.

The Proponent is seeking a ten year permit for this ongoing program of maintenance dredging and beach nourishment within the identified areas. Although evidence supports past maintenance dredging of the channel, permits have not been located. Therefore, the project is classified as improvement dredging for purposes of: resolving shoaling issues; improving water quality within the estuary by returning tidal flow to the pre-shoal conditions; improving and increasing shorebird nesting area in the areas of the by-pass dredging and the excavation on the

updrift side of the jetty and downdrift side of the channel; improving and increasing intertidal and shallow subtidal area fronting the downdrift shoreline making it more conducive for shellfish habitat; and reestablishing the hydraulic conditions allowing for movement of shoaled material to feed the starved downdrift beaches. The project is consistent with the Wetlands Restriction Order, under M.G.L. c. 130 s. 105 which regulates and restricts coastal wetlands in the Town of Chatham, issued by the Commonwealth of Massachusetts Department of Environmental Management in 1982.

MEPA Jurisdiction and Required Permits

The project is undergoing review pursuant to Sections 11.03(3)(b)(1)(f) and 11.03(3)(b)(3) of the MEPA regulations because the project requires a State Agency Action and it has the potential to alter one-half or more acres of other wetlands (Land Under the Ocean, Barrier Beach, Coastal Beach and Coastal Dune) and will require dredging of 10,000 or more cubic yards of material. The project will require: a Chapter 91 (c.91) Waterways Dredge Permit and a Section 401 Water Quality Certificate (WQC) from the Massachusetts Department of Environmental Protection (MassDEP); filing under the provisions of the Massachusetts Endangered Species Act (MESA) with the Massachusetts Division of Fisheries and Wildlife Natural Heritage and Endangered Species Program (NHESP); a Section 404 Programmatic General Permit (PGP) from the United States Army Corps of Engineers (U.S. ACOE); an Order of Conditions from the Chatham Conservation Commission (and, on appeal only, a Superseding Order of Conditions from MassDEP); and federal 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 those aspects of the project that are within the subject matter of required or potentially required state permits and that may cause Damage to the Environment as defined in the MEPA regulations. In this case, MEPA jurisdiction exists over wetlands, waterways, and tidelands, and rare species.

Wetlands, Waterways and Tidelands

According to the documentation provided in the ENF, the cumulative project impacts are estimated to be: 62,900 sf of Land Under the Ocean; 229,750 sf of Coastal Beach; 19,200 sf of Coastal Dune; and 168,050 sf of Barrier Beach.

The project proposes improvement dredging of the Mill Creek channel to -3 feet below Mean Low Water (MLW) with a one foot overdredge. A triangular deposition area of approximately 20,000 sf is proposed adjacent and updrift from the channel entrance to a depth of -5 feet below MLW with a one foot overdredge. Approximately 19,500 cy of beach compatible sand which will be hydraulically and mechanically pumped to four designated disposal areas and used for the extension of the shoal. The project is proposed to return the tidal channel to its previous inter-jetty location through channel dredging and restoration of the estuary to a more efficient tidal flushing system. In addition, endangered shorebird habitat and shellfish habitat will be enhanced. Beach nourishment is slated for East Jetty Beach, Cockle Cove Beach, Forest Beach, and Pleasant Street Beach. The dredging and excavation areas are located on town-owned property; disposal areas, except Forest Beach, are under both private and town ownership. Improvements to associated beach structures such as jetties, groins, sinks, boat ramps, etc., are not included as part of this project.

The Proponent should use the guidance presented in the MassDEP and NHESP comment letters, in addition to permit application requirements, to determine the level of detail necessary when comprehensive c. 91, Section 401 Water Quality Certificate, and MESA permits are sought. I remind the Proponent that the c.91 comprehensive permit application should specifically address how beach nourishment activities will not impede public use of the intertidal zone. A Notice of Intent for this project must be submitted to MassDEP and NHESP for its review and comment prior to the issuance of an Order of Conditions by the Chatham Conservation Commission.

MassDEP's comments indicate its support of sand by-passing where jetties and/or groins interfere with littoral drift. For nourishment areas on stretches of privately owned beach, the future c. 91 Permit for this project would include a special condition requiring the Proponent to obtain lateral access easements below the existing high water mark from the owners of the beach to be nourished in accordance with the Waterways Regulations at 310 CMR 9.40 (4). I refer the Proponent to MassDEP's comments regarding the antidegradation and other provisions of the Massachusetts Contingency Plan (MCP) that may be applicable to the project. The Proponent should consult with MassDEP if any notification or approval is required for material transport or disposal.

Comments received from CZM indicate that the project will improve the ecological health of the Mill Creek estuary and that the direct benefits to water quality, habitat and beach restoration justify the temporary impacts to the barrier beach and coastal dune resources in the beach bypass dredging. CZM commends the Proponent's efforts to maximize the benefits from the beach nourishment areas through ongoing sediment management efforts.

The Division of Marine Fisheries (*Marine Fisheries*) has identified Cackle Cove Beach, one of the proposed nourishment sites, as horseshoe crab spawning habitat. *Marine Fisheries* recommends a time-of-year (TOY) restriction prohibiting disposal of dredged material on Cackle Cove Beach from May 1 through July 31 of any year to protect spawning horseshoe crabs and nesting areas. *Marine Fisheries* has also identified the dredge site as historical winter flounder (*Pseudopleuronectes americanus*) spawning habitat. For a ten year permit, *Marine Fisheries* recommends a TOY restriction prohibiting dredging inside the jetties for years 2 through 10 from January 15 through May 31 each year to protect winter flounder spawning and juvenile development. I ask that MassDEP incorporate conditions as appropriate in any permits issued for the project to address the concerns and recommendations of *Marine Fisheries*.

Comments from the Cape Cod Commission (Commission) indicate its support of the project, notwithstanding the removal of vegetated dune to create shorebird nesting habitat. The Commission notes that such alterations of resource areas are typically not supported by the Cape Cod Regional Policy Plan. Commission staff suggests that efforts be made to ensure that during construction activities any eel grass in the vicinity of the project is not adversely impacted.

Comments from the Board of Underwater Archaeological Resources (the Board) indicate that the project is unlikely to impact submerged cultural resources. However, it is possible that there are submerged cultural resources in the project area. If heretofore-unknown submerged cultural resources are encountered during the course of the project, the Proponent should take steps to limit adverse effects and notify the Board, as well as other appropriate agencies, in accordance with the Board's *Policy Guidance for the Discovery of Unanticipated Archaeological Resources* (updated 9/28/06).

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.

Rare Species

According to comments received from NHESP, the project site is located within *Priority Habitat* and *Estimated Habitat* as indicated in the 13th Edition of the Massachusetts Natural Heritage Atlas and therefore requires review through a direct filing with NHESP for compliance with MESA (321 CMR 10.00) and its implementing regulations. NHESP anticipates that the project will need to be conditioned to avoid a "take" of state-listed bird species. NHESP reminds the Proponent that MESA review is not complete and that no alteration or work associated with the proposed project shall occur until NHESP has made its final determination. NHESP will likely require timing restrictions and restrictions on the shoreline slope of the deposited materials. I refer the Proponent to the guidance provided by NHESP for information that should be provided during the MESA review process including proposed timeframes for work activities, and specific detail on the location, volume, and design specifications (elevation, width, and slope) of the nourishment areas.

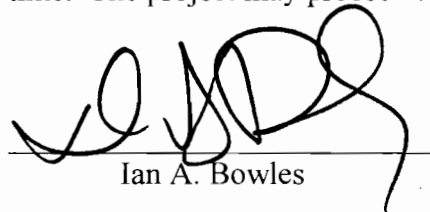
I refer the Proponent to MassDEP's comments regarding the Wetlands Protection Act Regulations provision which prohibits any short or long term adverse effects on the habitat of state-listed species located in resource areas proposed for alteration. I encourage the Proponent and NHESP to work together during the MESA review process to address outstanding rare species concerns and collaborate on efforts to assist the Proponent in the consolidation and streamlining of the permitting process.

Conclusion

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.

June 19, 2009

Date



Ian A. Bowles

Comments received:

06/08/2009 Cape Cod Commission
 06/08/2009 Massachusetts Division of Marine Fisheries
 06/08/2009 Division of Fisheries & Wildlife – Natural Heritage and Endangered Species Program
 06/09/2009 Massachusetts Department of Environmental Protection – SERO
 06/09/2009 Massachusetts Office of Coastal Zone Management
 06/10/2009 Massachusetts Board of Underwater Archaeological Resources

IAB/PPP/ppp