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July 10, 2009

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

PROJECT NAME : Swan Pond River and West Dennis Beach
PROJECT MUNICIPALITY : Dennis
PROJECT WATERSHED : Cape Cod
EEA NUMBER : 14419
PROJECT PROPONENT : Town of Dennis
DATE NOTICED IN MONITOR : May 20, 2009

Pursuant to the Massachusetts Environmental Policy Act (MEPA) (M.G.L. c. 30, ss. 61-62I) and Sections 11.06 and 11.11 of the MEPA Regulations (301 CMR 11.00), I have reviewed this project and hereby determine that it **does not require** further MEPA review. In a separate Draft Record of Decision (DROD) also issued today, I propose granting a Waiver from the requirement to prepare a mandatory Environmental Impact Report (EIR) for the project. This Certificate sets forth the issues that must be addressed by the Proponent during permitting and discusses recommendations that were submitted on the project during the MEPA comment period.

Project Description

As described in the Expanded Environmental Notification Form (EENF), the project consists of the maintenance dredging of the Swan Pond River channel and beach and dune nourishment on a barrier beach in Dennis. The project includes the dredging of 20,000 cubic yards (cy) of material from an approximate area of 550,000 square feet (sf) within the channel. Dredged materials will be reused to create a dune on West Dennis Beach. The Proponent is also seeking to permit West Dennis Beach to receive dredged materials in the future for further beach nourishment. The project is proposed in the interests of safe navigation, improvement of tidal flow from flushing, and reuse of dredge spoils for beach nourishment.

MEPA Jurisdiction and Required Permits

The project is undergoing review pursuant to Sections 11.03(3)(a)(1)(b) 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 ten acres or more of other wetlands (Land Under Ocean) 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 Dennis 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). The project may require a National Pollutant Discharge Elimination System (NPDES) Stormwater Permit for construction activities which disturb one acre or more of land.

The project is subject to the EEA Greenhouse Gas Policy and Protocol because it requires the preparation of a mandatory EIR. This is a dredging project that will not result in significant emissions of Greenhouse Gases (GHG) and therefore falls within the de minimis exception of the policy. The Proponent was not required to prepare an analysis of GHG emissions or identify measures to mitigate GHG emissions.

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, rare species and greenhouse gases.

Waiver Request

The Proponent filed an EENF with the MEPA office on May 13, 2009 that was subsequently noticed in the May 20, 2009 *Environmental Monitor*. Upon review of the EENF, it was determined that the Proponent had omitted indicating that the project exceeded a mandatory EIR threshold for potential wetland impacts. The Proponent filed and circulated a revised page one of the EENF on May 29, 2009 and this supplemental information was sufficient to constitute an EENF in accordance with the MEPA regulations with a request for a Waiver from the requirement to complete an EIR for the project. An extended review period of 51 days was held for the project.

Review of the EENF

Wetlands, Waterways and Tidelands

According to the documentation provided in the EENF, the cumulative project impacts are estimated to include alteration of: 550,000 (sf) of Land Under the Ocean; 459,900 sf of Coastal Beach; and 103,300 sf of Riverfront Area.

The project proposes maintenance dredging to -4.0 feet below Mean Low Water (MLW) which is the original channel depth as dredged previously in 1996-1997. The Proponent has proposed to work closely with the Town of Dennis Natural Resource Department to schedule the harvesting and relocation of any viable shellfish in the area of the proposed dredge. Approximately 20,000 cy of beach compatible sand will be hydraulically pumped to West Dennis Beach along with 10,000 cy of upland material to create a dune. Once the dune form is created there will be an aggressive planting schedule in place to establish beach grass and native beach plum to help stabilize the proposed dune. The project is proposed to enhance the sediment-starved beach and protect against continuous storm damage. In addition, endangered shorebird habitat will be enhanced. The project area is located on town-owned property; no beach nourishment is proposed on private property. 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 to obtain required State permits. 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.

The Division of Marine Fisheries (*Marine Fisheries*) has indicated that the project site lies within mapped shellfish habitat for quahogs (*Mercenaria mercenaria*), American oysters (*Crassostrea virginica*), blue mussels (*Mytilus edulis*) and soft shelled clams (*Mya arenaria*) which is afforded protection under the Wetlands Protection Act (310 CMR 10.34). *Marine Fisheries* has also identified Swan Pond River and surrounding embayments as winter flounder (*Pseudopleuronectes americanus*) spawning habitat. Accordingly, *Marine Fisheries* recommends a time-of-year (TOY) restriction prohibiting dredging from January 15 through June 15 of any year. In addition, *Marine Fisheries* has also identified Swan Pond River as containing diadromous fish populations and recommends a TOY restriction prohibiting all dredging and silt producing activities from March 15 through June 15. *Marine Fisheries* has identified the area of West Dennis Beach off Lighthouse Road as horseshoe crab spawning habitat. *Marine Fisheries* recommends a TOY restriction prohibiting the placement of beach fill below the Extreme High Water line from May 1 through July 31 of any year. If fill is to be placed on the beach outside of the recommended crab TOY, *Marine Fisheries* recommends that no fill be placed below the Mean High Water line. Finally, *Marine Fisheries* notes that eelgrass beds are situated directly outside of the river entrance and near the shore along West Dennis Beach and recommends the use of bottom weighted turbidity curtains around the dredge at all times. The EENF and the accompanying plans do not account for all of the TOY restrictions recommended by *Marine Fisheries*. I therefore ask that MassDEP incorporate conditions as appropriate in any permits issued for the project to address the concerns and recommendations of *Marine Fisheries*. I also ask that MassDEP consider the comments received from the Cape Cod Commission concerning the protection of shellfish populations.

According to the comments provided by MassDEP, condition 4 of the 1995 WQC issued for the previous dredging in 1996-1997 prohibited maintenance dredging activities until a long term dredging and disposal plan had been prepared. This requirement has not been complied with. The Proponent will therefore be required to submit to the MassDEP a long term dredging and disposal plan prior to the issuance of any MassDEP permits. The Proponent should also address MassDEP's comments on the adequate delineation and potential impacts of the project on nearby eel grass beds

as identified on MassDEP maps. The Waterways Regulations at 310 CMR 9.40(2) require that the dredging and dredged material disposal activities be designed and timed to minimize adverse impacts to submerged aquatic vegetation. While MassDEP does not specifically object to the updrift beach nourishment and dune construction at West Dennis Beach for this project, the Proponent will be required to perform an in-water survey to confirm the delineation of the eel grass beds and demonstrate that the project has been designed to avoid or minimize adverse impacts as part of the c.91 and WQC permitting processes. MassDEP recommends that the Proponent explore other potential downdrift beach nourishment sites for future maintenance dredging of the Swan Pond River. Finally, 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 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).

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. On April 21, 2009 NHESP issued a conditional no "take" determination letter for the project for compliance with the Wetlands Protection Act Regulations (310 CMR 10.37) and MESA. As set forth in that letter, the Proponent must comply with the following conditions in order to avoid a "take" of protected species:

- No beach nourishment from April 1 to August 31.
- Dredged material placed along the beach shall be graded to a slope no steeper than 10:1 horizontal:vertical slope. No vegetation shall be planted and no sand fencing shall be erected on the area of beach nourishment.
- The Proponent is responsible for protecting breeding Piping Plovers and Terns that may be attracted to the beach nourishment areas, as well as their eggs and unfledged chicks.
- Each year, beginning April 1, a qualified shorebird monitor approved by NHESP shall determine whether territorial or nesting Piping Plovers or Terns are present at beach nourishment areas, and erect and maintain warning signs and symbolic fencing around beach nourishment placed above the mean high tide line. Monitoring shall occur at least 2 times per week until at least July 1. However, if plovers or terns are found to be using the site, then monitoring frequency shall be increased to at least 3 times per week, and shall continue until all nesting and brood-rearing activity has been completed.
- The Proponent shall notify NHESP on or before March 1 each year as to what arrangements have been made for the aforementioned monitoring and site protection to occur. This notification shall include a written contract, memorandum of agreement, or some other

formal written agreement with the individual(s) or organization that will undertake monitoring and protection efforts in the field.

- A report shall be submitted to NHESP each year, on or before September 30, on standard census forms provided by NHESP, that summarizes the results of the state-listed species monitoring and site protection activities.

As indicated in the April 21, 2009 letter, NHESP typically approves dredging and beach nourishment projects for a maximum of a three-year period. I encourage the Proponent and NHESP to work together during the MESA review process to address outstanding rare species concerns.

Public Benefit Review

I have concluded that this water-dependent project will provide adequate public benefit in accordance with 301 CMR 13.04(1). A Public Benefit Determination (PBD) will be issued within 30 days of the issuance of the Final Record of Decision (FROD) approving the request for a waiver from the preparation of a mandatory EIR. Should a FROD not be issued, the PBD will be issued within 30 days of the issuance of a Certificate on the Final EIR.

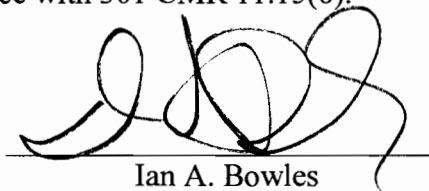
Conclusion

I am satisfied that the EENF has adequately described the general nature of the proposed project and proposed measures to avoid and minimize, or mitigate environmental impacts. Based on a review of the information provided by the Proponent and after consultation with the relevant public agencies, I find that the potential impacts of this project do not warrant further MEPA review. Outstanding issues may be addressed during the permitting process.

I have issued a DROD proposing to grant a Waiver from the requirement to prepare an EIR for the project. The DROD will be noticed in the July 22, 2009 issue of the *Environmental Monitor* for a 14-day public comment period ending August 5, 2009 in accordance with 301 CMR 11.15(2). Based on written comments received concerning the DROD, I shall either issue a Final Record of Decision (FROD) or a Scope for an EIR if the Full Waiver is not approved within seven days after the close of the public comment period, in accordance with 301 CMR 11.15(6).

July 10, 2009

Date



Ian A. Bowles

Comments received:

06/08/2009	Massachusetts Division of Marine Fisheries
06/29/2009	Cape Cod Commission
06/29/2009	Natural Heritage and Endangered Species Program
06/30/2009	Massachusetts Board of Underwater Archaeological Resources
06/30/2009	Massachusetts Department of Environmental Protection – SERO

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