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August 16, 2006

CERTIFICATE OF THE SECRETARY OF ENVIRONMENTAL AFFAIRS
ON THE
PHASE I DRAFT RECORD OF DECISION

PROJECT NAME : Sconset Beach Nourishment Project
PROJECT MUNICIPALITY : Siasconset, Nantucket
PROJECT WATERSHED : Cape & Islands
EOEA NUMBER : 13468
PROJECT PROPONENT : Siasconset Beach Preservation Fund
DATE NOTICED IN MONITOR : June 21, 2006

Pursuant to the Massachusetts Environmental Policy Act (M.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 hereby **propose to grant a waiver** to allow Phase I of the project as defined in this Record of Decision to proceed to the state permitting agencies pending preparation of an Environmental Impact Report (EIR) for the project as a whole. In a separate Certificate issued today, I have allowed the proponent to prepare an EIR for the project as a whole and laid out the scope for the required EIR.

Project Description

The purpose of the proposed project is to stabilize an approximately two-mile long eroding shoreline on Nantucket, from the town sewer beds south of Codfish Park to the Sankaty lighthouse. This is proposed to be accomplished by placing between 1.6 and 2.4 million cubic yards of sand as beach nourishment, installing Geotubes at the toe of the eroding bank, and constructing "sand gates," which are wooden, fence-like structures, perpendicularly to the shoreline throughout the nourishment footprint. The proponents have proposed obtaining the material necessary for the nourishment by dredging sand from two offshore borrow sites located

approximately three miles east of Nantucket island in state and federal waters. Additional volumes of sand will periodically be dredged from this or nearby shoals for supplemental fill activities as needed. The sand will be hydraulically pumped onto a 46-acre area of beach to create a berm approximately 200 - 250 feet wide to a depth of 10 feet prior to spreading. The exact location of the proposed offshore mining site has not yet been determined.

As described in the DEIR the preferred conceptual design involves placement of approximately 2.6 million cubic yards of sediment along four miles of the southeast shoreline of Nantucket for beach and dune nourishment; mining the sediments needed for the initial nourishment from a 345 acre offshore borrow site located approximately 2.7 miles east-northeast of Sankaty Head Lighthouse; construction of up to 13 new groins approximately 270 feet in length; placement of up to 6,100 linear feet of 30 – 60 foot circumference geotextile tubes filled with sand at the toe of the coastal bank, together with bank terracing and vegetative plantings on approximately 2000 linear feet of the coastal bank face; and possibly, the use of two existing beach dewatering systems to increase the longevity of the nourishment.

Required Permits and MEPA Jurisdiction

The project is undergoing review pursuant to Sections 11.03(3)(b)3, 11.03(3)(b)4, and 11.03(3)(a)1.b of the MEPA regulations, because the project involves the dredging of 10,000 or more cy of material, disposal of 10,000 or more cy of material and alteration of ten or more acres of any other wetland. The project will require a 401 Water Quality Certificate and a Chapter 91 License from the Department of Environmental Protection (DEP); and an Order of Conditions from the Nantucket Conservation Commissions (and hence Superseding Order from DEP if the Order is appealed). In addition, the Massachusetts Coastal Zone Management Office (CZM) will conduct Federal Consistency Review of the project, including the portions of the project located in federal waters. The project will require a Section 10/404 permit from the United States Army Corps of Engineers and a potential review and leasing of the borrow site in Federal water by the Minerals Management Service.

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 have the potential to cause significant Damage to the Environment. In this case, given the broad scope of the Chapter 91 permit, MEPA jurisdiction effectively extends to all aspects of the project that are within Massachusetts.

CZM has broad jurisdiction because federal law (pursuant to the Coastal Zone Management Act) specifically delegates review authority over projects in federal waters to the Coastal Zone Management Office of the adjacent coastal state, provided that the state has a federally approved Coastal Zone Management Plan.

Waiver Request

On June 21, 2006, the proponent requested that I grant a waiver to allow Phase I of the project to proceed in advance of completion of the EIR. The waiver request was submitted with the Draft EIR/NPC. As proposed, the proponent is requesting a waiver for the construction of Phase I, prior to the completion of the FEIR. The proponent has submitted a Notice of Project Change/Phase One Waiver request to allow construction of the proposed terraces on the coastal bank immediately while the remainder of the project completes review and permitting.

Criteria for Waiver

Section 11.11 of the MEPA Regulations provide that I may grant a waiver from any provisions of the MEPA regulations not specifically required by the MEPA statute upon a finding that strict compliance with the regulations will result in undue hardship and will not serve to minimize or avoid Damage to the Environment. Further, when a proponent seeks to proceed with Phase I of a project pending the preparation of an EIR for the project as a whole, the Phase I waiver request must meet additional tests including a test of insignificance and a test of severability.

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 I 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 I are insignificant; 2) ample and unconstrained infrastructure and services exist to support Phase I; 3) the project is severable, such that Phase I does not require the implementation of any other future phases; and 4) the agency action on Phase I will contain conditions that ensure due compliance with MEPA.

Findings:

1. The potential impacts of the project for Phase I are insignificant. The impacts do not trigger mandatory EIR thresholds.
 - Considered separately from the larger comprehensive project, the Phase I activities will not exceed MEPA review thresholds.
 - The proposed change in wetlands impacts is an additional 1.7 acres, or 0.5% of the total wetlands impacts of the 323 acres of overall impacts.

2. Ample and unconstrained infrastructure currently exists to support Phase I.
 - Phase I impacts do not depend on existing infrastructure facilities and are intended to protect Nantucket's roads, water lines and sewer lines.
3. The project is severable. Construction of Phase I does not require completion of the overall comprehensive project.
 - The Phase I activities are separate and distinct from the larger nourishment overall project. Implementation of Phase I components will not require the implementation of the additional project components.
4. The permitting associated with Phase I can include sufficient conditions to ensure compliance with MEPA prior to implementation of later phases.
5. The proponent must submit an EIR addressing the impacts of the entire project, Phase I and the overall comprehensive project, and propose appropriate mitigation.

The DEIR includes a description of the proposed terraces, but it does not indicate the source of sediment that will be used for the terracing and filling the coconut fiber bags. The sediment needed for this portion of the project should be brought in from an offsite source. I advise the proponent to consult with CZM on this topic.

Based on these findings, it is my judgment that the waiver request has merit, meets the tests established in Section 11.11 of the MEPA Regulations, and will serve to advance the interests of the Massachusetts Environmental Policy Act. Therefore, I propose to grant the waiver for Phase I of the project as defined in this Record of Decision. This Draft Record of Decision 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.

August 16, 2006

Date

Robert W. Golledge, Jr.

Comments received:

06/26/2006 State Representative Eric Turkington
 07/03/2006 State Representative Frank Hynes
 07/05/2006 State Representative Anthony Verga
 07/13/2006 State Representative Jeffrey Davis Perry
 07/17/2006 State Representative Demetrius Atsalis

07/17/2006 State Representative Thomas O'Brien
07/18/2006 State Representative Matthew Patrick
07/20/2006 State Representative Shirley Gomes
07/24/2006 Senator Steven Baddour
07/25/2006 State Representative Garrett Bradley
08/02/2006 Senator Therese Murray
08/03/2006 Senator Robert Travaglini

06/28/2006 Nantucket Association of Real Estate Brokers
07/03/2006 Kathleen M. Canaiy
07/03/2006 Nantucket Beach Foundation
07/11/2006 Mrs. Dennis Keller
07/17/2006 Robert Greenhill
07/17/2006 Sankaty Head Golf and Beach Club
07/17/2006 Kermit and Priscilla Roosevelt
07/18/2006 Kyle Latshaw and Loretta Yoder
07/19/2006 Helmut and Caroline Weymar
07/19/2006 W. Dexter and Susan Paine
07/19/2006 John Osborn
07/20/2006 Sam Furrow
07/20/2006 Peter Soros
07/20/2006 Chansoo Joung
07/20/2006 Brian and Julie Simmons
07/20/2006 Larry Pollock
07/20/2006 The Sconset Trust
07/20/2006 Andrew Saul
07/20/2006 Frederick Singer
07/20/2006 Catherine, Jeffrey, Preston and Sabrina Soros
07/20/2006 CZM / Board of Underwater Archaeological Resources
07/21/2006 Mass Audubon
07/21/2006 DEP/Boston
07/21/2006 Albacore Charters
07/21/2006 Derek Till
07/21/2006 Joshua Posner
07/24/2006 Jeffrey Soros
07/24/2006 James Walker
07/24/2006 Coastal Zone Management
07/24/2006 Massachusetts Historical Commission
07/24/2006 Division of Fisheries & Wildlife
07/24/2006 National Oceanic and Atmospheric Administration
07/25/2006 United States Environmental Protection Agency
07/25/2006 Cape Cod Commercial Hook Fishermen's Association

EOEA#13468

DROD Certificate

08/16/06

07/26/2006 Nantucket Land Council
07/26/2006 Division of Marine Fisheries
07/31/2006 Robert Petty
08/02/2006 Nantucket Board of Selectmen
08/02/2006 Nantucket Conservation Commission
08/08/2006 Epsilon Associates' Response to Comments

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