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November 26, 2007

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

PROJECT NAME : Maintenance Dredge Disposal/Beach Nourishment Area
 Expansion
 PROJECT MUNICIPALITY : Tisbury
 PROJECT WATERSHED : Martha's Vineyard
 EOE A NUMBER : 14121
 PROJECT PROPONENT : Mink Meadows Association
 DATE NOTICED IN MONITOR : October 27, 2007

Pursuant to the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-62H) 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).

The proposed project consists of maintenance dredging of the Mink Meadows Yacht Basin inlet channel and use of dredged material (4,253 cubic yards) to extend the existing beach nourishment area by an additional 880 feet along the beach to the northeast (for a total length of 1,180 feet). The purpose of the project is to maintain tidal flow through the inlet to ponds and other wetlands in the Mink Meadows area, in order to reduce the spread of phragmites and potential degradation of existing wetlands that may occur if flow through the channel is blocked for extended periods of time. The project site is located within estimated and priority habitat of rare species and within designated shellfish habitats that are approved as growing areas. Mapped eelgrass areas are located offshore from proposed beach nourishment areas. The Environmental Notification Form (ENF) proposes removal of 2,000 cubic yards of dredge material from the inlet channel in an area approximately 40 feet wide by 400 feet long. The ENF proposes excavating the channel on an "as needed" basis. The ENF also proposes excavation of approximately 2,250 cubic yards of sand from the fillet at the jetty on the west side of inlet channel (from an area approximately 500 feet long).

The project will result in wetlands impacts (2.6 acres), including 26,750 square feet (sf) of alteration to Land Under Ocean; 85,930 sf of Coastal Beach alteration; 34,175 sf of alteration

to Land Containing Shellfish; and 85,930 sf of alteration to Land Subject to Coastal Storm Flowage. The project is undergoing environmental review pursuant to Section 11.03 (3)(b)(1)(a) because it will alter barrier beach, Section 11.03(3)(b)(1)(f) because it will alter 1/2 acre or more of other wetlands, and Section 11.03(2)(b)(2) because it includes an area mapped as Priority Habitat for Rare Species and may result in a take of an endangered or threatened species or species of special concern.

The project is subject to review by the Division of Fisheries and Wildlife, Natural Heritage and Endangered Species Program (NHESP) under the Massachusetts Endangered Species Act (MESA). The project requires a Chapter 91 License and a 401 Water Quality Certificate from the Massachusetts Department of Environmental Protection (MADEP) and an Order of Conditions from the Tisbury Conservation Commission (and, on appeal only, a Superseding Order from MADEP). The project also requires a Category 2 Programmatic General Permit (PGP) from the U.S. Army Corps of Engineers. The proponent should consult with the Massachusetts Office of Coastal Zone Management (CZM) to determine if the project is subject to a CZM Federal Consistency Review.

The project does not involve financial assistance from the Commonwealth. Therefore, MEPA jurisdiction applies to those aspects of the project, within the subject matter of required or potentially required Permits that may cause Damage to the Environment as defined in the MEPA regulations. In this case, MEPA jurisdiction extends to wetlands, waterways and tidelands, water quality, and rare species.

As further detailed in the ENF, sand deposition during storm events has partially or fully blocked the inlet channel in the past. The proponent has been conducting maintenance dredging once or twice a year in the channel and depositing dredged material as beach nourishment on a 300-foot stretch of beach east of the jetty. The ENF proposes continued dredging of inlet, additional dredging of west-side fillet, and extension of the beach nourishment area, to reduce sand deposition in inlet and thereby reduce the frequency of dredging required. The NHESP has determined that dredging on the west side of the inlet channel would constitute a prohibited "take" and can not be permitted under the Massachusetts Endangered Species Act (MESA) and its implementing regulations (321 CMR 10.00). Maintenance dredging of the inlet and beach nourishment on the east side of the east jetty may be conditionally approved as further detailed below and in the NHESP comment letter.

The project site is located within Priority Habitat and Estimated Habitat of Piping Plover (*Charadrius melodus*, threatened) and Least Terns (*Sterna antillarum*, Special Concern), which are state-listed and protected in accordance with MESA. The Piping Plover is also federally protected as a "Threatened" species pursuant to the Federal Endangered Species Act (ESA, 50 CFR 17.11). The NHESP has determined that the proposed excavation of the "fillet" on the west side of the inlet channel will result in adverse effects to Resource Area habitats and a "take" of state-listed species. The proposed excavation would result in a direct loss of habitat and the disruption of the nesting, breeding and feeding behaviors of the Piping Plover and Least Tern. Therefore, no sand or other sediments shall be removed from the coastal beach, dunes, or intertidal areas to the west of the inlet (i.e. the "fillet").

The proponent should ensure that the project is implemented in accordance with NHESP requirements, which should be incorporated into the Tisbury Conservation Commissions Order of Conditions. In accordance with the NHESP determination, proposed maintenance dredging of the inlet and beach nourishment to the east of the east jetty must be conditioned to avoid adverse effects to Resource Area habitats and to avoid a "take" of state-listed species. Conditions include a timing restriction for the proposed work, guidelines for the beach nourishment, and monitoring requirements. Dredging and beach nourishment cannot be conducted during the April 1-August 31 period, unless conducted in accordance with a contingency plan approved by NHESP. As noted in the NHESP comment letter, the proponent wishes to develop a dredging and beach nourishment contingency plan in the event that a storm were to completely obstruct the inlet channel during the restricted time period (April 1-August 31). The proponent should continue working with NHESP to finalize details of the contingency plan. NHESP anticipates being able to condition the work (inlet dredging and beach nourishment to the east of the east jetty) to avoid adverse effects to Resource Area habitats and to avoid a "take" of state-listed species.

Portions of the project site are adjacent to mapped eelgrass beds and within designated shellfish habitats that are approved as growing areas. The proponent has committed to implement erosion and sedimentation controls during the construction phase and prohibit refueling within 100 feet of coastal resource areas. The proponent should place beach fill above the mean high water line and implement additional measures as appropriate to avoid and minimize adverse impacts to shellfish habitat and eelgrass beds. The proponent should consult with the Division of Marine Fisheries and the Tisbury Conservation Commission for additional guidance on appropriate measures to protect shellfish and other resource areas.

As noted in the MassDEP comment letter, the proponent submitted a Notice of Intent (NOI) to the Tisbury Conservation Commission and MassDEP on October 4, 2007. The proponent should submit, to MassDEP and the Commission, an analysis of the receiving beach and dredged materials grain size to determine compatibility. I refer the proponent to the MassDEP comment letter for guidance on the Massachusetts Contingency Plan including the anti-degradation provisions of 310 CMR 40.0032 that may apply to the project.

Based on review of the ENF, comment letters received, and consultation with relevant agencies, I find that the impacts associated with the project do not warrant further MEPA review. I am satisfied that any remaining issues can be adequately addressed during the state and local permit and review processes. The project may proceed to state permitting.

November 26, 2007
DATE



Ian A. Bowles, Secretary

Comments Received:

- 11/05/2007 Division of Fisheries and Wildlife, Natural Heritage and Endangered Species Program
- 11/16/07 Department of Environmental Protection, Southeast Regional Office

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