



The Commonwealth of Massachusetts

Executive Office of Environmental Affairs

100 Cambridge Street, Suite 900

Boston, MA 02114

Deval Patrick
GOVERNOR

Timothy Murray
LIEUTENANT GOVERNOR

Ian Bowles
SECRETARY

Tel: (617) 626-1000
Fax: (617) 626-1181
<http://www.mass.gov/envi>

January 29, 2007

CERTIFICATE OF THE SECRETARY OF ENVIRONMENTAL AFFAIRS
ON THE
FINAL ENVIRONMENTAL IMPACT REPORT

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 : December 23, 2006

As Secretary of Environmental Affairs, I hereby determine that the Final Environmental Impact Report (FEIR) submitted on this project **adequately and properly complies** with the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-62H) and with its implementing regulations (301 CMR 11.00).

As described in the FEIR, the project involves placement of approximately 2.6 million cubic yards of sediment along 3.1 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; bank terracing and vegetative plantings on approximately 2,000 linear feet of the coastal bank face; and the repair and use of existing beach dewatering systems to increase the longevity of the nourishment.

Based upon comments received on the DEIR, the proponent has eliminated the previously proposed Geotube (sand-filled geotextile tube) and the 13 proposed groins. These coastal engineering structures had the potential to have adverse impacts to coastal beach and downdrift coastal resources. The elimination of these components of the project greatly reduces the potential impacts of the proposed project, while maintaining a reasonable probability of achieving the project's purpose. In addition, the proponent has proposed to augment the existing dewatering system(s) in order to attempt to maximize retention of sand and potentially enhance nourishment longevity.

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. 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.

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.

MEPA Review Process and Approval Standards

Under Section 11.08(2) of the MEPA Regulations, during the course of an EIR review, I may review any relevant information from any source to determine whether the EIR is adequate. To that end, I have considered both the EIR itself, as well as comment letters received, additional information from consultation meetings between state and federal agency staff, and correspondence from the project proponent.

MEPA review is an informal process, which does not itself result in any formal adjudicative decision approving or disapproving a project. Section 11.08(8) of the MEPA Regulations requires me to find a FEIR adequate even if certain aspects of the project or issues require additional analysis of technical issues, so long as I find that the aspects and issues have been clearly described and their nature and general elements analyzed in the EIR or during MEPA review, that the aspects and issues can be fully analyzed prior to any Agency issuing its Section 61 Findings, and that there will be meaningful opportunities for public review of the additional analysis prior to any Agency taking Agency Action on the Project. As described in more detail in this Certificate, after examining the record before me, I find that there is enough information on project alternatives, environmental impacts, and mitigation to meet this standard.

Prior to project commencement, each state permitting agency must prepare and adopt Section 61 Findings pursuant to MEPA, which will detail each agency's enforceable commitments to actions that will avoid, minimize, or mitigate the project's environmental impacts. The project will also require several state permits as described above. The proponent can resolve any remaining issues with the permitting agencies during permitting. Several comment letters have outlined areas where additional technical analysis may be required. I have highlighted some of the major concerns below. I ask that the state permitting agencies and the proponent consider carefully the comments received on the FEIR when finalizing the details of state permit conditions and the proponent's mitigation commitments.

General

I find that the FEIR adequately addresses the issues remaining from the Certificate on the Draft EIR and provides adequate information to understand project impacts and provides state agencies with information necessary to make their required Section 61 Findings. The proponent has met its obligations under MEPA to avoid or minimize impacts wherever possible, and to develop mitigation commensurate with impacts in those areas where impacts are unavoidable. The MEPA review of the project is concluded.

Summary of Final EIR Mitigation:

The proponent has consulted closely with state agencies throughout the MEPA review process. The FEIR incorporates substantial mitigation commitments, as described in the EIR and further clarified in a letter dated January 25, 2007 from the proponent to EOEA. The proponent committed to the following mitigation measures under MEPA jurisdiction:

Time-of-Year Restrictions

- The proposed borrow site is designated as Essential Fish Habitat (EFH) for winter flounder. Ichthyoplankton data collected during the fisheries sampling program indicates that a small amount of winter flounder spawning occurs at the borrow site. Winter flounder spawn in Southern New England during the February to May time period. The proponent does not propose any construction during this time period.
- Seasonal restrictions on work in shorebird nesting habitat

Shellfish Harvest and Relay

- The borrow site may provide suitable habitat for surfclam. Proponent has agreed to undertake a pre-construction harvesting effort to remove legal-size surfclams so that they can be brought to market, and to relay smaller sized surfclams from the sand mining area to adjacent suitable habitats on Bass Rip. This harvest will be undertaken prior to construction activity when the clams are active to aid their transplantation to the relayed locations.

Cobble Habitat Mitigation

- The proponent has identified and characterized an area of cobble habitat in the nearshore area off of Sankaty Lighthouse. The total area being mitigated is 59 acres. The proponent will procure approximately 28,000 clean concrete railroad ties from the Massachusetts Bay Transportation Authority (MBTA) for use as an artificial reef at three sites recommended by Nantucket fishermen. Two of the sites are located near the entrance to Nantucket Harbor; the third location is near Squam Head between the project area and Great Point.

Marine Protection Observer

- The proponent will post a trained marine protection observer specialist on-board the dredge during construction to avoid conflicts between the dredge and protected marine resources. The marine protection observer will complete daily reports that will be submitted to National Marine Fisheries Service (NMFS) and the Division of Marine Fisheries (DMF) on a weekly basis.

Monitoring for Verification of Impacts and Documentation of Habitat Recovery

- The monitoring program is a central part of the overall mitigation package due to the inherent need to confirm project impacts and demonstrate habitat creation success.
- Construction-period surveys will be conducted to assess changes in physical and biological characteristics in the project area and guard against unanticipated impacts from project construction. The proponent will conduct construction period monitoring for turbidity and finfish distribution. If the turbidity threshold is exceeded, the contractor will be required to modify the construction operation to lessen turbidity generated by project construction activities.
- The proponent will conduct post-construction monitoring to assess the recovery of marine resources. Comprehensive monitoring of the project area will provide data documenting shoreline position and volumetric changes within and adjacent to the nourished area. Biological monitoring will focus on assessing habitat recovery as measured by the recolonization of disturbed area by benthic organisms.

Fishermen Compensation

- The proponent is open to evaluating potential impacts of the project on the fishing industry and will discuss the need for financial compensation if material adverse financial impacts can be demonstrated.

Review of the FEIR:

The FEIR has adequately responded to the Draft EIR certificate. It should be noted that

during the review of the Draft EIR, comments requested additional technical analysis, which the proponent provided in the FEIR. However, the proponent should continue to work with local, state and federal agencies to provide Draft Section 61 Findings.

Post-construction Monitoring

The FEIR included only a brief description of the monitoring protocol proposed for use in the assessment of any potential adverse impacts associated with the project. The proponent must develop a detailed monitoring program, agreed upon by all relevant parties, and incorporated as a condition(s) of the permits for the project, prior to commencement of construction. Federal, state and local agencies, through their comments, have identified details that should be included in the monitoring program. I strongly encourage the proponent to form a Technical Review Committee to be made up of local, state and federal agency representatives, who's function would be to assist in the development of the comprehensive monitoring plan; review monitoring reports and analyze data; determine, based on those reports, when pre-determined triggers have been reached; participate in the process of identification of future borrow sites; and otherwise be available to guide the construction and monitoring of the project.

Beach Nourishment

To assess the performance of the beach nourishment project, the proponent has proposed a monitoring program consisting of beach and hydrographic surveys along standardized beach profile lines. The profiles will be surveyed from a point landward of the fill to an offshore depth of -30 feet Mean Low Water (MLW) (seaward of the point of closure). The proponent will conduct a survey immediately following initial placement, six-months after construction, and annually thereafter. Given that it is anticipated that about one year will be required to achieve complete or near complete equilibration of the beach, the proponent should conduct an additional survey one year after initial placement.

Because the Massachusetts Natural Heritage and Endangered Species Program (NHESP) has mapped a significant portion of the coastal beach and dune within the project area as habitat for rare and endangered species (shorebirds), the proponent should coordinate with the NHESP relative to the timing of beach construction, dewatering system installation, location of construction equipment access corridors and staging areas as well as the placement of snow fencing and/or planting of vegetation within existing and potential shorebird habitat.

Borrow Site

The FEIR proposes to conduct the dredging and nourishment activities between the months of May and November, primarily to avoid the winter flounder spawning period and because of favorable weather conditions for offshore dredging. During the 401 Water Quality Certification process, DEP will consult with the Division of Marine Fisheries (DMF) and other

agencies to determine the most appropriate Time-of-Year restriction applicable to this project. Therefore, the proponent should work closely with these agencies to develop Time-of-Year restrictions.

The 401 Water Quality Certificate will also impose turbidity monitoring during construction, and require that the proponent develop and implement a long-term post-construction benthic monitoring program to monitor recovery of the benthic community impacted by this project. The FEIR states that previous studies of similar projects have found habitat recovery within one to three years and has proposed a three-year monitoring program. The proponent should work with DEP and other regulatory and resource agencies to develop a monitoring program with appropriate sampling protocols and statistical tests to evaluate the recovery of the system to a level that is consistent with pre-construction characteristics. The 401 Water Quality Certificate is likely to require additional habitat mitigation if habitat recovery is not documented by the results of the monitoring program.

Dredging of nourishment material is proposed to occur with the use of a cutterhead dredge. Material will be deposited directly onto the beach through a pipeline system extending from the dredge vessel. I remind the proponent that a Chapter 91 License will be required for both the dredging activity and placement of the material on the beach.

Habitat Mitigation

To mitigate the unavoidable impact of covering approximately 10 acres of nearshore cobble/boulder habitat with dredged sand for beach nourishment, the proponent has proposed a concept designed to create artificial reef habitat. At this time, the proponent has proposed to use approximately 28,000 concrete railroad ties to create an artificial reef at three sites recommended by local fisherman.

Nantucket Shoals provide important feeding, spawning, and nursery grounds for many species of finfish and invertebrates, including many of commercial and recreational importance. I am concerned that the proposed reefs could change the sediment transport and wave dissipation patterns in the proposed locations, thereby causing an adverse effect on the erosion and accretion patterns, as well as storm damage patterns along these sections of shoreline. Therefore, the proponent should work with the fishery and other state agencies in defining the details of this component of the project or consider a mitigation option that more closely replicates the type of habitat that will be covered by the nourishment. In addition, I am requiring that the proponent characterize the existing habitat in the proposed reef locations prior to permitting.

Beach Dewatering

The FEIR indicates that the proponent will be reactivating the existing beach dewatering systems at Lighthouse South/South (LHS/S) and Codfish Park originally approved in a

Superseding Order of Conditions under DEP file number SE 48-1248. The dewatering systems are intended to enhance the long-term effectiveness of the beach nourishment program. The proponent proposes to install six new 400-foot long drainage pipes at the dewatering site following beach nourishment activities. The drainage pipes will be installed by directional drilling methods. This installation technology is expected to have minimal disturbance to the beach. Connection of the drainage pipes to the wet wells will require excavation of a trench in the beach fill to a depth of approximately eight feet. The trench will be back-filled upon completion of the connection process. If the trench needs to be stabilized or dewatered during the connection process, then the proponent must provide more specific information to DEP prior to permitting. In addition, the FEIR does not specify what equipment will be used, where the excavated material will be stockpiled, whether sheet-pile cofferdams will be needed, and whether the trench will have to be dewatered. The proponent must provide this information prior to the permitting of the project.

Underwater Archeological Resources

The FEIR contains no data regarding submerged cultural resources. However, the Massachusetts Board of Underwater Archeology Board has approved the proposed survey research design, methodology and reporting plans. The proponent must complete the survey and reporting prior to permitting.

Future Borrow Site Identification for Future Re-nourishment

The projected life of the proposed nourishment project is expected to be relatively short. Therefore, the proponent must develop a scope for the identification of future borrow site(s), and get local, state and federal agency concurrence. I strongly advise a timeline for submitting the scope within twelve months following the completion of the first re-nourishment. Planning for future renourishment should also include the results of the nourishment monitoring so that the proponent can evaluate effectiveness of the design and consider whether changes should be made in the future, such as a selective use of groins to help maintain the beach profile for longer periods; the use of material of a different grain size or mix of grain sizes; and dredging the material in a furrow pattern that would leave some undisturbed areas within the overall borrow site that continue to serve as habitat and assist in the recovery of adjacent mined areas.

Section 61 Findings

I find the FEIR to be adequate, and am allowing the project to proceed to the state permitting agencies. The Final EIR contains adequate information on alternatives, impacts, and mitigation, and allows the state permitting agencies to understand the environmental consequences of their permit decisions. The proponent and state agencies should forward copies of the Section 61 Findings to the MEPA Office for completion of the file.

To keep all interested parties fully informed of permitting developments, the proponent should provide notification of local public meetings regarding the project to those parties who commented on the ENF, Draft EIR and Final EIR. I also request that the proponent send to the commenters notices of any relevant state permitting comment periods, meetings, or other opportunities for public input into the state permitting processes

January 29, 2007

Date



Ian A. Bowles

Comments Received:

- 12/26/2006 Farrow Auction Company / Sam Farrow
- 01/09/2007 Martin McGowan
- 01/12/2007 NP&EDC / Barry Rector
- 01/16/2007 Lynne Stahler
- 01/16/2007 James & Deborah Walker
- 01/17/2007 The Sconset Trust / Robert Dean Felch
- 01/17/2007 Caroline Ellis
- 01/18/2007 Nantucket Beach Foundation / Jonathan Betts 01/18/2007 Joshua Posner
- 01/18/2007 State Representative Demetrius Atsalis
- 01/18/2007 State Representative John Quinn
- 01/18/2007 State Representative Joseph Driscoll
- 01/18/2007 State Representative Vinny DeMacedo
- 01/18/2007 State Representative Michael Costello
- 01/19/2007 Massachusetts Board of Underwater Archaeological Resources
- 01/19/2007 State Representative Stephen Canessa
- 01/19/2007 State Senator Steven Baddour
- 01/19/2007 F. Helmut Weymar & Caroline Weymar
- 01/19/2007 Michael Price
- 01/19/2007 James Haslam
- 01/19/2007 State Representative Bruce Ayers
- 01/19/2007 State Representative Anthony Petrucci
- 01/19/2007 State Representative Cleon Turner
- 01/19/2007 State Representative Michael Rodrigues
- 01/19/2007 State Representative Jeffrey Davis Perry
- 01/19/2007 Senator Therese Murray
- 01/19/2007 Senator Stephen Brewer
- 01/19/2007 John M. Menard / Senate Majority Whip

Comments Received:

01/21/2007 Dorothy and George Vollans
01/21/2007 Kyle Latshaw & Loretta Yoder
01/22/2007 Massachusetts Division of Marine Fisheries
01/22/2007 Catherine Flanagan Stover
01/22/2007 Eric Miller, Ph.D.
01/22/2007 Office of Coastal Zone Management
01/22/2007 Nantucket Conservation Commission
01/22/2007 Nantucket Land Council, Inc.
01/22/2007 Patricia Haines
01/22/2007 State Senator James Timilty
01/22/2007 Robert Dumper
01/22/2007 Kermit and Priscilla Roosevelt
01/22/2007 State Senator Robert Travaglini
01/22/2007 Daryl Westbrook
01/22/2007 State Representative Matthew Patrick
01/22/2007 Robert Kuratek
01/22/2007 Norwood Davis
01/22/2007 Capt. Arthur Gasbarro, 111
01/22/2007 State Representative Susan Williams Gifford
01/22/2007 State Representative Eric Turkington
01/22/2007 Alice Emerson
01/22/2007 Kristal Moffett
01/22/2007 Winston Hindle
01/22/2007 Andrew Saul
01/22/2007 State Representative Anthony Verga
01/22/2007 David Boyce
01/23/2007 Division of Fisheries & Wildlife
01/23/2007 Senator Bruce Tarr
01/23/2007 David and Jean Nathan
01/23/2007 State Representative Garrett Bradley
01/23/2007 State Senator Robert O'Leary
01/24/2007 Siasconset Civic Association
01/24/2007 U.S. Environmental Protection Agency
01/24/2007 Daniel Lugosch
01/24/2007 Richard Green
01/24/2007 Constance Keller
01/24/2007 Mass Department of Environmental Protection / Boston
01/24/2007 Mass Historical Commission
01/25/2007 Larry Pollock
01/25/2007 Jeffrey Soros

Comments Received:

- 01/25/2007 Mass Audubon
- 01/25/2007 Frederick Singer
- 01/25/2007 Brian Simmons
- 01/25/2007 Representative Frank Hynes
- 01/25/2007 U.S. National Oceanic and Atmospheric Administration
- 01/26/2007 Derek Till

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