The Gut

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON MA 02108 (617)292-5500

ARGEO PAUL CELLUCCI
Governor

TRUDY COXE
Secretary

DAVID B. STRUHS
Commissioner

October 3, 1997

Town of Edgartown
c/o Paul Bagnall, Shellfish Constable and
Charles Blair, Harbormaster
P.O. Box 481
Edgartown, MA 02539

re: WATER QUALITY CERTIFICATION
Application BRP WW 08
Minor Project Dredging and
Beach Nourishment

at: Cape Poge Bay ("The Gut")
Edgartown
DEP Wetlands FILE #: 20-655
DEP Transmittal Number: 123381

Dear Sirs:

The Department has reviewed your application for Water Quality Certification, as referenced above. In accordance with the provisions of Section 401 of the Federal Clean Water Act as amended (33 U.S.C. §1251 et seq.), MGL c.21, §§ 26-53, and 314 CMR 9.00, it has been determined there is reasonable assurance the project or activity will be conducted in a manner which will not violate applicable water quality standards (314 CMR 4.00) and other applicable requirements of state law.

The waters of Cape Poge Bay are designated as Class SA Waters with Open Shellfishing in the Massachusetts Surface Water Quality Standards. Such waters are intended "as excellent habitat for fish, other aquatic life and wildlife and for primary and secondary contact recreation". Anti-degradation provisions of these Standards require that "existing uses and the level of water quality necessary to protect the existing uses shall be maintained and protected".

The proposed project involves hydraulic dredging of a total of 9900 cubic yards from Cape Poge Gut in an area 300 ft by 450 ft and 2.5 ft deep (at mean low water). This work will provide safer access to Cape Pogue Bay for the public, including commercial shellfishermen. The dredged materials, almost entirely sand with less than 1% silt/clay, will be pumped above mean high water at two locations: one, the barrier spit at the end of Cape Poge Elbow, and two, just south of the Gut on North Neck. The sediment grain sizes

of the dredged material appear compatible with the beach material based on the sample data provided. The work is expected to take about eight days.

Adverse impacts to water dependent resources have been avoided or minimized as follows. There are extensive eel grass beds as well as scallops, and hard and soft shelled clams throughout Cape Poge Bay according to Massachusetts Division of Marine Fisheries (MDMF); however, these resources do not inhabit the Gut area to be dredged. Winter flounder are likely to use the Bay as nursery and spawning area. Since the Gut serves as access to and from the Bay, the dredge volume is nearly 10,000 cy, and this Certification is a ten year permit, MDMF recommends that dredging not occur during the winter flounder spawning period beginning January 15 (see condition 7 below). The beach nourishment material will be placed on the beach above mean high water where a berm of beach material will contain the dredged sediments while they dewater. Silt barriers will be placed to protect salt marsh in both nourishment areas. Work is proposed to occur between November 1 and March 15, in accordance with Natural Heritage Program recommendations, to ensure no impact to nesting or chick rearing of Piping Plovers and Least Terns. These species are designated respectively in Massachusetts "threatened" and of "special concern." Two additional species, the Snowy Egret and the Black-crowned Night Heron, are present on the beaches and the protective measures recommended by the Natural Heritage Program will be followed.

No comments were received by the Department during the public comment period for this application, May 30 to June 21.

Therefore, based on information currently in the record, the Department grants a 401 Water Quality Certification for this project subject to the following conditions to maintain water quality, to minimize impact on waters and wetlands, and to ensure compliance with appropriate state law:

1. All waters including wetlands are protected by anti-degradation provisions of the Massachusetts Surface Water Quality Standards. The Contractor shall take all steps necessary to assure that the proposed activities will be conducted in a manner which will avoid violations of said standards.

2. Prior to construction, the Department shall be notified of any proposed change(s) in plans which may affect waters or wetlands. The Department will determine whether the change(s) require a revision to this Certification.

3. Future maintenance dredging and beach nourishment may be conducted as necessary for a period of ten (10) years from the date of this Certification or the date of the Chapter 91 permit for this project, provided that the initial project and any subsequent dredging has been conducted satisfactorily with

no violations of the terms and conditions of this Certification.

4. Dredging may begin once all other permits have been received.

5. Work shall conform substantially to plans submitted with this application, entitled "Dredging Plan for 'The Gut' - Cape Poge Pond", prepared for the Town of Edgartown," dated April 10, 1997, revised August 1, 1997 (referencing mean low water), stamped and signed by Richard J. Barbini, P.E., two sheets.

6. No dredged material shall be placed in salt marsh; adequate silt barriers shall be placed to protect any salt marsh near the beach nourishment areas.

7. No dredging shall occur during the winter flounder spawning period, January 15 through May 30 for this area. Note that the allowed dredging period that is protective of all resources is November 1 to January 15.

This certification does not relieve the applicant of the obligation to comply with other applicable state or federal statutes or regulations. The Applicant is reminded of the requirement to comply with all requirements and conditions of the U.S. Army Corps of Engineers Programmatic General Permit (available from the U. S. Army Corps of Engineers at 1-800-362-4367. Any changes made to the project as described in the previously submitted Notice of Intent, 401 Water Quality Certification application, or supplemental documents will require further notification to the Department.

The applicant or property owner; or any person aggrieved by this certification, any group of ten persons, or any governmental body or private organization with a mandate to protect the environment who has submitted written comments during the public comment period have a right to appeal this certification. A notice of claim to an Adjudicatory Hearing must be accompanied by the filing fee specified in 310 CMR 4.00, and the enclosed Departmental Action Fee Transmittal Form submitted to: the Office of Administrative Appeals, DEP, P.O. Box 4062, One Winter Street, Boston, MA 02108, by hand delivery or certified mail postmarked within twenty-one days of the date of this certification. A copy must also be sent to the DEP Division of Wetlands and Waterways in Boston. The notice of claim must comply with the requirements of 314 CMR 9.10(3). Failure to submit comments before the end of the public comment period may result in the loss of the right to an adjudicatory hearing.

Failure to comply with this certification is grounds for enforcement, including civil and criminal penalties, under MGL c.21 §42, 314 CMR 9.00, MGL c. 21A §16, 310 CMR 5.00, or other possible actions/penalties as authorized by the General Laws of the Commonwealth.

If you have questions on this decision, please contact Judith Perry at 617-292-5655.

Sincerely,

Pamela D. Harvey

Pamela D. Harvey
Acting Deputy Director
Wetlands and Waterways Program

enclosure; Departmental Action Fee Transmittal Form

cc: Edgartown Conservation Commission
Karen Adams, Regulatory Division, U.S. Army Corps of Engineers, 424 Trapelo Rd., Waltham 02254-9149
Robert L. Fultz & Associates, 74 Colonial Road, Marshfield 02050
Leigh Bridges, DMF
Mitch Ziencina, SERO/WW, Ch 91

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Narrows

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON MA 02108 (617)292-5500

Rec'd 10-10-97

ARGEO PAUL CELLUCCI
Governor

TRUDY COXE
Secretary

DAVID B. STRUHS
Commissioner

October 3, 1997

Town of Edgartown
c/o Paul Bagnall, Shellfish Constable and
Charles Blair, Harbormaster
P.O. Box 481
Edgartown, MA 02539

re: WATER QUALITY CERTIFICATION
Application BRP WW 08
Minor Project Dredging and
Beach Nourishment

at: Cape Poge Bay, "The Narrows"
Edgartown
DEP Wetlands FILE #: 20-653
DEP Transmittal Number: 122716

Dear Sirs:

The Department has reviewed your application for Water Quality Certification, as referenced above. In accordance with the provisions of Section 401 of the Federal Clean Water Act as amended (33 U.S.C. §1251 et seq.), MGL c.21, §§ 26-53, and 314 CMR 9.00, it has been determined there is reasonable assurance the project or activity will be conducted in a manner which will not violate applicable water quality standards (314 CMR 4.00) and other applicable requirements of state law.

The waters of Cape Poge Bay are designated as Class SA Waters with Open Shellfishing in the Massachusetts Surface Water Quality Standards. Such waters are intended "as excellent habitat for fish, other aquatic life and wildlife and for primary and secondary contact recreation". Anti-degradation provisions of these Standards require that "existing uses and the level of water quality necessary to protect the existing uses shall be maintained and protected".

The proposed project involves hydraulic dredging of a total of 3100 cubic yards from Cape Poge "Narrows" to maintain a channel 50 ft wide by 970 ft long and 3.0 ft deep (at mean low water). This work will provide safer access to Cape Pogue Bay for the public, including commercial shellfishermen. The sandy dredged materials (0% silt/clay) will be pumped above mean high water on the barrier beach immediately to the east at two locations: one, on the beach fronting Nantucket Sound, known as East Beach, and two, on the roadbed on the west side of the barrier beach. The sediment grain

sizes of the dredged material appear compatible with the beach material based on the sample data provided. The work is expected to take about three days.

Adverse impacts to water dependent resources have been avoided or minimized as follows. There are extensive eel grass beds as well as scallops, and hard and soft shelled clams throughout Cape Poge Bay according to Massachusetts Division of Marine Fisheries (MDMF). However, these resources do not inhabit the Narrows channel to be dredged. Winter flounder which are likely to use the Bay as nursery and spawning area will not be significantly impacted by the limited dredging proposed in the Narrows. The beach nourishment material will be placed on the beach above mean high water where a berm of beach material will contain the dredged sediments while they dewater. Silt barriers will be placed to protect salt marsh in the nourishment areas, as required by the Conservation Commission's Order. Work is proposed to occur between November 1 and March 15, in accordance with Natural Heritage Program recommendations, to ensure no impact to nesting or chick rearing of Piping Plovers and Least Terns. These species are designated respectively in Massachusetts "threatened" and of "special concern."

No comments were received by the Department during the public comment period for this application, May 30 to June 21.

Therefore, based on information currently in the record, the Department grants a 401 Water Quality Certification for this project subject to the following conditions to maintain water quality, to minimize impact on waters and wetlands, and to ensure compliance with appropriate state law:

1. All waters including wetlands are protected by anti-degradation provisions of the Massachusetts Surface Water Quality Standards. The Contractor shall take all steps necessary to assure that the proposed activities will be conducted in a manner which will avoid violations of said standards.

2. Prior to construction, the Department shall be notified of any proposed change(s) in plans which may affect waters or wetlands. The Department will determine whether the change(s) require a revision to this Certification.

3. Future maintenance dredging and beach nourishment may be conducted as necessary for a period of ten (10) years from the date of this Certification or the date of the Chapter 91 permit for this project, provided that the initial project and any subsequent dredging has been conducted satisfactorily with no violations of the terms and conditions of this Certification.

4. Dredging may begin once all other permits have been received.

5. Work shall conform substantially to plans submitted with this application, entitled "Dredging Plan for 'The Narrows' ", prepared for the Town of Edgartown," dated April 10, 1997, revised August 1, 1997 (referencing mean low water), stamped and signed by Richard J. Barbini, P.E., two sheets.

6. No dredged material shall be placed in salt marsh; adequate silt barriers shall be placed to protect any salt marsh near the beach nourishment areas.

This certification does not relieve the applicant of the obligation to comply with other applicable state or federal statutes or regulations. The Applicant is reminded of the requirement to comply with all requirements and conditions of the U.S. Army Corps of Engineers Programmatic General Permit (available from the U. S. Army Corps of Engineers at 1-800-362-4367. Any changes made to the project as described in the previously submitted Notice of Intent, 401 Water Quality Certification application, or supplemental documents will require further notification to the Department.

The applicant or property owner; or any person aggrieved by this certification, any group of ten persons, or any governmental body or private organization with a mandate to protect the environment who has submitted written comments during the public comment period have a right to appeal this certification. A notice of claim to an Adjudicatory Hearing must be accompanied by the filing fee specified in 310 CMR 4.00, and the enclosed Departmental Action Fee Transmittal Form submitted to: the Office of Administrative Appeals, DEP, P.O. Box 4062, One Winter Street, Boston, MA 02108, by hand delivery or certified mail postmarked within twenty-one days of the date of this certification. A copy must also be sent to the DEP Division of Wetlands and Waterways in Boston. The notice of claim must comply with the requirements of 314 CMR 9.10(3). Failure to submit comments before the end of the public comment period may result in the loss of the right to an adjudicatory hearing.

Failure to comply with this certification is grounds for enforcement, including civil and criminal penalties, under MGL c.21 §42, 314 CMR 9.00, MGL c. 21A §16, 310 CMR 5.00, or other possible actions/penalties as authorized by the General Laws of the Commonwealth.

If you have questions on this decision, please contact Judith Perry at 617-292-5655.

Sincerely,

Pamela D. Harvey

Pamela D. Harvey
Acting Deputy Director
Wetlands and Waterways Program

enclosure; Departmental Action Fee Transmittal Form

cc: Edgartown Conservation Commission
Karen Adams, Regulatory Division, U.S. Army Corps of Engineers, 424 Trapelo Rd., Waltham 02254-9149
Robert L. Fultz & Associates, 74 Colonial Road, Marshfield 02050
Leigh Bridges, DMF
Mitch Ziencina, SERO/WW, Ch 91

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Dike Bridge Approach

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON MA 02108 (617)292-5500

ARGEO PAUL CELLUCCI
Governor

TRUDY COXE
Secretary

DAVID B. STRUHS
Commissioner

October 3, 1997

Town of Edgartown
c/o Paul Bagnall, Shellfish Constable and
Charles Blair, Harbormaster
P.O. Box 481
Edgartown, MA 02539

re: WATER QUALITY CERTIFICATION
Application BRP WW 08
Minor Project Dredging and
Beach Nourishment

at: Channel to Poucha Pond
near Dike Road Bridge
Edgartown
DEP Wetlands FILE #: 20-651
DEP Transmittal Number: 125062

Dear Sirs:

The Department has reviewed your application for Water Quality Certification, as referenced above. In accordance with the provisions of Section 401 of the Federal Clean Water Act as amended (33 U.S.C. §1251 et seq.), MGL c.21, §§ 26-53, and 314 CMR 9.00, it has been determined there is reasonable assurance the project or activity will be conducted in a manner which will not violate applicable water quality standards (314 CMR 4.00) and other applicable requirements of state law.

The waters of Poucha Pond are designated as Class SA Waters with Open Shellfishing in the Massachusetts Surface Water Quality Standards. Such waters are intended "as excellent habitat for fish, other aquatic life and wildlife and for primary and secondary contact recreation". Anti-degradation provisions of these Standards require that "existing uses and the level of water quality necessary to protect the existing uses shall be maintained and protected".

The proposed project involves hydraulic dredging of 1800 cubic yards from the channel connecting Cape Poge Bay with Poucha Pond to maintain a channel 50 ft wide by 900 ft long and 3.0 ft deep (at mean low water). The site is near Dike Road Bridge. This work will provide safer navigation for the public, including commercial shellfishermen. The sandy dredged materials (0% silt/clay) will be pumped above mean high water on the barrier beach immediately to

the east to improve the quality of the Over Sand Vehicle roadbed. The sediment grain sizes of the dredged material include about 33% fine sand, whereas the beach material contains about 1% fine sand based on the sample data provided. Therefore, much of the fine sand may be winnowed or washed out of the nourished beach site due to wind and wave activity. The work is expected to take about one day.

Adverse impacts to water dependent resources have been avoided or minimized as follows. There are no eel grass or shellfish resources within the channel to be dredged, according to the applicant. Winter flounder, which are likely to use the Cape Poge Bay as a nursery and spawning area, will not be significantly impacted by the limited dredging proposed in the Poucha Pond channel. The beach nourishment material will be placed on the beach above mean high water where a berm of beach material will contain the dredged sediments while they dewater. Silt barriers will be placed to protect salt marsh in the nourishment area, as required by the Conservation Commission's Order. Work is proposed to occur between November 1 and March 15, in accordance with Natural Heritage Program recommendations, to ensure no impact to nesting or chick rearing of Piping Plovers. This species is designated "threatened" in Massachusetts.

No comments were received by the Department during the public comment period for this application, May 30 to June 21.

Therefore, based on information currently in the record, the Department grants a 401 Water Quality Certification for this project subject to the following conditions to maintain water quality, to minimize impact on waters and wetlands, and to ensure compliance with appropriate state law:

1. All waters including wetlands are protected by anti-degradation provisions of the Massachusetts Surface Water Quality Standards. The Contractor shall take all steps necessary to assure that the proposed activities will be conducted in a manner which will avoid violations of said standards.

2. Prior to construction, the Department shall be notified of any proposed change(s) in plans which may affect waters or wetlands. The Department will determine whether the change(s) require a revision to this Certification.

3. Future maintenance dredging and beach nourishment may be conducted as necessary for a period of ten (10) years from the date of this Certification or the date of the Chapter 91 permit for this project, provided that the initial project and any subsequent dredging has been conducted satisfactorily with no violations of the terms and conditions of this Certification.

4. Dredging may begin once all other permits have been received.

5. Work shall conform substantially to plans submitted with this application, entitled "Dredging Plan for 'The Dike Bridge Approach' " prepared for Town of Edgartown," dated April 10, 1997, revised August 1, 1997 (referencing mean low water), stamped and signed by Richard J. Barbini, P.E., two sheets.

6. No dredged material shall be placed in salt marsh; adequate silt barriers shall be placed to protect any salt marsh near the beach nourishment areas.

This certification does not relieve the applicant of the obligation to comply with other applicable state or federal statutes or regulations. The Applicant is reminded of the requirement to comply with all requirements and conditions of the U.S. Army Corps of Engineers Programmatic General Permit (available from the U. S. Army Corps of Engineers at 1-800-362-4367. Any changes made to the project as described in the previously submitted Notice of Intent, 401 Water Quality Certification application, or supplemental documents will require further notification to the Department.

The applicant or property owner; or any person aggrieved by this certification, any group of ten persons, or any governmental body or private organization with a mandate to protect the environment who has submitted written comments during the public comment period have a right to appeal this certification. A notice of claim to an Adjudicatory Hearing must be accompanied by the filing fee specified in 310 CMR 4.00, and the enclosed Departmental Action Fee Transmittal Form submitted to: the Office of Administrative Appeals, DEP, P.O. Box 4062, One Winter Street, Boston, MA 02108, by hand delivery or certified mail postmarked within twenty-one days of the date of this certification. A copy must also be sent to the DEP Division of Wetlands and Waterways in Boston. The notice of claim must comply with the requirements of 314 CMR 9.10(3). Failure to submit comments before the end of the public comment period may result in the loss of the right to an adjudicatory hearing.

Failure to comply with this certification is grounds for enforcement, including civil and criminal penalties, under MGL c.21 §42, 314 CMR 9.00, MGL c. 21A §16, 310 CMR 5.00, or other possible actions/penalties as authorized by the General Laws of the Commonwealth.

If you have questions on this decision, please contact Judith Perry at 617-292-5655.

Sincerely,

Pamela D. Harvey

Pamela D. Harvey
Acting Deputy Director
Wetlands and Waterways Program

Eel Pond

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON MA 02108 (617)292-5500

ARGEO PAUL CELLUCCI
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TRUDY COXE
Secretary

DAVID B. STRUHS
Commissioner

October 3, 1997

Town of Edgartown
c/o Paul Bagnall, Shellfish Constable and
Charles Blair, Harbormaster
P.O. Box 481
Edgartown, MA 02539

re: WATER QUALITY CERTIFICATION
Application BRP WW 08
Minor Project Dredging and
Beach Nourishment

Ammended 12/31/1998

at: Eel Pond and boat ramp
off Braley's Way
Edgartown
DEP Wetlands FILE #: 20-654
DEP Transmittal Number: 122151

Dear Sirs:

The Department has reviewed your application for Water Quality Certification, as referenced above. In accordance with the provisions of Section 401 of the Federal Clean Water Act as amended (33 U.S.C. §1251 et seq.), MGL c.21, §§ 26-53, and 314 CMR 9.00, it has been determined there is reasonable assurance the project or activity will be conducted in a manner which will not violate applicable water quality standards (314 CMR 4.00) and other applicable requirements of state law.

The waters of Eel Pond and Nantucket Sound are designated as Class SA Waters with Open Shellfishing in the Massachusetts Surface Water Quality Standards. Such waters are intended "as excellent habitat for fish, other aquatic life and wildlife and for primary and secondary contact recreation". Anti-degradation provisions of these standards require that "existing uses and the level of water quality necessary to protect the existing uses shall be maintained and protected".

The proposed project involves hydraulic dredging of a total of 3130 cubic yards from two sites. Within Eel Pond an area 500 ft long by 25 ft wide will be dredged at the boat ramp to -3.5 ft MLW and outside the barrier beach (Little Beach) a channel 1180 ft long by 50 ft wide will be dredged to -4.0 ft mean low water. This work will provide safer access to the public and to commercial

shellfishermen to these areas. The dredged materials, almost entirely sand with less than 3% silt/clay, will be pumped to two locations at or near the end of the barrier beach. The work is expected to take about three days.

Adverse impacts to water dependent resources have been avoided or minimized as follows. Eel grass beds near the larger dredging area have been avoided. The nourishment material will be placed on the beach above mean low water where a berm of beach material will contain the dredged sediments while they dewater. Work is proposed to occur between November 1 and March 15, in accordance with Natural Heritage Program recommendations; to ensure no impact to nesting or chick rearing of Piping Plovers and Least Terns. These species are designated respectively in Massachusetts "threatened" and of "special concern." Final grading on the beach will be a very gradual slope (20:1 proposed) which will be suitable for nesting and chick rearing of these species.

No comments were received by the Department during the public comment period for this application.

Therefore, based on information currently in the record, the Department grants a 401 Water Quality Certification for this project subject to the following conditions to maintain water quality, to minimize impact on waters and wetlands, and to ensure compliance with appropriate state law:

1. All waters including wetlands are protected by anti-degradation provisions of the Massachusetts Surface Water Quality Standards. The Contractor shall take all steps necessary to assure that the proposed activities will be conducted in a manner which will avoid violations of said standards.

2. Prior to construction, the Department shall be notified of any proposed change(s) in plans which may affect waters or wetlands. The Department will determine whether the change(s) require a revision to this Certification.

3. Future maintenance dredging and beach nourishment may be conducted as necessary for a period of ten (10) years from the date of this Certification or the date of the Chapter 91 permit for this project, provided that the initial project and any subsequent dredging has been conducted satisfactorily with no violations of the terms and conditions of this Certification.

4. Dredging may begin once all other permits have been received.

5. Work shall conform substantially to plans submitted with this application, entitled "Dredging Plan for "Eel Pond Areas" prepared for the Town of Edgartown," dated April 10, 1997, revised August 1, 1997 referencing mean low water, stamped and

revised August 1, 1997 referencing mean low water, stamped and signed by Richard J. Barbini, P.E., two sheets.

This certification does not relieve the applicant of the obligation to comply with other applicable state or federal statutes or regulations. The Applicant is reminded of the requirement to comply with all requirements and conditions of the U.S. Army Corps of Engineers Programmatic General Permit (available from the U. S. Army Corps of Engineers at 1-800-362-4367. Any changes made to the project as described in the previously submitted Notice of Intent, 401 Water Quality Certification application, or supplemental documents will require further notification to the Department.

The applicant or property owner; or any person aggrieved by this certification, any group of ten persons, or any governmental body or private organization with a mandate to protect the environment who has submitted written comments during the public comment period have a right to appeal this certification. A notice of claim to an Adjudicatory Hearing must be accompanied by the filing fee specified in 310 CMR 4.00, and the enclosed Departmental Action Fee Transmittal Form submitted to: the Office of Administrative Appeals, DEP, P.O. Box 4062, One Winter Street, Boston, MA 02108, by hand delivery or certified mail postmarked within twenty-one days of the date of this certification. A copy must also be sent to the DEP Division of Wetlands and Waterways in Boston. The notice of claim must comply with the requirements of 314 CMR 9.10(3). Failure to submit comments before the end of the public comment period may result in the loss of the right to an adjudicatory hearing.

Failure to comply with this certification is grounds for enforcement, including civil and criminal penalties, under MGL c.21 §42, 314 CMR 9.00, MGL c. 21A §16, 310 CMR 5.00, or other possible actions/penalties as authorized by the General Laws of the Commonwealth.

If you have questions on this decision, please contact Judith Perry at 617-292-5655.

Sincerely,

Pamela D. Harvey

Pamela D. Harvey
Acting Deputy Director
Wetlands and Waterways Program

enclosure; Departmental Action Fee Transmittal Form

cc: Edgartown Conservation Commission
Karen Adams, Regulatory Division, U.S. Army Corps of Engineers, 424 Trapelo Rd., Waltham 02254-9149
Robert L. Fultz & Associates, 74 Colonial Road, Marshfield 02050
Leigh Bridges, DMF
Mitch Zieneina, SERO/WW, Ch 91

edgartnl.wqc

Lighthouse

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

ARGEO PAUL CELLUCCI
Governor

TRUDY COXE
Secretary

DAVID B. STRUHS
Commissioner

September 21, 1998

Mr. Charlie Blair
Town of Edgartown
P.O. Box 739
Edgartown, MA 02539

re: 401 WATER QUALITY CERTIFICATION
Application for BRP WW 07
Major project dredging, dune nourishment

at: Edgartown Lighthouse
Edgartown Harbor
EDGARTOWN

DEP Wetlands FILE #: SE20-723
DEP Transmittal #: 125423

Dear Mr. Blair:

The Department has reviewed your application for Water Quality Certification, as referenced above. In accordance with the provisions of Section 401 of the Federal Clean Water Act as amended (33 U.S.C. §1251 et seq.), MGL c.21, §§ 26-53, and 314 CMR 9.00, it has been determined there is reasonable assurance the project or activity will be conducted in a manner which will not violate applicable water quality standards (314 CMR 4.00) and other applicable requirements of state law.

The waters of Edgartown Harbor are designated in the Massachusetts Surface Water Quality Standards as Class SA Waters with open shellfishing. Such waters are intended "as excellent habitat for fish, other aquatic life and wildlife and for primary and secondary contact recreation". Anti-degradation provisions of these Standards require that "existing uses and the level of water quality necessary to protect the existing uses shall be maintained and protected".

The proposed project involves dredging 6500 cubic yards of shoal material in the area seaward of the culvert from the salt pond near the Lighthouse in order to improve navigation safety for some 700 commercial and recreational vessels based in Edgartown harbor. The dredged area will be deepened to -6 ft mean low water. The Town's hydraulic dredge will be used and the material will be pumped to Lighthouse Beach above mean high water where it will nourish the dune. Revised plans have been prepared specifying a slope of 10:1 in the nourished areas, consistent with recommendations from the

Natural Heritage Program (NHP) to protect nesting piping plovers. NHP recommends no disposal during the nesting period April 1 to August 31. Sediment grain size based on samples from two locations shows the material to be mostly sand with some fine gravel and an average silt content of about 2%. Work is expected to begin in October 1998 and continue for a month. Similar dredging is expected to be needed again in five years.

The application includes information on local marine resources from the Town Shellfish Constable and the Town Dredging Master Plan indicating no eelgrass, saltmarsh or significant shellfish in or near the dredge area.

No comments were received by the Department during the public comment period for this application, June 19 to July 10, 1998.

Therefore, based on information currently in the record, the Department grants a 401 Water Quality Certification for this project subject to the following conditions to maintain water quality, to minimize impact on waters and wetlands, and to ensure compliance with appropriate state law:

1. All waters including wetlands are protected by anti-degradation provisions of the Massachusetts Surface Water Quality Standards. The Contractor shall take all steps necessary to assure that the proposed activities will be conducted in a manner which will avoid violations of said standards.

2. Work in waters shall conform substantially to plans submitted in application to this Department: "Edgartown Lighthouse Dredging Project", two sheets, prepared by CLE Engineering, Inc., stamped and signed by John A. DeRugeris, P.E., revised 7-8-98.

3. Dredged material shall be pumped to Lighthouse Beach and be used as beach/dune nourishment above mean high water, as proposed.

4. In order to protect piping plovers during the nesting period no disposal shall occur on Lighthouse Beach between April 1 and August 31.

5. Future maintenance dredging and beach/dune nourishment in substantial agreement with the plans referenced above may be conducted as necessary for a period of ten (10) years from the date of the DEP Chapter 91 License or Permit, provided that the initial project and any subsequent dredging has been conducted satisfactorily with no violations of the terms and conditions of this Certification..

6. Dredging in accord with this Certification may begin once all other permits have been received.

7. Disposal of any volume of dredged material at any location in tidal waters is subject to approval by the Department and by the Massachusetts Coastal Zone Management office.

This certification does not relieve the applicant of the obligation to comply with other applicable state or federal statutes or regulations. The Applicant is reminded of the requirement to comply with all requirements and conditions of the U.S. Army Corps of Engineers Programmatic General Permit (available from the U. S. Army Corps of Engineers at 1-800-362-4367). Any changes made to the project as described in the previously submitted Notice of Intent, 401 Water Quality Certification application, or supplemental documents will require further notification to the Department.

The applicant or property owner; or any person aggrieved by this certification, any group of ten persons, or any governmental body or private organization with a mandate to protect the environment who has

submitted written comments during the public comment period have a right to appeal this certification. A notice of claim to an Adjudicatory Hearing must be accompanied by the filing fee specified in 310 CMR 4.00, and the enclosed Departmental Action Fee Transmittal Form submitted to: the Office of Administrative Appeals, DEP, P.O. Box 4062, One Winter Street, Boston, MA 02108, by hand delivery or certified mail postmarked within twenty-one days of the date of this certification. A copy must also be sent to the DEP Division of Wetlands and Waterways in Boston. The notice of claim must comply with the requirements of 314 CMR 9.10(3). Failure to submit comments before the end of the public comment period may result in the loss of the right to an adjudicatory hearing.

Failure to comply with this certification is grounds for enforcement, including civil and criminal penalties, under MGL c.21 §42, 314 CMR 9.00, MGL c. 21A §16, 310 CMR 5.00, or other possible actions/penalties as authorized by the General Laws of the Commonwealth.

If you have questions on this decision, please contact Judith Perry at 617-292-5655.

Sincerely,

Michael J. Stroman
Acting Deputy Director
Wetlands and Waterways Program

enclosure: Departmental Action Fee Transmittal Form

cc: Conservation Commission, P.O. Box 1065, Edgartown, MA 02539
Karen Adams, Regulatory/Enforcement Division, U.S. Army Corps of Engineers, 696 Virginia Road, Concord, MA 01742-2751
Robert L. Fultz & Associates, 74 Colonial Rd., Marshfield, MA 02050
Deerin Babb-Brott, CZM
Greg Skomal, MDMF, c/o Boston
Scott Melvin, DFW , Route 135, Westborough, MA 01581
Mitch Ziencina, SERO/Ch 91
David Burns, SERO/ Ten Mile River and Islands Watershed Chief

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Lighthouse.

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

ARGEO PAUL CELLUCCI
Governor

TRUDY COXE
Secretary

DAVID B. STRUHS
Commissioner

December 14, 1998

Town of Edgartown
c/o Robert L. Fultz
Fultz & Associates
74 Colonial road
Marshfield, Ma 02050

Re: **Amendment to Water Quality Certification, BRP WW09**
dredging at Edgartown Harbor, change in dredge depth
beach nourishment at Lighthouse Beach

DEP Transmittal #: 121066
DEP Wetlands File #: SE20-723, Addendum of 11/19/98

Dear Sirs:

The Department has reviewed your application for an amendment to the Certification issued by the Department September 21, 1998, Transmittal # 125423. We understand that the project is under construction and that a one foot increase in dredge depth is proposed to -7 ft mean low water. This will result in about 2000 cubic yards of additional dredged material, which will be placed above mean high water on Lighthouse Beach. The total dredged material volume is now 8400 cy. This project change has been approved by the Conservation Commission as referenced above.

Therefore, the Department hereby amends the Water Quality Certification , Transmittal # 125423 by deleting condition #2 and substituting:

2. Work in waters shall conform substantially to project plans, six sheets prepared by CLE Engineering, Inc., entitled "Proposed Dredging Plan in Edgartown Harbor," originally dated May 27/98 and last revised October 15, 1998, stamped and signed by John A. DeRugeris, P.E..

Please contact Judith Perry at 617-292-5655 if you have questions about this letter.

Yours truly,

Lois Bruinooge
Deputy Director, Office of Watershed Management
enc.: 9/21/98 Certification

Etwn-lt2.doc

Inner Harbor

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

ARGEO PAUL CELLUCCI
Governor

TRUDY COXE
Secretary

DAVID B. STRUHS
Commissioner

October 4, 1999

Mr. Charlie Blair
Town of Edgartown
P.O. Box 481
Edgartown, MA 02539

re: **401 WATER QUALITY CERTIFICATION**
Application for BRP WW 07
Major project dredging, dune nourishment

at: Edgartown Inner Harbor mooring area
EDGARTOWN

DEP Wetlands FILE #: SE20-774
DEP Transmittal #: W995749

Dear Mr. Blair:

The Department has reviewed your application for Water Quality Certification, as referenced above. In accordance with the provisions of Section 401 of the Federal Clean Water Act as amended (33 U.S.C. §1251 et seq.), MGL c.21, §§ 26-53, and 314 CMR 9.00, it has been determined there is reasonable assurance the project or activity will be conducted in a manner which will not violate applicable water quality standards (314 CMR 4.00) and other applicable requirements of state law.

The waters of **Edgartown Harbor** are designated in the Massachusetts Surface Water Quality Standards as **Class SA Waters** with open shellfishing. Such waters are intended "as excellent habitat for fish, other aquatic life and wildlife and for primary and secondary contact recreation". Anti-degradation provisions of these Standards require that "existing uses and the level of water quality necessary to protect the existing uses shall be maintained and protected".

The proposed project involves dredging 8500 cubic yards of shoal material in the mooring area off Chappaquiddick Point in order to improve navigation safety for commercial and recreational day sailors. The dredged area, consisting of only subtidal habitat, will be deepened to -6 ft mean low water. A hydraulic dredge will be used and the material will be pumped to Lighthouse Beach above mean high water where it will nourish the dune. This beach was used for the Lighthouse dredging project (WQC 9/21 and 12/14/98) where 8400 cy of dredged material was placed from Stations 0+00 to 12+00, with the area from 12+00 to 20+00 left for future projects such as the present one. The Edgardown Conservation Commission has issued an Order (referenced above) which allows such disposal for this project. Project

plans show a slope of 10:1 in the nourished areas, consistent with recommendations from the Natural Heritage Program (NHP) to protect nesting piping plovers. NHP recommends no disposal during the nesting period April 1 to August 31. Sediment grain size based on samples from two locations shows the material to be mostly sand with some fine gravel and an average silt content of 1 percent. Work is expected to begin in October 1999. Similar dredging is expected to be needed again in five years.

The application includes information on local marine resources from the Town Shellfish Constable which indicates no eelgrass or shellfish beds in the dredge area. Natural Heritage Program staff have indicated no species or communities of special concern exist within the dredging area.

Mitigating features of the proposed plans which reduce environmental impact include: use of the hydraulic pipeline dredge, confining work to fall and early winter, creating a berm in the dune nourishment area to contain the dredged slurry for dewatering, and use of a diffuser at the pipeline outlet to mimimize erosion.

No comments were received by the Department during the 21 day public comment period for this application, July 2 to 23, 1999.

Therefore, based on information currently in the record, the Department grants a 401 Water Quality Certification for this project subject to the following conditions to maintain water quality, to minimize impact on waters and wetlands, and to ensure compliance with appropriate state law:

1. All waters including wetlands are protected by anti-degradation provisions of the Massachusetts Surface Water Quality Standards. The Contractor shall take all steps necessary to assure that the proposed activities will be conducted in a manner which will avoid violations of said standards.

2. Work in waters shall conform substantially to plans submitted in application to this Department: "Edgartown Harbor, Inner Harbor", three sheets, dated September 1998, revised 9/10/99 prepared by Bourne Consulting Engineering, stamped and signed by Danni R. Goulet, P.E.. Plans for the disposal area: "Proposed Dredging Plan in Edgartown Harbor at Edgartown Lighthouse", revised 7/8/98, stamped and signed by John A. DeRugeris, P.E., for CLE Engineering, Inc., sheets 2, 3, and 5.

3. Dredged material shall be pumped to Lighthouse Beach and be used as beach/dune nourishment above mean high water, as proposed. Temporary berms shall be constructed to allow containment of the dredged material slurry for dewatering.

4. In order to protect piping plovers during the nesting period no disposal shall occur on Lighthouse Beach between April 1 and August 31.

5. Future maintenance dredging and beach/dune nourishment in substantial agreement with the plans referenced above may be conducted as necessary for a period of ten (10) years from the date of the DEP Chapter 91 License or Permit, provided that the initial project and any subsequent dredging has been conducted satisfactorily with no violations of the terms and conditions of this Certification..

6. Dredging in accord with this Certification may begin once all other permits have been received.

7. Disposal of any volume of dredged material at any location in tidal waters is subject to approval by the Department and by the Massachusetts Coastal Zone Management office.

Inner Harbor Dredging WQC
Edgartown, T# W005749

This certification does not relieve the applicant of the obligation to comply with other applicable state or federal statutes or regulations. The Applicant is reminded of the requirement to comply with all requirements and conditions of the U.S. Army Corps of Engineers Programmatic General Permit (available from the U. S. Army Corps of Engineers at 1-800-362-4367). Any changes made to the project as described in the previously submitted Notice of Intent, 401 Water Quality Certification application, or supplemental documents will require further notification to the Department.

The applicant or property owner; or any person aggrieved by this certification, any group of ten persons, or any governmental body or private organization with a mandate to protect the environment who has submitted written comments during the public comment period have a right to appeal this certification. A notice of claim to an Adjudicatory Hearing must be accompanied by the filing fee specified in 310 CMR 4.00, and the enclosed Departmental Action Fee Transmittal Form submitted to: the Office of Administrative Appeals, DEP, P.O. Box 4062, One Winter Street, Boston, MA 02108, by hand delivery or certified mail postmarked within twenty-one days of the date of this certification. A copy must also be sent to the DEP Division of Wetlands and Waterways in Boston. The notice of claim must comply with the requirements of 314 CMR 9.10(3). Failure to submit comments before the end of the public comment period may result in the loss of the right to an adjudicatory hearing.

Failure to comply with this certification is grounds for enforcement, including civil and criminal penalties, under MGL c.21 §42, 314 CMR 9.00, MGL c. 21A §16, 310 CMR 5.00, or other possible actions/penalties as authorized by the General Laws of the Commonwealth.

If you have questions on this decision, please contact Judith Perry at 617-292-5655.

Sincerely,

Glenn Haas, Director
Division of Watershed Management

enclosure: Departmental Action Fee Transmittal Form

cc: Conservation Commission, P.O. Box 1065, Edgartown, MA 02539
Karen Adams, Regulatory/Enforcement Division, U.S. Army Corps of Engineers, 696 Virginia Road, Concord, MA 01742-2751
Robert L. Fultz & Associates, 74 Colonial Rd., Marshfield, MA 02050
Jane Mead, CZM
Greg Skomal, MDMF, c/o Boston
Scott Melvin, DFW , Route 135, Westborough, MA 01581
Mitch Ziencina, SERO/Ch 91
David Burns, SERO/ Ten Mile River and Islands Watershed Chief

Wqc\E-town-inhbr.

Collins Beach

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

ARGEO PAUL CELLUCCI
Governor

JANE SWIFT
Lieutenant Governor

BOB DURAND
Secretary

LAUREN A. LISS
Commissioner

January 26, 2000

Mr. Charles Blair, Harbormaster
Town of Edgartown
P.O. Box 481
Edgartown, MA 02539

re: 401 WATER QUALITY CERTIFICATION
Application for BRP WW 08
Minor project dredging, beach nourishment

at: Collins Beach Mooring Area, EDGARTOWN

DEP Wetlands FILE #: SE20-777
DEP Transmittal #: W003958

Dear Mr. Blair,

The Department has reviewed your application for Water Quality Certification, as referenced above. In accordance with the provisions of Section 401 of the Federal Clean Water Act as amended (33 U.S.C. §1251 et seq.), MGL c.21, §§ 26-53, and 314 CMR 9.00, it has been determined there is reasonable assurance the project or activity will be conducted in a manner which will not violate applicable water quality standards (314 CMR 4.00) and other applicable requirements of state law.

The tidal waters of Martha's Vineyard are designated in the Massachusetts Surface Water Quality Standards as Class SA Waters with open shellfishing. Such waters are intended "as excellent habitat for fish, other aquatic life and wildlife and for primary and secondary contact recreation". Anti-degradation provisions of these Standards require that "existing uses and the level of water quality necessary to protect the existing uses shall be maintained and protected".

Project description: Proposed dredging would occur at the Collins Beach Mooring area off South Water Street in order to improve navigation access for recreational and commercial day sailors and for commercial shellfishing vessels. Some 2150 cubic yards of sandy sediments would be removed to provide a depth of –6 ft. mean low water, which includes a one foot over-dredge allowance. Plans to dredge at the nearby boat launch area have been dropped. Hydraulic pipeline dredge equipment will be used and the Vose property private beaches to the south of the mooring area will receive the dredged material via dredge pipeline for beach nourishment. All material will be placed above mean low water.

Sediment description: grain size analysis of four samples from the Collins Beach area indicate sandy material with 4 to 12% silt/clay and the remaining fraction sand or coarser. No chemical analysis was required for this review as the material is primarily sand. The Edgartown Harbormaster reports that there are no storm drains or other point source discharges to the Collins Beach area and that there have been no recorded spills of oil or hazardous materials.

Potential water quality impacts: Since the sediment samples contained a low percentage of silt and clay, there should be very short-lived turbidity in the dredge area during dredging. If hydraulic pipeline dredge is used as planned, there should be even less turbidity. No eel grass or shellfish beds exist in the vicinity of the dredging area according to the Town Shellfish Warden.

Public Notice of the 401 Certification review was published June 15, 1999, describing the project dredge volume as slightly larger (2980 cy) and the disposal areas as private beaches to the south of Collins Beach

Therefore, based on information currently in the record, the Department grants a 401 Water Quality Certification for this project subject to the following conditions to maintain water quality, to minimize impact on waters and wetlands, and to ensure compliance with appropriate state law:

1. All waters including wetlands are protected by anti-degradation provisions of the Massachusetts Surface Water Quality Standards. The Contractor shall take all steps necessary to assure that the proposed activities will be conducted in a manner which will avoid violations of said standards.

2. Work in waters and wetlands shall conform substantially to plans submitted in application to this Department: six sheets prepared by Bourne Consulting Engineering, dated Jan '00, revised 1/4/2000, stamped and signed by Danni R. Goulet, P.E..

3. Future maintenance dredging may be conducted as necessary for a period of ten (10) years from the date of this Certification, provided that the initial project and any subsequent dredging has been conducted satisfactorily with no violations of the terms and conditions of this Certification .

4. Dredging in accord with this Certification may begin once all other permits have been received.

5. The dredged material shall be disposed of as beach nourishment at a site or sites approved by the Edgartown Conservation Commission. Disposal of any volume of dredged material at a sub-tidal site is not authorized by this Certification. Such disposal would require approval by DEP and the Massachusetts Coastal Zone Management office.

This certification does not relieve the applicant of the obligation to comply with other applicable state or federal statutes or regulations. The Applicant is reminded of the requirement to comply with all requirements and conditions of the U.S. Army Corps of Engineers Programmatic General Permit (available from the U. S. Army Corps of Engineers at 1-800-362-4367). Any changes made to the project as described in the previously submitted Notice of Intent, 401 Water Quality Certification application, or supplemental documents will require further notification to the Department.

The applicant or property owner; or any person aggrieved by this certification, any group of ten persons, or any governmental body or private organization with a mandate to protect the environment who has submitted written comments during the public comment period have a right to appeal this certification. A notice of claim to an Adjudicatory Hearing must be accompanied by the filing fee specified in 310 CMR 4.00, and the enclosed Departmental Action Fee Transmittal Form submitted to: the Office of Administrative Appeals, DEP, P.O. Box 4062, One Winter Street, Boston, MA 02108, by hand delivery or certified mail postmarked within twenty-one days of the date of this certification. A copy must also be sent to the DEP Division of Wetlands and Waterways in Boston. The notice of claim must comply with the requirements of 314 CMR 9.10(3). Failure to submit comments before the end of the public comment period may result in the loss of the right to an adjudicatory hearing.

Failure to comply with this certification is grounds for enforcement, including civil and criminal penalties, under MGL c.21 §42, 314 CMR 9.00, MGL c. 21A §16, 310 CMR 5.00, or other possible actions/penalties as authorized by the General Laws of the Commonwealth.

If you have questions on this decision, please contact Judith Perry at 617-292-5655.

Sincerely,

Edgartown WQC, Collins Beach, January 2000
T# W03958

enclosure: Departmental Action Fee Transmittal Form

cc: Edgartown Conservation Commission, P.O. Box 1065, Edgartown 02539
Karen Adams, Regulatory/Enforcement Division, U.S. Army Corps of Engineers, 696 Virginia Road, Concord, MA 01742-2751
Robert L. Fultz & Associates, 74 Colonial Rd., Marshfield, MA 02050
Deerin Babb-Brott, CZM
Vincent Malkowski, MDMF , 50A Portside Drive, Pocasset, MA 02559
Mitch Ziencina, SERO-Ch 91
Dave Burns, SERO – Islands Watershed Chief

wqc\E-town-collins

Fn: edgar-collins

Caleb's Pond

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

MITT ROMNEY
Governor

KERRY HEALEY
Lieutenant Governor

ELLEN ROY HERZFELDER
Secretary

ROBERT W. GOLLEDGE, Jr.
Commissioner

January 12, 2005

Mr. Charles Blair
P.O. Box 739
Edgartown, MA 02539

Re: **401 WATER QUALITY CERTIFICATION**
Application for BRP WW 07
Major project dredging, beach nourishment

At: Caleb's Pond, EDGARTOWN

ACoE Application №: 2004-114
DEP Transmittal №: W053604

Dear Mr. Blair:

The Department has reviewed your application for Water Quality Certification, as referenced above. In accordance with the provisions of Section 401 of the Federal Clean Water Act as amended (33 U.S.C. §1251 et seq.), MGL c.21, §§ 26-53, and 314 CMR 9.00, it has been determined there is reasonable assurance the project or activity will be conducted in a manner which will not violate applicable water quality standards (314 CMR 4.00) and other applicable requirements of state law.

The waters of Caleb's Pond are designated in the Massachusetts Surface Water Quality Standards as Class SA Waters with open shellfishing. Such waters are intended "as excellent habitat for fish, other aquatic life and wildlife and for primary and secondary contact recreation." Anti-degradation provisions of these Standards require that "existing uses and the level of water quality necessary to protect the existing uses shall be maintained and protected."

Proposed project: The project entails dredging 8,400 yd^3 of sediment from a 92,000-ft^2 area to create a navigational channel in Caleb's Pond. The channel will be dredged to -4MLW, with a one-foot overdredge allowance, and will be approximately 55-ft wide and 1,700 ft long. A hydraulic dredge will be used. The sediment will be pumped to five nearby beaches where it will be used a nourishment material. The sediment will be placed landward of the mean low water line.

Sediment sampling data: Three sediment samples were collected and submitted for grain-size distribution analysis. Results indicate that the sediment is composed primarily of sand with between 2% and 10% passing the Number 200 sieve. The result of grain-size distribution

analysis of samples collected from the beach indicated that the material is primarily poorly graded sand with between 0.5% and 2.2% passing the Number 200 sieve.

The Department received no comments during the 21-day public comment period for this application, which began September 3,2004.

Section 61 Findings: Pursuant to M.G. L. Chapter 30, Sections 61 to 62H including (M.E.P.A.) this Notice of Project Change was reviewed as EOEA № 13263 and the Secretary's Certificate, issued on June 7, 2004, indicated that no further MEPA review was required.

Therefore, based on information currently in the record, the Department grants a 401 Water Quality Certification for this project subject to the following conditions to maintain water quality, to minimize impact on waters and wetlands, and to ensure compliance with appropriate state law:

1. The Contractor shall take all steps necessary to assure that the proposed activities will be conducted in a manner that will avoid violations of the anti-degradation provisions of Massachusetts Surface Water Quality Standards that protect all waters, including wetlands.

2. Prior to the start of in-water work, the Department shall be notified of any proposed change(s) in plans that may affect waters or wetlands. The Department will determine whether the change(s) require a revision to this Certification.

3. Work in waters and wetlands shall conform substantially to plans submitted in application to this Department: twelve sheets, prepared by CLE Engineering, signed and stamped by Carlos G. Peña, dated 5/29/98, revised 11/24/98, 3/1/99, 1/21/04.

4. The Department shall be notified, attention Yvonne Unger 617-292-5893, one week prior to the start of in-water work so that Department staff may inspect the work for compliance with the terms and conditions of this Certification.

5. Future maintenance dredging may be conducted as necessary for a period of five years from the date of this Certification, provided that:

   a. the initial project and any subsequent dredging has been conducted satisfactorily with no violations of the terms and conditions of this Certification,
   b. sediment placement on the beach occurs within the boundaries of the project described herein, and
   c. no known spills of oil or other toxic substances have occurred which could have contaminated the sediment in the dredge area.

6. Dredging in accord with this Certification may begin following the 21-day appeal period and once all other permits have been received.

7. Within 30 days of the completion of the initial dredging, a bathymetric survey of the channel, depicting post-dredge conditions, shall be sent to the Department.

8. In order to protect spawning, larval and juvenile development of winter flounder no dredging shall occur between January 15th and May 30th of any year.

The applicant, or their contractor, shall make every feasible effort to complete the project within the permitted timeframe. Should the applicant, or their contractor, fail to complete the project and wish to request an amendment to the Certification for incursion into the no-dredge period, the written request shall be received by the Department by January 1st. The following information shall be included in the request:

a. project location and transmittal number,
b. the date on which dredging started,
c. the number of days and hours per day the dredge operated,
d. expected daily average production rate and the actual daily average production rate,
e. an explanation of why the project failed to remain on schedule,
f. an account of efforts made to get the project back on schedule,
g. a plan depicting the areas that remain to be dredged,
h. the number of cubic yards that remain to be dredged,
i. an accurate estimate of the number of days required to complete the project,
j. an evaluation of the impact of continued dredging on the species of concern,
k. a description of any efforts that will be made to minimize the impacts of the project on the species of concern, and
l. a realistic assessment of any societal/financial effects of a denial of permission to continue dredging.

The Department will share the information with other resource agencies and a decision to grant or deny the amendment will be made by January 15th. Requests for amendment received after January 1st will be considered at the Department's discretion.

9. Disposal of any volume of dredged material at any location in tidal waters is subject to approval by this Department and the Massachusetts Coastal Zone Management office.

This certification does not relieve the applicant of the obligation to comply with other applicable state or federal statutes or regulations. Any changes made to the project as described in the previously submitted Notice of Intent, 401 Water Quality Certification application, or supplemental documents will require further notification to the Department.

Certain persons shall have a right to request an adjudicatory hearing concerning certifications by the Department when an application is required:

a. the applicant or property owner;
b. any person aggrieved by the decision who has submitted written comments during the public comment period;
c. any ten (10) persons of the Commonwealth pursuant to M.G.L. c.30A where a group member has submitted written comments during the public comment period; or
d. any governmental body or private organization with a mandate to protect the environment, which has submitted written comments during the public comment period.

Any person aggrieved, any ten (10) persons of the Commonwealth, or a governmental body or private organization with a mandate to protect the environment may appeal without having submitted written comments during the public comment period only when the claim is based on new substantive issues arising from material changes to the scope or impact of the activity and not apparent at the time of public notice. To request an adjudicatory hearing pursuant to M.G.L. c.30A, § 10, a Notice of Claim must be made in writing, provided that the request is made by certified mail or hand delivery to the Department, with the appropriate filing fee specified within

310 CMR 4.10 along with a DEP Fee Transmittal Form within twenty-one (21) days from the date of issuance of this Certificate, and addressed to:

Docket Clerk
Office of Administrative Appeals
Department of Environmental Protection
One Winter Street, 3rd Floor
Boston, MA 02108.

A copy of the request shall at the same time be sent by certified mail or hand delivery to the issuing office of the Wetlands and Waterways Program at:

Department of Environmental Protection
One Winter Street, 6th Floor
Boston, MA 02108.

A Notice of Claim for Adjudicatory Hearing shall comply with the Department's Rules for Adjudicatory Proceedings, 310 CMR 1.01(6), and shall contain the following information pursuant to 310 CMR 9.10(3):

a. the 401 Certification Transmittal Number and DEP Wetlands Protection Act File Number;
b. the complete name of the applicant and address of the project;
c. the complete name, address, and fax and telephone numbers of the party filing the request, and, if represented by counsel or other representative, the name, fax and telephone numbers, and address of the attorney;
d. if claiming to be a party aggrieved, the specific facts that demonstrate that the party satisfies the definition of "aggrieved person" found at 314 CMR 9.02;
e. a clear and concise statement that an adjudicatory hearing is being requested;
f. a clear and concise statement of (1) the facts which are grounds for the proceedings, (2) the objections to this Certificate, including specifically the manner in which it is alleged to be inconsistent with the Department's Water Quality Regulations, 314 CMR 9.00, and (3) the relief sought through the adjudicatory hearing, including specifically the changes desired in the final written Certification; and
g. a statement that a copy of the request has been sent by certified mail or hand delivery to the applicant, the owner (if different from the applicant), the conservation commission of the city or town where the activity will occur, the Department of Environmental Management (when the certificate concerns projects in Areas of Critical Environmental Concern), the public or private water supplier where the project is located (when the certificate concerns projects in Outstanding Resource Waters), and any other entity with responsibility for the resource where the project is located.

The hearing request along with a DEP Fee Transmittal Form and a valid check or money order payable to the Commonwealth of Massachusetts in the amount of one hundred dollars ($100) must be mailed to:

Commonwealth of Massachusetts
Department of Environmental Protection
Commonwealth Master Lockbox
P.O. Box 4062
Boston, MA 02211

The request will be dismissed if the filing fee is not paid, unless the appellant is exempt or granted a waiver. The filing fee is not required if the appellant is a city or town (or municipal agency), county, or district of the Commonwealth of Massachusetts, or a municipal housing authority. The Department may waive the adjudicatory-hearing filing fee pursuant to 310 CMR 4.06(2) for a person who shows that paying the fee will create an undue financial hardship. A person seeking a waiver must file an affidavit setting forth the facts believed to support the claim of undue financial hardship together with the hearing request as provided above.

No activity may begin prior to the expiration of the appeal period or until a final decision is issued by the Department if an appeal is filed.

Failure to comply with this certification is grounds for enforcement, including civil and criminal penalties, under MGL c.21 §42, 314 CMR 9.00, MGL c. 21A §16, 310 CMR 5.00, or other possible actions/penalties as authorized by the General Laws of the Commonwealth.

If you have questions on this decision, please contact Yvonne Unger at 617-292-5893.

Sincerely,

Glenn Haas
Director
Division of Watershed Management

enclosure: Departmental Action Fee Transmittal Form

cc:
Crystal Gardner, Regulatory/Enforcement Division, U.S. Army Corps of Engineers, 696 Virginia Road, Concord, MA 01742-2751
Alex Strysky, CZM, 251 Causeway Street, Suite 900, Boston, MA 02114- 2119
Vincent Malkoski, Division of Marine Fisheries, Southeast Marine Fisheries Station, 50A Portside Drive, Pocasset, MA 02559
Liz Kouloheras, Mitch Ziencina DEP SERO
Edgartown Conservation Commission, P.O. Box 1065, Edgartown, MA02539
Burton Bryan, 74 Colonial Road, Marshfield, MA 02050

Yu/W053604

Katama Boat Ramp / Channel

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

ARGEO PAUL CELLUCCI
Governor

TRUDY COXE
Secretary

DAVID B. STRUHS
Commissioner

September 17, 1998

Mr. Charlie Blair
Town of Edgartown
P.O. Box 739
Edgartown, MA 02539

re: 401 WATER QUALITY CERTIFICATION
Application for BRP WW 07
Major project dredging, dune nourishment

at: Katama Boat Ramp at Katama Bay (dredge)
Edgartown Bay Road
Norton Pt. Beach (nourishment)

DEP Wetlands FILE #: SE20-722
DEP Transmittal #: 125429

Dear Mr. Blair:

The Department has reviewed your application for Water Quality Certification, as referenced above. In accordance with the provisions of Section 401 of the Federal Clean Water Act as amended (33 U.S.C. §1251 et seq.), MGL c.21, §§ 26-53, and 314 CMR 9.00, it has been determined there is reasonable assurance the project or activity will be conducted in a manner which will not violate applicable water quality standards (314 CMR 4.00) and other applicable requirements of state law.

The waters of Katama Bay are designated in the Massachusetts Surface Water Quality Standards as Class SA Waters with open shellfishing. Such waters are intended "as excellent habitat for fish, other aquatic life and wildlife and for primary and secondary contact recreation". Anti-degradation provisions of these Standards require that "existing uses and the level of water quality necessary to protect the existing uses shall be maintained and protected".

The proposed project involves dredging at the Katama Boat Ramp and to provide a channel to Katama Bay 5 ft deep at low water. Some 9390 cubic yards of sandy sediment will be removed by hydraulic dredge and the spoils pumped to nourish the dunes above mean high water at Norton Point Beach. Revised plans have been prepared specifying a slope of 10:1 in the nourished areas, consistent with recommendations from the Natural Heritage Program to protect nesting piping plovers. NHP recommends no disposal during the nesting period April 1 to August 31. Sediment grain size based on

samples from two locations shows the material to be sand and gravel with no more than 3% silt. The boat ramp and channel exist on the edge of areas shown as quahog and scallop habitat according the Edgartown Dredging Master Plan, but no significant shellfish losses should occur from the limited project area. Work is expected to occur in October 1998. Similar dredging is expected to be needed again in five years.

No comments were received by the Department during the public comment period for this application, June 19 to July 10, 1998.

Therefore, based on information currently in the record, the Department grants a 401 Water Quality Certification for this project subject to the following conditions to maintain water quality, to minimize impact on waters and wetlands, and to ensure compliance with appropriate state law:

1. All waters including wetlands are protected by anti-degradation provisions of the Massachusetts Surface Water Quality Standards. The Contractor shall take all steps necessary to assure that the proposed activities will be conducted in a manner which will avoid violations of said standards.

2. Work in waters shall conform substantially to plans submitted in application to this Department: "Katama Boat Ramp Project,... Proposed Dredging Plan" two sheets, prepared by CLE Engineering, Inc., stamped and signed by John A. DeRugeris, P.E., revised 7-8-98.

3. Dredged material shall be pumped to Norton Point Beach and be used as beach/dune nourishment above mean high water, as proposed.

4. In order to protect piping plovers during the nesting period no disposal shall occur on Norton Point Beach between April 1 and August 31.

5. In order to protect winter flounder spawning, no dredging shall occur between January 15 and May 30 of any year.

6. Future maintenance dredging and beach nourishment as originally proposed may be conducted as necessary for a period of ten (10) years from the date of this Certification, provided that the initial project and any subsequent dredging has been conducted satisfactorily with no violations of the terms and conditions of this Certification..

7. Dredging in accord with this Certification may begin once all other permits have been received.

8. Disposal of any volume of dredged material at any location in tidal waters is subject to approval by the Department and by the Massachusetts Coastal Zone Management office.

This certification does not relieve the applicant of the obligation to comply with other applicable state or federal statutes or regulations. The Applicant is reminded of the requirement to comply with all requirements and conditions of the U.S. Army Corps of Engineers Programmatic General Permit (available from the U. S. Army Corps of Engineers at 1-800-362-4367). Any changes made to the project as described in the previously submitted Notice of Intent, 401 Water Quality Certification application, or supplemental documents will require further notification to the Department.

The applicant or property owner; or any person aggrieved by this certification, any group of ten persons, or any governmental body or private organization with a mandate to protect the environment who has submitted written comments during the public comment period have a right to appeal this certification. A

notice of claim to an Adjudicatory Hearing must be accompanied by the filing fee specified in 310 CMR 4.00, and the enclosed Departmental Action Fee Transmittal Form submitted to: the Office of Administrative Appeals, DEP, P.O. Box 4062, One Winter Street, Boston, MA 02108, by hand delivery or certified mail postmarked within twenty-one days of the date of this certification. A copy must also be sent to the DEP Division of Wetlands and Waterways in Boston. The notice of claim must comply with the requirements of 314 CMR 9.10(3). Failure to submit comments before the end of the public comment period may result in the loss of the right to an adjudicatory hearing.

Failure to comply with this certification is grounds for enforcement, including civil and criminal penalties, under MGL c.21 §42, 314 CMR 9.00, MGL c. 21A §16, 310 CMR 5.00, or other possible actions/penalties as authorized by the General Laws of the Commonwealth.

If you have questions on this decision, please contact Judith Perry at 617-292-5655.

Sincerely,

Michael J. Stroman

Michael J. Stroman
Acting Deputy Director
Wetlands and Waterways Program

enclosure: Departmental Action Fee Transmittal Form

cc: Conservation Commission, P.O. Box 1065, Edgartown, MA 02539
Karen Adams, Regulatory/Enforcement Division, U.S. Army Corps of Engineers, 696 Virginia Road, Concord, MA 01742-2751
Robert L. Fultz & Associates, 74 Colonial Rd., Marshfield, MA 02050
Deerin Babb-Brott, CZM
Greg Skomal, MDMF, c/o Boston
Scott Melvin, DFW , Route 135, Westborough, MA 01581
Mitch Ziencina, SERO/Ch 91
David Burns, SERO/ Ten Mile River and Islands Watershed Chief

Katama.doc

Katama Bay

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

MITT ROMNEY
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KERRY HEALEY
Lieutenant Governor

ELLEN ROY HERZFELDER
Secretary

ROBERT W. GOLLEDGE, Jr.
Commissioner

December 22, 2003

Mr. Charles Blair
P.O. Box 739
Edgartown, MA 02539

Re: **401 WATER QUALITY CERTIFICATION**
Application for BRP WW 08
Minor project dredging, beach nourishment

At: Katama Bay, EDGARTOWN

ACoE Application №: 2003001586
DEP Transmittal №: W040597

Dear Mr. Blair:

The Department has reviewed your application for Water Quality Certification, as referenced above. In accordance with the provisions of Section 401 of the Federal Clean Water Act as amended (33 U.S.C. §1251 et seq.), MGL c.21, §§ 26-53, and 314 CMR 9.00, it has been determined there is reasonable assurance the project or activity will be conducted in a manner which will not violate applicable water quality standards (314 CMR 4.00) and other applicable requirements of state law.

The waters of Katama Bay are designated in the Massachusetts Surface Water Quality Standards as Class SA Waters with open shellfishing. Such waters are intended "as excellent habitat for fish, other aquatic life and wildlife and for primary and secondary contact recreation." Anti-degradation provisions of these Standards require that "existing uses and the level of water quality necessary to protect the existing uses shall be maintained and protected."

Proposed project: The project entails dredging 3,975 yd^3 of sediment from a 50,094-ft^2 area to create a navigational channel in southern Katama Bay. The channel will be dredged to -4MLW, with a one-foot overdredge allowance, and will be approximately 20-ft wide at the bottom. A hydraulic dredge will be used. The sediment will be pumped to Norton's Beach, located at the southern edge of the bay.

Sediment sampling data: Three sediment samples were collected and submitted for grain-size distribution analysis. Results indicate that the sediment is composed primarily of medium sand with less than 1% passing the Number 200 sieve.

The Department received no comments during the 21-day public comment period for this application, which began July 15, 2003.

Section 61 Findings: Pursuant to M.G. L. Chapter 30, Sections 61 to 62H including (M.E.P.A.) this Notice of Project Change was reviewed as EOEA № 12823 and the Secretary's Certificate, issued on June 6, 2003, indicated that no further MEPA review was required.

Therefore, based on information currently in the record, the Department grants a 401 Water Quality Certification for this project subject to the following conditions to maintain water quality, to minimize impact on waters and wetlands, and to ensure compliance with appropriate state law:

1. The Contractor shall take all steps necessary to assure that the proposed activities will be conducted in a manner that will avoid violations of the anti-degradation provisions of Massachusetts Surface Water Quality Standards that protect all waters, including wetlands.

2. Prior to the start of in-water work, the Department shall be notified of any proposed change(s) in plans that may affect waters or wetlands. The Department will determine whether the change(s) require a revision to this Certification.

3. Work in waters and wetlands shall conform substantially to plans submitted in application to this Department: six sheets, prepared by Bourne Consulting Engineering, signed and stamped by Joseph W. Hanlon.

4. The Department shall be notified, attention Yvonne Unger 617-292-5893, one week prior to the start of in-water work so that Department staff may inspect the work for compliance with the terms and conditions of this Certification.

5. Future maintenance dredging may be conducted as necessary for a period of five years from the date of this Certification, provided that:

   a. the initial project and any subsequent dredging has been conducted satisfactorily with no violations of the terms and conditions of this Certification,
   b. the volume of sediment dredged does not exceed 2000 cubic yards,
   c. sediment placement on the beach occurs within the boundaries of the project described herein, and
   d. no known spills of oil or other toxic substances have occurred which could have contaminated the sediment in the dredge area.

6. Dredging in accord with this Certification may begin following the 21-day appeal period and once all other permits have been received.

7. Within 30 days of the completion of the initial dredging, a bathymetric survey of the channel, depicting post-dredge conditions, shall be sent to the Department.

8. A shellfish-monitoring plan, prepared by the applicant's consultant (see Attachment A), shall be performed annually for three years beginning the first September after completion of the channel dredging.

9. In order to protect spawning, larval and juvenile development of winter flounder and spawning shellfish no dredging shall occur between January 15th and October 31st of any year.

   The applicant, or their contractor, shall make every feasible effort to complete the project within the permitted timeframe. Should the applicant, or their contractor, fail to complete the project and wish to request an amendment to the Certification for incursion into the no-dredge period, the written request shall be received by the Department by January 1st. The following information shall be included in the request:

   a. project location and transmittal number,
   b. the date on which dredging started,
   c. the number of days and hours per day the dredge operated,
   d. expected daily average production rate and the actual daily average production rate,
   e. an explanation of why the project failed to remain on schedule,
   f. an account of efforts made to get the project back on schedule,
   g. a plan depicting the areas that remain to be dredged,
   h. the number of cubic yards that remain to be dredged,
   i. an accurate estimate of the number of days required to complete the project,
   j. an evaluation of the impact of continued dredging on the species of concern,
   k. a description of any efforts that will be made to minimize the impacts of the project on the species of concern, and
   l. a realistic assessment of any societal/financial effects of a denial of permission to continue dredging.

   The Department will share the information with other resource agencies and a decision to grant or deny the amendment will be made by January 15th. Requests for amendment received after January 1st will be considered at the Department's discretion.

10. Disposal of any volume of dredged material at any location in tidal waters is subject to approval by this Department and the Massachusetts Coastal Zone Management office.

This certification does not relieve the applicant of the obligation to comply with other applicable state or federal statutes or regulations. Any changes made to the project as described in the previously submitted Notice of Intent, 401 Water Quality Certification application, or supplemental documents will require further notification to the Department.

Certain persons shall have a right to request an adjudicatory hearing concerning certifications by the Department when an application is required:

a. the applicant or property owner;
b. any person aggrieved by the decision who has submitted written comments during the public comment period;
c. any ten (10) persons of the Commonwealth pursuant to M.G.L. c.30A where a group member has submitted written comments during the public comment period; or
d. any governmental body or private organization with a mandate to protect the environment which has submitted written comments during the public comment period.

Any person aggrieved, any ten (10) persons of the Commonwealth, or a governmental body or private organization with a mandate to protect the environment may appeal without having submitted written comments during the public comment period only when the claim is based on

new substantive issues arising from material changes to the scope or impact of the activity and not apparent at the time of public notice. To request an adjudicatory hearing pursuant to M.G.L. c.30A, § 10, a Notice of Claim must be made in writing, provided that the request is made by certified mail or hand delivery to the Department, with the appropriate filing fee specified within 310 CMR 4.10 along with a DEP Fee Transmittal Form within twenty-one (21) days from the date of issuance of this Certificate, and addressed to:

Docket Clerk
Office of Administrative Appeals
Department of Environmental Protection
One Winter Street, 3rd Floor
Boston, MA 02108.

A copy of the request shall at the same time be sent by certified mail or hand delivery to the issuing office of the Wetlands and Waterways Program at:

Department of Environmental Protection
One Winter Street, 6th Floor
Boston, MA 02108.

A Notice of Claim for Adjudicatory Hearing shall comply with the Department's Rules for Adjudicatory Proceedings, 310 CMR 1.01(6), and shall contain the following information pursuant to 310 CMR 9.10(3):

a. the 401 Certification Transmittal Number and DEP Wetlands Protection Act File Number;
b. the complete name of the applicant and address of the project;
c. the complete name, address, and fax and telephone numbers of the party filing the request, and, if represented by counsel or other representative, the name, fax and telephone numbers, and address of the attorney;
d. if claiming to be a party aggrieved, the specific facts that demonstrate that the party satisfies the definition of "aggrieved person" found at 314 CMR 9.02;
e. a clear and concise statement that an adjudicatory hearing is being requested;
f. a clear and concise statement of (1) the facts which are grounds for the proceedings, (2) the objections to this Certificate, including specifically the manner in which it is alleged to be inconsistent with the Department's Water Quality Regulations, 314 CMR 9.00, and (3) the relief sought through the adjudicatory hearing, including specifically the changes desired in the final written Certification; and
g. a statement that a copy of the request has been sent by certified mail or hand delivery to the applicant, the owner (if different from the applicant), the conservation commission of the city or town where the activity will occur, the Department of Environmental Management (when the certificate concerns projects in Areas of Critical Environmental Concern), the public or private water supplier where the project is located (when the certificate concerns projects in Outstanding Resource Waters), and any other entity with responsibility for the resource where the project is located.

The hearing request along with a DEP Fee Transmittal Form and a valid check or money order payable to the Commonwealth of Massachusetts in the amount of one hundred dollars ($100) must be mailed to:

Commonwealth of Massachusetts
Department of Environmental Protection

Commonwealth Master Lockbox
P.O. Box 4062
Boston, MA 02211

The request will be dismissed if the filing fee is not paid, unless the appellant is exempt or granted a waiver. The filing fee is not required if the appellant is a city or town (or municipal agency), county, or district of the Commonwealth of Massachusetts, or a municipal housing authority. The Department may waive the adjudicatory-hearing filing fee pursuant to 310 CMR 4.06(2) for a person who shows that paying the fee will create an undue financial hardship. A person seeking a waiver must file an affidavit setting forth the facts believed to support the claim of undue financial hardship together with the hearing request as provided above.

No activity may begin prior to the expiration of the appeal period or until a final decision is issued by the Department if an appeal is filed.

Failure to comply with this certification is grounds for enforcement, including civil and criminal penalties, under MGL c.21 §42, 314 CMR 9.00, MGL c. 21A §16, 310 CMR 5.00, or other possible actions/penalties as authorized by the General Laws of the Commonwealth.

If you have questions on this decision, please contact Yvonne Unger at 617-292-5893.

Sincerely,

Glenn Haas
Director
Division of Watershed Management

enclosure: Departmental Action Fee Transmittal Form

cc:
Crystal Gardner, Regulatory/Enforcement Division, U.S. Army Corps of Engineers, 696 Virginia Road, Concord, MA 01742-2751
Jane Mead, CZM, 251 Causeway Street, Suite 900, Boston, MA 02114- 2119
Vincent Malkoski, Division of Marine Fisheries, Southeast Marine Fisheries Station, 50A Portside Drive, Pocasset, MA 02559
Liz Kouloheras, Mitch Ziencina DEP SERO
Edgartown Conservation Commission, P.O. Box 1065, Edgartown, MA02539
Burton Bryan, 74 Colonial Road, Marshfield, MA 02050

Yu/W040597

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

ARGEO PAUL CELLUCCI
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Lieutenant Governor

BOB DURAND
Secretary

LAUREN A. LISS
Commissioner

September 21, 2000

Mr. Charlie Blair, Harbormaster
Town of Edgartown
Edgartown Town Hall
P.O. Box 739
Edgartown, MA 02539-0739

Re: **401 WATER QUALITY CERTIFICATION**
Application for BRP WW 07
Major project dredging/filling, beach and dune nourishment

At: Edgartown Great Pond – Barrier Beach #35, EDGARTOWN

DEP Wetlands File №: SE 20-809
DEP Transmittal №: W012990

Dear Mr. Blair:

The Department has reviewed your application for Water Quality Certification, as referenced above. In accordance with the provisions of Section 401 of the Federal Clean Water Act as amended (33 U.S.C. §1251 et seq.), MGL c.21, §§ 26-53, and 314 CMR 9.00, it has been determined there is reasonable assurance the project or activity will be conducted in a manner which will not violate applicable water quality standards (314 CMR 4.00) and other applicable requirements of state law.

The waters of Edgartown Great Pond are designated in the Massachusetts Surface Water Quality Standards as Class SA Waters. Such waters are intended "as excellent habitat for fish, other aquatic life and wildlife and for primary and secondary contact recreation." Anti-degradation provisions of these Standards require that "existing uses and the level of water quality necessary to protect the existing uses shall be maintained and protected."

Proposed project: The project has two phases; typical dredging and excavation with side casting. The project's dredge footprint includes a channel at the outlet of Edgartown Great Pond of approximately 300 feet in length, 60 feet in width, which flares out to incorporate a delta that has formed inside the pond. In total 115,100 square feet will be dredged, removing some 9,800 cubic yards of sediment. Dredging will be to - 5 beet below mean low water (MLW), with an overdredge limit of -6 feet below MLW. The dredge footprint contains no eelgrass or shellfish beds. The channel will not go through to the ocean, rather it is intended to

connect the seasonal excavation to the ocean. The purpose of dredging is to increase the period of tidal exchange, which will help to restore marine fisheries habitat. The dredging to estimated to take a month to complete, starting October 15th and ending by November 15th.

A hydraulic dredge will be used. A pipe system will be connected to the dredge, through which the sediment will be pumped as slurry and discharged directly onto South Beach. Sediment will be discharged landward of a bermed area and allowed to dewater. After dewatering the sediment will be graded to design elevations. The beach will be shaped with a slope of 10 to 1. The nourishment activities occurring at lower elevations will be conducted during lower tides. The discharge pipe will be routed to avoid disturbing dune vegetation.

There will be 935 cubic yards of sediment placed on 55,847 square feet of beach below mean high water, and approximately 2,989 cubic yards of sediment will be placed on 72,143 square feet of beach between the annual high tide line and mean high water. The remainder will be placed above the high tide line.

The excavation and side casting portion of the project occurs multiple times a year, typically late autumn, early spring and mid-summer, under the guidance of the Edgartown Shellfish Department. The excavation is undertaken by the town to improve conditions in the pond for shellfish by encouraging an exchange of water between the pond and ocean. The summary description of the opening, included in the application, was taken from a Woods Hole Coast and Harbor Consultant's report dated 1997.

A channel approximately 15 feet wide and 2 feet deep is dug from the pond outlet to the ocean, (the excavated material is sidecast). Flow from the pond to the ocean is turbulent over a period of hours, producing standing waves in a gorge as the collapsing channel walls contribute to inlet enlargement. Over approximately 24 hours the Pond elevation drops by about 40-inches. During this time there is movement of sediment outward toward the ocean, resulting in minor, temporary filling. As flow from the Pond diminishes the inlet dimensions reach 150 to 250 feet in width, with an average depth of 5 to 7 feet.

When the Pond is mostly drained, the seawater entering produces a forced tide with an average range of a few inches. The gorge, too large to be sustained by tidal flow, begins infilling immediately. The inlet cross section becomes smaller as a result of shoaling. As flow through the shallow inlet becomes less effective at moving sediment, the inlet eventually becomes blocked off.

In 1995, Edgartown Great Pond was opened on April 17th, and closed on April 23rd. The second opening was on July 27th and lasted until July 30th, was reopened on the July 31st and remained open until August 2nd. It was opened once again on December 8th and closed on December 15th.

This project is located within the habitat of both the Piping Plover (*Charadrius melodus*) and the Least Tern (*Sterna antillarum*). Upon review of the project, the Massachusetts Natural Heritage and Endanger Species Program made several recommendations to minimize the potential effects of the project on nesting and chick rearing habitat of these two species (see conditions 11 through 14). The applicant has stated that personnel of Trustees of the Reservation (approved by the Massachusetts Natural Heritage and Endangered Species Program for such work) already monitors the site for the Piping Plover and Least Tern.

<u>Sediment sample data</u>: Four samples were collected from the area to be dredged and two collected from the beach area slated to be nourished. Sieve analysis was performed on each sample. The beach samples were classified as poorly graded sand, with less than 1% passing

the No. 200 sieve. The sediment samples were also classified as poorly graded sand, with less than 1% passing the No. 200 sieve. The sediment is considered suitable for beach and dune nourishment.

The Department received no comments by during the 21-day public comment period for this application, which began July 11, 2000.

Section 61 Findings: Pursuant to M.G. L. Chapter 30, Sections 61 to 62H including (M.E.P.A.) this project was reviewed as EOEA № 12265 and the Secretary's Certificate, issued on August 24, 2000, indicated that preparation of an Environmental Impact Report was not required.

Therefore, based on information currently in the record, the Department grants a 401 Water Quality Certification for this project subject to the following conditions to maintain water quality, to minimize impact on waters and wetlands, and to ensure compliance with appropriate state law:

1. Anti-degradation provisions of the Massachusetts Surface Water Quality Standards protect all waters including wetlands. The Contractor shall take all steps necessary to assure that the proposed activities will be conducted in a manner which will avoid violations of said standards.

2. Prior to construction, the Department shall be notified of any proposed change(s) in plans that may affect waters or wetlands. The Department will determine whether the change(s) require a revision to this Certification.

3. Work in waters and wetlands shall conform substantially to plans submitted in application to this Department: prepared by Bourne Consulting Engineering, stamped and signed by Danni R. Goulet, with five sheets dated March 1999, and three dated May 2000.

4. The Department, attention Yvonne Unger 617 292-5893, shall be notified one week prior to the start of construction so that Department staff may inspect the work for compliance with the terms and conditions of this Certification.

5. In order to protect finfish resources dredging shall occur between March 15th and June 15th.

6. Only beach and dune areas devoid of vegetation shall be nourished.

7. Future maintenance dredging may be conducted as necessary for a period of five years from the date of this Certification, provided that the initial project and any subsequent dredging has been conducted satisfactorily with no violations of the terms and conditions of this Certification and provided that all necessary Department approvals are obtained for any reuse of sediments.

8. Dredging in accord with this Certification may begin following the 21-day appeal period and once all other permits have been received.

9. Disposal of any volume of dredged material at any location in tidal waters is subject to approval by this Department and the Massachusetts Coastal Zone Management office.

10. An Order of Conditions for the excavation of the pond openings shall be obtained prior to the next opening. All subsequent openings shall be performed under a valid Order of conditions.

11. Excavation for any pond openings shall not occur within 300 feet of active plover or tern nests unless otherwise authorized by the Massachusetts Division of Fisheries and Wildlife.

12. The nourished beach shall have a final slope of 10 to 1.

13. The nourished beach may create nesting/chick rearing habitat for Piping Plover and/or Least Tern. In the event that the new habitat is utilized by either of these species steps shall be taken to adequately protect, as determined by the Massachusetts Division of Fisheries and Wildlife, both the habitat and populations of both species.

14. If channel excavation to open the Pond occurs between April 1st and July 31st, post-opening changes in the Pond's water level within 200 yards of either side of the Pond outlet shall be monitored and quantified. The Massachusetts Division of Fisheries and Wildlife shall approve monitoring and quantification activities, in consultation with the applicant (Town of Edgartown), the Edgartown Conservation Commission and other interested parties.

This certification does not relieve the applicant of the obligation to comply with other applicable state or federal statutes or regulations. Any changes made to the project as described in the previously submitted Notice of Intent, 401 Water Quality Certification application, or supplemental documents will require further notification to the Department.

The applicant or property owner; or any person aggrieved by this certification, any group of ten persons, or any governmental body or private organization with a mandate to protect the environment who has submitted written comments during the public comment period have a right to appeal this certification. A notice of claim to an Adjudicatory Hearing must be accompanied by the filing fee specified in 310 CMR 4.00, and the enclosed Departmental Action Fee Transmittal Form submitted to: the Office of Administrative Appeals, DEP, P.O. Box 4062, One Winter Street, Boston, MA 02108, by hand delivery or certified mail postmarked within twenty-one days of the date of this certification. A copy must also be sent to the DEP Division of Wetlands and Waterways in Boston. The notice of claim must comply with the requirements of 314 CMR 9.10(3). Failure to submit comments before the end of the public comment period may result in the loss of the right to an adjudicatory hearing.

No activity may begin prior to the expiration of the appeal period or until a final decision is issued by the Department if an appeal is filed.

Failure to comply with this certification is grounds for enforcement, including civil and criminal penalties, under MGL c.21 §42, 314 CMR 9.00, MGL c. 21A §16, 310 CMR 5.00, or other possible actions/penalties as authorized by the General Laws of the Commonwealth.

If you have questions on this decision, please contact Yvonne Unger at 617-292-5893.

Sincerely,

Glenn Haas, Director
Division of Watershed Management

enclosure: Departmental Action Fee Transmittal Form

cc: Kevin Mooney, DEM – Office of Waterways, 349 Lincoln St., Building #45, Hingham 02043
Greg Penta, Regulatory/Enforcement Division, U.S. Army Corps of Engineers, 696 Virginia Road, Concord, MA 01742-2751
Deerin Babb-Brott, CZM –Boston
Vince Malkoski, Division of Marine Fisheries, Southeast Marine Fisheries Station, 50A Portside Drive, Pocasset, MA 02559
Sharon Stone, Tena Davies, DEP SERO
Mr. Robert Fultz, 74 Colonial Road, Marshfield, MA 02050
Edgartown Conservation Commission, P.O. Box 1065, Edgartown, MA 02539

Yu/certw012990

GP Channel

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

MITT ROMNEY
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KERRY HEALEY
Lieutenant Governor

STEPHEN R. PRITCHARD
Secretary

ROBERT W. GOLLEDGE, Jr.
Commissioner

October 3, 2005

Mr. Charlie Blair, Harbormaster
Town of Edgartown
Edgartown Town Hall
P.O. Box 739
Edgartown, MA 02539-0739

Re: **401 WATER QUALITY CERTIFICATION- EXTENSION**
Application for BRP WW 07
Major project dredging, beach and dune nourishment

At: Edgartown Great Pond – Barrier Beach #35, EDGARTOWN

DEP Wetlands File №: SE 20-809
DEP Transmittal №: W012990

Dear Mr. Blair:

The Department has received your request for an extension of the Water Quality Certification, as referenced above. In accordance with the provisions of Section 401 of the Federal Clean Water Act as amended (33 U.S.C. §1251 et seq.), MGL c.21, §§ 26-53, and 314 CMR 9.00, it has been determined there is reasonable assurance the project or activity will be conducted in a manner which will not violate applicable water quality standards (314 CMR 4.00) and other applicable requirements of state law. This letter serves to extend the original Certification for a 5 (five)-year term. The Certification is valid until September 21, 2010.

Failure to comply with applicable conditions of the original certification is grounds for enforcement, including civil and criminal penalties, under MGL c.21 §42, 314 CMR 9.00, MGL c. 21A §16, 310 CMR 5.00, or other possible actions/penalties as authorized by the General Laws of the Commonwealth.

If you have questions on this decision, please contact Yvonne Unger at 617-292-5893.

Sincerely,

Lealdon Langley
Director
Wetlands and Waterways Program

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COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

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KERRY HEALEY
Lieutenant Governor

ROBERT W. GOLLEDGE, Jr.
Secretary

ARLEEN O'DONNELL
Commissioner

November 17, 2006

Mr. Charles Blair
Town of Edgartown
P.O. Box 739
Edgartown, Ma 02539

Re: Amended Water Quality Certification
Application for BRP WW 07
DEP Transmittal No: W21487

At: Edgartown Great Pond Fish Run, EDGARTOWN

Transmittal Numbers:
ACOE Application No.: 2001-01947
DEP Wetlands File No: SE20-854
DEP Transmittal No.: W21487 (Original Water Quality Certification)

Dear Mr. Blair:

The Massachusetts DEP is in receipt of your Amendment request dated September 244, 2006, requesting an extension of the 401 Water Quality Certification (WQC) from December 8, 2006 to December 8, 2016 to conduct maintenance dredging and beach nourishment. No other information was provided to support the time extension request.

The Department has reviewed your request of additional areas for beach nourishment and an extension of the Water Quality Certification, as referenced above. In accordance with the provisions of MGL c.21, §§ 26-53, 314 CMR 9.00 and Section 401 of the Federal Clean Water Act as amended (33 U.S.C. § 1251 et seq.), we have determined there is a reasonable assurance the project or activity can be conducted in a manner that will not violate applicable water quality standards (314 CMR 4.00) provided the following conditions are met:

1 A valid Order of Condition to perform maintenance dredging and beach nourishment.

2 Dredge volume not to exceed 9,800 yd^3.

3 A statement verifying that there was no violation for work performed under the 401 WQC.

4 A statement verifying that no known spills of oil or other toxic substances have occurred which could have contaminated the sediment in the dredge area.

5 The duration of this time extension is five years.

This letter serves as an amendment of 401 Water Qualification, ACOE Application No: 2001-01947, DEP Transmittal No. W2148767. All other conditions of the license and Water Quality Certification remain in effect. Failure to comply with the Project's certification is grounds for enforcement, including civil an criminal penalties, under MGL c21 §42, 314 CMR 9.00, MGL c.21A §16, 310 CMR 5.00, or other possible actions/penalties as authorized by the General Laws of the Commonwealth.

If you have any questions, or need additional information, please contact me at (617) 574-6882 or Ken Chin at (617) 292-5893.

Sincerely,

Lealdon Langley
Director
Wetlands and Waterways Program

Cc: Karen Adams, Regulatory/Enforcement Division, U.S. Army Corps of Engineers
696 Virginia Road, Concord, MA 01742-2751
Truman Henson, CZM, 251 Causeway Street, Suite 900, Boston, MA 02114
Vin Malkoski, Division of Marine Fisheries, Southeast Marine Fisheries Station
838 South Rodney French Blvd., New Bedford, MA 02744
Liz Kouloheras - DEP SERO
Edgartown Conservation Commission, MA 02645
Lynne Fraker, Dredge Administrator, P.O. Box 739, Edgartown, MA 02539

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

JANE SWIFT
Governor

BOB DURAND
Secretary

LAUREN A. LISS
Commissioner

December 17, 2002

Mr. Charles Blair
Harbormaster
Town of Edgartown
P.O. Box 739
Edgartown, MA 02539

Re: **401 WATER QUALITY CERTIFICATION**
Application for BRP WW 07
Major project dredging, beach nourishment

At: Herring Creek Restoration Project, EDGARTOWN

ACoE Application №: 200202110
DEP Transmittal №: W031738

Dear Mr. Blair:

The Department has reviewed your application for Water Quality Certification, as referenced above. In accordance with the provisions of Section 401 of the Federal Clean Water Act as amended (33 U.S.C. §1251 et seq.), MGL c.21, §§ 26-53, and 314 CMR 9.00, it has been determined there is reasonable assurance the project or activity will be conducted in a manner which will not violate applicable water quality standards (314 CMR 4.00) and other applicable requirements of state law.

The waters of Edgartown Great Pond are designated in the Massachusetts Surface Water Quality Standards as Class SA Waters. Such waters are intended "as excellent habitat for fish, other aquatic life and wildlife and for primary and secondary contact recreation." Anti-degradation provisions of these Standards require that "existing uses and the level of water quality necessary to protect the existing uses shall be maintained and protected."

Proposed project: The project entails the dredging/excavation of 5,400 yd^3 of sandy material to restore a herring run. Reestablishing the fish run requires a hydraulic link between Edgartown Great Pond and Crackatuxet Cove, removing an area of cattails filling the east end of Herring Creek, and replacing the sluiceway control structure and installing control structures on tow culverts. These activities will affect 7,400 ft^2 of Coastal Dune, 2,500 linear feet of Land Under

Fish Run, 13,000 ft^2 of Bordering Vegetated Wetland, and 3,375 ft^2 of Land Under Water Bodies.

The dredging/excavation will be carried out using conventional construction equipment operating from the beach, bank or dune. The material will be placed into trucks and transported to South Beach where it will be place landward of mean high water.

Where necessary invasive, nuisance vegetation will be removed, by hand if possible, and disturbed areas will be replanted with native species.

Sediment sampling data: Six samples were collect and submitted for grain-size distribution analysis. The material to be dredged is characterized as poorly graded sand with 1% or less passing the No. 200 sieve. The material is suitable for use at South Beach as proposed.

The Department received no comments during the 21-day public comment period for this application, which began November 8, 2002.

Section 61 Findings: Pursuant to M.G. L. Chapter 30, Sections 61 to 62H including (M.E.P.A.) this project was reviewed as EOEA № 12822 and the Secretary's Certificate, issued on August 9, 2002, indicated that preparation of an Environmental Impact Report was not required.

Therefore, based on information currently in the record, the Department grants a 401 Water Quality Certification for this project subject to the following conditions to maintain water quality, to minimize impact on waters and wetlands, and to ensure compliance with appropriate state law:

1. The Contractor shall take all steps necessary to assure that the proposed activities will be conducted in a manner that will avoid violations of the anti-degradation provisions of Massachusetts Surface Water Quality Standards that protect all waters, including wetlands.

2. Prior to the start of in-water work, the Department shall be notified of any proposed change(s) in plans that may affect waters or wetlands. The Department will determine whether the change(s) require a revision to this Certification.

3. Work in waters and wetlands shall conform substantially to plans submitted in application to this Department: twenty-one sheets, prepared by Bourne Consulting Engineering, dated 6/21/02, revised 6/27/02 and 9/05/02, signed and stamped by Joseph W. Hanlon.

4. The Department shall be notified, attention Yvonne Unger 617-292-5893, one week prior to the start of in-water work so that Department staff may inspect the work for compliance with the terms and conditions of this Certification.

5. As advised by the Division of Fisheries and Wildlife Natural Heritage and Endangered Species Program, to protect nesting piping plovers (*Charadrius melodus*) and least terns (*Sterna antillarum*):

   a. beach nourishment shall not occur between April 1st and August 31st of any year,
   b. beach nourishment sand shall be graded to a slope of 10 (horizontal) to 1 (vertical); and
   c. vegetation shall not be planted on the nourished portions of South Beach.

6. As directed by the Division of Fisheries and Wildlife Natural Heritage and Endangered Species Program, the areas along Herring Creek affected by the project shall be surveyed for presence of Nantucket Shadbush (*Amelanchier nantucketensis*). Any specimens found shall be proximately marked with flagged stakes, and work shall be arranged to avoid any impact to the protected species.

7. Future maintenance dredging may be conducted as necessary for a period of five years from the date of this Certification, provided that:

   a. the initial project and any subsequent dredging has been conducted satisfactorily with no violations of the terms and conditions of this Certification,
   b. no dredging occurs between April 1st and November 1st of any year,
   c. no beach nourishment occurs between April 1st and August 31st of any year,
   d. the volume of sediment dredged does not exceed 3000 yd^3,
   e. sediment placement on South Beach occurs within the boundaries of the project described herein,
   f. the grain-size distribution of the sediment to be dredged is compatible with the grain-distribution of the material on South Beach, and
   g. no known spills of oil or other toxic substances have occurred which could have contaminated the sediment in the dredge area.

8. Dredging in accord with this Certification may begin following the 21-day appeal period and once all other permits have been received.

9. Within 30 days of the completion of the initial dredging, a bathymetric survey of the dredge footprint, depicting post-dredge conditions, shall be sent to the Department.

10. Disposal of any volume of dredged material at any location in tidal waters is subject to approval by this Department and the Massachusetts Coastal Zone Management office.

11. Prior to commencement of any work at the site, erosion control measures [staked hay bales] shall be utilized as shown in the referenced plans. The erosion control barriers shall be maintained until all disturbed areas have been stabilized.

12. All disturbed or exposed soil surfaces described by this application shall be temporarily stabilized within thirty days of disturbance or exposure, with hay, straw, mulch or any other protective covering and/or method approved by the U.S. Department of Agriculture, Natural Resource Conservation Service, to prevent erosion.

This certification does not relieve the applicant of the obligation to comply with other applicable state or federal statutes or regulations. Any changes made to the project as described in the previously submitted Notice of Intent, 401 Water Quality Certification application, or supplemental documents will require further notification to the Department.

Certain persons shall have a right to request an adjudicatory hearing concerning certifications by the Department when an application is required:

   a. the applicant or property owner;
   b. any person aggrieved by the decision who has submitted written comments during the public comment period;

c. any ten (10) persons of the Commonwealth pursuant to M.G.L. c.30A where a group member has submitted written comments during the public comment period; or
d. any governmental body or private organization with a mandate to protect the environment, which has submitted written comments during the public comment period.

Any person aggrieved, any ten (10) persons of the Commonwealth, or a governmental body or private organization with a mandate to protect the environment may appeal without having submitted written comments during the public comment period only when the claim is based on new substantive issues arising from material changes to the scope or impact of the activity and not apparent at the time of public notice. To request an adjudicatory hearing pursuant to M.G.L. c.30A, § 10, a Notice of Claim must be made in writing, provided that the request is made by certified mail or hand delivery to the Department, with the appropriate filing fee specified within 310 CMR 4.10 along with a DEP Fee Transmittal Form within twenty-one (21) days from the date of issuance of this Certificate, and addressed to:

Docket Clerk
Office of Administrative Appeals
Department of Environmental Protection
One Winter Street, 3rd Floor
Boston, MA 02108.

A copy of the request shall at the same time be sent by certified mail or hand delivery to the issuing office of the Wetlands and Waterways Program at:

Department of Environmental Protection
One Winter Street, 6th Floor
Boston, MA 02108.

A Notice of Claim for Adjudicatory Hearing shall comply with the Department's Rules for Adjudicatory Proceedings, 310 CMR 1.01(6), and shall contain the following information pursuant to 310 CMR 9.10(3):

a. the 401 Certification Transmittal Number and DEP Wetlands Protection Act File Number;
b. the complete name of the applicant and address of the project;
c. the complete name, address, and fax and telephone numbers of the party filing the request, and, if represented by counsel or other representative, the name, fax and telephone numbers, and address of the attorney;
d. if claiming to be a party aggrieved, the specific facts that demonstrate that the party satisfies the definition of "aggrieved person" found at 314 CMR 9.02;
e. a clear and concise statement that an adjudicatory hearing is being requested;
f. a clear and concise statement of (1) the facts which are grounds for the proceedings, (2) the objections to this Certificate, including specifically the manner in which it is alleged to be inconsistent with the Department's Water Quality Regulations, 314 CMR 9.00, and (3) the relief sought through the adjudicatory hearing, including specifically the changes desired in the final written Certification; and
g. a statement that a copy of the request has been sent by certified mail or hand delivery to the applicant, the owner (if different from the applicant), the conservation commission of the city or town where the activity will occur, the Department of Environmental Management (when the certificate concerns projects in Areas of Critical Environmental Concern), the public or private water supplier where the project is located (when the

certificate concerns projects in Outstanding Resource Waters), and any other entity with responsibility for the resource where the project is located.

The hearing request along with a DEP Fee Transmittal Form and a valid check or money order payable to the Commonwealth of Massachusetts in the amount of one hundred dollars ($100) must be mailed to:

Commonwealth of Massachusetts
Department of Environmental Protection
Commonwealth Master Lockbox
P.O. Box 4062
Boston, MA 02211

The request will be dismissed if the filing fee is not paid, unless the appellant is exempt or granted a waiver. The filing fee is not required if the appellant is a city or town (or municipal agency), county, or district of the Commonwealth of Massachusetts, or a municipal housing authority. The Department may waive the adjudicatory-hearing filing fee pursuant to 310 CMR 4.06(2) for a person who shows that paying the fee will create an undue financial hardship. A person seeking a waiver must file an affidavit setting forth the facts believed to support the claim of undue financial hardship together with the hearing request as provided above.

No activity may begin prior to the expiration of the appeal period or until a final decision is issued by the Department if an appeal is filed.

Failure to comply with this certification is grounds for enforcement, including civil and criminal penalties, under MGL c.21 §42, 314 CMR 9.00, MGL c. 21A §16, 310 CMR 5.00, or other possible actions/penalties as authorized by the General Laws of the Commonwealth.

If you have questions on this decision, please contact Yvonne Unger at 617-292-5893.

Sincerely,

Glenn Haas
Director
Division of Watershed Management

enclosure: Departmental Action Fee Transmittal Form

cc: Crystal Gardner, Regulatory/Enforcement Division, U.S. Army Corps of Engineers, 696 Virginia Road, Concord, MA 01742-2751
Jane Mead, CZM, 251 Causeway Street, Suite 900, Boston, MA 02114- 2119
Vincent Malkoski, Division of Marine Fisheries, Southeast Marine Fisheries Station, 50A Portside Drive, Pocasset, MA 02559
Stephanie Cunningham, DMF, Annisquam River Marine Fisheries Station, 30 Emerson Avenue, Gloucester, MA 01930
Mitch Ziencina, Liz Kouloheras, DEP SERO
Patricia Huckery, DFW-NHESP, 1 Rabbit Hill Road, Westborough, MA 01581
Burt Bryant, 74 Colonial Drive, Marshfield, MA 02050
Edgartown Conservation Commission, P.O. Box 1065, Edgartown, MA 02539

Yu/W031738

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

MITT ROMNEY
Governor

KERRY HEALEY
Lieutenant Governor

ELLEN ROY HERZFELDER
Secretary

EDWARD P. KUNCE
Acting Commissioner

April 9, 2003

Mr. Charles Blair
Harbormaster
Town of Edgartown
P.O. Box 739
Edgartown, MA 02539

Re: **AMENDED 401 WATER QUALITY CERTIFICATION**
Application for BRP WW 07
Major project dredging, beach nourishment

At: Herring Creek Restoration Project, EDGARTOWN

ACoE Application №: 200202110
DEP Transmittal №: W031738

Dear Mr. Blair:

The Department has reviewed your request for amendment of the Water Quality Certification, as referenced above. Specifically your requested permission to work into the time of year restriction imposed on beach nourishment activities for the protection of piping plovers. After consultation with staff from the Natural Heritage and Endangered Species Program, the Department grants the amendment for work to continue until May 1, 2003, subject to the following conditions:

1) All areas of beach and dune habitat where dredged materials are to be placed shall be monitored every 3 days for the presence of Piping Plovers, their nests, or recent scrapes that indicate that plovers are present and engaged in pre-nesting behavior. This monitoring shall be conducted by a trained biologist who is experienced in shorebird observation and identification, and shall continue from April 1 until the beach nourishment is completed.

2) No beach nourishment work shall occur within 300 feet of any Piping Plover nest, active scrapes, or areas where adult plovers are engaged in territorial behavior or courtship. If a nest is found, it shall immediately be protected with symbolic fencing (twine or rope strung between wooden posts with warning signs) in order to maintain at least a 50 yard-wide buffer from other human disturbance around the nest.

3) After beach nourishment is completed, those sections of South Beach where dredged materials have been placed shall be monitored on a weekly basis until at least July 1 to determine if Piping Plovers or Least Terns use the site for nesting or chick-rearing. If either of these species is found to be present, then monitoring shall occur every 3 days until nesting and chick-rearing is completed for the summer.

4) If plover or tern nests or scrapes are found, or if plovers or terns are observed in pre-nesting behavior, then the sections of beach where those activities are occurring shall be protected with symbolic fencing as noted above. Further, the landowner shall take steps to protect these birds, their habitats, and any eggs or chicks that are present from adverse effects of off-road vehicles, following guidelines that have been issued by this agency and by the U.S. Fish and Wildlife Service.

This letter serves as an amendment of the original Certification. In accordance with the provisions of Section 401 of the Federal Clean Water Act as amended (33 U.S.C. §1251 et seq.), MGL c.21, §§ 26-53, and 314 CMR 9.00, it has been determined there is reasonable assurance the project or activity will be conducted in a manner which will not violate applicable water quality standards (314 CMR 4.00) and other applicable requirements of state law.

This certification does not relieve the applicant of the obligation to comply with other applicable state or federal statutes or regulations. Any changes made to the project as described in the previously submitted Notice of Intent, 401 Water Quality Certification application, or supplemental documents will require further notification to the Department.

Failure to comply with this certification is grounds for enforcement, including civil and criminal penalties, under MGL c.21 §42, 314 CMR 9.00, MGL c. 21A §16, 310 CMR 5.00, or other possible actions/penalties as authorized by the General Laws of the Commonwealth.

If you have questions on this decision, please contact Yvonne Unger at 617-292-5893.

Sincerely,

Lealdon Langley
Director
Wetlands and Waterways Program

cc: Crystal Gardner, Regulatory/Enforcement Division, U.S. Army Corps of Engineers, 696 Virginia Road, Concord, MA 01742-2751
Jane Mead, CZM, 251 Causeway Street, Suite 900, Boston, MA 02114- 2119
Vincent Malkoski, Division of Marine Fisheries, Southeast Marine Fisheries Station, 50A Portside Drive, Pocasset, MA 02559
Stephanie Cunningham, DMF, Annisquam River Marine Fisheries Station, 30 Emerson Avenue, Gloucester, MA 01930
Mitch Ziencina, Liz Kouloheras, DEP SERO
Scott Melvin, DFW-NHESP, 1 Rabbit Hill Road, Westborough, MA 01581
Bob Fultz, 74 Colonial Drive, Marshfield, MA 02050
Edgartown Conservation Commission, P.O. Box 1065, Edgartown, MA 02539

Yu/W031738a

Boat Ramp

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

JANE SWIFT
Governor

BOB DURAND
Secretary

LAUREN A. LISS
Commissioner

November 12, 2002

Mr. Charles Blair
Harbormaster
Town of Edgartown
P.O. Box 739
Edgartown, MA 02539

Re: **401 WATER QUALITY CERTIFICATION**
Application for BRP WW 08
Minor project dredging, beach nourishment

At: Public Boat Ramp, Edgartown Great Pond, EDGARTOWN

DEP Wetlands File №: SE20-868
DEP Transmittal №: W026369
Corps Application №: 200202121

Dear Mr. Blair:

The Department has reviewed your application for Water Quality Certification, as referenced above. In accordance with the provisions of Section 401 of the Federal Clean Water Act as amended (33 U.S.C. §1251 et seq.), MGL c.21, §§ 26-53, and 314 CMR 9.00, it has been determined there is reasonable assurance the project or activity will be conducted in a manner which will not violate applicable water quality standards (314 CMR 4.00) and other applicable requirements of state law.

The waters of Edgartown Great Pond are designated in the Massachusetts Surface Water Quality Standards as Class SA Waters. Such waters are intended "as excellent habitat for fish, other aquatic life and wildlife and for primary and secondary contact recreation." Anti-degradation provisions of these Standards require that "existing uses and the level of water quality necessary to protect the existing uses shall be maintained and protected."

Proposed project: The project entails dredging of approximately 500 yd^3 of sediment from a 5,415-ft^2 area adjacent to the public boat ramp. Dredging will deepen the area to a depth of -4 ft

Mean Low Water with no over-dredge allowance. The sediment will be dredged hydraulically and will be used to nourish the adjacent beach and costal bank.

According to the applicant's agent there is no eelgrass in the dredge footprint.

Sediment sampling data:

The results of grain-size distribution analysis indicate that the sediment is comprised primarily of fine sand with less 2% to 11% passing the number 200 sieve. The results of the grain-size distribution analysis of the receiving beach and coastal bank indicate that the material there is poorly graded sand with between 1% and 5% passing the number 200 sieve.

The Department received no comments during the 21-day public comment period for this application, which began August 20, 2002.

Therefore, based on information currently in the record, the Department grants a 401 Water Quality Certification for this project subject to the following conditions to maintain water quality, to minimize impact on waters and wetlands, and to ensure compliance with appropriate state law:

1. The Contractor shall take all steps necessary to assure that the proposed activities will be conducted in a manner that will avoid violations of the anti-degradation provisions of Massachusetts Surface Water Quality Standards that protect all waters, including wetlands.

2. Prior to the start of in-water work, the Department shall be notified of any proposed change(s) in plans that may affect waters or wetlands. The Department will determine whether the change(s) require a revision to this Certification.

3. Work in waters and wetlands shall conform substantially to plans submitted in application to this Department: three sheets, signed and stamped by Danni R. Goulet, dated July 2001.

4. The Department shall be notified, attention Yvonne Unger 617-292-5893, one week prior to the start of in-water work so that Department staff may inspect the work for compliance with the terms and conditions of this Certification.

5. Future maintenance dredging may be conducted as necessary for a period of five years from the date of this Certification, provided that:

   a. the initial project and any subsequent dredging has been conducted satisfactorily with no violations of the terms and conditions of this Certification,
   b. the volume of sediment dredged does not exceed 300 yd^3,
   c. sediment placement on beach occurs within the boundaries of the project described herein, and
   d. no known spills of oil or other toxic substances have occurred which could have contaminated the sediment in the dredge area.

6. Dredging in accord with this Certification may begin following the 21-day appeal period and once all other permits have been received.

7. Within 30 days of the completion of the initial dredging, a bathymetric survey of the area, depicting post-dredge conditions, shall be sent to the Department.

(3) Boat Ramp

8. Disposal of any volume of dredged material at any location in tidal waters is subject to approval by this Department and the Massachusetts Coastal Zone Management office.

This certification does not relieve the applicant of the obligation to comply with other applicable state or federal statutes or regulations. Any changes made to the project as described in the previously submitted Notice of Intent, 401 Water Quality Certification application, or supplemental documents will require further notification to the Department.

Certain persons shall have a right to request an adjudicatory hearing concerning certifications by the Department when an application is required:

a. the applicant or property owner;
b. any person aggrieved by the decision who has submitted written comments during the public comment period;
c. any ten (10) persons of the Commonwealth pursuant to M.G.L. c.30A where a group member has submitted written comments during the public comment period; or
d. any governmental body or private organization with a mandate to protect the environment which has submitted written comments during the public comment period.

Any person aggrieved, any ten (10) persons of the Commonwealth, or a governmental body or private organization with a mandate to protect the environment may appeal without having submitted written comments during the public comment period only when the claim is based on new substantive issues arising from material changes to the scope or impact of the activity and not apparent at the time of public notice. To request an adjudicatory hearing pursuant to M.G.L. c.30A, § 10, a Notice of Claim must be made in writing, provided that the request is made by certified mail or hand delivery to the Department, with the appropriate filing fee specified within 310 CMR 4.10 along with a DEP Fee Transmittal Form within twenty-one (21) days from the date of issuance of this Certificate, and addressed to:

Docket Clerk
Office of Administrative Appeals
Department of Environmental Protection
One Winter Street, 3rd Floor
Boston, MA 02108.

A copy of the request shall at the same time be sent by certified mail or hand delivery to the issuing office of the Wetlands and Waterways Program at:

Department of Environmental Protection
One Winter Street, 6th Floor
Boston, MA 02108.

A Notice of Claim for Adjudicatory Hearing shall comply with the Department's Rules for Adjudicatory Proceedings, 310 CMR 1.01(6), and shall contain the following information pursuant to 310 CMR 9.10(3):

a. the 401 Certification Transmittal Number and DEP Wetlands Protection Act File Number;
b. the complete name of the applicant and address of the project;
c. the complete name, address, and fax and telephone numbers of the party filing the request, and, if represented by counsel or other representative, the name, fax and telephone numbers, and address of the attorney;

d. if claiming to be a party aggrieved, the specific facts that demonstrate that the party satisfies the definition of "aggrieved person" found at 314 CMR 9.02;
e. a clear and concise statement that an adjudicatory hearing is being requested;.
f. a clear and concise statement of (1) the facts which are grounds for the proceedings, (2) the objections to this Certificate, including specifically the manner in which it is alleged to be inconsistent with the Department's Water Quality Regulations, 314 CMR 9.00, and (3) the relief sought through the adjudicatory hearing, including specifically the changes desired in the final written Certification; and
g. a statement that a copy of the request has been sent by certified mail or hand delivery to the applicant, the owner (if different from the applicant), the conservation commission of the city or town where the activity will occur, the Department of Environmental Management (when the certificate concerns projects in Areas of Critical Environmental Concern), the public or private water supplier where the project is located (when the certificate concerns projects in Outstanding Resource Waters), and any other entity with responsibility for the resource where the project is located.

The hearing request along with a DEP Fee Transmittal Form and a valid check or money order payable to the Commonwealth of Massachusetts in the amount of one hundred dollars ($100) must be mailed to:

Commonwealth of Massachusetts
Department of Environmental Protection
Commonwealth Master Lockbox
P.O. Box 4062
Boston, MA 02211

The request will be dismissed if the filing fee is not paid, unless the appellant is exempt or granted a waiver. The filing fee is not required if the appellant is a city or town (or municipal agency), county, or district of the Commonwealth of Massachusetts, or a municipal housing authority. The Department may waive the adjudicatory-hearing filing fee pursuant to 310 CMR 4.06(2) for a person who shows that paying the fee will create an undue financial hardship. A person seeking a waiver must file an affidavit setting forth the facts believed to support the claim of undue financial hardship together with the hearing request as provided above.

No activity may begin prior to the expiration of the appeal period or until a final decision is issued by the Department if an appeal is filed.

Failure to comply with this certification is grounds for enforcement, including civil and criminal penalties, under MGL c.21 §42, 314 CMR 9.00, MGL c. 21A §16, 310 CMR 5.00, or other possible actions/penalties as authorized by the General Laws of the Commonwealth.

If you have questions on this decision, please contact Yvonne Unger at 617-292-5893.

Sincerely,

Glenn Haas
Director
Division of Watershed Management

401 Water Quality Certification, Public Boat Ramp, Edgartown Great Pond, EDGARTOWN
Transmittal № W026369

(5) Boat Ramp

enclosure: Departmental Action Fee Transmittal Form

cc:
Crystal Gardner, Regulatory/Enforcement Division, U.S. Army Corps of Engineers, 696 Virginia Road, Concord, MA 01742-2751
Jane Mead, CZM, 251 Causeway Street, Suite 900, Boston, MA 02114- 2119
Vincent Malkoski, Division of Marine Fisheries, Southeast Marine Fisheries Station, 50A Portside Drive, Pocasset, MA 02559
Mitch Ziencina, Liz Kouloheras DEP SERO
Edgartown Conservation Commission, P.O. Box 1065, Edgartown, MA 02539
Robert Fultz, 74 Colonial Drive, Marshfield, MA 02050

Yu/w026369

Senge

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

DEVAL L. PATRICK
Governor

TIMOTHY P. MURRAY
Lieutenant Governor

IAN A. BOWLES
Secretary

ARLEEN O'DONNELL
Commissioner

June 27, 2007

Lynne Fraker
Town Of Edgartown and Oak Bluffs
PO Box 739
Edgartown, MA 02539

Re: **401 WATER QUALITY CERTIFICATION**
Application for BRP WW 07, Major project dredging

At: Sengekontacket Pond/Nantucket Sound

401 WQC Transmittal №: W075131
Wetlands File №: SE20-623
ACoE Application №: NAE 2006-3749

Dear Ms. Fraker

The Department has reviewed your application for Water Quality Certification (WQC), as referenced above. In accordance with the provisions of Section 401 of the Federal Clean Water Act as amended (33 U.S.C. §1251 et seq.), MGL c.21, §§ 26-53, and 314 CMR 9.00, it has been determined there is reasonable assurance the project or activity will be conducted in a manner which will not violate applicable water quality standards (314 CMR 4.00) and other applicable requirements of state law.

The waters of Sengekontacket Pond and Nantucket Sound are designated in the Massachusetts Surface Water Quality Standards as Class SA Waters. Such waters are intended "as excellent habitat for fish, other aquatic life and wildlife and for primary and secondary contact recreation." New or increased discharges to Outstanding Resource Waters are prohibited unless the discharge of dredged or fill material, limited as specified in 314 CMR 9.00. Anti-degradation provisions of these Standards require that "existing uses and the level of water quality necessary to protect the existing uses shall be maintained and protected."

Project History: In 1996, Edgartown, Oaks Bluff, Dukes County, Massachusetts Highway Department (MHD), Department of Environmental Protection (DEP), Department of Environmental Management (DEM), now the Department of Conservation and Recreation (DCR), Coastal Zone Management (CZM), and the Army Corps of Engineer (ACoE) entered a Memorandum of Agreement (MOA) to reduce storm damage to Sylvia State Beach, Beach Road and maintenance dredging of Sengekontacket Pond. The Interim Short-Term Alternative referred to in the MOA was completed in 1997, which included construction of temporary adjusted wooden groin, beach nourishment/groin cell renourishment, dredging of Sengekontacket Pond, and implementation of an annual maintenance and monitoring Program. The Barrier Beach Task Force and a Technical Advisory Committee (TAC) were formed to coordinate the work.

MHD submitted a Notice of Project Change (NPC) to the Executive Office of Environmental Affairs (EOEA) on April 16, 1996.

On May 20, 2005, the Town of Oaks Bluff and Edgartown received an Emergency Authorization from the Department to dredge 4,000 yd^3 of sediment of the entrance channel of the Little Bridge, between Nantucket Sound and Sengekontacket Pond.

Proposed project:: Based on the recommendation of the TAC, the proposed project entails of maintenance dredging of Borrow Area #1 near the Big Bridge (south inlet) and Borrow Area #2 near the Little Bridge (north inlet) of the Sengekontacket Pond to the depth of –5.0 feet and –3.0 feet MLW respectively. The dredge volume of Borrow Area #1 is approximately 67,000 yd^3 and approximately 2,500 yd^3 for Borrow Area #2. In addition, approximately 4000 yd^3 of sediment dredging will take place at the Little Bridge Channel out side of the Sengekontacket Pond. Dredging will be conducted with the use of the Town's hydraulic dredge.

Sediment dewatering: The dredged material will be piped to the Sylvia State Beach where the suspended sandy material will precipitate out and the excess water will either percolate or drained back to the Nantucket Sound.

Sediment sampling data: Nine samples were collected in 1996 for gradation analysis. Results of the gradation analysis indicated that less than 10 percent of sediment passing the No. 200 U.S. Standard Series Testing Sieve. Therefore, no chemical analysis was required. Because the analysis was performed more than 10 years ago and no updated information is provided in the WQC application, condition no. 12 will require the applicant to take samples of the dredged material to confirm the gradation result of the 1996 sampling event and compatibility with the receiving nourishment area.

Beneficial Reuse of sediments: Dredged material will be used as beach nourishment material at the Sylvia State Beach.

The Department received no comment during the 21-day public comment period for this application, which began February 22, 2007.

Therefore, based on information currently in the record, the Department grants a 401 Water Quality Certification for this project subject to the following conditions to maintain water quality, to minimize impact on waters and wetlands, and to ensure compliance with appropriate state law. The Department further certifies in accordance with 314 CMR 9.00 that there is reasonable assurance the project or activity will be conducted in a manner

which will not violate applicable water quality standards (314 CMR 4.00) and other applicable requirements of state law. Finally, the Department has determined that upon satisfying the conditions and mitigation requirements of this approval, the project provides a level of water quality necessary to protect existing uses and accordingly finds that the project as implemented satisfies the Surface Water Quality Standards at 314 CMR 4.00.

1. The Contractor shall take all steps necessary to assure that the proposed activities will be conducted in a manner that will avoid violations of the anti-degradation provisions of Massachusetts Surface Water Quality Standards that protect all waters, including wetlands.

2. Prior to the start of work, the Department shall be notified of any change(s) in the proposed project or plans that may affect waters or wetlands. The Department will determine whether the change(s) require a revision to this Certification.

3. Work in waters and wetlands shall conform substantially to plans submitted in application to this Department, 5 Figures dated April 5, 1993 as part of the Dredge Permit No. 250. The Department shall be notified if there are modifications and or deletions of work as specified in the plans. Depending on the nature of the scope change, approval by the Department may be required.

4. The Department shall be notified, attention Ken Chin 617-292-5893, one week prior to the start of in-water work so that Department staff may inspect the work for compliance with the terms and conditions of this Certification.

5. The Certification remains in effect for the same duration of the federal permit that required it.

6. Dredging in accord with this Certification may begin following the 21-day appeal period and once all other permits have been received.

7. Future maintenance dredging may be conducted as necessary for the duration of this Certification, provided that:

   a. the initial project and any subsequent dredging has been conducted satisfactorily with no violations of the terms and conditions of this Certification,
   b. sediment placement on beach occurs within the boundaries of the project described herein,
   c. documenting the grain-size distribution of the sediment to be dredged is compatible with the grain-size distribution of the receiving beach, and
   d. a due-diligent evaluation to determine that no known spills of oil or other toxic substances have occurred which could have contaminated the sediment in the dredge area.

8. Within 30 days of the completion of the initial dredging, a bathymetric survey of the dredged areas, depicting post-dredge conditions, shall be sent to the Department.

9. In order to protect spawning, larval and juvenile development of winter flounder and horseshoe crab, no dredging shall occur between January 15th and June 30h of any year.

10. The applicant shall cease work if a presence of a visible plume lasting longer than two hours is observed. The applicant shall notify the Department of the event and consult with the Department before work is resumed.

11. After the dredged material is piped to the beach nourishment area, the applicant shall collect 15 samples of the dredged material evenly spaced within the beach nourishment area for gradation analysis within 48 hours at the completion of the dredging operation. Chemical analysis shall be performed in accordance with 314 CMR 9.07(2)(b)6, promulgated on December 29, 2006, if the sample result of the gradation analysis confirms that more than ten percent of dredged material by weight passing the No. 200 U.S. Standard Series Testing Sieve. Turn-around-time for the chemical analyses will be five days maximum. Analytical results will be provided to the Department within 48 hours once it is available.

12. The applicant or designee shall conduct daily inspection of the dredging activity and beach nourishment pertaining to Sylvia State Beach. If any material other than compatible beach nourishment material is observed, the applicant shall direct the dredging contractor to cease dredging operation and conduct an investigation regarding the nature of the to the suspected material. If the suspected material is determined to be incompatible as beach nourishment material, the applicant shall remove the suspect material and disposed of appropriately after consultation with the Department.

13. Disposal of any volume of dredged material at any location in tidal waters is subject to approval by this Department and the Massachusetts Coastal Zone Management office.

14. The applicant shall comply with the conditions set forth on the February 24, 1997 letter issued by the Division of Fisheries & Wildlife. The applicant should coordinate with the Division of Fisheries & Wildlife to determine if any additional or updated requirements regarding the Natural Heritage & Endangered Species Program (NHESP) are needed.

15. Within four weeks of the effective date of this Certification, the applicant shall provide the Department with existing water quality data of the Sengekontacket embayment. If there is an on-going water-quality monitoring program, provide a copy of the water-quality monitoring plan to the Department. If there is no water-quality data of Sengekontacket embayment available, within six weeks of the effective date of this Certification, the applicant shall propose a minimum of 2 years, monthly water-quality monitoring program for the parameters listed on 314 CMR 4.05(4)(a), Class SA to determine if the water quality within the embayment is consistent with the SA classification as the result of the dredging conducted under this Certification, to the Department for acceptance.

16. The applicant, or their contractor, shall make every feasible effort to complete the project within the permitted timeframe. Should the applicant, or their contractor, fail to complete the project and wish to request an amendment to the Certification for incursion into the no-dredge period, the written request shall be received by the Department by January 2nd. The following information shall be included in the request:

    a. project location and transmittal number,
    b. the date on which dredging started,
    c. the number of days and hours per day the dredge operated,
    d. expected daily average production rate and the actual daily average production rate,

e. an explanation of why the project failed to remain on schedule,
f. an account of efforts made to get the project back on schedule,
g. a plan depicting the areas that remain to be dredged,
h. the number of cubic yards that remain to be dredged,
i. an accurate estimate of the number of days required to complete the project,
j. an evaluation of the impact of continued dredging on the species of concern,
k. a description of any efforts that will be made to minimize the impacts of the project on the species of concern, and a realistic assessment of any societal/financial effects of a denial of permission to continue dredging.

The Department will share the information with other resource agencies and a decision to grant or deny the amendment shall be made by January 15th. Requests for amendment received after January 2nd will be considered at the Department's discretion.

This certification does not relieve the applicant of the obligation to comply with other applicable state or federal statutes or regulations. Any changes made to the project as described in the previously submitted Notice of Intent, 401 Water Quality Certification application, or supplemental documents will require further notification to the Department.

Certain persons shall have a right to request an adjudicatory hearing concerning certifications by the Department when an application is required:

a. the applicant or property owner;
b. any person aggrieved by the decision who has submitted written comments during the public comment period;
c. any ten (10) persons of the Commonwealth pursuant to M.G.L. c.30A where a group member has submitted written comments during the public comment period; or
d. any governmental body or private organization with a mandate to protect the environment, which has submitted written comments during the public comment period.

Any person aggrieved, any ten (10) persons of the Commonwealth, or a governmental body or private organization with a mandate to protect the environment may appeal without having submitted written comments during the public comment period only when the claim is based on new substantive issues arising from material changes to the scope or impact of the activity and not apparent at the time of public notice. To request an adjudicatory hearing pursuant to M.G.L. c.30A, § 10, a Notice of Claim must be made in writing, provided that the request is made by certified mail or hand delivery to the Department, with the appropriate filing fee specified within 310 CMR 4.10 along with a DEP Fee Transmittal Form within twenty-one (21) days from the date of issuance of this Certificate, and addressed to:

Case Administrator
Department of Environmental Protection
One Winter Street, 2nd Floor
Boston, MA 02108.

A copy of the request shall at the same time be sent by certified mail or hand delivery to the issuing office of the Wetlands and Waterways Program at:

Department of Environmental Protection
One Winter Street, 5th Floor

Boston, MA 02108.

A Notice of Claim for Adjudicatory Hearing shall comply with the Department's Rules for Adjudicatory Proceedings, 310 CMR 1.01(6), and shall contain the following information pursuant to 314 CMR 9.10(3):

a. the 401 Certification Transmittal Number and DEP Wetlands Protection Act File Number;
b. the complete name of the applicant and address of the project;
c. the complete name, address, and fax and telephone numbers of the party filing the request, and, if represented by counsel or other representative, the name, fax and telephone numbers, and address of the attorney;
d. if claiming to be a party aggrieved, the specific facts that demonstrate that the party satisfies the definition of "aggrieved person" found at 314 CMR 9.02;
e. a clear and concise statement that an adjudicatory hearing is being requested;
f. a clear and concise statement of (1) the facts which are grounds for the proceedings, (2) the objections to this Certificate, including specifically the manner in which it is alleged to be inconsistent with the Department's Water Quality Regulations, 314 CMR 9.00, and (3) the relief sought through the adjudicatory hearing, including specifically the changes desired in the final written Certification; and
g. a statement that a copy of the request has been sent by certified mail or hand delivery to the applicant, the owner (if different from the applicant), the conservation commission of the city or town where the activity will occur, the Department of Environmental Management (when the certificate concerns projects in Areas of Critical Environmental Concern), the public or private water supplier where the project is located (when the certificate concerns projects in Outstanding Resource Waters), and any other entity with responsibility for the resource where the project is located.

The hearing request along with a DEP Fee Transmittal Form and a valid check or money order payable to the Commonwealth of Massachusetts in the amount of one hundred dollars ($100) must be mailed to:

Commonwealth of Massachusetts
Department of Environmental Protection
Commonwealth Master Lockbox
P.O. Box 4062
Boston, MA 02211

The request will be dismissed if the filing fee is not paid, unless the appellant is exempt or granted a waiver. The filing fee is not required if the appellant is a city or town (or municipal agency), county, or district of the Commonwealth of Massachusetts, or a municipal housing authority. The Department may waive the adjudicatory-hearing filing fee pursuant to 310 CMR 4.06(2) for a person who shows that paying the fee will create an undue financial hardship. A person seeking a waiver must file an affidavit setting forth the facts believed to support the claim of undue financial hardship together with the hearing request as provided above.

Failure to comply with this certification is grounds for enforcement, including civil and criminal penalties, under MGL c.21 §42, 314 CMR 9.00, MGL c. 21A §16, 310 CMR 5.00, or other possible actions/penalties as authorized by the General Laws of the Commonwealth.

If you have questions on this decision, please contact Ken Chin at 617-292-5893.

Sincerely,

Glenn Haas
Director
Division of Watershed Management

enclosure: Departmental Action Fee Transmittal Form

cc:
Karen Adams, Regulatory/Enforcement Division, U.S. Army Corps of Engineers, 696 Virginia Road, Concord, MA 01742-2751
Robert Boeri, CZM, 251 Causeway Street, Suite 900, Boston, MA 02114
Frank Germano, DMF, 838 South Rodney French Blvd., New Bedford, MA 02744
David Hill, Liz Kouloheras, DEP SERO
Edgartown Conservation Commission, P.O. Box 1065, Edgartown, MA 02539
Oak Bluffs Conservation Commission, Town Hall, 56 School Street, main floor, Oak Bluffs, MA 02557

KC/W075131

Massachusetts Department of Environmental Protection
Bureau of Resource Protection – Wetlands and Waterways Program

Fee Transmittal Form – Request for Adjudicatory Hearing

A. Request Information

1. Person/Party Making Request:
   (if appropriate, name the group representative)

   Name

   Street Address

   City/Town State Zip Code

   Phone Number Fax Number (if applicable)

   Applicant (if applicable):

   Name

   Street Address

   City/Town State Zip Code

   Phone Number Fax Number (if applicable)

2. Project Location

   Street Address

   City/Town State Zip Code

3. DEP Transmittal Number:

B. Instructions

1. Send this form and check or money order for $100.00 payable to the *Commonwealth of Massachusetts* to the DEP Lockbox at:

   Department of Environmental Protection
   Commonwealth Master Lockbox
   Box 4062
   Boston, MA 02211

2. Send a copy of this form and a copy of the check or money order with the Request for an Adjudicatory Hearing to:

   Docket Clerk
   Office of Administrative Appeals
   Department of Environmental Protection
   One Winter Street
   Boston, MA 02108

IMPORTANT
This form is intended for fee transmittal only. The contents of a request for an adjudicatory hearing (Notice of Claim) are established at 310 CMR 1.01 (6) and the substantive statutes and regulations governing the Department's action.

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

DEVAL L. PATRICK
Governor

TIMOTHY P. MURRAY
Lieutenant Governor

IAN A. BOWLES
Secretary

LAURIE BURT
Commissioner

August 22, 2008

Lynne Fraker
Town Of Edgartown and Oak Bluffs
PO Box 739
Edgartown, MA 02539

Re: **401 WATER QUALITY CERTIFICATION- AMENDMENT No. 1**
Application for BRP WW 07, Major project dredging

At: Sengekontacket Pond/Nantucket Sound

401 WQC Transmittal №: W075131
Amendment Transmittal №: X223847
Wetlands File №: SE20-623
ACoE Application №: NAE 2006-3749

Dear Ms. Fraker

The Massachusetts DEP is in receipt of an amendment request, dated August 6, 2008, of the above Water Quality Certification to include Bend in the Road Beach as beach nourishment location in addition to Sylvia State Beach. Approximately 9,800 cubic yards of dredged material from Borrow Area # 1 will be deposited on Bend in the Road Beach. Dredging of Borrow Area # 1 was authorized under the above WQC issued on June 27, 2007.

The scope of this amendment request, a part of a larger regional Sengekontacket Pond dredging project currently under Environmental Impact Review, was granted a Phase One waiver.

The Department has reviewed your request to include Bent in the Road Beach for beach nourishment. In accordance with the provisions of MGL c.21, §§ 26-53, 314 CMR 9.00 and Section 401 of the Federal Clean Water Act as amended (33 U.S.C. § 1251 et seq.), the Department has determined there is a reasonable assurance the project or activity can be

conducted in a manner that will not violate applicable water quality standards (314 CMR 4.00) and hereby approve this amendment in accordance with 314 CMR 9.09(2).

This letter serves as an amendment of Water Quality Certification, DEP Transmittal No. W075131, ACOE Application No: NAE 2006-3749. All other conditions of the license and Water Quality Certification remain in effect. Failure to comply with the Project's certification is grounds for enforcement, including civil a criminal penalties, under MGL c21 §42, 314 CMR 9.00, MGL c.21A §16, 310 CMR 5.00, or other possible actions/penalties as authorized by the General Laws of the Commonwealth.

If you have any questions, or need additional information, please contact me at (617) 574-6882 or Ken Chin at (617) 292-5893.

Sincerely,

Lealdon Langley
Director
Wetlands and Waterways Program

Cc: Karen Adams, Regulatory/Enforcement Division, U.S. Army Corps of Engineers
696 Virginia Road, Concord, MA 01742-2751
Robert Boeri, CZM, 251 Causeway Street, Suite 800, Boston, MA 02114
Eileen Feeney, Division of Marine Fisheries, Southeast Marine Fisheries Station
838 South Rodney French Blvd., New Bedford, MA 02744
Mitch Ziencina, Liz Kouloheras - DEP SERO
Edgartown Conservation Commission, P.O. Box 1065, Edgartown, MA 02539
Oak Bluffs Conservation Commission, Town Hall, 56 School Street, main floor, Oak Bluffs, MA 02557

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

DEVAL L. PATRICK
Governor

TIMOTHY P. MURRAY
Lieutenant Governor

IAN A. BOWLES
Secretary

LAURIE BURT
Commissioner

November 28, 2008

Lynne Fraker
Town Of Edgartown and Oak Bluffs
PO Box 739
Edgartown, MA 02539

Re: **401 WATER QUALITY CERTIFICATION- AMENDMENT No. 2**
Application for BRP WW 07, Major project dredging

At: Sengecontacket Pond/Nantucket Sound

401 WQC Transmittal №: W075131
Amendment № 2 Transmittal №: X224796
Wetlands File №: SE20-623
ACoE Application №: NAE 2006-3749

Dear Ms. Fraker

The Massachusetts DEP is in receipt of an amendment request, dated October 10, 2008, of the above Water Quality Certification to include Cow Bay Dune Restoration as an additional area to receive the dredged material from Borrow area #1 along with Bend in the Road Beach and Sylvia State Beach. Approximately 30,000 cubic yards of dredged material from Borrow Area # 1 will be deposited upland of Mean High Water (MHW) along approximately 28,000 feet of eroded dune. Dredging of Borrow Area # 1 was authorized under the above WQC issued on June 27, 2007.

The scope of this amendment request is a part of a larger regional Sengecontacket Pond dredging project. A Project Notice Change was file and pursuant to M.G.L. Chapter 30, Sections 61 to 62H including (M.E.P.A.) this project was reviewed as EOEA No. 14139 and the Secretary's Certificate, issued on November 21, 2008 found that an Environmental Impact Report (EIR) would not be required

The Department has reviewed your request to include Cow Bay Dune restoration. In accordance with the provisions of MGL c.21, §§ 26-53, 314 CMR 9.00 and Section 401 of the Federal Clean Water Act as amended (33 U.S.C. § 1251 et seq.), the Department has determined there is a reasonable assurance the project or activity can be conducted in a manner that will not violate applicable water quality standards (314 CMR 4.00) and hereby approve this amendment in accordance with 314 CMR 9.09(2).

This letter serves as an amendment of Water Quality Certification, DEP Transmittal No. W075131, ACOE Application No: NAE 2006-3749. All other conditions of the license and Water Quality Certification remain in effect. Failure to comply with the Project's certification is grounds for enforcement, including civil a criminal penalties, under MGL c21 §42, 314 CMR 9.00, MGL c.21A §16, 310 CMR 5.00, or other possible actions/penalties as authorized by the General Laws of the Commonwealth.

If you have any questions, or need additional information, please contact me at (617) 574-6882 or Ken Chin at (617) 292-5893.

Sincerely,

Lealdon Langley
Director
Wetlands and Waterways Program

Cc: Karen Adams, Regulatory/Enforcement Division, U.S. Army Corps of Engineers
696 Virginia Road, Concord, MA 01742-2751
Robert Boeri, CZM, 251 Causeway Street, Suite 800, Boston, MA 02114
Eileen Feeney, Division of Marine Fisheries, Southeast Marine Fisheries Station
838 South Rodney French Blvd., New Bedford, MA 02744
Mitch Ziencina, Liz Kouloheras - DEP SERO
Edgartown Conservation Commission, P.O. Box 1065, Edgartown, MA 02539
Oak Bluffs Conservation Commission, Town Hall, 56 School Street, main floor, Oak Bluffs, MA 02557

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

DEVAL L. PATRICK
Governor

TIMOTHY P. MURRAY
Lieutenant Governor

IAN A. BOWLES
Secretary

LAURIE BURT
Commissioner

January 13, 2009

Lynne Fraker
Town Of Edgartown and Oak Bluffs
PO Box 739
Edgartown, MA 02539

Re: **401 WATER QUALITY CERTIFICATION- AMENDMENT No. 3**
Application for BRP WW 07, Major project dredging

At: Sengecontacket Pond/Nantucket Sound

401 WQC Transmittal №: W075131
Wetlands File №: SE20-623
ACoE Application №: NAE 2006-3749

Dear Ms. Fraker

The Department has reviewed your request for an extension of time to complete the dredging at the above-referenced location. You have requested an incursion into the no-dredge window as conditioned in the Water Quality Certification reference above. The Department understands the request for extension is due to adverse weather conditions, equipment malfunction, and replacement parts delay. The Department hereby grants a one time extension of the dredging window to February 8, 2009 in accordance with 314 CMR 9.09(2). The 24-day duration is based on a peak dredging production rate of 500 cubic yards per day working 7 days per week.

In accordance with the provisions of Section 401 of the Federal Clean Water Act as amended (33 U.S.C. § 1215 et seq.), MG c.21, §§ 26-53, and 314 CMR 9.00, it has been determined there is a reasonable assurance for the activity will be conducted in a manner which will not violate applicable water quality standards (314 CMR 4.00).

This letter serves as an amendment of 401 Water Qualification, ACOE Application No: NAE 2006-3749, DEP Transmittal No. W075131. Dredging is permitted until February 8, 2009, and the Department shall be kept abreast regarding the progress of the dredging. All other conditions of the license and Water Quality Certification remain in effect. Failure to comply with the

Project's certification is grounds for enforcement, including civil a criminal penalties, under MGL c21 §42, 314 CMR 9.00, MGL c.21A §16, 310 CMR 5.00, or other possible actions/penalties as authorized by the General Laws of the Commonwealth.

If you have any questions, or need additional information, please contact me at (617) 574-6882 or Ken Chin at (617) 292-5893.

Sincerely,

Lealdon Langley
Director
Wetlands and Waterways Program

Cc: Karen Adams, Regulatory/Enforcement Division, U.S. Army Corps of Engineers
696 Virginia Road, Concord, MA 01742-2751
Robert Boeri, CZM, 251 Causeway Street, Suite 800, Boston, MA 02114
Eileen Feeney, Division of Marine Fisheries, Southeast Marine Fisheries Station
838 South Rodney French Blvd., New Bedford, MA 02744
Mitch Ziencina, Liz Kouloheras - DEP SERO
Edgartown Conservation Commission, P.O. Box 1065, Edgartown, MA 02539
Oak Bluffs Conservation Commission, Town Hall, 56 School Street, main floor, Oak Bluffs, MA 02557

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

DEVAL L. PATRICK
Governor

TIMOTHY P. MURRAY
Lieutenant Governor

IAN A. BOWLES
Secretary

LAURIE BURT
Commissioner

February 5, 2009

Lynne Fraker
Town Of Edgartown and Oak Bluffs
PO Box 739
Edgartown, MA 02539

Re: **401 WATER QUALITY CERTIFICATION- AMENDMENT No. 4**
Application for BRP WW 07, Major project dredging

At: Sengecontacket Pond/Nantucket Sound

401 WQC Transmittal №: W075131
Wetlands File №: SE20-623
ACoE Application №: NAE 2006-3749

Dear Ms. Fraker

The Department has reviewed your second request for an extension of time into the no-dredge window in order to complete the dredging and nourishment at the above-referenced location. The Department granted a one time extension based on the ability of the contractor achieving peak dredging production rate of 500 cubic yards per day. In your February 4, 2009 letter, you indicated that the actual production rate was closer to 300 cubic yards per day.

The Department understands the need to substantially complete the dune restoration in the Bend in the Road Beach and Cow Bay Beach to minimize further erosion and therefore, will grant additional seven days to February 15, 2009.

In accordance with the provisions of Section 401 of the Federal Clean Water Act as amended (33 U.S.C. § 1215 et seq.), MG c.21, §§ 26-53, and 314 CMR 9.00, it has been determined there is a reasonable assurance for the activity will be conducted in a manner which will not violate applicable water quality standards (314 CMR 4.00).

This letter serves as an amendment of 401 Water Qualification, ACOE Application No: NAE 2006-3749, DEP Transmittal No. W075131. Dredging is permitted until February 8, 2009, and

the Department shall be kept abreast regarding the progress of the dredging. All other conditions of the license and Water Quality Certification remain in effect. Failure to comply with the Project's certification is grounds for enforcement, including civil a criminal penalties, under MGL c21 §42, 314 CMR 9.00, MGL c.21A §16, 310 CMR 5.00, or other possible actions/penalties as authorized by the General Laws of the Commonwealth.

If you have any questions, or need additional information, please contact me at (617) 574-6882 or Ken Chin at (617) 292-5893.

Sincerely,

Lealdon Langley
Director
Wetlands and Waterways Program

Cc: Karen Adams, Regulatory/Enforcement Division, U.S. Army Corps of Engineers
696 Virginia Road, Concord, MA 01742-2751
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Edgartown Conservation Commission, P.O. Box 1065, Edgartown, MA 02539
Oak Bluffs Conservation Commission, Town Hall, 56 School Street, main floor, Oak Bluffs, MA 02557

The Gut Warrows

DEPARTMENT OF THE ARMY
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS
696 VIRGINIA ROAD
CONCORD, MASSACHUSETTS 01742-2751

REPLY TO
ATTENTION OF

January 26, 2005

Regulatory Division
CENAE-R-PEA
Permit Number: NAE-2004-3801

Ms. Lynne Fraker
Town of Edgartown
P.O Box 739
Edgartown, Massachusetts 02539

Dear Ms. Fraker:

We have reviewed your application to dredge an approximately 135,000 square-foot area to a depth of 2.5 feet below mean low water at Cape Pogue Pond in Edgartown, Massachusetts. Approximately 9900 cubic yards of sediments will be removed by hydraulic means and disposed of below the high tide line on 101,000 square feet of an adjacent beach. The work is described on the enclosed plans entitled "Dredging Plan for The Gut – Cape Pogue Pond," on 3 sheets, and dated November 25, 1997.

Based on the information you have provided, we have determined that the proposed activity, which includes a discharge of dredged or fill material into waters or wetlands, will have only minimal individual or cumulative environmental impacts. Therefore, this work is authorized as a Category II activity under the Federal permit, Massachusetts Programmatic General Permit (PGP) provided you comply with the following special conditions:

1. There shall be no dredging from January 15 to April 15 of any year in order to minimize adverse impact to winter flounder.

2. In order to avoid adversely affecting breeding piping plovers (*Charadrius melodus*) on Cape Pogue, dredge disposal should only occur between September 1 and March 15 of any year. However, given the small amount of dredge material, work may occur outside of the recommended time-of-year restriction <u>if</u> a qualified piping plover monitor has determined that piping plovers are not present within 300 meters of the proposed disposal site. We request that the U.S. Fish and Wildlife Service be contacted at (603) 223-2541 at least two weeks prior to any work proposed outside of the September 1 through March 15 window.

This determination becomes valid only after the Massachusetts Department of Environmental Protection (DEP) issues or waives the necessary 401 Water Quality Certification. In the event the State denies 401 Water Quality Certification, this determination becomes null and void. The address of the DEP Regional office for your area is provided in the enclosed PGP.

You must perform the activity authorized herein in compliance with the special condition provided above, all the terms and conditions of the PGP and any conditions placed on 401 Water Quality Certification including any required mitigation. Please review the enclosed PGP carefully, including the PGP conditions beginning on page 9, to familiarize yourself with its contents. You are responsible for complying with all of the PGP requirements; therefore, you should be certain that whoever does the work fully understands all of the conditions. You may wish to discuss the conditions of this authorization with your contractor to ensure the contractor can accomplish the work in a manner that conforms to all requirements.

The Corps of Engineers has consulted with the National Marine Fisheries Service (NMFS) regarding the effects of your project on Essential Fish Habitat (EFH) designated under the Magnuson-Stevens Fishery Conservation and Management Act. The NMFS provided EFH conservation recommendations, which we included in special condition #1 listed above. This condition will reduce turbidity and sedimentation effects on winter flounder.

Your project is located within, or may affect resources within the coastal zone. Therefore, in order for the above determination of eligibility to become the Federal authorization, a Federal consistency concurrence from the Massachusetts Office of Coastal Zone Management (MCZM) is required. However, MCZM has already determined that no further Federal Consistency Review is required.

If you change the plans or construction methods for work within our jurisdiction, please contact us immediately to discuss modification of this authorization. This office must approve any changes before you undertake them.

You must commence or have under contract to commence the work authorized herein by January 20, 2010, and complete the work by January 20, 2011, unless the Massachusetts PGP is modified, suspended, or revoked, such that the activity would no longer comply with the terms and conditions of the Massachusetts PGP.

This authorization requires you to notify us before beginning work and allow us to inspect the project. Therefore, you must complete and return the enclosed Work Start Notification Form to this office no later than two weeks before the anticipated starting date.

Please note that this determination does not constitute an authorization to proceed until all other applicable Federal, state and local permits are obtained. Performing work not specifically authorized by this permit, starting work without obtaining other Federal, state and local approvals, or failing to comply with the permit conditions may subject you to the enforcement provisions of our regulations.

Narrows

DEPARTMENT OF THE ARMY
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS
696 VIRGINIA ROAD
CONCORD, MASSACHUSETTS 01742-2751

REPLY TO
ATTENTION OF

January 26, 2005

Regulatory Division
CENAE-R-PEA
Permit Number: NAE-2004-3803

Ms. Lynne Fraker
Town of Edgartown
P.O Box 739
Edgartown, Massachusetts 02539

Dear Ms. Fraker:

We have reviewed your application to dredge an approximately 48,500 square-foot area to a depth of 3 feet below mean low water at the Narrows, Cape Poge Pond, Edgartown, Massachusetts. Approximately 3100 cubic yards of sediments will be removed by hydraulic means and disposed of below the high tide line on 25,000 square feet of an adjacent beach. The authorized work is described on the enclosed plans entitled, "Dredging Plan for The Narrows," on two sheets and dated April 10, 1997.

Based on the information you have provided, we have determined that the proposed activity, which includes a discharge of dredged or fill material into waters or wetlands, will have only minimal individual or cumulative environmental impacts. Therefore, this work is authorized as a Category II activity under the Federal permit, Massachusetts Programmatic General Permit (PGP) provided you comply with the following special condition:

> In order to avoid adversely affecting breeding piping plovers (*Charadrius melodus*) on Cape Pogue, dredge disposal should only occur between September 1 and March 15 of any year. However, given the small amount of dredge material and the short duration (three days) of construction activities, work may occur outside of the recommended time-of-year restriction <u>if</u> a qualified piping plover monitor has determined that piping plovers are not present within 300 meters of the proposed disposal site. We request that the U.S. Fish and Wildlife Service be contacted at (603) 223-2541 at least two weeks prior to any work proposed outside of the September 1 through March 15 window.

This determination becomes valid only after the Massachusetts Department of Environmental Protection (DEP) issues or waives the necessary 401 Water Quality Certification. In the event the State denies 401 Water Quality Certification, this determination becomes null and void. The address of the DEP Regional office for your area is provided in the enclosed PGP.

You must perform the activity authorized herein in compliance with all the terms and conditions of the PGP and any conditions placed on 401 Water Quality Certification <u>including any required mitigation</u>. Please review the enclosed PGP carefully, including the PGP conditions beginning on page 9, to familiarize yourself with its contents. You are responsible for complying with all of the PGP requirements; therefore, you should be certain that whoever does the work

fully understands all of the conditions. You may wish to discuss the conditions of this authorization with your contractor to ensure the contractor can accomplish the work in a manner that conforms to all requirements.

Your project is located within, or may affect resources within the coastal zone. Therefore, in order for the above determination of eligibility to become the Federal authorization, a Federal consistency concurrence from the Massachusetts Office of Coastal Zone Management (MCZM) is required. However, MCZM has already determined that no further Federal Consistency Review is required.

If you change the plans or construction methods for work within our jurisdiction, please contact us immediately to discuss modification of this authorization. This office must approve any changes before you undertake them.

You must commence or have under contract to commence the work authorized herein by January 20, 2010, and complete the work by January 20, 2011, unless the Massachusetts PGP is modified, suspended, or revoked, such that the activity would no longer comply with the terms and conditions of the Massachusetts PGP.

This authorization requires you to notify us before beginning work and allow us to inspect the project. Therefore, you must complete and return the enclosed Work Start Notification Form to this office no later than two weeks before the anticipated starting date.

Please note that this determination does not constitute an authorization to proceed until all other applicable Federal, state and local permits are obtained. Performing work not specifically authorized by this permit, starting work without obtaining other Federal, state and local approvals, or failing to comply with the permit conditions may subject you to the enforcement provisions of our regulations.

If you have any questions, please contact Kevin Kotelly of my staff at (978) 318-8703.

Sincerely,

Thomas L. Koning
Colonel, Corps of Engineers
District Engineer

Enclosures

Dike Bridge Navraus

DEPARTMENT OF THE ARMY
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS
696 VIRGINIA ROAD
CONCORD, MASSACHUSETTS 01742-2751

REPLY TO
ATTENTION OF

January 26, 2005

Regulatory Division
CENAE-R-PEA
Permit Number: NAE-2004-3802

Ms. Lynne Fraker
Town of Edgartown
P.O Box 739
Edgartown, Massachusetts 02539

Dear Ms. Fraker:

We have reviewed your application to dredge an approximately 45,000 square-foot area to a depth of 3 feet below mean low water at the Dike Bridge Approach in Edgartown, Massachusetts. Approximately 1800 cubic yards of sediments will be removed by hydraulic means and disposed of below the high tide line on 21,000 square feet of an adjacent beach. The authorized work is described on the enclosed plans entitled, "Dredging Plan for the Dike Bridge Approach," on two sheets and dated August 1, 1997.

Based on the information you have provided, we have determined that the proposed activity, which includes a discharge of dredged or fill material into waters or wetlands, will have only minimal individual or cumulative environmental impacts. Therefore, this work is authorized as a Category II activity under the Federal permit, Massachusetts Programmatic General Permit (PGP).

This determination becomes valid only after the Massachusetts Department of Environmental Protection (DEP) issues or waives the necessary 401 Water Quality Certification. In the event the State denies 401 Water Quality Certification, this determination becomes null and void. The address of the DEP Regional office for your area is provided in the enclosed PGP.

You must perform the activity authorized herein in compliance with all the terms and conditions of the PGP and any conditions placed on 401 Water Quality Certification <u>including any required mitigation</u>. Please review the enclosed PGP carefully, including the PGP conditions beginning on page 9, to familiarize yourself with its contents. You are responsible for complying with all of the PGP requirements; therefore, you should be certain that whoever does the work fully understands all of the conditions. You may wish to discuss the conditions of this authorization with your contractor to ensure the contractor can accomplish the work in a manner that conforms to all requirements.

Your project is located within, or may affect resources within the coastal zone. Therefore, in order for the above determination of eligibility to become the Federal authorization, a Federal consistency concurrence from the Massachusetts Office of Coastal Zone Management (MCZM) is required. However, MCZM has already determined that no further Federal Consistency Review is required.

If you change the plans or construction methods for work within our jurisdiction, please contact us immediately to discuss modification of this authorization. This office must approve any changes before you undertake them.

You must commence or have under contract to commence the work authorized herein by January 20, 2010, and complete the work by January 20, 2011, unless the Massachusetts PGP is modified, suspended, or revoked, such that the activity would no longer comply with the terms and conditions of the Massachusetts PGP.

This authorization requires you to notify us before beginning work and allow us to inspect the project. Therefore, you must complete and return the enclosed Work Start Notification Form to this office no later than two weeks before the anticipated starting date.

Please note that this determination does not constitute an authorization to proceed until all other applicable Federal, state and local permits are obtained. Performing work not specifically authorized by this permit, starting work without obtaining other Federal, state and local approvals, or failing to comply with the permit conditions may subject you to the enforcement provisions of our regulations.

If you have any questions, please contact Kevin Kotelly of my staff at (978) 318-8703.

Sincerely,

for Thomas L. Koning
Colonel, Corps of Engineers
District Engineer

Enclosures

Copies Furnished:

John McCulloch, U.S. EPA, Region 1, 1 Congress Street, Suite 1100-Mail Code CWQ, Boston, Massachusetts 02114-2023
Christopher Boelke, National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01930-2298
William Neidermyer, U.S. Fish and Wildlife Service, 70 Commercial Street, Suite 300, Concord, New Hampshire 03301-5087
Elizabeth F. Kouloheras, DEP Southeast Regional Office, Wetlands and Waterways, 20 Riverside Drive, Lakeville, Massachusetts 02347

Eel Pond

DEPARTMENT OF THE ARMY
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS
696 VIRGINIA ROAD
CONCORD, MASSACHUSETTS 01742-2751

REPLY TO:
ATTENTION OF:

August 24, 2007

Regulatory Division
CENAE-R-PEA
Permit Number: NAE-2006-3245

Paul Bagnall, Shellfish Constable
Town of Edgartown
P.O. Box 481
Edgartown, Massachusetts 02539

Dear Mr. Bagnall:

We have reviewed your application to dredge an approximately 59,000 square-foot (SF) area to a depth of 4 feet (FT) below mean low water (MLW) and an approximately 10,000 SF area to a depth of 2.5 FT below MLW in Eel Pond and Nantucket Sound in Edgartown, Massachusetts. Approximately 3,200 cubic yards of sand will be removed by hydraulic means and disposed of at an adjacent beach located west of Eel Pond. Approximately 1,800 CY of the material will be disposed of below the high tide line (HTL) over an area of 19,500 SF and approximately 1,400 CY of the material will be disposed of above the HTL over an area of 9,700 SF. The work is shown on the attached plans entitled, "Dredging Plan for Eel Pond Areas Prepared for Town of Edgartown," on six sheets, and dated, "October 23, 1998."

Based on the information you have provided, we have determined that the proposed activity, which includes a discharge of dredged or fill material into waters or wetlands, will have only minimal individual or cumulative environmental impacts on waters of the United States, including wetlands. Therefore, this work is authorized as a Category 2 activity under the attached Federal permit known as the Massachusetts Programmatic General Permit (PGP). This work must be performed in accordance with the terms and conditions of the PGP and also in compliance with the following special conditions:

1. *There shall be no dredging from January 15th to June 30th of any year in order to minimize adverse impacts to Winter Flounder.*

2. *There shall be no dredging in eelgrass.*

3. *There shall be no discharge of dredged material on the adjacent beach from March 16th to October 31st in order to minimize adverse impacts to nesting shore birds.*

The Corps of Engineers has consulted with the National Marine Fisheries Service (NMFS) regarding the effects of your project on Essential Fish Habitat (EFH) as designated under the Magnuson-Stevens Fishery Conservation and Management Act. The NMFS provided EFH conservation recommendations, which we included in special conditions #1 and 2 listed above. These conditions are intended to minimize adverse impacts to Winter Flounder and eelgrass.

You are responsible for complying with all of the PGP's requirements. Please review the attached PGP carefully, in particular the PGP conditions beginning on Page 9, to familiarize yourself with its contents. You should ensure that whoever does the work fully understands the requirements and that a copy of the permit document and this authorization letter are at the project site throughout the time the work is underway.

This determination becomes valid only after the Massachusetts Department of Environmental Protection (DEP) issues or waives Water Quality Certification (WQC) as required under Section 401 of the Clean Water Act. In the event the DEP denies the 401 WQC, this determination becomes null and void. The address of the DEP Regional office for your area is provided in the attached PGP.

Your project is located within, or may affect resources within the coastal zone. The Massachusetts Office of Coastal Zone Management (CZM) has already determined that no further Federal Consistency Review is required.

This authorization expires on January 20, 2010, unless the PGP is modified, suspended or revoked. You must complete the work authorized herein by January 20, 2010. If you do not, you must contact this office to determine the need for further authorization before continuing the activity. We recommend you contact us *before* this permit expires to discuss a time extension or permit reissuance.

If you change the plans or construction methods for work within our jurisdiction, please contact us immediately to discuss modification of this authorization. This office must approve any changes before you undertake them.

This authorization requires you to 1. notify us before beginning work so we may inspect the project, and 2. submit a Compliance Certification Form. You must complete and return the enclosed Work Start Notification Form to this office at least two weeks before the anticipated starting date. You must complete and return the enclosed Compliance Certification Form within one month following the completion of the authorized work.

This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law, as listed on Page 1 of the PGP. Performing work not specifically authorized by this determination or failing to comply with any special conditions provided above or all the terms and conditions of the PGP may subject you to the enforcement provisions of our regulations.

Please contact Kevin Kotelly of my staff at (978) 318-8703 if you have any questions.

Sincerely,

Ted Lento, Acting Chief
for Curtis L. Thalken
Colonel, Corps of Engineers
District Engineer

Attachments

Copies Furnished:

Ed Reiner, U.S. EPA, Region 1, 1 Congress Street, Suite 1100-Mail Code CWP, Boston, Massachusetts 02114-2023
Christopher Boelke, National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01930-2298
Maria Tur, U.S. Fish and Wildlife Service, 70 Commercial Street, Suite 300, Concord, New Hampshire 03301-5087
Elizabeth F. Kouloheras, DEP SERO, Wetlands and Waterways, 20 Riverside Drive, Lakeville, Massachusetts 02347
Robert Boeri, Coastal Zone Management, 251 Causeway Street, Suite 900, Boston, Massachusetts 02114
Lynne Fraker, Town of Edgartown, P.O. Box 481, Edgartown, Massachusetts 02539

Lighthouse

DEPARTMENT OF THE ARMY
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS
696 VIRGINIA ROAD
CONCORD, MASSACHUSETTS 01742-2751

REPLY TO
ATTENTION OF

January 26, 2005

Regulatory Division
CENAE-R-PEA
Permit Number: NAE-2004-3805

Ms. Lynne Fraker
Town of Edgartown
P.O Box 739
Edgartown, Massachusetts 02539

Dear Ms. Fraker:

We have reviewed your application to dredge an approximately 50,990 square foot area to a depth of –7 feet mean low water from the channel at the mouth of Edgartown Harbor in Edgartown, Massachusetts. Approximately 8,400 cubic yards of sand will be removed by hydraulic means and discharged directly on Lighthouse Beach in Edgartown, impacting 7,420 square feet below the high tide line. The work is described on the enclosed plans entitled "Proposed Dredging Plan in Edgartown Harbor At: Edgartown Lighthouse, County of Dukes, Application By Town of Edgartown," on six sheets, and dated October 15, 1998.

Based on the information you have provided, we have determined that the proposed activity, which includes a discharge of dredged or fill material into waters or wetlands, will have only minimal individual or cumulative environmental impacts. Therefore, this work is authorized as a Category II activity under the Federal permit, Massachusetts Programmatic General Permit (PGP) provided you comply with the following special condition:

1. There shall be no dredging from January 15 to April 15 of any year in order to minimize adverse impacts to winter flounder.

2. All suitable piping plover habitat created by work performed under this authorization shall be managed (a) in accordance with the attached Guidelines for Managing Recreational Activities in Piping Plover Breeding Habitat on the U.S. Atlantic Coast to Avoid Take Under Section 9 of the Endangered Species Act issued by the U.S. Fish and Wildlife Service in 1996 and (b) in consultation with the Supervisor, New England Field Office, U.S. Fish and Wildlife Service, 22 Bridge St., Unit 1, Concord, NH 03301-4986, Telephone (603) 225-1411.

3. Each year, before dredged material is placed at any site, a qualified piping plover monitor shall determine whether suitable piping plover nesting habitat exists at that site. A qualified piping plover monitor is a person who has the skills, knowledge, and ability to conduct monitoring. Aptitude for monitoring includes keen powers of observation, familiarity with avian biology, experience observing birds or other wildlife for sustained periods, tolerance for adverse weather, patience, and the ability to maintain detailed organized notes. The permittee shall contact the U.S. Fish and Wildlife Service at (603) 223-2541 before placing

dredged material at any site where the monitor determines that suitable piping plover habitat exists.

4. Suitable piping plover nesting habitat that is degraded by work performed under this authorization shall be restored to its pre-construction level of suitability immediately following completion of work at that site. The applicant shall provide the U.S. Fish and Wildlife Service with a copy of a work-start notification form as well as a ground photograph of the post-construction site (Send to: Supervisor, New England Field Office, U.S. Fish and Wildlife Service, 22 Bridge St., Unit 1, Concord, NH 03301-4986).

5. On suitable piping plover nesting habitat all construction activities are prohibited during the period April 1 to September 1 of each year unless:

a. At least two weeks before construction begins the U.S. Fish and Wildlife Service is notified at (603) 223-2541 of (1) when construction activities are proposed to start and (2) the location of the construction activities;

b. A qualified piping plover monitor is in place to document the location and activities of breeding piping plovers at least one week prior to the start of any construction activity. In any calendar year pre-activity surveys shall begin one week prior to April 1 or one week prior to the commencement of any on-site project activity, whichever occurs first. On at least four non-consecutive days the piping plover monitor shall survey the project area (including landing, staging, operation, sand-transport and beach nourishment areas) for the occurrence of territorial, courting or nesting piping plovers. Each day's monitoring shall consist of two separate surveys conducted during different times of the tidal cycle;

c. Dredge/disposal activities are located 100 meters or more from piping plover territories, nests and/or broods and do not disturb piping plovers;

d. Plovers are monitored continuously during project activities and, if it is determined that piping plovers are disturbed by the activity, (1) all work ceases immediately and (2) the U.S. Fish and Wildlife Service is notified immediately at (603) 223-2541 for further consultation. Piping plover monitoring field notes shall be provided to the U.S. Fish and Wildlife Service upon request. Piping plover monitoring is the process of observing and recording data on piping plover breeding activities without causing disturbance to the birds under observation. Monitoring includes, but is not limited to, detecting and recording locations of territorial and courting adults, locating nests and incubating adults, locating broods, interpreting piping plover behaviors, and documenting observations in legible, complete field notes. Except to determine the number of eggs in a newly discovered nest, monitoring is done using binoculars or spotting scopes from a distance of at least 50 meters;

e. If a crushed nest or a dead piping plover chick or adult is found, the permittee immediately contacts the Division of Law Enforcement, U.S. Fish and Wildlife Service, 70 Everett Avenue, Suite 315, Chelsea, Massachusetts 02150, Telephone (617) 889-6616.

This determination becomes valid only after the Massachusetts Department of Environmental Protection (DEP) issues or waives the necessary 401 Water Quality Certification. In the event the State denies 401 Water Quality Certification, this determination becomes null and void. The address of the DEP Regional office for your area is provided in the enclosed PGP.

You must perform the activity authorized herein in compliance with the special condition provided above, all the terms and conditions of the PGP and any conditions placed on 401 Water Quality Certification including any required mitigation. Please review the enclosed PGP carefully, including the PGP conditions beginning on page 9, to familiarize yourself with its contents. You are responsible for complying with all of the PGP requirements; therefore, you should be certain that whoever does the work fully understands all of the conditions. You may wish to discuss the conditions of this authorization with your contractor to ensure the contractor can accomplish the work in a manner that conforms to all requirements.

The Corps of Engineers has consulted with the National Marine Fisheries Service (NMFS) regarding the effects of your project on Essential Fish Habitat (EFH) designated under the Magnuson-Stevens Fishery Conservation and Management Act. The NMFS provided EFH conservation recommendations, which we included in special condition #1 listed above. This condition will reduce turbidity and sedimentation effects on winter flounder.

Your project is located within, or may affect resources within the coastal zone. Therefore, in order for the above determination of eligibility to become the Federal authorization, a Federal consistency concurrence from the Massachusetts Office of Coastal Zone Management (MCZM) is required. However, MCZM has already determined that no further Federal Consistency Review is required.

If you change the plans or construction methods for work within our jurisdiction, please contact us immediately to discuss modification of this authorization. This office must approve any changes before you undertake them.

You must commence or have under contract to commence the work authorized herein by January 20, 2010, and complete the work by January 20, 2011, unless the Massachusetts PGP is modified, suspended, or revoked, such that the activity would no longer comply with the terms and conditions of the Massachusetts PGP.

This authorization requires you to notify us before beginning work and allow us to inspect the project. Therefore, you must complete and return the enclosed Work Start Notification Form to this office no later than two weeks before the anticipated starting date.

Please note that this determination does not constitute an authorization to proceed until all other applicable Federal, state and local permits are obtained. Performing work not specifically authorized by this permit, starting work without obtaining other Federal, state and local approvals, or failing to comply with the permit conditions may subject you to the enforcement provisions of our regulations.

If you have any questions, please contact Kevin Kotelly of my staff at (978) 318-8703.

Sincerely,

Thomas L. Koning
Colonel, Corps of Engineers
District Engineer

Enclosures

Copies Furnished:

John McCulloch, U.S. EPA, Region 1, 1 Congress Street, Suite 1100-Mail Code CWQ, Boston, Massachusetts 02114-2023
Christopher Boelke, National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01930-2298
William Neidermyer, U.S. Fish and Wildlife Service, 70 Commercial Street, Suite 300, Concord, New Hampshire 03301-5087
Elizabeth F. Kouloheras, DEP Southeast Regional Office, Wetlands and Waterways, 20 Riverside Drive, Lakeville, Massachusetts 02347

Inner Harbor

DEPARTMENT OF THE ARMY
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS
696 VIRGINIA ROAD
CONCORD, MASSACHUSETTS 01742-2751

REPLY TO
ATTENTION OF

January 26, 2005

Regulatory Division
CENAE-R-PEA
Permit Number: NAE-2004-3804

Ms. Lynne Fraker
Town of Edgartown
P.O Box 739
Edgartown, Massachusetts 02539

Dear Ms. Fraker:

We have reviewed your application to dredge an approximately 113,000 square-foot area to a depth of -6 feet mean low water at Chappaquiddick Point in Edgartown Harbor, Edgartown, Massachusetts. Approximately 8,500 cubic yards of sediments will be removed by hydraulic means and disposed of below the high tide line on 7,420 square feet of Lighthouse Beach located to the north. The authorized work is described on the enclosed plans of various titles on six sheets and dated September and May, 1998.

Based on the information you have provided, we have determined that the proposed activity, which includes a discharge of dredged or fill material into waters or wetlands, will have only minimal individual or cumulative environmental impacts. Therefore, this work is authorized as a Category II activity under the Federal permit, Massachusetts Programmatic General Permit (PGP) provided you comply with the following special condition:

> There shall be no dredging from January 15 to October 15 of any year in order to minimize adverse impacts to winter flounder.

This determination becomes valid only after the Massachusetts Department of Environmental Protection (DEP) issues or waives the necessary 401 Water Quality Certification. In the event the State denies 401 Water Quality Certification, this determination becomes null and void. The address of the DEP Regional office for your area is provided in the enclosed PGP.

You must perform the activity authorized herein in compliance with the special condition provided above, all the terms and conditions of the PGP and any conditions placed on 401 Water Quality Certification <u>including any required mitigation</u>. Please review the enclosed PGP carefully, including the PGP conditions beginning on page 9, to familiarize yourself with its contents. You are responsible for complying with all of the PGP requirements; therefore, you should be certain that whoever does the work fully understands all of the conditions. You may wish to discuss the conditions of this authorization with your contractor to ensure the contractor can accomplish the work in a manner that conforms to all requirements.

The Corps of Engineers has consulted with the National Marine Fisheries Service (NMFS) regarding the effects of your project on Essential Fish Habitat (EFH) designated under the Magnuson-Stevens Fishery Conservation and Management Act. The NMFS provided EFH conservation recommendations, which we included in the special condition listed above. This condition will reduce turbidity and sedimentation effects on winter flounder.

Your project is located within, or may affect resources within the coastal zone. Therefore, in order for the above determination of eligibility to become the Federal authorization, a Federal consistency concurrence from the Massachusetts Office of Coastal Zone Management (MCZM) is required. However, MCZM has already determined that no further Federal Consistency Review is required.

If you change the plans or construction methods for work within our jurisdiction, please contact us immediately to discuss modification of this authorization. This office must approve any changes before you undertake them.

You must commence or have under contract to commence the work authorized herein by January 20, 2010, and complete the work by January 20, 2011, unless the Massachusetts PGP is modified, suspended, or revoked, such that the activity would no longer comply with the terms and conditions of the Massachusetts PGP.

This authorization requires you to notify us before beginning work and allow us to inspect the project. Therefore, you must complete and return the enclosed Work Start Notification Form to this office no later than two weeks before the anticipated starting date.

Please note that this determination does not constitute an authorization to proceed until all other applicable Federal, state and local permits are obtained. Performing work not specifically authorized by this permit, starting work without obtaining other Federal, state and local approvals, or failing to comply with the permit conditions may subject you to the enforcement provisions of our regulations.

If you have any questions, please contact Kevin Kotelly of my staff at (978) 318-8703.

Sincerely,

Thomas L. Koning
for Colonel, Corps of Engineers
District Engineer

Enclosures

Copies Furnished:

John McCulloch, U.S. EPA, Region 1, 1 Congress Street, Suite 1100-Mail Code CWQ, Boston, Massachusetts 02114-2023

Christopher Boelke, National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01930-2298

William Neidermyer, U.S. Fish and Wildlife Service, 70 Commercial Street, Suite 300, Concord, New Hampshire 03301-5087

Elizabeth F. Kouloheras, DEP Southeast Regional Office, Wetlands and Waterways, 20 Riverside Drive, Lakeville, Massachusetts 02347

Collins Beach

DEPARTMENT OF THE ARMY
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS
696 VIRGINIA ROAD
CONCORD, MASSACHUSETTS 01742-2751

REPLY TO
ATTENTION OF
Regulatory Branch
CENAE-CO-R-199901569

January 21, 2000

Mr. Charles Blair
Edgartown Harbormaster
c/o Robert L. Fultz and Associates
74 Colonial Road
Marshfield, Massachusetts 02050

Dear Mr. Blair:

This is to inform you that we have reviewed your application to dredge an approximately 24,700 square feet (SF) area to a depth of –5' mean low water at Collins Beach, Edgartown, Massachusetts. Approximately 2,140 cubic yards of sand will be removed by hydraulic method and disposed of on the beach located approximately 900' to the south. Approximately 22,440 SF of sand will be placed below the high tide line. This work is described on the enclosed plans entitled "PURPOSE: DREDGING & BEACH NOURISHMENT," on six pages, and dated "JAN. '00."

Based on the information you have provided, we have determined that the proposed activity, which includes a discharge of dredged or fill material into waters or wetlands, will have only minimal individual or cumulative environmental impacts. The Federal permit known as the Massachusetts Programmatic General Permit (PGP) therefore authorizes this activity, provided you comply with the following special condition:

There shall be no dredging between February 15th and June 15th of any year. This is to minimize impacts to spawning, larval and juvenile winter flounder.

This determination becomes valid only after the Massachusetts Department of Environmental Protection (DEP) issues or waives the necessary 401 Water Quality Certification. In the event the State denies 401 Water Quality Certification, this determination becomes null and void. The address of the DEP Regional office for your area is provided in the enclosed PGP.

Your project is located within, or may affect resources within the coastal zone. Therefore, in order for the above determination of eligibility to become the Federal authorization, a Federal consistency concurrence from the Massachusetts Office of Coastal Zone Management (MCZM) is required. However, MCZM has already determined that this project is below applicable thresholds and does not require Federal consistency concurrence.

The Corps of Engineers has consulted with the National Marine Fisheries Service (NMFS) regarding the effects of your project on Essential Fish Habitat (EFH) designated under the Magnuson-Stevens Fishery Conservation and Management Act. The NMFS provided EFH conservation recommendations, which are included in the above listed special condition. This condition will minimize impacts to spawning, larval and juvenile winter flounder.

You must perform the activity authorized herein in compliance with the special condition provided above, all the terms and conditions of the PGP and any conditions placed on 401 Water Quality Certification. Enclosed is a copy of the PGP. Please review it carefully to familiarize yourself with its contents. You are responsible for complying with all of the PGP requirements; therefore, you should be certain that whoever does the work fully understands all of the

conditions. You may wish to discuss the conditions of this authorization with your contractor to ensure the contractor can accomplish the work in a manner that conforms to all requirements.

Please note that this determination does not constitute an authorization to proceed until all other applicable state and local permits are obtained. Performing work not specifically authorized by this permit, starting work without obtaining other applicable State and local approvals, or failing to comply with the permit conditions may subject you to the enforcement provisions of our regulations.

Condition 33 of the PGP (page 12) provides one year for completion of work that has commenced prior to the expiration of this PGP on January 11, 2005. You will need to apply for reauthorization for any work within Corps jurisdiction that is not completed by January 1, 2006. Please complete and return the enclosed Work Start Notification Form to this office no later than two weeks before the anticipated starting date to allow us to inspect the project if necessary.

If you have any questions, please contact Mr. Greg Penta, of my staff, at (978) 318-8862.

Sincerely,

Brian E. Osterndorf
Colonel, Corps of Engineers
District Engineer

Enclosures

Copies Furnished:

Mr. John McCulloch, U.S. EPA, Region 1, 1 Congress Street, Suite 1100-Mail Code CWQ, Boston, MA 02114-2023
Mr. Eric Hutchins, National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01930-2298
Mr. Phil Morrison, U.S. Fish and Wildlife Service, 22 Bridge Street, Unit #1, Concord, New Hampshire 03301-4901
Ms. Elizabeth F. Kouloheras, DEP Southeast Regional Office, Wetlands and Waterways, 20 Riverside Drive, Lakeville, Massachusetts 02347

Caleb's Pond

DEPARTMENT OF THE ARMY
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS
696 VIRGINIA ROAD
CONCORD, MASSACHUSETTS 01742-2751

REPLY TO
ATTENTION OF

March 13, 2006

Regulatory Division
CENAE-R-PEA
Permit Number: NAE-2004-114

Charles J. Blair, Harbormaster
Town of Edgartown
P.O. Box 739
Edgartown, Massachusetts 02539

Dear Mr. Blair:

We have reviewed your application to add an additional disposal site to the Caleb's Pond dredging and beach nourishment project previously permitted under permit number NAE-2004-114. The total area of proposed fill below the high tide line at the additional disposal site will be 36,710 square feet (SF). The additional disposal site is described on the enclosed plans entitled, "Application By: Town of Edgartown, In: Edgartown Harbor, At: Caleb's Pond," on 4 sheets and dated "October, 2005."

The main project which was previously permitted under permit number NAE-2004-114 is to dredge an approximately 51,000 SF area consisting of a channel 30-feet (FT) wide at the bottom and 1700-FT long to a depth of 4-FT below mean low water at Caleb's Creek in Edgartown, Massachusetts. Approximately 8,400 cubic yards of fine gravel to fine sand will be removed by hydraulic means and pumped to five separate beach areas in Edgartown inner harbor to be used as beach nourishment. The total area of fill below the high tide line for beach nourishment over the five beaches will be 47,375 SF. The authorized work is described on the enclosed plans entitled, "Proposed Dredging Plan In Caleb's Creek, Edgartown Harbor," on 12 sheets and dated "January 21, 2004." The project purpose is to provide navigational access into Caleb's Creek, primarily for access to shellfish beds.

Based on the information you have provided, we have determined that the proposed activity, which includes a discharge of dredged or fill material into waters or wetlands, will have only minimal individual or cumulative environmental impacts. Therefore, this work is authorized as a Category II activity under the Federal permit, Massachusetts Programmatic General Permit (PGP) provided you comply with the following special condition:

> There shall be no dredging or disposal from January 15 to May 30 of any year in order to minimize adverse impact to winter flounder spawning and juvenile development.

This determination becomes valid only after the Massachusetts Department of Environmental Protection (DEP) issues or waives the necessary 401 Water Quality Certification. In the event the State denies 401 Water Quality Certification, this determination becomes null and void. The address of the DEP Regional office for your area is provided in the enclosed PGP.

You must perform the activity authorized herein in compliance with the special condition provided above, all the terms and conditions of the PGP and any conditions placed on 401 Water Quality Certification including any required mitigation. Please review the enclosed PGP carefully, including the PGP conditions beginning on page 9, to familiarize yourself with its contents. You are responsible for complying with all of the PGP requirements; therefore, you should be certain that whoever does the work fully understands all of the conditions. You may wish to discuss the conditions of this authorization with your contractor to ensure the contractor can accomplish the work in a manner that conforms to all requirements.

The Corps of Engineers has consulted with the National Marine Fisheries Service (NMFS) regarding the effects of your project on Essential Fish Habitat (EFH) designated under the Magnuson-Stevens Fishery Conservation and Management Act. The NMFS provided EFH conservation recommendations, which we included in the special condition listed above. This condition will minimize adverse impact to winter flounder spawning and juvenile development.

Your project is located within, or may affect resources within the coastal zone. Therefore, in order for the above determination of eligibility to become the Federal authorization, a Federal consistency concurrence from the Massachusetts Office of Coastal Zone Management (MCZM) is required. However, MCZM has already determined that no further Federal Consistency Review is required.

If you change the plans or construction methods for work within our jurisdiction, please contact us immediately to discuss modification of this authorization. This office must approve any changes before you undertake them.

You must commence or have under contract to commence the work authorized herein by January 20, 2010, and complete the work by January 20, 2011, unless the Massachusetts PGP is modified, suspended, or revoked, such that the activity would no longer comply with the terms and conditions of the Massachusetts PGP.

This authorization requires you to notify us before beginning work and allow us to inspect the project. Therefore, you must complete and return the enclosed Work Start Notification Form to this office no later than two weeks before the anticipated starting date.

Please note that this determination does not constitute an authorization to proceed until all other applicable Federal, state and local permits are obtained. Performing work not specifically authorized by this permit, starting work without obtaining other Federal, state and local approvals, or failing to comply with the permit conditions may subject you to the enforcement provisions of our regulations.

This permit letter supersedes the permit letter previously issued by the Corps for this project dated October 19, 2004.

If you have any questions, please contact Kevin Kotelly of my staff at (978) 318-8703.

Sincerely,

Curtis L. Thalken
Colonel, Corps of Engineers
District Commander

Attachments

Enclosures

Copies Furnished:

Ed Reiner, U.S. EPA, Region 1, 1 Congress Street, Suite 1100-Mail Code CWQ, Boston, Massachusetts 02114-2023
Christopher Boelke, National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01930-2298
Maria Tur, U.S. Fish and Wildlife Service, 70 Commercial Street, Suite 300, Concord, New Hampshire 03301-5087
Elizabeth F. Kouloheras, DEP Southeast Regional Office, Wetlands and Waterways, 20 Riverside Drive, Lakeville, Massachusetts 02347
Truman Henson, Coastal Zone Management, 251 Causeway Street, Suite 900, Boston, Massachusetts 02114
Burton B. Bryan, Robert L. Fultz and Associates, 181 Winter Street, Norwell, Massachusetts 02061

Katama Boat Ramp

DEPARTMENT OF THE ARMY
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS
696 VIRGINIA ROAD
CONCORD, MASSACHUSETTS 01742-2751

October 5, 2000

REPLY TO
ATTENTION OF

Regulatory Branch
CENAE-CO-R-200000373

Mr. Charles Blair
Harbormaster
Town of Edgartown
P.O. Box 739
Edgartown, Massachusetts 02539

Dear Mr. Blair:

This is to inform you that we have reviewed your application to dredge an approximately 97,740 square foot (sf) area to a depth of –5 feet mean low water at the Katama Boat Ramp area in Edgartown, Massachusetts. Approximately 9,390 cubic yards of sand will be removed by hydraulic dredging and discharged directly on the beach at Norton Point in Edgartown, impacting 6, 260 sf below the high tide line. This work is described on the enclosed plans entitled "Proposed dredging Plan in Katama Bay, Edgartown Harbor", on seven sheets, and dated "5/26/98" and revised "7/8/98" and "9/10/98".

Based on the information you have provided, we have determined that the proposed activity, which includes a discharge of dredged or fill material into waters or wetlands, will have only minimal individual or cumulative environmental impacts. The Federal permit known as the Massachusetts Programmatic General Permit (PGP) therefore authorizes this activity provided you comply with the following special conditions:

1. There shall be no dredging or disposal from January 15th to April 15th in order to minimize adverse impact to winter flounder, *Pleuronectes americanus*.

2. All suitable piping plover habitat created by work performed under this authorization shall be managed (a) in accordance with the attached Guidelines for Managing Recreational Activities in Piping Plover Breeding Habitat on the U.S. Atlantic Coast to Avoid Take Under Section 9 of the Endangered Species Act issued by the U.S. Fish and Wildlife Service in 1996 and (b) in consultation with the Supervisor, New England Field Office, U.S. Fish and Wildlife Service, 22 Bridge St., Unit 1, Concord, NH 03301-4986, Telephone (603) 225-1411.

3. Each year, before dredged material is placed at any site, a qualified piping plover monitor shall determine whether suitable piping plover nesting habitat exists at that site. A qualified piping plover monitor is a person who has the skills, knowledge, and ability to conduct monitoring. Aptitude for monitoring includes keen powers of observation, familiarity with avian biology, experience observing birds or other wildlife for sustained periods, tolerance for adverse weather, patience, and the ability to maintain detailed organized notes. The permittee shall contact the U.S. Fish and Wildlife Service at (603) 225-1411 before placing dredged material at any site where the monitor determines that suitable piping plover habitat exists.

4. Suitable piping plover nesting habitat that is degraded by work performed under this authorization shall be restored to its pre-construction level of suitability immediately following completion of work at that site. The applicant shall provide the U.S. Fish and Wildlife Service with a copy of a work-start notification form as well as a ground photograph of the post-construction site (Send to: Supervisor, New England Field Office, U.S. Fish and Wildlife Service, 22 Bridge St., Unit 1, Concord, NH 03301-4986).

5. On suitable piping plover nesting habitat all construction activities are prohibited during the period April 15st to August 31st of each year unless:

a. At least two weeks before construction begins the U.S. Fish and Wildlife Service is notified at (603) 225-1411 of (1) when construction activities are proposed to start and (2) the location of the construction activities;

b. A qualified piping plover monitor is in place to document the location and activities of breeding piping plovers at least one week prior to the start of any construction activity. In any calendar year pre-activity surveys shall begin one week prior to April 1 or one week prior to the commencement of any on-site project activity, whichever occurs first. On at least four non-consecutive days the piping plover monitor shall survey the project area (including landing, staging, operation, sand-transport and beach nourishment areas) for the occurrence of territorial, courting or nesting piping plovers. Each day's monitoring shall consist of two separate surveys conducted during different times of the tidal cycle;

c. Dredge/disposal activities are located 100 meters or more from piping plover territories, nests and/or broods and do not disturb piping plovers;

d. Plovers are monitored continuously during project activities and, if it is determined that piping plovers are disturbed by the activity, (1) all work ceases immediately and (2) the U.S. Fish and Wildlife Service is notified immediately at (603) 225-1411 for further consultation. Piping plover monitoring field notes shall be provided to the U.S. Fish and Wildlife Service upon request. Piping plover monitoring is the process of observing and recording data on piping plover breeding activities without causing disturbance to the birds under observation. Monitoring includes, but is not limited to, detecting and recording locations of territorial and courting adults, locating nests and incubating adults, locating broods, interpreting piping plover behaviors, and documenting observations in legible, complete field notes. Except to determine the number of eggs in a newly discovered nest, monitoring is done using binoculars or spotting scopes from a distance of at least 50 meters;

e. If a crushed nest or a dead piping plover chick or adult is found, the permittee immediately contacts the Division of Law Enforcement, U.S. Fish and Wildlife Service, Charlestown Navy Yard, 120 Second Avenue, Charlestown, MA 02129, Telephone (617) 424-5750.

The Corps of Engineers has consulted with the National Marine Fisheries Service (NMFS) regarding the effects of your project on Essential Fish Habitat (EFH) designated under the Magnuson-Stevens Fishery Conservation and Management Act. NMFS provided EFH conservation recommendations, which we included in special condition # 1 listed above. This condition will reduce turbidity and sedimentation effects on the winter flounder.

You must perform the activity authorized herein in compliance with the special conditions provided above, all the terms and conditions of the PGP and any conditions placed on 401 Water Quality Certification. Enclosed is a copy of the PGP. Please review it carefully to familiarize yourself with its contents. You are responsible for complying with all of the PGP requirements; therefore, you should be certain that whoever does the work fully understands all of the conditions. You may wish to discuss the conditions of this authorization with your contractor to ensure the contractor can accomplish the work in a manner that conforms to all requirements.

Please note that this determination does not constitute an authorization to proceed until all other applicable state and local permits are obtained. Performing work not specifically authorized by this permit, starting work without obtaining other applicable State and local approvals, or failing to comply with the permit conditions may subject you to the enforcement provisions of our regulations.

Condition 33 of the PGP (page 12) provides one year for completion of work that has commenced prior to the expiration of this PGP on January 11, 2005. You will need to apply for reauthorization for any work within Corps jurisdiction that is not completed by January 11, 2006.

Please complete and return the enclosed Work Start Notification Form to this office no later than two weeks before the anticipated starting date to allow us to inspect the project if necessary.

The Corps of Engineers has implemented an administrative appeals process for jurisdictional determinations. If you are interested in appealing the jurisdictional determination for this project; or if you would like any additional information pertaining to the appeals process, please contact David Keddell, of my staff at (800) 343-4789, or (800) 362-4367 if calling within Massachusetts.

Sincerely,

for Brian E. Osterndorf
Colonel, Corps of Engineers
District Engineer

Enclosures

Copies Furnished:

Mr. John McCulloch, U.S. EPA, Region 1, 1 Congress Street, Suite 1100-Mail Code CWQ, Boston, MA 02114-2023
Mr. Eric Hutchins, National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01930-2298
Mr. Phil Morrison, U.S. Fish and Wildlife Service, 22 Bridge Street, Unit #1, Concord, New Hampshire 03301-4901
Ms. Elizabeth F. Kouloheras, DEP Southeast Regional Office, Wetlands and Waterways, 20 Riverside Drive, Lakeville, Massachusetts 02347
Ms. Jane Mead, Coastal Zone Management, 100 Cambridge Street, 20th Floor, Boston, Massachusetts 02202

Katama Channel
Bay

DEPARTMENT OF THE ARMY
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS
696 VIRGINIA ROAD
CONCORD, MASSACHUSETTS 01742-2751

REPLY TO:
ATTENTION OF:

November 26, 2003

Regulatory Division
CENAE-R-PEA
Permit Number: 200301586

Town of Edgartown
c/o Charles J. Blair, Harbormaster
P.O. Box 739
Edgartown, Massachusetts 02539

Dear Applicant:

We have reviewed your application to initially dredge and maintain approximately 3,975 cubic yards of medium to fine grained sand from a 50,094 square foot area of Katama Bay and perform periodic maintenance dredging, in Edgartown, Massachusetts, to a depth of –5 feet below mean low water, to establish a navigation channel for commercial, recreational and emergency vessels. The material will be mechanically dredged and then hydraulically pumped to an upland site. The dredged material will be placed above the high tide line and used as beach nourishment at Norton Point Beach. The work is located in Katama Bay, Edgartown, Massachusetts. The work is described on the enclosed plans entitled: "APPLICANT: TOWN OF EDGARTOWN, KATAMA BAY NAVIGATION IMPROVEMENT CHANNEL, IN: KATAMA BAY, EDGARTOWN, MA," on 13 consecutive sheets and dated "13 NOV 2003."

Based on the information you have provided, we have determined that the proposed activity, which includes a discharge of dredged or fill material into waters or wetlands, will have only minimal individual or cumulative environmental impacts. Therefore, this work is authorized as a Category II activity under the Federal permit, Massachusetts Programmatic General Permit (PGP), provided you comply with the following special condition:

No in-water silt producing activities shall occur from May 1 through October 31 of any year, in order to avoid impacts to spawning Quahog and soft shell clams.

This determination becomes valid only after the Massachusetts Department of Environmental Protection (DEP) issues or waives the necessary 401 Water Quality Certification. In the event the State denies 401 Water Quality Certification, this determination becomes null and void. The address of the DEP Regional office for your area is provided in the enclosed PGP.

You must perform the activity authorized herein in compliance with the special condition provided above, all the terms and conditions of the PGP and any conditions placed on 401 Water Quality Certification including any required mitigation. Please review the enclosed PGP carefully, including the PGP conditions beginning on page 9, to familiarize yourself with its contents. You are responsible for complying with all of the PGP requirements; therefore, you should be certain that whoever does the work fully understands all of the conditions. You may wish to discuss the conditions of this authorization with your contractor to ensure the contractor can accomplish the work in a manner that conforms to all requirements.

The Corps of Engineers has consulted with the National Marine Fisheries Service (NMFS) regarding the effects of your project on Essential Fish Habitat (EFH) designated under the Magnuson-Stevens Fishery Conservation and Management Act. The NMFS provided EFH conservation recommendations, which we included in special conditions # 1, listed above. This condition will serve to avoid impacts to spawning Quahog and soft shell clams.

Your project is located within, or may affect resources within the coastal zone. In order for the above determination to become valid, you must obtain Federal consistency concurrence from the Massachusetts Office of Coastal Zone Management (MCZM) if the proposed work is above the review thresholds of the Massachusetts Environmental Policy Act (MEPA). The MCZM address is provided below:

CZM Cape Cod & Islands Regional Office
P.O. Box 220
Barnstable, MA 02630-0220
Phone: 508-362-1760
FAX: 508-362-1698

If you change the plans or construction methods for work within our jurisdiction, please contact us immediately to discuss modification of this authorization. This office must approve any changes before you undertake them.

This authorization is valid until January 11, 2007, which is two years from the Massachusetts PGP's expiration date of January 11, 2005, unless the Massachusetts PGP is modified, suspended, or revoked, such that the activity would no longer comply with the terms and conditions of the Massachusetts PGP.

This authorization requires you to notify us before beginning work and allow us to inspect the project. Therefore, you must complete and return the enclosed Work Start Notification Form to this office no later than two weeks before the anticipated starting date.

Please note that this determination does not constitute an authorization to proceed until all other applicable Federal, state and local permits are obtained. Performing work not specifically authorized by this permit, starting work without obtaining other Federal, state and local approvals, or failing to comply with the permit conditions may subject you to the enforcement provisions of our regulations.

If you have any questions, please contact Mark A. Mirabella, of my staff at (978) 318-8708.

Sincerely,

Alan R Anuchcka-Pasternak

for Thomas L. Koning
Colonel, Corps of Engineers
District Engineer

Enclosures

Copies Furnished:

John McCulloch, U.S. EPA, Region 1, 1 Congress Street, Suite 1100-Mail Code CWQ, Boston, Massachusetts 02114-2023

Christopher Boelke, National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01930-2298

William Neidermyer, U.S. Fish and Wildlife Service, 70 Commercial Street, Suite 300, Concord, New Hampshire 03301-5087

Elizabeth F. Kouloheras, DEP Southeast Regional Office, Wetlands and Waterways, 20 Riverside Drive, Lakeville, Massachusetts 02347

Mark Borelli, Coastal Zone Management, 251 Causeway Street, Suite 900, Boston, Massachusetts 02114

Burton B. Bryan, Robert L Fultz & Associates, 74 Colonial Road, Marshfield, Massachusetts 02050

PGP WORK START NOTIFICATION FORM
(Minimum Advance Notice: Two Weeks)

MAIL TO: U.S. Army Corps of Engineers, New England District
Regulatory Division
Policy Analysis/Technical Support Branch
696 Virginia Road
Concord, Massachusetts 01742-2751

A Corps of Engineers Permit (No 200301586) was issued to Town of Edgartown. The permit authorized:

To dredge and maintain a navigation channel 20 foot wide and 1,395 feet in length, controlling depth of -5 feet below MLW, remove approximately 3,975 cubic yards of sand in an area approximately 50,094 square feet and dispose of materials above the HTL at Norton Point Beach, in Katama Bay, Edgartown, Massachusetts.

The people (e.g., contractor) listed below will do the work, and they understand the permit's conditions and limitations.

PLEASE PRINT OR TYPE

Name of Person/Firm: _____

_____

_____

Business Address: _____

_____

_____

Telephone: ( ) _____ ( ) _____

Proposed Work Dates: Start: _____

Finish: _____

PERMITTEE'S SIGNATURE: _____ DATE: _____

PRINTED NAME: _____ TITLE: _____

FOR USE BY THE CORPS OF ENGINEERS

PM: _____ Submittals Required: _____

Inspection Recommendation: _____

_____

_____

Great Pond Channel

DEPARTMENT OF THE ARMY
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS
696 VIRGINIA ROAD
CONCORD, MASSACHUSETTS 01742-2751

REPLY TO:
ATTENTION OF:

December 29, 2005

Regulatory Division
CENAE-R-PEA
Permit Number: NAE-2005-4050

Lynne Fraker
Dredge Administrator
Town of Edgartown
Town Hall
P.O. Box 739
Edgartown, Massachusetts 02539

Channel

Dear Mrs. Franklin:

In accordance with your recent request your Department of the Army permit, number 200001739, is hereby extended until December 31, 2007.

All other conditions of the original permit remain in full force and effect.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

Curtis L. Thalken
Colonel, Corps of Engineers
District Engineer

Copies Furnished:

Ed Reiner, U.S. EPA, Region 1, 1 Congress Street, Suite 1100-Mail Code CWQ, Boston, Massachusetts 02114-2023
Christopher Boelke, National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01930-2298
Maria Tur, U.S. Fish and Wildlife Service, 70 Commercial Street, Suite 300, Concord, New Hampshire 03301-5087
Richard Tomczyk, DEP Northeast Regional office, Wetland and Waterways, One Winter Street - 5th Floor, Boston, Massachusetts 02108

Great Pond Channel

DEPARTMENT OF THE ARMY PERMIT

Permittee Town of Edgartown, Town Hall, P.O. Box 739, Edgartown, Massachusetts 02539-0739, ATTN: Charles Blair, Harbormaster

Permit No. 200001739

Issuing Office New England District

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description:

To periodically open Great Pond to the Atlantic Ocean for the purpose of maintaining marine fisheries habitat. The project will dredge an 8'x400' channel to –4' mean low water (MLW) between the pond and the ocean. Inside the pond, a channel 60'x300' and a fan shaped area about 300'x450', encompassing about 115,000 square feet (SF), will be dredged to –5' MLW with a 1' overdredge. About 9,800 cubic yards (CY) of sand will be dredged and discharged to beaches to the east, fronting on the Atlantic Ocean. Approximately 10,027 CY will be placed in a 54,605 SF area above the high tide line (HTL), and 2,854 CY will be placed in a 103,891 SF area below the HTL along 1,100' on the Atlantic Ocean side of the beach. The work is described on the enclosed two sets of plans. The first set is entitled "PURPOSE PROPOSED DREDGE," on four sheets and revised on "9/26/00." The seconds set is entitled "PURPOSE: BEACH NOURISHMENT," on five sheets, and revised on "MAR. '99."

Project Location:

The dredge and disposal areas are located in the southeast corner of Great Pond. The project is located on the USGS Tisbury, Massachusetts quadrangle sheet at UTM coordinates 4578350 N and 361750 E.

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on December 31, 2005. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.

2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.

3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions:

1. The permittee shall ensure that a copy of this permit is at the work site whenever work is being performed and that all personnel performing work at the site of the work authorized by this permit are fully aware of the terms and conditions of the permit. This permit, including its drawings and any appendices and other attachments, shall be made a part of any and all contracts and sub-contracts for work which affects areas of Corps of Engineers jurisdiction at the site of the work authorized by this permit. This shall be done by including the entire permit in the specifications for work.

(Special Conditions continued on Page 4)

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

(✓) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

(✓) Section 404 of the Clean Water Act (33 U.S.C. 1344).

( ) Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.

a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

_____ _____

(PERMITTEE) *(DATE)*

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

_____ _____

(DISTRICT ENGINEER) *(DATE)*

Brian E. Osterndorf
Colonel, Corps of Engineers

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

_____ _____

(TRANSFEREE) *(DATE)*

☆U.S. GOVERNMENT PRINTING OFFICE: 1998 — 717-425

(Special Conditions Continued from Page 2)

1. (Continued.) If the permit is issued after the construction specifications but before receipt of bids or quotes, the entire permit shall be included as an addendum to the specifications. If the permit is issued after receipt of bids or quotes, the entire permit shall be included in the contract or sub-contract as a change order. The term "entire permit" includes permit amendments. Although the permittee may assign various aspects of the work to different contractors or sub-contractors, all contractors and sub-contractors shall be obligated by contract to comply with all environmental protection provisions of the entire permit, and no contract or sub-contract shall require or allow unauthorized work in areas of Corps jurisdiction.

2. This authorization neither authorizes nor requires work on any property without permission of the property owner.

3. There shall be no work performed between March 15 to June 15 of any year to protect finfish passage, spawning and larval development in the project area.

4. The Federally-listed threatened piping plover (*Charadrius melodus*) is known to nest and feed in the vicinity of this project's dredge and disposal activities – on the barrier beach separating Great Pond from the Atlantic Ocean and the Pond's shorelines. Potential adverse effects to the piping plover may result from disturbance to or mortality of breeding plovers and their young from dredging equipment and beach nourishment activities occurring when plovers are present (April through August). In order to minimize potential adverse effects to the piping plover, all construction activities are prohibited on suitable piping plover breeding habitat during the period April 1 to September 1 of each year unless:

a. Each year, before dredging and beach nourishment activities take place, a qualified piping plover monitor shall determine whether suitable piping plover breeding habitat exists at Great Pond. A qualified piping plover monitor is a person who has the skills, knowledge, and ability to conduct monitoring. Aptitude for monitoring includes keen powers of observation, familiarity with avian biology, experience observing birds or other wildlife for sustained periods, tolerance for adverse weather, patience, and the ability to maintain detailed organized notes.

b. Suitable piping plover breeding habitat that is degraded by work performed under this authorization shall be restored to its pre-construction level of suitability immediately following completion of work at that site. The proposed 10:1 slope for beach nourishment falls within the suitable habitat parameters and may not be exceeded.

c. If plovers are present in the project area, they must be monitored *daily* during project activities and, if it is determined that piping plovers are disturbed by the activity:

(1) All work ceases immediately and;

(2) The U.S. Fish and Wildlife (US FWS) is notified immediately at (603) 225-1411 for further consultation. Piping plover monitoring field notes shall be provided

to the US FWS upon request. Piping plover monitoring is the process of observing and recording data on piping plover breeding activities without causing disturbance to the birds under observation. Monitoring includes, but is not limited to, detecting and recording locations of territorial and courting adults, locating nests and incubating adults, locating broods, interpreting piping plover behaviors, and documenting observations in legible, complete field notes. Except to determine the number of eggs in a newly discovered nest, monitoring is done using binoculars or spotting scopes from a distance of at least 50 meters.

d. Changes in water level and the amount of exposed shoreline within 200 yards on either side of the dredged area and within the channel must be monitored and quantified on a weekly basis for three consecutive years between the dates of March 1st and September 1st. Dr. Scott Melvin of the Massachusetts Division of Fisheries and Wildlife (508-792-7270 ext. 150) should be consulted in the design of the shoreline and channel monitoring program. Copies of the report must be sent to the U.S. Fish and Wildlife Service upon completion of the annual dredge cycle. Should data indicate that plover feeding habitat is being adversely affected, additional consultation with the U.S. Fish and Wildlife Service may be required.

e. Should information from shoreline or breeding plover monitoring reports indicate that adverse effects rise above the level of insignificant and discountable, the permittee shall notify the Corps of Engineers. The Corps contact is Greg Penta at (978) 318-8862. The Corps will determine if consultation should be reinitiated under Section 7 of the Endangered Species Act. The consultation could potentially result in permit modification, suspension, or revocation. "Discountable effects" are those effects that are extremely unlikely to occur. Based on best judgement, a person would not:

(1) be able to meaningfully measure, detect, or evaluate insignificant effects; or
(2) expect discountable effects to occur.

Sluiceway Approach

DEPARTMENT OF THE ARMY
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS
696 VIRGINIA ROAD
CONCORD, MASSACHUSETTS 01742-2751

REPLY TO:
ATTENTION OF:

December 19, 2005

Regulatory Division
CENAE-R-PEA
Permit Number: NAE-2005-4048

Lynne Fraker, Dredge Administrator
Town of Edgartown
Dredge Advisory Committee
P.O. Box 739
Edgartown, Massachusetts 02539

Dear Ms. Fraker:

We have reviewed your application to dredge and maintain the approach to a sluiceway and fish run in Great Pond, Edgartown, Massachusetts. The project will dredge an approximately 138,186 square foot (SF) area to a depth of –4 feet mean low water. Approximately 9,800 cubic yards of sand will be removed by hydraulic methods and disposed of on the adjacent beach in a 47,851 SF area, of which 31,152 SF are below the high tide line. Note that this description does not include dredging the sluiceway between Great Pond and Edgartown Harbor, as this was not included in the application. The work is described on the enclosed plans entitled "Water Quality and Water Level Control, At Sluiceway Approach, Town of Edgartown," on five sheets, and dated "May 22, 2001."

Based on the information you have provided, we have determined that the proposed activity, which includes a discharge of dredged or fill material into waters or wetlands, will have only minimal individual or cumulative environmental impacts. Therefore, this work is authorized as a Category II activity under the Federal permit, Massachusetts Programmatic General Permit (PGP) provided you comply with the following special condition:

> There shall be no dredging or disposal from April 15th to August 15th in order to minimize adverse impact to piping plovers.

This determination becomes valid only after the Massachusetts Department of Environmental Protection (DEP) issues or waives the necessary 401 Water Quality Certification. In the event the State denies 401 Water Quality Certification, this determination becomes null and void. The address of the DEP Regional office for your area is provided in the enclosed PGP.

You must perform the activity authorized herein in compliance with the special condition provided above, all the terms and conditions of the PGP, and any conditions placed on 401 Water Quality Certification <u>including any required mitigation</u>. Please review the enclosed PGP carefully, including the PGP conditions beginning on page 9, to familiarize yourself with its contents. You are responsible for complying with all of the PGP requirements; therefore, you should be certain that whoever does the work fully understands all of the conditions. You may wish to discuss the conditions of this authorization with your contractor to ensure the contractor can accomplish the work in a manner that conforms to all requirements.

Your project is located within, or may affect resources within the coastal zone. Therefore, in order for the above determination of eligibility to become the Federal authorization, a Federal consistency concurrence from the Massachusetts Office of Coastal Zone Management (MCZM) is required. However, MCZM has already determined that no further Federal Consistency Review is required.

If you change the plans or construction methods for work within our jurisdiction, please contact us immediately to discuss modification of this authorization. This office must approve any changes before you undertake them.

You must commence or have under contract to commence the work authorized herein by January 20, 2010, and complete the work by January 20, 2011, unless the Massachusetts PGP is modified, suspended, or revoked, such that the activity would no longer comply with the terms and conditions of the Massachusetts PGP.

This authorization requires you to notify us before beginning work and allow us to inspect the project. Therefore, you must complete and return the enclosed Work Start Notification Form to this office no later than two weeks before the anticipated starting date.

This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.

If you have any questions, please contact Kevin Kotelly of my staff at (978) 318-8703.

Sincerely,

Curtis L. Thalken
Colonel, Corps of Engineers
District Engineer

Enclosures

Copies Furnished:

Ed Reiner, U.S. EPA, Region 1, 1 Congress Street, Suite 1100-Mail Code CWQ, Boston, Massachusetts 02114-2023
Christopher Boelke, National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01930-2298
Maria Tur, U.S. Fish and Wildlife Service, 70 Commercial Street, Suite 300, Concord, New Hampshire 03301-5087
Elizabeth F. Kouloheras, DEP Southeast Regional Office, Wetlands and Waterways, 20 Riverside Drive, Lakeville, Massachusetts 02347
Truman Henson, Coastal Zone Management, 251 Causeway Street, Suite 900, Boston, Massachusetts 02114

Herring Creek Restoration

DEPARTMENT OF THE ARMY
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS
696 VIRGINIA ROAD
CONCORD, MASSACHUSETTS 01742-2751

REPLY TO:
ATTENTION OF:

December 23, 2005

Regulatory Division
CENAE-R-PEA
Permit Number: NAE-2005-4049

Lynne Fraker, Dredge Administrator
Town of Edgartown
Dredge Advisory Committee
P.O. Box 739
Edgartown, Massachusetts 02539

Dear Ms. Fraker:

We have reviewed your application to continue beach nourishment operations associated with the Edgartown Great Pond and Herring Creek Restoration Project. The Edgartown Great Pond and Herring Creek Restoration Project involves the discharge of dredged and/or fill material within approximately 15,000 square feet of waters of the United States, including jurisdictional wetlands associated with the restoration of the sluiceway between the Edgartown Great Pond and Crackatuxet Pond and other fishery enhancement projects along Herring Creek in Edgartown, Massachusetts. The purpose for this project is to restore a historic anadromous fish run from Katama Bay through Herring Creek and Crackatuxet Pond to the Edgartown Great Pond. This project involves excavating the sluiceway between the Edgartown Great Pond and Crackatuxet Pond, installing a new sluiceway water control structure with associated scour protection; removing 3,000 square feet of cattails from the eastern end of Crackatuxet Pond; installing a culvert control structure and fishery resting pool at the Herring Creek Road culvert; and installing a flow restriction structure at the Katama Road culvert. Approximately 5,400 cubic yards of material will be excavated and deposited at South Beach landward of the approximate high tide line. In addition, the Town of Edgartown proposes to manually remove vegetation impeding fish migration at the east end Crackatuxet Pond and in Herring Creek. This work is described on the enclosed plans entitled "Fisheries Restoration, Town of Edgartown, Great Pond/Herring Creek, Edgartown," on 21 sheets, and dated "6/21/02" and revised "6/27/02" and 9/05/02".

Based on the information you have provided, we have determined that the proposed activity, which includes a discharge of dredged or fill material into waters or wetlands, will have only minimal individual or cumulative environmental impacts. Therefore, this work is authorized as a Category II activity under the Federal permit, Massachusetts Programmatic General Permit (PGP) provided you comply with the following special conditions:

1. All temporary construction access ways and staging areas shall be located on existing paved roads and/or as per the enclosed drawings in order to minimize direct and indirect impacts to archaeological sites. Any proposed modifications shall be approved by the project's design engineer prior to submission to the Corps of Engineers (Corps) for review and approval. Such modifications shall not be implemented until the Corps approves them in writing.

2. All suitable piping plover habitat created by work performed under this authorization shall be managed (a) in accordance with the attached Guidelines for Managing Recreational Activities in Piping Plover Breeding Habitat on the U.S. Atlantic Coast to Avoid Take Under Section 9 of the Endangered Species Act issued by the U.S. Fish and Wildlife Service in 1996 and (b) in consultation with the Supervisor, New England Field Office, U.S. Fish and Wildlife Service, 70 Commercial Street, Suite 300, Concord, NH 03301, Telephone (603) 223-2541.

3. Each year, before dredged material is placed at any site, a qualified piping plover monitor shall determine whether suitable piping plover nesting habitat exists at that site. A qualified piping plover monitor is a person who has the skills, knowledge, and ability to conduct monitoring. Aptitude for monitoring includes keen powers of observation, familiarity with avian biology, experience observing birds or other wildlife for sustained periods, tolerance for adverse weather, patience, and the ability to maintain detailed organized notes. The permittee shall contact the U.S. Fish and Wildlife Service at (603) 223-2541 before placing dredged material at any site where the monitor determines that suitable piping plover habitat exists.

4. Suitable piping plover nesting habitat that is degraded by work performed under this authorization shall be restored to its pre-construction level of suitability immediately following completion of work at that site. The applicant shall provide the U.S. Fish and Wildlife Service with a copy of a work-start notification form as well as a ground photograph of the post-construction site (Send to: Supervisor, New England Field Office, U.S. Fish and Wildlife Service, 70 Commercial Street, Suite 300, Concord, NH 03301).

5. No dredge disposal/beach nourishment shall occur at South Beach during the period between April 1st and September 1st of any year, in order to protect nesting habitat of the Atlantic Coast piping plover (*Charadrius melodus*) unless:

   a. At least two weeks before construction begins you notify the Corps, the U.S. Fish and Wildlife Service (603) 223-2541 and MassWildlife (508) 792-7270 x150 of (1) when construction activities are proposed to start and (2) the location of the construction activities. You may not begin dredge disposal or beach nourishment activities at South Beach until you have received written notification of the time-of-year extension from the Corps and the U.S. Fish and Wildlife Service;

   b. A qualified piping plover monitor is in place to document the location and activities of breeding piping plovers at least one week prior to the start of any construction activity. In any calendar year pre-activity surveys shall begin one week prior to April 1 or one week prior to the commencement of any on-site project activity, whichever occurs first. On at least four non-consecutive days the piping plover monitor shall survey the project area (including landing, staging, operation, sand-transport and beach nourishment areas) for the occurrence of territorial, courting or nesting piping plovers. Each day's monitoring shall consist of two separate surveys conducted during different times of the tidal cycle;

c. During construction periods at South Beach all areas of beach and dune habitat where dredged materials are to be placed shall be monitored every three days by a qualified piping plover monitor for the presence of piping plovers, their nests, or recent scrapes that indicate that plovers are present and engaged in pre-nesting behavior. This monitoring shall be conducted by a trained biologist who is experienced in shorebird observation and identification, and shall continue from April 1 until the beach nourishment is completed;

d. No beach nourishment work shall occur within 300 feet of any piping plover nest, active scrapes, or areas where adult plovers are engaged in territorial behavior or courtship. If a nest is found during the construction activity, it shall immediately be protected with symbolic fencing (twine or rope strung between wooden posts with warning signs) in order to maintain at least a 50 yard-wide buffer from other human disturbance around the nest;

e. After beach nourishment is completed, those sections of South Beach where dredged materials have been placed shall be monitored on a weekly basis until at least July 1 by a qualified piping plover monitor to determine if piping plovers use the site for nesting or chick-rearing;

f. If plover nests or scrapes are found post-construction, or if plovers are observed in pre-nesting behavior, then the sections of beach where those plover activities have been observed shall be protected with symbolic fencing as noted above. Further, the Town of Edgartown shall take steps to protect these birds, their habitats, and any eggs or chicks that are present from adverse effects of off-road vehicles and pedestrians, following the attached Guidelines for Managing Recreational Activities in Piping Plover Breeding Habitat on the U.S. Atlantic Coast to Avoid Take Under Section 9 of the Endangered Species Act;

g. Plovers located further than 300 feet and less than 1000 feet from construction activities, shall be monitored continuously during project activities by a qualified piping plover monitor and, if it is determined that piping plovers are disturbed by the activity, (1) all work ceases immediately and (2) the U.S. Fish and Wildlife Service is notified immediately at (603) 225-2441 for further consultation;

h. If a crushed nest or a dead piping plover chick or adult is found, the permittee immediately contacts the Division of Law Enforcement, U.S. Fish and Wildlife Service, Charlestown Navy Yard, 120 Second Avenue, Charlestown, MA 02129, Telephone (617) 424-5750.

6. Beach nourishment sands placed at South Beach shall be graded to a slope no steeper than 10 (horizontal) to 1(vertical).

7. Vegetation shall not be planted nor sanding fencing installed on the beach nourishment areas on South Beach.

8. Periodic maintenance dredging to the area and depth limits described herein is authorized until January 11, 2006, provided disposal of the dredged material is at an upland site. NOTE: No periodic maintenance dredging shall be performed between April 1st and November 1st of any year in order to protect the spawning, nursery, and foraging habitat of anadromous fish species.

9. Except where stated otherwise, reports, drawings, correspondence and any other submittals required to be sent to the Corps of Engineers shall be marked with the words "Corps of Engineers File No. 200202110, Town of Edgartown/Edgartown Great Pond and Herring Creek Restoration" and shall be addressed to "CENAE-R-PT, Compliance Section, U.S. Army Corps of Engineers, 696 Virginia Road, Concord, Massachusetts 01742-2751." Documents which are not marked and addressed in this manner may not reach their intended destination and do not comply with the requirements of this permit.

This determination becomes valid only after the Massachusetts Department of Environmental Protection (DEP) issues or waives the necessary 401 Water Quality Certification. In the event the State denies 401 Water Quality Certification, this determination becomes null and void. The address of the DEP Regional office for your area is provided in the enclosed PGP.

You must perform the activity authorized herein in compliance with the special conditions provided above, all the terms and conditions of the PGP and any conditions placed on 401 Water Quality Certification <u>including any required mitigation</u>. Please review the enclosed PGP carefully, including the PGP conditions beginning on page 9, to familiarize yourself with its contents. You are responsible for complying with all of the PGP requirements; therefore, you should be certain that whoever does the work fully understands all of the conditions. You may wish to discuss the conditions of this authorization with your contractor to ensure the contractor can accomplish the work in a manner that conforms to all requirements.

The Corps of Engineers has consulted with the National Marine Fisheries Service (NMFS) regarding the effects of your project on Essential Fish Habitat (EFH) designated under the Magnuson-Stevens Fishery Conservation and Management Act. The NMFS indicated that the proposed restoration projects will enhance EFH.

Your project is located within, or may affect resources within the coastal zone. Therefore, in order for the above determination of eligibility to become the Federal authorization, a Federal consistency concurrence from the Massachusetts Office of Coastal Zone Management (MCZM) is required. However, MCZM has already determined that no further Federal Consistency Review is required.

If you change the plans or construction methods for work within our jurisdiction, please contact us immediately to discuss modification of this authorization. This office must approve any changes before you undertake them.

You must commence or have under contract to commence the work authorized herein by January 20, 2010, and complete the work by January 20, 2011, unless the Massachusetts PGP is modified, suspended, or revoked, such that the activity would no longer comply with the terms and conditions of the Massachusetts PGP.

This authorization requires you to notify us before beginning work and allow us to inspect the project. Therefore, you must complete and return the enclosed Work Start Notification Form to this office no later than two weeks before the anticipated starting date.

This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.

If you have any questions, please contact Kevin Kotelly of my staff at (978) 318-8703.

Sincerely,

Curtis L. Thalken
Colonel, Corps of Engineers
District Engineer

Enclosures

Copies Furnished:

Ed Reiner, U.S. EPA, Region 1, 1 Congress Street, Suite 1100-Mail Code CWQ, Boston, Massachusetts 02114-2023
Christopher Boelke, National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01930-2298
Maria Tur, U.S. Fish and Wildlife Service, 70 Commercial Street, Suite 300, Concord, New Hampshire 03301-5087
Elizabeth F. Kouloheras, DEP Southeast Regional Office, Wetlands and Waterways, 20 Riverside Drive, Lakeville, Massachusetts 02347
Truman Henson, Coastal Zone Management, 251 Causeway Street, Suite 900, Boston, Massachusetts 02114

Great Pond Ramp

DEPARTMENT OF THE ARMY
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS
696 VIRGINIA ROAD
CONCORD, MASSACHUSETTS 01742-2751

REPLY TO:
ATTENTION OF:

December 19, 2005

Regulatory Division
CENAE-R-PEA
Permit Number: NAE-2005-4047

Lynne Fraker, Dredge Administrator
Town of Edgartown
Dredge Advisory Committee
P.O. Box 739
Edgartown, Massachusetts 02539

Dear Ms. Fraker:

We have reviewed your application to dredge 500 cubic yards of sand from a 3,415 square foot area of Great Pond. This material will be used as beach nourishment on the adjacent beach in Edgartown, Massachusetts and will cover a 10,275 square foot area. This project was previously permitted under the Department of the Army permit number 200202121. This work is located in Mashacket Cove at Town Park, Mashacket Neck, Edgartown, Massachusetts. The work is described on the enclosed plans entitled "Great Pond Resource Areas," on four sheets, and dated "November 22, 2002."

Based on the information you have provided, we have determined that the proposed activity, which includes a discharge of dredged or fill material into waters or wetlands, will have only minimal individual or cumulative environmental impacts. Therefore, this work is authorized as a Category II activity under the Federal permit, Massachusetts Programmatic General Permit (PGP).

This determination becomes valid only after the Massachusetts Department of Environmental Protection (DEP) issues or waives the necessary 401 Water Quality Certification. In the event the State denies 401 Water Quality Certification, this determination becomes null and void. The address of the DEP Regional office for your area is provided in the enclosed PGP.

You must perform the activity authorized herein in compliance with all the terms and conditions of the PGP and any conditions placed on 401 Water Quality Certification <u>including any required mitigation</u>. Please review the enclosed PGP carefully, including the PGP conditions beginning on page 9, to familiarize yourself with its contents. You are responsible for complying with all of the PGP requirements; therefore, you should be certain that whoever does the work fully understands all of the conditions. You may wish to discuss the conditions of this authorization with your contractor to ensure the contractor can accomplish the work in a manner that conforms to all requirements.

Your project is located within, or may affect resources within the coastal zone. Therefore, in order for the above determination of eligibility to become the Federal authorization, a Federal consistency concurrence from the Massachusetts Office of Coastal Zone Management (MCZM) is required. However, MCZM has already determined that no further Federal Consistency Review is required.

If you change the plans or construction methods for work within our jurisdiction, please contact us immediately to discuss modification of this authorization. This office must approve any changes before you undertake them.

You must commence or have under contract to commence the work authorized herein by January 20, 2010, and complete the work by January 20, 2011, unless the Massachusetts PGP is modified, suspended, or revoked, such that the activity would no longer comply with the terms and conditions of the Massachusetts PGP.

This authorization requires you to notify us before beginning work and allow us to inspect the project. Therefore, you must complete and return the enclosed Work Start Notification Form to this office no later than two weeks before the anticipated starting date.

This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.

If you have any questions, please contact Kevin Kotelly of my staff at (978) 318-8703.

Sincerely,

Karen K. Adams
Chief, Permits & Enforcement Branch
Regulatory Division

Enclosures

Copies Furnished:

Ed Reiner, U.S. EPA, Region 1, 1 Congress Street, Suite 1100-Mail Code CWQ, Boston, Massachusetts 02114-2023
Christopher Boelke, National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01930-2298
Maria Tur, U.S. Fish and Wildlife Service, 70 Commercial Street, Suite 300, Concord, New Hampshire 03301-5087
Elizabeth F. Kouloheras, DEP Southeast Regional Office, Wetlands and Waterways, 20 Riverside Drive, Lakeville, Massachusetts 02347
Truman Henson, Coastal Zone Management, 251 Causeway Street, Suite 900, Boston, Massachusetts 02114

Bend in The Road

DEPARTMENT OF THE ARMY
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS
696 VIRGINIA ROAD
CONCORD, MASSACHUSETTS 01742-2751

REPLY TO:
ATTENTION OF:

September 18, 2008

Regulatory Division
CENAE-R-PEA
Permit Number: NAE-2008-1616

Lynne Fraker
Town of Edgartown
P.O. Box 739
Edgartown, Massachusetts 02539

Dear Ms. Fraker:

We have reviewed your application to place sand in a 25,000 square feet area below the high tide line for beach nourishment (9,800 cubic yards). Compatible sand would come from a permitted dredge area #1 in Sengekontacket Pond (Corps permit number NAE-2006-3749). The sand from the permitted dredge site will be pumped through a pipe to the beach nourishment site. This project is located in Nantucket Sound at Bend in the Road Beach, and Sengekontacket Pond off Beach Road, Edgartown Massachusetts. The work is shown on the attached plans entitled "Bend in the Road Beach Nourishment Town of Edgartown, MA", on 4 sheets, and dated "4-21-08".

Based on the information you have provided, we have determined that the proposed activity which includes a discharge of dredged or fill material into waters or wetlands, will have only minimal individual or cumulative environmental impacts on waters of the United States, including wetlands. Therefore, this work is authorized as a Category 2 activity under the attached Federal permit known as the Massachusetts Programmatic General Permit (PGP). This work must be performed in accordance with the terms and conditions of the PGP and also in compliance with the following special conditions:

1. Dredge slurry shall be dewatered in a dewatering pit/trench constructed on Bend in the Road Beach to allow the suspended sediment (i.e. sediment slurry) to settle and the water to percolate through the sand back to Nantucket Sound. The scheduling of dredging and dewatering shall be such that the capacity of the dewatering pit/trench is not exceeded under any circumstances.
2. There shall be no disposal from January 15 and June 30 of any year in order to minimize adverse impact to winter flounder spawning and rearing, and horseshoe crab spawning.
3. Any suitable piping plover habitat created by work performed under this authorization shall be managed in accordance with the U.S. Fish and Wildlife Service (U.S.FWS), Northeast Region, April 15, 1994 document titled Guidelines for Managing Recreational Activities in Piping Plover Breeding Habitat on the U.S. Atlantic Coast to Avoid Take Under Section 9 of the Endangered Species Act

(Guidelines) for managing recreational beaches when federally-listed piping plovers are present. See www.fws.gov/northeast/pipingplover/recguide.html.

4. Before work takes place, assurance of plover management must be provided to the U.S. FWS through a management plan implemented by the permittee or signed management agreement between the permittee and a qualified entity. The U.S. FWS must approve the management plan. Permittees must contact Susi von Oettingen of the U.S. FWS at (603) 223-2541, extension 22 or susi_vonOettingen@fws.gov, for information on preparing a management agreement and its approval.
5. Beach nourishment that is existing plover habitat should maintain a 10:1 slope and have no vegetation plantings.
6. Each year, before dredged material is placed in any site authorized under this permit, a qualified piping plover monitor shall determine whether suitable piping plover nesting habitat exists at this site. A qualified piping plover monitor is a person who has the skills, knowledge, and ability to conduct monitoring. If such habitat is present, it shall be posted with warning signs and/or "symbolic fencing" before April 1 of each year and managed according to the Guidelines. "Symbolic fencing" refers to two strands of light-weight string, tied wbetween posts to delineate a least a 50-meter radius around nest areas where pedestrians and vehicles should not enter.
7. Each year, a qualified monitor shall determine whether suitable piping plover nesting habitat exists at disposal sites that have received dredged material under this authorization. If such habitat is present, it shall be posted with warning signs and/or "symbolic fencing" by April 1 of each year and managed according to the Guidelines referenced above.
8. On suitable piping plover nesting habitat, all construction activities are prohibited during the period March 30 to September 1 of each year.

The Corps of Engineers has consulted with the National Marine Fisheries Service (NMFS) regarding the effects of your project on Essential Fish Habitat (EFH) as designated under the Magnuson-Stevens Fishery Conservation and Management Act. The NMFS provided EFH conservation recommendations, which we included in special conditions # 1 listed above. This condition is intended to reduce turbidity and sedimentation effects on EFH.

You are responsible for complying with all of the PGP's requirements. Please review the attached PGP carefully, in particular the PGP conditions beginning on Page 9, to familiarize yourself with its contents. You should ensure that whoever does the work fully understands the requirements and that a copy of the permit document and this authorization letter are at the project site throughout the time the work is underway.

This determination becomes valid only after the Massachusetts Department of Environmental Protection (DEP) issues or waives Water Quality Certification (WQC) as required under Section 401 of the Clean Water Act. In the event the DEP denies the 401 WQC, this determination becomes null and void. The address of the DEP Regional office for your area is provided in the attached PGP.

Your project is located within, or may affect resources within the coastal zone. The Massachusetts Office of Coastal Zone Management (CZM) has already determined that no further Federal Consistency Review is required.

This authorization expires on January 20, 2010, unless the PGP is modified, suspended or revoked. You must complete the work authorized herein by January 20, 2010. If you do not, you must contact this office to determine the need for further authorization before continuing the activity. We recommend you contact us *before* this permit expires to discuss a time extension or permit reissuance.

This authorization requires you to complete and return the enclosed Work Start Notification Form to this office at least two weeks before the anticipated starting date. You must also complete and return the enclosed Compliance Certification Form within one month following the completion of the authorized work and any required mitigation (but not mitigation monitoring, which requires separate submittals).

This authorization presumes that the work as described above and as shown on your plans noted above is in waters of the U.S. Should you desire to appeal our jurisdiction, please submit a request for an approved jurisdictional determination in writing to this office.

This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law, as listed on Page 1 of the PGP. Performing work not specifically authorized by this determination or failing to comply with any special conditions provided above or all the terms and conditions of the PGP may subject you to the enforcement provisions of our regulations.

We continually strive to improve our customer service. In order for us to better serve you, we would appreciate your completing our Customer Service Survey located at http://per2.nwp.usace.army.mil/survey.html

Please contact John Sargent, of my staff at 978-318-8026 if you have any questions.

Sincerely,

Philip T. Feir
Colonel, Corps of Engineers
District Engineer

Attachments

Copies Furnished:

Ed Reiner, U.S. EPA, Region 1, 1 Congress Street, Suite 1100-Mail Code CWP, Boston, Massachusetts 02114-2023

Sengekontacket

DEPARTMENT OF THE ARMY
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS
696 VIRGINIA ROAD
CONCORD, MASSACHUSETTS 01742-2751

REPLY TO:
ATTENTION OF:

May 29, 2007

Regulatory Division
CENAE-R-PEA
Permit Number: NAE-2006-3749

Mr. Charles Blair, Harbormaster
Town of Edgartown Dredge Advisory Committee
P.O. Box 739
Edgartown, Massachusetts 02539

Dear Mr. Blair:

We have reviewed your application to dredge three areas in Sengekontacket Pond, Edgartown, Massachusetts, as follows:

- Dredge Area #1 – to dredge an approximately 720,000 square foot (SF) area near the Big Bridge to a depth of 5 feet (ft) below mean low water (MLW). Approximately 67,000 cubic yards (CY) of sand will be removed by hydraulic means.
- Dredge Area #2 – to dredge an approximately 147,814 SF area near the Little Bridge to a depth of 3 ft below MLW. Approximately 2,500 CY of sand will be removed by hydraulic means.
- Dredge Area #3 – to dredge an approximately 12,000 SF area from the channel outside Sengekontacket Pond at the Little Bridge to a depth of 5 ft below MLW. Approximately 4,000 CY of sand will be removed by hydraulic means.

Dredged material will be used for beach nourishment at Sylvia State Beach. The work is shown on the attached plans entitled, "Sengekontacket Pond Dredging, Sengekontacket Pond, Edgartown and Oak Bluffs, MA, Dukes County," on 5 sheets, and dated, "April 5, 1993," and entitled, "Massachusetts Highway Department Interim Shore Protection Project, Oak Bluffs/Edgartown," on 8 sheets, and dated, "August, 1996."

Based on the information you have provided, we have determined that the proposed activity, which includes a discharge of dredged or fill material into waters or wetlands, will have only minimal individual or cumulative environmental impacts on waters of the United States, including wetlands. Therefore, this work is authorized as a Category 2 activity under the attached Federal permit known as the Massachusetts Programmatic General Permit (PGP). This work must be performed in accordance with the terms and conditions of the PGP and also in compliance with the following special conditions:

1. There shall be no dredging or disposal from January 15th to June 15th of any year in order to minimize adverse impact to anadromous fish.
2. Dredge disposal activities on Silvia State Beach may only occur outside of the piping plover breeding season, from September 1st through March 31st.
3. Dredge material on Silvia State Beach must be graded to a slope of 10:1.
4. Vegetation may not be planted on any part of the newly-nourished beach.

This determination becomes valid only after the Massachusetts Department of Environmental Protection (DEP) issues or waives Water Quality Certification (WQC) as required under Section 401 of the Clean Water Act. In the event the DEP denies the 401 WQC, this determination becomes null and void. The address of the DEP Regional office for your area is provided in the attached PGP.

Your project is located within, or may affect resources within the coastal zone. The Massachusetts Office of Coastal Zone Management (CZM) has already determined that no further Federal Consistency Review is required.

This authorization expires on January 20, 2010, unless the PGP is modified, suspended or revoked. You must complete the work authorized herein by January 20, 2010. If you do not, you must contact this office to determine the need for further authorization before continuing the activity. We recommend you contact us *before* this permit expires to discuss a time extension or permit reissuance.

If you change the plans or construction methods for work within our jurisdiction, please contact us immediately to discuss modification of this authorization. This office must approve any changes before you undertake them.

This authorization requires you to 1. notify us before beginning work so we may inspect the project, and 2. submit a Compliance Certification Form. You must complete and return the enclosed Work Start Notification Form to this office at least two weeks before the anticipated starting date. You must complete and return the enclosed Compliance Certification Form within one month following the completion of the authorized work.

This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law, as listed on Page 1 of the PGP. Performing work not specifically authorized by this determination or failing to comply with any special conditions provided above or all the terms and conditions of the PGP may subject you to the enforcement provisions of our regulations.

An individual permit was previously issued for this project in 1996. This Category 2 permit is being issued under the PGP as this project is now maintenance dredging. However, it is recommended that a new 10-year individual permit be processed before the expiration of this Category 2 PGP.

Please contact Kevin Kotelly of my staff at (978) 318-8703 if you have any questions.

Sincerely,

Brian E. Valiton
for Curtis L. Thalken
Colonel, Corps of Engineers
District Engineer

Attachments

Christopher Boelke, National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01930-2298
Maria Tur, U.S. Fish and Wildlife Service, 70 Commercial Street, Suite 300, Concord, New Hampshire 03301-5087
Elizabeth F. Kouloheras, DEP SERO, Wetlands and Waterways, 20 Riverside Drive, Lakeville, Massachusetts 02347 (DEP File No.)
Robert Boeri, Coastal Zone Management, 251 Causeway Street, Suite 900, Boston, Massachusetts 02114

The Commonwealth of Massachusetts
Executive Office of Environmental Affairs
100 Cambridge Street
Boston, Massachusetts 02202

MICHAEL S. DUKAKIS
GOVERNOR

JAMES S. HOYTE
SECRETARY

CERTIFICATE OF THE SECRETARY OF ENVIRONMENTAL AFFAIRS

ON THE

ENVIRONMENTAL NOTIFICATION FORM

PROJECT NAME	: Dredging of Sengekontacket Pond
PROJECT LOCATION	: Oak Bluffs and Edgartown
EOEA NUMBER	: 6386
PROJECT PROPONENT	: DEM/Waterways
DATE NOTICED IN MONITOR	: January 12, 1987

Pursuant to the Massachusetts Environmental Policy Act (G.L.,c.30,s.61-62H) and Section 11.06 of the MEPA regulations (301 CMR 11.00), I hereby determine that the above project does not require the preparation of an Environmental Impact Report.

The expanded dredging project should avoid eel grass beds and the time of year for dredging must consider both an anadromous fish and shellfish spawning periods. I endorse the beach nourishment and beach grass planting elements.

February 11, 1987
DATE

JAMES S. HOYTE, SECRETARY

JSH/DES/bk

EOEA #12580 ENF Certificate September 21, 2001

The project is subject to review pursuant to Section 11.03 (3)(b)1f and (2)(b)1 of the MEPA regulations because it involves alteration of 4.9 acres of wetlands resource areas and of a designated significant habitat. It requires a Chapter 91 permit and Water Quality Certification from the Department of Environmental Protection (DEP), a U.S. Army Corps of Engineers permit and, federal consistency review by the Coastal Zone Management office. Because the proponent is not seeking financial assistance from the Commonwealth, MEPA jurisdiction is limited to those aspects of the project that are within the subject matter of the state permits.

The year 2000 project and the following breach connected Great Pond with Long Island Sound. The breach remained open for 66 days and resulted in the needed salinity changes and allowed for anadromous fish passage. It has improved the fish, shellfish and eel grass habitat.

The current project will not change the habitat values until other elements of the overall plan are in place. The approval is sought at this time because the dredge remains in Great Pond. The timing of the work is designed to avoid impacts to the rare species habitat. The dredge spoils are to be placed where those from 2000 were permitted.

I ask that the remaining elements of the plan be expeditiously filed with this office. The comments of Marine Fisheries concerning the potential spread of the Dermo oyster disease should be addressed in the filing. In addition, a management plan for the improved fishways should be included.

Based on a review of the information provided by the proponent and after consultation with relevant public agencies, I find that the potential impacts of the project are not significant enough to warrant preparation of an Environmental Impact Report and can be addressed in the permitting process. No further MEPA review is required. The proponent should file for the remainder of the plan as soon as possible.

September 21, 22001
DATE

Bob Durand

calebs

The Commonwealth of Massachusetts
Executive Office of Environmental Affairs

100 Cambridge Street, Suite 900
Boston, MA 02114-2524

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MITT ROMNEY
GOVERNOR

KERRY HEALEY
LIEUTENANT GOVERNOR

ELLEN ROY HERZFELDER
SECRETARY

June 7, 2004

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

PROJECT NAME	: Caleb's Pond Dredging
PROJECT MUNICIPALITY	: Edgartown
PROJECT WATERSHED	: Islands
EOEA NUMBER	: 13263
PROJECT PROPONENT	: Town of Edgartown
DATE NOTICED IN MONITOR	: May 8, 2004

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.

As described in the Environmental Notification Form (ENF), the proposed project includes the hydraulic dredging of approximately 8,400 cubic yards of material from the entrance channel to Caleb's Pond on Chappaquiddick Island. It is proposed that the dredged material will be placed on five shorefront sites adjacent to the dredge project in Edgartown Harbor.

The project is undergoing review pursuant to Section 11.03 (3)(b)(1)(f) of the MEPA regulations, because the project involves alteration of more than ½ acre of wetland resources other than bordering vegetated wetlands. The project will require a Chapter 91 License and a 401 Water Quality Certificate from the Department of Environmental Protection (DEP), and a US Army Corps of Engineers Permit. The project has already received an Order of Conditions from the Town of Edgartown's Conservation Commission.

Because the proponent is not seeking financial assistance from the Commonwealth for the

05/27/04 Coastal Zone Management
05/28/04 Department of Environmental Protection SERO
06/02/04 Burton Bryan, Response to Comments

ERH/ACC/acc

The Commonwealth of Massachusetts
Executive Office of Environmental Affairs
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Boston, MA 02114-2119

ARGEO PAUL CELLUCCI
GOVERNOR

JANE SWIFT
LIEUTENANT GOVERNOR

BOB DURAND
SECRETARY

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http://www.magnet.state.ma.us/envir

August 24, 2000

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

PROJECT NAME	: Great Pond Dredging/Beach Nourishment
PROJECT MUNICIPALITY	: Edgartown
PROJECT WATERSHED	: Cape & Islands
EOEA NUMBER	: 12265
PROJECT PROPONENT	: Town of Edgartown
ENF NOTICED IN MONITOR	: July 8, 2000

Pursuant to the Massachusetts Environmental Policy Act (M.G.L. c. 30, ss. 61-62H) and Sections 11.04 and 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.

As presented in the Environmental Notification Form (ENF), the project consists of hydraulically dredging a channel at the outlet of Great Pond to enhance tidal flushing and improve marine fisheries habitat within the pond. The channel will be 850 feet long by 60 feet wide and will result in the removal of 9,800 cubic yards of material that will be placed on South Beach dune and beach nourishment. According to the Department of Environmental Protection, the channel is not intended for navigational purposes but is meant to provide a seasonal connection with the ocean, as authorized under Chapter 311 of the Acts of 1949.

The project should result in improved fisheries habitat. However, with respect to the project's potential to improve Piping Plover habitat, the proponent needs to consult further with the Massachusetts Natural Heritage and Endangered Species Program (NHESP) and the U.S Fish and Wildlife Service to ensure compliance with the US Endangered Species Act. In addition, even though the Order of Conditions has been issued (June 28, 2000),

the NHESP conditions need to be included in an amended Order of Conditions and/or be included as requirements of the 401 Water Quality Certification. Otherwise, I reserve the right to require a Notice of Project Change and further MEPA review.

Based on a review of the information provided by the proponent and consultation with relevant public agencies, I find that the potential impacts of the project do not warrant the preparation of an Environmental Impact Report and can be addressed by the permitting agencies. No further MEPA review is required.

August 24, 2000
Date

Bob Durand

Comments received:
George Clark (7/19/00)
MDFW-NHESP; Attn: Scott Melvin, Ph.D. (8/11/00)
Division of Marine Fisheries (8/16/00)
DEP-SERO; Attn: Sharon Stone (8/16/00)

cc: Edgartown Conservation Commission (w/comments)
USCOE-Regulatory Branch; Attn: Ted Lento (w/comments)

BD/DEV/dv

The Commonwealth of Massachusetts
Executive Office of Environmental Affairs
100 Cambridge Street, Boston, 02202

WILLIAM F. WELD
GOVERNOR
ARGEO PAUL CELLUCCI
LIEUTENANT GOVERNOR
TRUDY COXE
SECRETARY

Tel: (617) 727-9800
Fax: (617) 727-2754

June 14, 1996

6/14/96 FILE COPY

CERTIFICATE OF THE SECRETARY OF ENVIRONMENTAL AFFAIRS
ON THE
NOTICE OF PROJECT CHANGE

PROJECT NAME	: Dredging Sengenkontacket Pond (Beach Road Interim Erosion Control)
PROJECT LOCATION	: Oak Bluffs and Edgartown
EOEA NUMBER	: 6386
PROJECT PROPONENT	: Massachusetts Highway Department
DATE NOTICED IN MONITOR	: April 24, 1996

Pursuant to the Massachusetts Environmental Policy Act (G.L., c.30, ss.61-62H) and Section 11.17 of the MEPA regulations (301 CMR 11.00), I have reviewed the Notice of Project Change submitted on the above project and hereby determine that it does not require the preparation of an Environmental Impact Report.

This project was originally filed with MEPA by the Department of Environmental Management Division of Waterways (DEM) in December of 1987. At that time the project involved dredging 40,500 cubic yards (cy) of sand from Sengenkontacket Pond with the sand being used as beach nourishment on Sylvia State Beach. On February 11, 1987 a Certificate was issued stating that no Environmental Impact Report was required.

On September 8, 1992 the Oak Bluffs Board of Selectmen filed a Notice of Project Change (NPC) that increased the volume of dredging to 60,000 cy and involved the addition of two stone groins south of the existing groin field on Sylvia State Beach. The groins were recommended by the Army Corps of Engineers.

The introduction of groins into the project prompted a series of meetings between the permitting agencies and the Town of Oak Bluffs. These meetings resulted in the Town withdrawing the proposal for the additional dredging and in DEM withdrawing the proposal for the groins. This action resulted in a decision from the Secretary on the NPC stating that no further MEPA review was required.

This project is currently being undertaken by the Massachusetts Highway Department (MHD) to provide a temporary level of protection to Beach Road as well as improve navigation and circulation in Sengekontacket Pond. Beach Road has been severely threatened in several recent storms. The project involves the dredging of 70,000 cy of sand from Sengekontacket Pond, using the sand as beach nourishment on Sylvia State Beach and installing three temporary, adjustable wooden groins south of the existing groin field on the beach. The groins are proposed to assist in holding the sand in place as erosion control.

In order to develop both an acceptable erosion control design and a consensus among agencies, the MHD established an erosion control workgroup. After a number of meetings with input from federal, state and local agencies and other groups, a consensus was reached and a Memorandum of Agreement (MOA) was developed that sanctions the current project.

The project will require an Order of Conditions from both the Edgartown and Oak Bluffs Conservation Commissions, approval from the Army Corps of Engineers under Section 404, a new Water Quality Certification under Section 401 for installation of the adjustable groins and an amended Water Quality Certification for the dredging and beach nourishment.

I expect that the Water Quality Certification will include provisions for construction, maintenance and monitoring of this project.

I find no likelihood of significant adverse environmental impacts from implementation of this project and, given continued regulatory oversight, I find no need for further MEPA review.

June 14, 1996
DATE

Trudy Coxe, Secretary

Comments received : DEP
Martha's Vineyard Commission
Massachusetts Audubon Society

TC/rf

The Commonwealth of Massachusetts
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

DEVAL L. PATRICK
GOVERNOR
TIMOTHY P. MURRAY
LIEUTENANT GOVERNOR
IAN A. BOWLES
SECRETARY

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May 23, 2008

FINAL RECORD OF DECISION

PROJECT NAME	: Sengekontacket Pond Dredging, Beach Nourishment, & Dune Restoration
PROJECT MUNICIPALITY	: Edgartown
PROJECT WATERSHED	: Islands
EOEA NUMBER	: 14138
PROJECT PROPONENT	: Town of Edgartown
DATE NOTICED IN MONITOR	: May 7, 2008

Pursuant to the Massachusetts Environmental Policy Act (MEPA) (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 grant a Phase 1 Waiver (as defined below), allowing the Phase 1 Renourishment of Bend-in-the-Road Beach to proceed to the state permitting agencies prior to completion of the Environmental Impact Report (EIR) for the entire project.

Project Description

The NPC was submitted for MEPA review on March 13, 2008. The proponent is requesting that it be allowed to phase this project by renourishing Bend-in-the-Road Beach before the EIR is submitted. The proposed Phase 1 will renourish about 1.7 acres with approximately 9,800 cubic yards (cy) of compatible material. The dredged material will be pumped from an area of 150,000 sf within Borrow Area #1 in Sengekontacket Pond. Borrow Area #1 is approximately 16.9 acres and has been dredged in the past. Therefore, the dredging of Borrow Area #1 is considered maintenance dredging. The proponent will only dredge an area of 150,000 sf/3.44 acres, which is outside the limits of the original ENF. The dredge pipe will run under the Big Bridge and along Sylvia State Beach to Bend-in-the-Road Beach. It will discharge sand onto the beach and the protective dunes. The dune area, which will be impacted by Phase 1, is approximately 23,957 sf of dune. This dune area will receive about 2,000 cy of dredged material. Phase 1 is anticipated to begin in October of 2008 and end before April of 2009.

Project History

The Environmental Notification Form (ENF) was submitted in November of 2007. The

project consisted of the dredging of approximately 85,000 to 100,000 cy from 13.9 acres of Land under a Salt Pond (LUSP) within the existing navigational channels within Sengekontacket Pond. The project included both maintenance (2.2 acres) and improvement dredging (11.7 acres). The proponent is proposing to utilize the dredged material as beach nourishment on 13.6 acres of adjacent coastal and barrier beaches. The dredged material will be utilized on Bend-in-the-Road and Cow Bay Beaches. The channel to be dredged is 6,060 linear feet long, 100 feet wide, and approximately 6-feet deep. The dredging area would be excavated to -6 feet at Mean Low Water (MLW). It will be hydraulically dredged and the sand will be pumped to the disposal site through submerged and floating lines. The project will provide navigation improvements for boating, storm damage protection, flood control, and improved water quality within the ponds, which may improve shellfish habitat. The proposed project area is approximately 27.5 acres. On December 26, 2007, the Secretary determined that the project required a mandatory EIR.

Categorical Inclusion

The project is included for the preparation of a mandatory EIR pursuant to Section 11.03 (3)(a)(1)(b) of the MEPA regulations because it alters 10 or more acres of wetlands. The Certificate with the Scope for the EIR was issued on December 26, 2007.

Jurisdiction

This project will require a Chapter 91 License and a Section 401 Water Quality Certificate from the Department of Environmental Protection (MassDEP). The proponent should submit a filing in compliance with the Massachusetts Endangered Species Act (MESA) and continue to consult with the Natural Heritage & Endangered Species Program (NHESP). The project may need to obtain a Federal Consistency review from the Massachusetts Coastal Zone Management (MCZM) Office. It may need a Section 404 Individual Permit from the U.S. Army Corps of Engineers. An Order of Conditions will be required from the Edgartown Conservation Commission for work within a resource area. Because the proponent is not seeking financial assistance from the Commonwealth for the project, MEPA jurisdiction is limited to those aspects of the project within the subject matter of required state permits (wetlands, waterways, habitat, and stormwater) that may have significant environmental impacts.

Waiver Request

On March 10, 2008, the proponent requested that I grant a Phase 1 Waiver to allow for the Renourishment of Bend-in-the-Road Beach to proceed in advance of completion of the EIR. The waiver request was submitted with the NPC. The NPC provided an Expanded ENF level of detail such that the MEPA Office could accept and consider the waiver request. As proposed, Phase 1 consists of placing approximately 9,800 cy of compatible dredged material on about 1.7

acres of beach and dune.

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 1 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 1 are insignificant; 2) ample and unconstrained infrastructure and services exist to support Phase 1; 3) the project is severable, such that Phase 1 does not require the implementation of any other future phases; and 4) the agency action on Phase 1 will contain conditions that ensure due compliance with MEPA.

Findings

Based upon the information submitted by the proponent and after consultation with the relevant state agencies, I find that:

1. The potential impacts of the project for Phase 1 are insignificant. According to the proponent, the 9,800 cy of compatible dredged material will be pumped from a 150,000 sf area in Borrow Area #1, which is outside the limits of the previously proposed project. Borrow Area #1 has been dredged before and is considered maintenance dredging by the proponent. The dredge pipe will run under the Big Bridge and along Sylvia State Beach to Bend-in-the-Road Beach. It will discharge sand to approximately 1.7 acres of beach and dune. By utilizing the Big Bridge pipeline route, the project will avoid any impacts on marsh and other resource areas.

2. The proponent will improve the Bend-in-the-Road Beach by widening it by approximately 30 to 35 feet to the MLW line.

3. The Phase 1 dredging area is limited to a 150,000 sf area within Borrow Area #1. Approximately 1.7 acres of beach and dune would receive approximately 9,800 cubic yards of compatible material. The project will be confined to work within these resource areas.

4. The proponent will restore the dune area to a height of about five feet and connect the new

dune to the existing dunes on either side of Bend-in-the-Road Beach. The proponent will plant beach grass on top of the proposed dune.

5. Ample and unconstrained infrastructure exists.

6. The project will provide storm damage protection, increased areas of beach and dune, an increased recreational area for a popular bathing beach, and increased habitat for endangered shore birds. It is consistent with the Town of Edgartown's Ten Year Dredge Master Plan, and the Renourishment of Bend-in-the-Road Beach was originally developed as a stand alone project.

7. The proponent will provide Time-of-Year Restrictions (TOYR) to protect winter flounder (January 15th through May 31st). No beach nourishment will occur between April 1st and August 31st to protect shore birds during mating season.

8. The proponent has committed to provide the DEIR by April of 2009.

9. The project is severable. Phase 1 does not require the implementation of any other future phase of the project or restrict the means, by which potential environmental impacts from any other phase of the project may be avoided, minimized or mitigated.

10. MassDEP has sufficient permitting authority to ensure due compliance with the MEPA Regulations prior to the commencement of any other phases.

Based on these findings, it is my judgment that the waiver request has merit and meets the tests established in Section 11.11. Therefore, I grant the Phase 1 Waiver requested for the Phase 1 Renourishment of Bend-in-the-Road Beach, subject to the above findings.

May 23, 2008
Date

Ian A. Bowles

Comments received:

MCZM, 4/28/08

14138frod
IAB/WTG

Bend in the Road

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS
OFFICE OF COASTAL ZONE MANAGEMENT
251 Causeway Street, Suite 800, Boston, MA 02114-2136
(617) 626-1200 FAX: (617) 626-1240

MEMORANDUM

TO: Ian A. Bowles, Secretary, EEA
ATTN: William Gage, MEPA Unit
FROM: Leslie-Ann McGee, Director, CZM
DATE: April 9, 2008,
RE: EOEA 14138 – Sengekontacket Pond Dredging, Edgartown

The Massachusetts Office of Coastal Zone Management (CZM) has completed its review of the above-referenced Notice of Project Change (NPC), noticed in the Environmental Monitor dated March 26, 2008 and offers the following comments.

Project Description

The overall project involves the dredging of approximately 85,000 cubic yards of material from Sengekontacket Pond and includes both maintenance and improvement dredging. The proposed channel is approximately 6,060 feet (ft) long by 100 ft wide with a depth of six ft below MLW. The material has been tested and consists of medium to course sand. The sand will be placed along portions of the adjacent barrier beach. The nourishment area is approximately one mile long and encompasses a small portion of Sylvia State Beach, the town owned Bend in the Road Beach, and the privately owned Cow Bay Beach.

The changes described in the NPC involve separating the proposed project into phases. Phase 1, presented in the NPC and evaluated in this document, involves the dredging of 9,800 cubic yards of sand from a previously permitted borrow site (referenced in the plans as borrow area #1) located within Sengekontacket Pond in close proximity to the Big Bridge inlet. The material will be hydraulically pumped to Bend in the Road Beach, located on the adjacent barrier beach.

Project Comments

The barrier beach protecting Sengekontacket Pond carries the State Highway known as Beach Road connecting the towns of Oak Bluffs and Edgartown. The barrier beach is also one of the largest public beach areas on Martha's Vineyard. It has experienced areas of severe erosion caused by a combination of storm events, updrift armoring, and the depletion of the natural sediment source. This project is intended to nourish Bend in the Road Beach and rebuild dunes to help improve the storm damage function of the barrier beach in this area.

CZM recognizes the need to manage this barrier beach system through regular sand nourishment efforts, and therefore supports the Town's request for a Phase I waiver for this portion of the project. The NPC did not contain detailed information regarding the proposed borrow site, however this information will be required to be developed and evaluated during the routine regulatory review for the required local Order of Conditions, the Section 404 Permit from the Army Corps of Engineers, the 401 Water Quality Certificate and Chapter 91 License from the Massachusetts Department of Environmental Protection and CZM Federal Consistency Review.

Sengekontacket

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
OFFICE OF COASTAL ZONE MANAGEMENT
100 CAMBRIDGE STREET, BOSTON, MA 02202
(617) 727-9530 FAX (617) 727-2754

September 25, 1996

Lisa Rhodes
Mass Highway Department
Ten Park Plaza
Boston, MA 02116

Re: Federal Consistency Certification: Dredging, Beach Nourishment, Temporary Wooden Adjustable Groin Construction; Oak Bluffs and Edgartown.

Dear Ms. Rhodes:

The Massachusetts Coastal Zone Management (MCZM) Office has completed its review of the proposed dredging of Sengekontacket Pond, beach nourishment, and construction of three temporary, wooden, adjustable groins on Sylvia State Beach.

We concur with your certification and find that the activities as proposed on plans submitted with the Notices of Intent dated May 31 and June 7, 1996 are consistent with the MCZM enforceable program policies.

If the above-referenced proposal, which has received this concurrence from MCZM, is modified in any manner or is noted to be having effects on the coastal zone or its uses that are substantially different than originally proposed, please submit an explanation of the nature of the change to this Office pursuant to 301 CMR 21.17 and 15 CFR 930.66.

Thank you for your cooperation with MCZM.

Sincerely,

Margaret M. Brady
Director

MMB/rlh
1423

caleb's

AC

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
OFFICE OF COASTAL ZONE MANAGEMENT
251 Causeway Street, Suite 900, Boston, MA 02114-2136
(617) 626-1200 fax: (617) 626-1240

MEMORANDUM

TO: Ellen Roy Herzfelder, Secretary, EOEA
ATTN: Anne Canaday, MEPA Unit
FROM: Tom Skinner, Director, CZM
DATE: May 25, 2004
RE: EOEA 13263 – Caleb's Pond Maintenance Dredging; Edgartown

The Massachusetts Office of Coastal Zone Management (CZM) has completed its review of the above-referenced Environmental Notification Form (ENF), noticed in the Environmental Monitor dated May 8, 2004, and does not recommend the preparation of an Environmental Impact Report. CZM supports the project, as it proposes the beneficial reuse of the dredge material for beach nourishment. Remaining technical issues can be addressed in the permitting process.

The proposed project includes the hydraulic dredging of approximately 8,400 cubic yards of material from the entrance channel to Caleb's Pond on Chappaquiddick. The dredged material will be placed on five shorefront sites adjacent to the dredge project in Edgartown Harbor. The channel was reportedly first dredged in 1938, and the proposed project is consistent with the Town's Dredging Master Plan.

The proposed project may be subject to CZM federal consistency review, in which case the project must be found to be consistent with CZM's enforceable program policies. For further information on this process, please contact Alex Strysky, Project Review Coordinator, at 617-626-1219 or visit the CZM web site at www.state.ma.us/czm/fcr.htm.

TWS/th

cc: Truman Henson, Jr.,
CZM Cape & Islands Regional Coordinator
Elizabeth Kouloheras, Section Chief,
Southeast Regional Office, MA DEP
Ben Lynch, Acting Section Chief,
Waterways Program, MA DEP
Crystal Gardner, Chief, Regulatory Branch,
US Army Corps of Engineers
Town of Edgartown Harbormaster,
P.O. Box 739, Edgartown, MA 02539
Burton B. Bryan, Robert L. Fultz & Assoc.,
74 Colonial Dr., Marshfield, MA 02050

Katama Channel

THE COMMONWEALTH OF MASSACHUSETTS
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(617) 626-1200 fax: (617) 626-1240

MEMORANDUM

TO: Ellen Roy Herzfelder, Secretary, EOEA
ATTN: William Gage, MEPA Unit
FROM: Tom Skinner, Director, CZM
DATE: May 22, 2003
RE: 12823 – Katama Bay Navigation Channel; Edgartown

The Massachusetts Office of Coastal Zone Management (CZM) has completed its review of the above-referenced Notice of Project Change (NPC), noticed in the Environmental Monitor dated May 7, 2003. Many of the issues raised in our previous comment letters during the review of this proposal have been addressed, and we believe that any outstanding issues can be adequately addressed during the permitting process.

The project, as currently proposed, dramatically decreases associated potential impacts by reducing the project area to 50,094 sq. ft. (a reduction of over sixty percent), and total dredging to 3,975 cubic yards (a reduction of almost eighty percent). Additionally, the dredged material disposal area has been reduced from approximately five, to approximately three acres. These reductions were made possible by the proponent's attention to comments submitted during the review of the original project, and modification of the project in accordance with those suggestions. CZM offered a number of specific comments during that process, but was most concerned relative to the proposed location of the designed channel. Those concerns have been alleviated by the redesign of the project, including the relocation and reduction in scale of the proposed channel.

CZM believes that the project design has evolved into one that meets the Town's navigational safety and convenience needs, is consistent with the Town's long-term dredging plans, minimizes both short and long term impacts, and will also minimize future maintenance needs. Therefore, we support the proponent's request to rescind the Certificate issued by the Secretary on July 10, 2002, and allow the project as now designed to proceed to the permitting stage.

The proposed project may be subject to CZM federal consistency review, in which case the project must be found to be consistent with CZM's enforceable program policies. For further information on this process, please contact Jane W. Mead, Project Review Coordinator, at 617-626-1219 or visit the CZM web site at www.state.ma.us/czm/fcr.htm.

TWS/th

Herring Creek Rest

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
OFFICE OF COASTAL ZONE MANAGEMENT
251 Causeway Street, Suite 900, Boston, MA 02114-2136
(617) 626-1200 fax: (617) 626-1240

February 25, 2003

Burton B. Bryan, Ph.D.
Robert L. Fultz & Associates
74 Colonial Road
Marshfield, MA 02050

RE: Federal Consistency Certification: Great Pond and Herring Creek Restoration Project; Edgartown

Dear Mr. Bryan:

The Massachusetts Office of Coastal Zone Management (CZM) has completed its review of the proposed Great Pond and Herring Creek Restoration Project. We concur with your certification and find that the activity as proposed is consistent with the CZM enforceable program policies.

If the above-referenced proposal, which has received this concurrence from CZM, is modified in any manner or is noted to be having effects on the coastal zone or its uses that are substantially different than originally proposed, please submit an explanation of the nature of the change to this Office pursuant to 301 CMR 21.17 and 15 CFR 930.66.

Thank you for your cooperation with CZM.

Sincerely,

Tom Skinner
Director

TWS/rh

Cc: Crystal Gardner, Chief
Regulatory Branch, US Army Corps of Engineers
Elizabeth Kouloheras, Section Chief
Southeast Regional Office, MA DEP
Ben Lynch, Acting Section Chief
Waterways Program, MA DEP
Truman Henson,
CZM Cape Cod and Islands Regional Coordinato