



Commonwealth of Massachusetts  
Executive Office of Energy & Environmental Affairs

## Department of Environmental Protection

One Winter Street Boston, MA 02108 • 617-292-5500

Charles D. Baker  
Governor

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Lieutenant Governor

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Secretary

Martin Suberg  
Commissioner

October 4, 2016

David Fronzuto  
Town of Nantucket  
16 Broad Street  
Nantucket, MA 02554

Re: **COMBINED PERMIT - CHAPTER 91 PERMIT and 401 WATER QUALITY  
CERTIFICATION**  
Application for BRP WW 26  
COMBINED PERMIT FOR DREDGING – MAJOR/MINOR PROJECT

At: Polpis Harbor, NANTUCKET

401 WQC Transmittal №: X269790  
Chapter 91 Permit №: 14251  
Wetlands File №: SE48-699  
ACoE Application №:

Dear Mr. Fronzuto:

The Department has reviewed your application for a combined Chapter 91 Dredge Permit and Water Quality Certification ("Combined Permit"), 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, 314 CMR 9.00 and MGL c.91, 310 CMR 9.00, the Department has 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 Polpis Harbor are designated in the Massachusetts Surface Water Quality Standards as Class SA. 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."

**Background:** Polpis Harbor is located approximately 3 miles northeast of the entrance to Nantucket Harbor. It is an active waterfront utilized by recreational and commercial vessels. Due to its geographic location, Polpis Harbor is also a haven of storm refuge for boaters.

On May 29, 1992, the Department issued a 401 Water Quality Certification, transmittal # 21929, to the Town of Nantucket to dredge the Polpis Harbor entrance channel. On July 2, 1992, Chapter 91 Permit No. 229 was also issued to the Town of Nantucket to dredge the same channel.

Proposed project: The proposed project scope entails conducting maintenance dredging within previously authorized dredge limits, to a design depth of -6.0 feet Mean Low Water (MLW), including a 1-foot allowable overdredge to -7.0 feet MLW and 3H:1V side slopes. The estimated dredge volume is 8,300 yd<sup>3</sup>.

Dredging will be performed using either hydraulic or mechanical methods. Mechanical methods will consist of a barge-mounted excavator or crane with a closed bucket placing the dredged material into a barge/scow. Hydraulic methods will consist of a suction-cutterhead and the sediment slurry will be pumped directly into a barge/scow to allow for settling and the supernatant effluent will be pumped back into Polpis Harbor. The scow will then be transported with the aid of a tug boat to the Steamship Authority wharf and transferred where the dredged material will be off-loaded onto dump trucks and brought to the DPW yard located at 188 Madaket Road and a vacant lot located off New South Road near the Airport to be stockpiled. Both locations are to be permitted as Intermediate Facility (IF) under 314 CMR 9.07(4).

Eelgrass: An eelgrass survey was conducted in October 2013, adhering to the recommended methodologies presented in the MA Division of Marine Fisheries (DMF) Technical Report TR-43 "*Technical Guidelines for the Delineation, Restoration, and Monitoring of Eelgrass (Zostera marina) in Massachusetts Coastal Waters*". An underwater video camera with a monitor was utilized to visually confirm the presence of eelgrass along each survey transect. The locations shown to contain eelgrass were tagged using GPS so that the limits of existing eelgrass could be determined relative to proposed dredging and nourishment activities.

Based on the eelgrass survey, the proposed dredge plan was developed to entirely avoid direct impacts to the confirmed eelgrass areas within or in close proximity to the limits of the authorized channel (see Special Conditions 17-21)

ALTERNATIVES ANALYSIS: Three alternatives were evaluated for this project:

**Alternative 1- No Dredge:** Under this alternative, dredging would not be performed within the existing authorized entrance channel, and navigation conditions would continue to deteriorate. Shoaling would continue to increase, reducing tidal flushing and increasing the potential for vessel groundings that may result in spill and/or release of oil and hazardous material (OHM) into the harbor or sediment suspension from prop wash of the vessel. For these reasons, Alternative 1 was eliminated.

**Alternative 2 - Maintenance Dredging:** Under Alternative 2, maintenance dredging would be performed within all areas within the established limits of the existing navigation channel that are above the authorized depth of -6.0 feet MLW. Implementation of this alternative would restore/improve navigation, public access and use and tidal flushing within the waterway; however, it also would result in a direct impact to approximately ±32,030 SF (±0.7 acres) of existing/confirmed eelgrass habitat that is located within the southern-most reach of the 100-foot wide channel. Alternative 2 is not considered a viable option due the direct impacts to eelgrass habitat that would result from dredging.

**Alternative 3 - Modified Maintenance Dredging:** Under Alternative 3, maintenance dredging is proposed to restore areas within the existing navigation channel that are above the authorized depth of -6.0 feet MLW, with the exception that no dredging is proposed within the southernmost reach of the existing 100-foot wide channel due to the presence of eelgrass. Instead, channel access will be relocated slightly east to where existing water depths are currently at a minimum -5.0 feet MLW or deeper. Channel markers will be placed by the Town that delineates a 50-foot wide access channel at this location of the harbor. Alternative 3 was the preferred alternative.

**Beneficial reuse:** The dredged material will be beneficially reused to restore and enhance coastal resiliency along the eroding shorelines of Nantucket.

**Proposed Nantucket Sand Bank:** While the Town of Nantucket prefers to nourish its public shoreline area(s), these areas are not always available due to the need of nourishment and the need/timing of the dredge does not always arise at the same time. Private eroding beaches may be nourished if easements for public access below the existing high water mark can be secured from the owner of the beach to be nourished. However, the Town has not been successful in obtaining all the easements for public access in the past two years. As a result, the Town decided to establish a Sand Bank in order to proceed with the dredging of the Polpis Harbor channel and to allow the dredged material to be available for beneficial reuse at both publicly and privately owned eroding beaches.

The Sand Bank will provide the Town of Nantucket more flexibility in managing and reusing dredged material for nourishment. The Town is currently in the initial planning phase required to implement a comprehensive dredge program and has secured the necessary funding to proceed with the related design and permitting efforts. A preliminary island-wide matrix has been developed by the Town identifying potential dredge and beach nourishment sites (see Attachment 1).

The Town has conducted a precursory assessment of potential private parties interested in purchasing dredged sediments and confirmed that there is a significant demand for sand. The Town also confirmed that there is a shortage of available material from upland sources and the price per cubic yard of sand ranged from \$40 to \$52. Multiple parties expressed interest in purchase the dredged sand from Polpis Harbor due to an immediate need of material and potential cost savings for not purchasing from upland sources. The interested parties understand that a valid Order of Conditions from the Conservation Commission would be required and beach public access easement in-hand.

Based on the response of the private entities, it is anticipated that 80 percent of the dredged sediment from Polpis will be purchased by the interested private entities. Prior to commencement of the maintenance dredging of Polpis Harbor, the Town of Nantucket will finalize the purchase agreement with all the interested private parties. The purchase agreement will include:

1. proof of existing **valid** permit authorization for beach nourishment at the property of interest;

2. copy of all applicable public beach access easements that have been secured for the public use of the private land being nourished with dredged material from the publicly funded dredging project, and
3. payment for the quantity of beach sand to be purchased and picked up for further distribution.

No dredged sediment will be sold by the Town to any private entity that does not have the required public access easement(s) in-hand. The Town will administer and monitor the purchase protocol to ensure proper authorization(s) and documentation(s) are in place for the dredged material to be distributed amongst the approved private entities.

Once the dredged sand is transported from the barge to Steamship Wharf where it will be unloaded onto trucks and distributed to the private properties with the final purchased agreement. Any of the dredged sand that is not purchased by private entities will be trucked and placed at the designated Intermittent Facilities for stockpile. The stockpiled material will be available for reuse on as-needed basis and will provide an established/authorized reuse location.

The proceeds generated under the Sand Bank will be allocated to the Town's General Fund for future dredging and nourishment project. Dredging and nourishment projects funded by this source of revenue are considered as public funded projects. Private entities interested in purchasing the sand will have to abide by the above conditions (Michael Counts, personal communication-electronic mail dated September 22, 2016).

Sediment sampling data: Nine core samples were collected within the proposed dredge footprint for gradation analysis. Results of the gradation analysis showed all nine sediment samples contained less than ten percent of particles (0.5 percent to 3 percent) passing the No. 200 U.S. Standard Series Testing Sieve.

In accordance with 314 CMR 9.07(2)(a), no chemical testing is required if the sediment to be dredged contains less than ten percent of particles passing the No. 200 U.S. Standard Series Testing Sieve, and if the required "due diligence review" demonstrates to the Department's satisfaction that the area is unlikely to contain anthropogenic concentrations of oil or hazardous materials. As such, Special Condition no. 9 requires a due diligence review be conducted and its findings be submitted to the Department.

Dredged Material Dewatering: Based on the results of the gradation analysis, very little or no dewatering will be required for the dredged material. In this case, the dredged material will settle rapidly in the barge/scow and the supernatant effluent will return back to the Nantucket/Polpis Harbor.

Rare Species and Rare Wildlife Habitat: The site is located within the Priority Habitats of Rare Species, Estimated Habitats of Rare Wildlife, and Certified Vernal Pools in accordance with the Massachusetts Natural Heritage Atlas, 13<sup>th</sup> Edition. According to a letter dated March 18, 2015, from the Division of Fisheries & Wildlife, Natural Heritage & Endangered Species Program (NHESP), it has determined that this project as proposed must be conditioned in order to avoid adverse effect the actual Resource Area Habitat of state-protected rare wildlife species and a prohibited "take" (see Special Condition 16).

Public Notice: The public notice of the Chapter 91 dredge and 401 WQC combined application was published in the Nantucket Inquirer and Mirror on May 19, 2016. The Department did not receive any comment during the 21-day public comment period under 314 CMR 9.05(3)(e) and the 15-day public comment period under 310 CMR 9.13(1)(c)5, which ended on June 9, 2016 and June 3, 2016 respectively.

Section 61 Findings: Pursuant to M.G.L. Chapter 30, Sections 61 to 62H (M.E.P.A.) this project was reviewed as EOE No. 15241 and the Secretary's Certificate, issued on September 5, 2014 found that t an Environmental Impact Report (EIR) was not required.

**Therefore, based on information currently in the record, the Department grants a Combined Permit 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 to be implemented satisfies the Surface Water Quality Standards at 314 CMR 4.00**

STANDARD COMBINED PERMIT CONDITIONS:

1. Acceptance of this Combined Permit shall constitute an agreement by the Applicant to conform to all terms and conditions stated herein.
2. This Combined Permit is issued upon the express condition that any and all other applicable authorizations necessitated due to the provisions hereof shall be secured by the Applicant prior to the commencement of any activity hereby authorized.
3. This Combined Permit shall be revocable by the Department for noncompliance with the terms and conditions set forth herein. This Combined Permit may be revoked after the Department has given written notice of the alleged noncompliance to the Applicant, or his agent, and those persons who have filed a written request, with the Department, for such notice and have afforded the Applicant a reasonable opportunity to correct said noncompliance.
4. This Combined Permit is issued subject to all applicable federal, state, county, and municipal laws, ordinances, by-laws, and regulations, including but not limited to, a valid Order of Conditions issued pursuant to the Wetlands Protection Act, M.G.L. Chapter 131, s.40.
5. This Combined Permit is issued upon the express condition that dredging and transportation and disposal of dredge material shall be in strict conformance with all applicable requirements and authorizations of the Department.
6. The Applicant shall assume and pay all claims and demands arising in any manner from the work authorized herein, and shall save harmless and indemnify the Commonwealth of

Massachusetts, its officers, employees, and agents from all claims, audits, damages, costs and expenses incurred by reason thereof.

7. Dredging under this Combined Permit shall be conducted in a manner not to cause unnecessary obstruction of the free passage of vessels. When conducting authorized dredging, care shall be taken not to cause any shoaling. If, however, any shoaling is caused, the Applicant shall, at his expense remove the shoal areas. The Applicant shall pay all costs of supervision, and if at any time the Department deems necessary a survey or surveys of the area dredged, the Applicant shall pay all costs associated with such work. Nothing in this Combined Permit shall be construed as to impair the legal rights of any persons, or authorize dredging on land not owned by the Applicant without consent of the owner(s) of such property.

#### SPECIAL COMBINED PERMIT CONDITIONS

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 the Massachusetts Surface Water Quality Standards that protect all waters, including wetlands.
2. Prior to the start of work, or any other portion of the work thereafter, 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 Combined Permit.
3. Dredging in accordance with this Combined Permit may begin following the 21-day appeal period and once all other Permits have been received.
4. Work in waters and wetlands shall conform to Part E – Proposed Scope of Project and Use Activity Description and plans/figures submitted in this application to the Department, 11 sheets prepared by CLE Engineering, Inc., dated April 1, 2016, and are unsigned and unstamped. The Department shall be notified if there are modifications and or deletions of work as specified in the plans. Depending on the nature and the scope of any change, approval by the Department may be required.
5. The applicant and its contractor shall allow agents of the Department to enter the project sites to verify compliance with the conditions of this Combined Permit.
6. 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 Combined Permit.
7. The term of the Chapter 91 dredge permit of this Combined Permit is five years in accordance with 310 CMR 9.15(2). The term of the 401 WQC dredging of the Combined Permit remains in effect for the same duration as the federal permit that requires it or five years from the date of issuance of this Combined Permit whichever comes first.

8. The applicant may request an extension of the 401 dredging of the Combined Permit in accordance with 314 CMR 9.09(3). If the Department grants an extension, the Chapter 91 dredge permit of the Combined Permit will also be extended for the same term.
9. Within 21 days of issuance of the Combined Permit, the applicant shall perform a due-diligence review in accordance with 314 CMR 9.07(2)(a) to determine that no known spills of oil or other toxic substances have occurred which could have contaminated the sediment in the proposed dredge area(s). The findings of the due-diligence review shall be submitted to the Department prior to commencement of the dredging activity.
10. Future maintenance dredging may be conducted as necessary for the duration of this Combined Permit, provided that:
  - a. the initial project and any subsequent dredging has been conducted satisfactorily with no violations of the terms and conditions of this Combined Permit or any violations which did occur have been resolved to the satisfaction of the Department;
  - b. Confirm that the private entity has a valid permit for the beach nourishment activity;
  - c. information has been submitted to the Department, if applicable, regarding chemical characteristics and final end use/disposal of the dredged material for review and approval and no future maintenance dredging has commenced without obtaining end use/disposal approval from the Department;
  - d. **Documentation** showing the grain-size distribution of the sediment to be dredged is compatible with the grain-size distribution of the **approved** receiving beach(es) in accordance with the document entitled Beach Nourishment, Mass DEP's Guide to Best Management Practices for Projects in Massachusetts, March 2007 and is submitted to the Department;
  - e. coordinates of the maintenance dredge footprint are the same as the dredge footprint authorized under this Certification;
  - f. a current due-diligence evaluation is done to determine that no known spills of oil or other toxic substances have occurred which could have contaminated the sediment in the dredge area and submitted to the Department prior to maintenance dredging;
  - g. a bathymetric survey has been submitted to the Department in compliance with Condition no. 21;
  - h. the volume of future maintenance dredging does not exceed 8,300 cubic yards and the Department is notified prior to commencement of maintenance dredging.

11. The Town shall maintain all final purchase agreements. At a minimum, the purchase agreement shall include the following information:
  - a. name of the private entity;
  - b. address of the nourishment location;
  - c. copy of the **valid** permit for nourishment;
  - d. public beach access agreement;
  - e. quantity of sand purchased and price per cubic yard.

Copy of the purchase agreement shall be provided to the Department upon request.

12. When conducting future maintenance dredging at Station 3+00 and 17+00 of the entrance channel adjacent to Quaise Point, equipment such as a long reach excavator shall be situated above the Mean High Tide (MHT) line. Any temporary impact to the coastal beach

shall be restored back to the pre-dredging condition. In the event that dredging cannot be carried out above the MHT line or cause additional impact to other wetland resources, the applicant or its contractor shall submit a proposed work plan to the Wetlands and Waterways Program, Attn: Ken Chin for review and approval. Dredging may not commence without obtaining the approval from the Department.

13. Best Management Practices (BMPs) such as a silt curtain shall be deployed surrounding the dredge area to minimize turbidity. At a minimum, the silt curtain shall be bottom-weighted to minimize the degree of lifting/flailing or billowing and shall be of suitable material/grade appropriate based on the velocity of the current at the site. Intermediate vertical floats or other means shall be placed on the silt curtain to lift the bottom of the silt curtain at low tide so that the bottom edges of the curtain remain close to the mudline at low tide but do not rake the sediment in areas subject to tidal influence. Dredging shall be carried out using a closed, environmental bucket if the sediment does not consist solely of densely compacted silt/clay.
14. Best Management Practices (BMPs) shall be implemented during transportation of the dredged material to the licensed receiving facility. At a minimum, when transported upon public roadways, all dredged material shall have no free liquid as determined by the Paint Filter Test or other suitably analogous methodology acceptable to the Department, and a tarpaulin or other means shall be used to cover the dredged material during transport.
15. 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.
16. The applicant shall comply with the conditions set forth in the March 15, 2015 letter issued by the Natural Heritage Endangered Species Program of the Division of Fisheries & Wildlife.
17. If it is feasible, a buffer of 100 feet shall be maintained between the top of slope of the channel and any identified bordering eelgrass beds.
18. In area where the buffer is less than 100 feet, a pre-and post-dredge eelgrass survey shall be conducted. The eelgrass survey protocol shall be submitted electronically to the Wetlands and Waterway Division in the Boston Office, attn.: Ken Chin, and to the Division of Marine Fisheries (DMF) ([DMF.EnvReview-South@state.ma.us](mailto:DMF.EnvReview-South@state.ma.us)) for review and approval prior to commencement of the dredging activity of Polpis Harbor.
19. The approved pre-dredge eelgrass survey should be performed during the eelgrass growing season in May or September. Of these two potential survey months, whichever most closely precedes the planned dredge activity shall be selected. The approved post-dredge surveys should be performed in the same growing season selected in the pre-dredge survey. Survey results shall be submitted to the Department and DMF for review. Any eelgrass loss documented through the survey will require mitigation according to a mitigation plan developed in coordination with DEP and DMF.
20. Prior to construction, all contractors will be made aware of eelgrass in the project vicinity and be instructed to avoid eelgrass at all times during construction activities. Any eelgrass beds within 500 feet of the construction footprint should be marked with buoys prior to construction to facilitate avoidance.

21. Within 90 days of the completion of the initial dredging and any future maintenance dredging to be conducted authorized under this Combined Permit, a bathymetric survey of the dredged area within [name of the waterbody] depicting post-dredge conditions shall be conducted. At a minimum, the survey shall include an overlay of the dredge footprint (i.e. top of slope) with sufficient coordinates in the Massachusetts State Plane (e.g. longitude and latitude) to clearly delineate the dredge footprint. The survey shall be submitted within five working days after its completion to the Department and a copy shall be sent to the Massachusetts Coastal Zone Management office, attention: Robert Boeri. This submittal shall also include a cross section or profile showing the water depths at mean low water within the dredge footprint.
22. In order to protect spawning, larval and juvenile development of winter flounder, no dredging shall occur between January 15<sup>th</sup> and May 31<sup>st</sup>.

The applicant, or its contractor, shall make every feasible effort to complete the project within the Combined Permitted timeframe. Should the applicant, or their contractor, fail to complete the project and wish to request an amendment to the Combined Permit for incursion into the no-dredge period, the written request shall be received by the Department by January 2<sup>nd</sup>. 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 15<sup>th</sup>. Requests for amendment received after January 2<sup>nd</sup> will be considered at the Department's discretion.

23. No later than four weeks after issuance of the Combined Permit, the applicant shall submit a notification procedure outlining the reporting process to the Department for incidents, relating to the dredging activities, impacting surrounding resource areas and habitats such as, but not limited to, observed dead or distressed fish, or other aquatic organisms, observed oily sheen on surface water, sediment spill, turbidity plume beyond the deployed BMP's, and barging or equipment accident/spill. If at any time during implementation of the project any incident environment impacts such as those listed above, all site related activities impacting the water shall cease until the source of the problem is identified and adequate mitigating measures employed to the satisfaction of the Department.

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Failure to comply with this Combined Permit 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, MGL c.91, 310 CMR 9.00 or other possible actions/penalties as authorized by the General Laws of the Commonwealth.

This Combined Permit 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, Combined Permit application, or supplemental documents will require further notification to the Department.

### **NOTICE OF APPEAL RIGHTS**

#### **Chapter 91 Appeal Process (310 CMR 9.17)**

Pursuant to 310 CMR 9.17(1)(a) and 9.17(2), the applicant may appeal this decision within twenty-one (21) days of the date of Combined Permit issuance, by submitting a written request, by certified mail, for an adjudicatory hearing. Any notice of claim for an adjudicatory hearing must include the following information: the DEP Combined Application license/permit Number; the complete name, address and telephone number of the party filing the request; if represented by counsel, the name, address and telephone number of the attorney; a clear statement that a formal adjudicatory hearing is being requested; and a clear and concise statement of the specific objections to the Department's license decision, and the relief sought through the adjudicatory hearing, including, specifically, the changes desired in the final Combined Permit.

The following persons shall have the right to an adjudicatory hearing concerning this decision by MassDEP to grant or deny a license or Combined Permit, in accordance with 310 CMR 9.17(1):

- a. an applicant who has demonstrated property rights in the lands in question, or which is a public agency;
- b. any person aggrieved by the decision of MassDEP to grant a Combined Permit who has submitted written comments within the public comment period;
- c. ten (10) residents of the Commonwealth who, pursuant to M.G.L. c. 30A, § 10A, have submitted comments within the public comment period with at least 5 of the 10 residents residing in the municipality(s) in which the Combined Permit activity is located. The appeal shall clearly and specifically state the facts and grounds for the appeal and the relief sought, and each appealing resident shall file an affidavit stating the intent to be part of the group and to be represented by its authorized representative;
- d. the municipal official in the affected municipality who has submitted written comments within the public comment period; and
- e. CZM, for any project identified in 310 CMR 9.13(2) (a) for CZM participation or, in an Ocean Sanctuary, if it has filed a notice of participation within the public comment period.

A person requesting an adjudicatory hearing must submit a "Notice of Claim" to the Department, with a copy of the MassDEP Transmittal Form and including the detail specified below, within twenty-one (21) days of the date of issuance of this decision. The MassDEP Fee Transmittal Form is available at the following website:

<http://www.mass.gov/eea/docs/dep/service/adr/adjherfm.doc>. The Notice of Claim must be made in writing and sent by certified mail or hand delivery to:

Case Administrator  
MassDEP  
One Winter Street, 2<sup>nd</sup> Floor  
Boston, MA 02108

A copy of the complete Notice of Claim must be sent at the same time by certified mail or hand delivery to: (1) the applicant, (2) the municipal official of the city or town where the project is located, and (3) the issuing office of the MassDEP, which in this case is located at:

MassDEP Waterways Regulation Program  
[appropriate Regional Office address]

The MassDEP Fee Transmittal Form and a valid check payable to the Commonwealth of Massachusetts in the amount of one hundred dollars (\$100) must be mailed to:

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

#### Information must be included in the hearing request

Pursuant to 310 CMR 9.17(3), any Notice of Claim requesting an adjudicatory hearing must include the following information:

- a. the 401 Combined Permit Transmittal Number and MassDEP Waterways Application File Number;
- b. the complete name, address, fax number and telephone number of the applicant;
- c. the address of the project;
- d. the complete name, address, fax number, and telephone number of the party filing the request and, if represented by counsel, the name, address, fax number, and phone number of the attorney;
- e. if claiming to be a person aggrieved, the specific facts that demonstrate that the party satisfies the definition of "aggrieved person" found in 310 CMR 9.02;
- f. a clear statement that a formal adjudicatory hearing is being requested;
- g. a clear statement of the facts which are the grounds for the proceedings, the specific objections to the MassDEP's written decision, and the relief sought through the adjudicatory hearing, including specifically the changes desired in the final written decision; and
- h. a statement that a copy of the request has been sent to: the applicant and the municipal official of the city or town where the project is located.

#### Dismissal of request

The request for appeal will be dismissed if the filing fee is not paid, unless the appellant is exempt or is 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.

Please note that the Department may revoke this Combined Permit for non-compliance with the terms and conditions set forth. Therefore, it is recommended that you contact the Department prior to performing any alterations or use modifications for review and, if necessary, approval pursuant to M.G.L. Chapter 91.

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401 WQC Appeal Process (314 CMR 9.10):

Certain persons shall have a right to request an adjudicatory hearing concerning Combined Permits 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.

Case Administrator  
Department of Environmental Protection  
One Winter Street, 2<sup>nd</sup> 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, 5<sup>th</sup> 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 Combined Permit 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 Combined Permit; 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

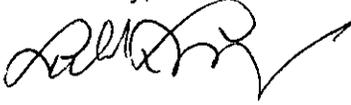
The request will be dismissed if the filing fee is not paid, unless the appellant is exempt or granted a waiver. The filing fee is not required if the appellant is a city or town (or municipal agency), county, or district of the Commonwealth of Massachusetts, or a municipal housing authority. The Department 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.

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Failure to comply with this Combined Permit 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 about this decision, please contact Ken Chin at 617-292-5893.

Sincerely,



Lealdon Langley  
Director  
Wetlands and Waterways Program

enclosure: Departmental Action Fee Transmittal Form

ecc:

Barbara Newman, 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  
John Logan, DMF, 1213 Purchase St., 3<sup>rd</sup> floor, New Bedford, MA 02740-6694  
Carlos Fragata, Jim Mahala, DEP SERO  
Michael Counts, CLE Engineering, Inc. 15 Creek Road, Marion, MA 02738Consultant  
Sheila Lucey, Harbor Master, 34 Washington Street, Nantucket, Ma 02554

cc: Nantucket Conservation Commission, 2 Bathing Beach Road, Nantucket, MA 02554

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