



Commonwealth of Massachusetts

Division of Marine Fisheries

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November 27, 2019

Secretary Kathleen Theoharides
Executive Office of Energy and Environmental Affairs (EEA)
Attn: MEPA Office
Erin Flaherty, EEA No. 16115
100 Cambridge Street, Suite 900
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Dear Secretary Theoharides:

The Division of Marine Fisheries (MA DMF) has reviewed the Environmental Notification Form (ENF) for the Martha's Vineyard Shipyard's proposed marina construction and dredging project on Lagoon Pond in the Town of Tisbury. The proposed pier, ramp, and floating dock system is designed to berth approximately 48 small craft vessels and would have a total float area of 5,107 square feet. Proposed in-water structures include two piers, ramps, and floating dock systems, two finger floats adjacent to existing boat ramps, and an offshore pile to mark the channel entrance. The proposal also includes an overall zone of reconfiguration for the proposed floats. Additional in-water work includes re-dredging the area surrounding the proposed floats as well as the approach to the existing navigational channel. The estimated volume of dredge material is approximately 4,700 cubic yards including over-dredge to achieve a depth of four feet below mean low water (MLW) with a one foot overdredge to a final depth of five feet below MLW. Dredged material would mostly be stockpiled in an upland location for future use as nourishment material at approved sites. Approximately 500 cubic yards of the material would be used at the project site. Proposed upland work includes the removal of two warehouse buildings and construction of a new, smaller warehouse building and parking areas within the footprint of the existing warehouses and parking areas. Proposed stormwater improvements include parking area re-grading and creation of vegetated buffers on the seaward edge of the parking area. Existing marine fisheries resources and habitat and potential project impacts to these resources are outlined in the following paragraphs.

The project site as well as the entire "west arm" of Lagoon Pond is an important shellfish growing area for the Town of Tisbury. Most of the west arm supports both commercial and recreational harvest. The town's designated recreational harvest area is located east of the proposed project area. The Tisbury Shellfish Department conducts shellfish propagation activities, including seeding the area with hatchery reared juvenile shellfish and transplanting mildly contaminated shellfish from other areas. In addition to shellfish harvest by recreational permit holders, the town holds family days in this area where families are taught shellfishing techniques and allowed to harvest and bring home shellfish without a town permit. The project area contains mapped

shellfish habitat for bay scallop (*Argopecten irradians*), blue mussel (*Mytilus edulis*), quahog (*Mercenaria mercenaria*), soft shell clam (*Mya arenaria*), and razor clam (*Ensis directus*). The site shellfish survey performed on March 18, 2019 by AECOM identified, in descending order of abundance, quahogs, bay scallops, soft shell clams, and razor clams. Land containing shellfish is deemed significant to the interest of the Wetlands Protection Act (310 CMR 10.34) and the protection of marine fisheries.

Lagoon Pond has been identified as spawning habitat for winter flounder (*Pseudopleuronectes americanus*). Winter flounder enter the area and spawn from January through May, laying clumps of eggs directly on the substrate. These demersal eggs hatch approximately fifteen to twenty days later. The Atlantic States Marine Fisheries Commission has designated winter flounder spawning habitat as “Habitat Areas of Particular Concern”. A recent stock assessment determined that Southern New England/Mid Atlantic winter flounder populations are at only 23% of the recommended recovery level [2]. Because of the winter flounder stock status, every effort should be made to protect winter flounder and their spawning habitat.

This region of Lagoon Pond has also been identified as horseshoe crab (*Limulus polyphemus*) spawning habitat. Horseshoe crabs deposit their eggs in the upper intertidal regions of sandy beaches from late spring to early summer during spring high tides [1]. Adult crabs congregate in deep waters such as channel areas during the day while waiting to move on to the beaches at night to spawn. The eggs hatch approximately two to four weeks later.

MA DMF offers the following comments for your consideration:

- The ENF includes a “Shellfish Sustainability Statement” that highlights project compatibility with local shellfish resources and fisheries based on a) improved water quality and by association shellfish habitat due to stormwater improvements, b) a voluntary moratorium on “over-night boaters” if it results in a minimization of the shellfish closure area, c) willingness to rake the dredge area prior to dredging and relocate existing standing stock of shellfish to nearby habitat, and d) willingness to contribute \$2,500 towards shellfish seeding for the first year post-construction. MA DMF supports most of these measures, but the proposed project will nonetheless reduce access to recreational and commercial fisheries, and also potentially degrade water quality by creating new in-water pollution sources. The proposed marina would trigger a downgrade in the classification of the shellfish growing area from a current Approved classification. The full extent of the downgrade cannot be determined at this time, but at a minimum, nearly two acres will be automatically downgraded to either a Conditionally Approved or Prohibited classification year-round. The Conditionally Approved classification would limit shellfishing access to the winter season and would only apply if the marina is not operational during that time period and no more than ten boats are in the water. If measures to prevent overnight occupancy are insufficient, greater than 23 acres of the west arm of Lagoon Pond may need to be closed to shellfishing as a result of the proposed marina expansion (see Figure 1). At this point, we are still identifying all the necessary conditions that need to be met to ensure that no overnight occupancy is occurring. While proposed upland activities (reduction of impervious surfaces, re-grading, establishment of vegetated buffers) should benefit water quality, boating activities associated with the use of the proposed marina as well as likely increased waterfowl occupancy due to increased roosting habitat from

docked boats and floats combine to increase the risk of impaired water quality for this region of Lagoon Pond. The proposed mitigation of \$2,500 to purchase shellfish seed is insufficient to mitigate the potential and actual impacts that the proposed project will have on marine fisheries resources and habitat.

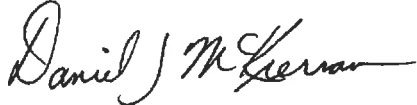
- While the shellfish survey included in the ENF provides some useful characterizations of the shellfish resources in the project area, a single survey only provides a snap shot of standing stock that is not necessarily representative of shellfish resources and habitat on seasonal or annual timescales. For example, the project area supports bay scallop fisheries that open in November. A survey conducted in March would largely miss the biomass harvested in the preceding fall and winter months.
- Given the shellfish resources and associated fisheries in the project area and the potential for much of this area to be closed to fishing due to the proposed project scope, MA DMF recommends a revised alternatives analysis that considers re-locating the marina to the northern shore of the Martha's Vineyard Shipyard property in Vineyard Haven Inner Harbor. This area is currently classified as Conditionally Approved, already impaired by boating activity, and would have less impact on shellfish resources and associated fisheries than the currently proposed site in Lagoon Pond.
- Any in-water silt producing work should be staged to avoid the time-of-year (TOY) restriction period of **January 15 to May 31** to minimize impacts to winter flounder spawning, demersal egg survival, and juvenile development [3].



Figure 1. Map of Lagoon Pond showing the potential shellfish closure areas due to proposed marina construction.

Questions regarding this review may be directed to John Logan in our New Bedford office at (508) 742-9722.

Sincerely,



Daniel J. McKiernan
Deputy Director

cc: Tisbury Conservation Commission
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References

1. Barlow Jr. RB, Powers MK, Howard H, Kass L. Migration of *Limulus* for mating: relation to lunar phase, tide height, and sunlight. Biol Bull. 1986;171: 310–329.
2. Northeast Fisheries Science Center. Operational assessment of 20 northeast groundfish stocks, updated through 2014. Northeast Fisheries Science Center Reference Document 15-24. <http://www.nefsc.noaa.gov/publications/crd/crd1524/crd1524.pdf>. 2014.
3. Evans NT, Ford KH, Chase BC, Sheppard J. Recommended Time of Year Restrictions (TOYs) for Coastal Alteration Projects to Protect Marine Fisheries Resources in Massachusetts. Massachusetts Division of Marine Fisheries Technical Report, TR-47. 2011.

DM/JL/CP/sd