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March 14, 2008

DRAFT RECORD OF DECISION

PROJECT NAME : Plymouth Inner Harbor Dredging  
PROJECT MUNICIPALITY : Plymouth  
PROJECT WATERSHED : South Coastal  
EOEA NUMBER : 14182  
PROJECT PROPONENT : Town of Plymouth  
DATE NOTICED IN MONITOR : February 6, 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 propose to grant a waiver from the requirement to prepare a mandatory Environmental Impact Report (EIR).

Project Description

As described in the Expanded Environmental Notification Form (ENF), the proposed project consists of the dredging of approximately 12.4 acres/539,138 square feet (sf) in the Plymouth Inner Harbor, with a dredge volume of approximately 66,100 cubic yards (CY). The project includes dredging three areas. Area 1 is a six-foot deep mooring basin located north of Brewer's Marina and the Plymouth Yacht Club. It includes 4.2 acres of maintenance dredging and 1.5 acres of improvement dredging. Area 1 will be dredged to elevation -6.0 Mean Low Water (MLW) with an allowable 1-foot overdredge that produces a volume of 31,800 CY of material. Area 2 is an existing eight-foot deep mooring basin located between the State Pier and Brewer's Marina. It includes 1.6 acres of maintenance dredging and 2.9 acres of improvement dredging. Area 2 will be dredged to elevation -8.0 MLW with an allowable 1-foot overdredge that produces a volume of 21,600 CY. Area 3 is an existing 12-foot deep anchorage area at the Town Pier. It includes 1.8 acres of maintenance dredging and 0.4 acres of improvement dredging. Area 3 will be dredged to elevation -12.0 MLW with an allowable 1-foot overdredge that produces a volume of 12,700 CY.

### 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 ten or more acres of any other wetland (12.4 acres of Land Under the Ocean (LUO)).

### Jurisdiction

The project will require a Section 401 Water Quality Certificate and a Chapter 91 Waterways Permit from the Department of Environmental Protection (MassDEP). It may need to be reviewed under the Massachusetts Endangered Species Act by the Natural Heritage and Endangered Species Program. The project may require an Individual Permit under Section 404 from the U.S. Army Corps of Engineers. A Federal Consistency Review by the Massachusetts Coastal Zone Management (MCZM) office may also be necessary. The project will require an Order of Conditions from the Plymouth Conservation Commission as a "limited" project. Because Commonwealth funds may be used for the project, MEPA jurisdiction extends to all aspects of the project that may have significant environmental impacts.

### Waiver Request

On January 31, 2008, the proponent requested a waiver from the requirement for the preparation of an EIR. The waiver request was discussed at the consultation/scoping session, which was held on February 19, 2008.

### Criteria for Waiver

Section 11.11 of the MEPA Regulations provides that a waiver may be granted upon a finding that strict compliance with the regulations will result in undue hardship and will not serve to minimize or avoid damage to the environment. In the case of categorically included projects, this finding shall be based on one or more of the following circumstances: 1) the project is likely to cause no damage to the environment; and 2) ample and unconstrained infrastructure exists to support the project. The terms agreed to as a condition of the waiver will bring about benefits in excess of those that could be achieved in the absence of a waiver.

### Findings

1. The proponent is undertaking the project to address significant shoaling, to restore and improve navigation, and to more efficiently manage existing mooring and docking space within the Inner Harbor.
2. The proponent intends to dove-tail this dredging project with the U.S. Army Corps of

Engineers project to dredge Plymouth Harbor's anchorage and the federal channel entrance. This dove-tailing would reduce the project cost for mobilization and provide economies of scale. It would limit the repeated environmental impacts and disturbance associated with two separate dredging projects. On March 12, 2008, the proponent submitted a copy of the *Plymouth Harbor Environmental Assessment and Finding of No Significant Impact for Maintenance Dredging and Disposal* that was prepared by the USACOE to the MEPA Office.

3. If it is determined to be necessary by MassDEP, the proponent will adjust the toe-of-slope away from the MLW line to account for the potential instances where the ultimate equilibrium slope profile is greater than that anticipated in the project design to reduce the potential for Intertidal impacts from dredging in Area 2 and Area 3. It will provide a third party observer when dredging adjacent to the intertidal areas to ensure that dredging is in conformance with dredging design plans.
4. The proponent will utilize mechanical dredging to reduce impacts to the Inner Harbor.
5. The proponent will restrict dredging between February 1 to July 31 (Time of Year (TOY) restriction) to protect fish passage, spawning, and/or juvenile development.
6. Based on comments from MCZM, the proponent may be required to submit a Notice of Project Change (NPC) for the "T" Wharf Reconstruction project (EEA #14139) to ensure that the dredging associated with it is adequately evaluated and addressed as part of that project.
7. The proponent will provide the scope and methodology of the 1998 hydrographic survey to the Massachusetts Board of Underwater Archaeological Resources (BUAR) for its review to determine if additional investigation may be warranted for archaeological resources within improvement dredging locations.
8. The proponent has surveyed the dredged areas for shellfish and eel grass. The three dredged areas are not open to shell fishing and no areas of significant shellfish are located in these areas. No dredging will be conducted in areas containing significant shellfish or in areas containing eel grass.
9. The dredging will improve emergency response times during mid to low tide by the Harbormaster's fleet and the Massachusetts Environmental Police, which are berthed at the Town Pier, for boating emergencies and response to the Pilgrim Nuclear Power Plant.
10. The areas of improvement dredging are proposed to provide safe navigation within these areas and to the main federal entrance channel and to more efficiently manage existing mooring and docking space. The Department of Conservation and Recreation (DCR) has requested improvement dredging at the State Pier to provide adequate water depths for the *Mayflower*.

Based on these findings, it is my judgment that the waiver request has merit and meets the tests established in Section 11.11. MassDEP has sufficient permitting authority to ensure that the proponent complies with the findings of this Certificate. Therefore, I propose to grant the waiver requested for the Plymouth Inner Harbor Dredging Project, subject to the above findings. This Draft Record of Decision shall be published in the next issue of the *Environmental Monitor* for a fourteen-day comment period, after which I shall reconsider, modify, or confirm the waiver.

March 14, 2008

DATE

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Ian A. Bowles

Comments received:

Vine Associates, 2/21/08

BUAR, 2/25/08

Vine Associates, 2/29/08

MassWildlife, 3/4/08

MCZM, 3/7/08

DCR, 3/7/08

MassDEP/SERO, 3/7/08

Vine Associates, 3/12/08

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