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May 9, 2008

**DRAFT RECORD OF DECISION**

PROJECT NAME: Stage Harbor Channel – Hardings Beach/Cockle Cove  
PROJECT MUNICIPALITY: Chatham  
PROJECT WATERSHED: Cape Cod  
EEA NUMBER: 14196  
PROJECT PROPONENT: Town of Chatham  
DATE NOTICED IN MONITOR: March 12, 2008

Pursuant to the Massachusetts Environmental Policy Act (M.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 hereby **propose to grant a waiver** from the categorical requirement to prepare an Environmental Impact Report (EIR). In a separate Certificate also issued today, I have set forth the outstanding issues related to the project that can be addressed by permitting agencies.

Project Description

As described in the Expanded Environmental Notification Form (EENF), the project involves the re-permitting of the Federal navigation project at Stage Harbor by the Town of Chatham. The proponent is seeking to re-permit the continued maintenance dredging of the Federal navigation channel and prospective dredged material disposal sites. The project will enable continued maintenance dredging of up to 150,000 cubic yards (cy) annually of clean sand from the Stage Harbor Channel. Dredging will be performed by either the Town of Chatham utilizing the Barnstable County Dredge, a qualified private contractor, or by the United States Army Corps of Engineers (U.S. ACOE) utilizing the hopper dredge *Currituck*. The channel is an authorized Federal Navigation Project with channel dimensions of up to ten feet deep Mean Low

Water (MLW) by 150 feet wide. Potential dredged material disposal sites include two nearshore sub-aqueous sites (referred to as SAE and SAW in the EENF), as well as upland beach nourishment sites at Cockle Cove and Hardings Beach (referenced as HBE and HBW). The current sub-aqueous site (SAE), the upland beach nourishment at Cockle Cove and HBE are currently, or have historically, been permitted. Additional area on Hardings Beach (HBW) is proposed for beach nourishment to enhance beach conditions in the more actively used public portions of the beach. The second, more westerly sub-aqueous site (SAW) is seeking permitting approval because it lies near the western end of Hardings Beach and will assist in the natural downdrift nourishment of the public beach.

The total area of Land Under Ocean (LUO) associated with the two sub-aqueous disposal sites and the Federal navigation channel is approximately 42 acres in area. The identified upland beach nourishment sites, classified as Barrier Beach under the Wetlands Protection Act, are anticipated to be permitted for potential nourishment of up to 35 acres in area. Within the EENF, the proponent has indicated that the maximum permitted dredge volume for a single dredge incident would be 150,000 cy. This would translate to impacts between 100,000 sf and 300,000 sf of land per year. Historical dredging data provided in the EENF notes that dredging in excess of 100,000 cy in a one year period has not occurred in over 20 years, and is not anticipated in the near future. The channel has not been dredged since 2000 and as such the Town of Chatham is anticipating an initial dredge volume of approximately 50,000 cy.

### Jurisdiction

The project is undergoing review pursuant to Section 11.03 (3)(a)(1)(b) because the project requires a State Agency action and the project has the potential to alter ten acres or more of other wetlands (e.g. Land Under Ocean, Barrier Beaches, and Land Containing Shellfish). The project will require a Chapter 91 (c.91) Waterways Dredge Permit and a Section 401 Water Quality Certificate from the Massachusetts Department of Environmental Protection (MassDEP). The project will be required to file under the provisions of the Massachusetts Endangered Species Act (MESA) with the Massachusetts Division of Fisheries and Wildlife Natural Heritage and Endangered Species Program (NHESP). The proponent must also obtain approval from the United States Army Corps of Engineers (U.S. ACOE). The project will require an Order of Conditions from the Chatham Conservation Commission. The project may also be subject to Office of Coastal Zone Management (CZM) federal consistency review.

Because the proponent is not seeking financial assistance from the Commonwealth for the project, MEPA jurisdiction extends to those aspects of the project that may have significant environmental impacts and that are within the subject matter of required or potentially required state permits. In this case, MEPA jurisdiction exists over wetlands, waterways, and tidelands, and rare species.

### Waiver Request

The proponent submitted an Expanded Environmental Notification Form (EENF) for the project with a request for a waiver from the requirement for the preparation of an EIR. After submission of a standard ENF without a request for waiver and subsequent to the site consultation session held on March 28, 2008, it was determined that the cumulative impact of the project exceeded MEPA thresholds for the preparation of a mandatory EIR. The proponent requested a four week extension of the comment period to April 29, 2008 and provided supplemental materials including an Expanded ENF with a request for a full waiver of the EIR requirements.

### Standards for All Waivers

The MEPA regulations at 301 CMR 11.11(1) state that I may waive any provision or requirement in 301 CMR 11.00 not specifically required by MEPA and may impose appropriate and relevant conditions or restrictions, provided that I find that strict compliance with the provision or requirement would:

- (a) Result in an undue hardship for the Proponent, unless based on delay in compliance by the Proponent; and,
- (b) Not serve to avoid or minimize Damage to the Environment.

### Determinations for an EIR Waiver

The MEPA regulations at 301 CMR 11.11(3) state that, in the case of a waiver of a mandatory EIR review threshold, I shall at a minimum base the finding required in accordance with 301 CMR 11.11(1)(b) stated above on a determination that:

- (a) The project is likely to cause no Damage to the Environment; and,
- (b) Ample and unconstrained infrastructure facilities and services exist to support those aspects of the project within subject matter jurisdiction.

### Findings

Based upon the information submitted by the Proponent and after consultation with the relevant state agencies, I find that the waiver request has merit and that the Proponent has demonstrated that the proposed project meets the standards for all waivers at 301 CMR 11.11(1). I find that strict compliance with the requirement to prepare a Mandatory EIR for the project would result in undue hardship for the Proponent.

I also find that compliance with the requirement to prepare an EIR for the project would not serve to avoid or minimize Damage to the Environment. In accordance with 301 CMR 11.11(3), this finding is based on my determination that:

1. The project is likely to cause no Damage to the Environment:
  - The project will occur within a historically dredged Federal navigation channel. The Federal Navigation Project at State Harbor Channel has been permitted and dredged, primarily by the U.S. ACOE, for more than forty years. No expansion of the designated channel is proposed. The proponent is undertaking the project to address shoaling and to restore and improve navigation to Stage Harbor. Stage Harbor is home port to an important local and transient fishing fleet, and U.S. Coast Guard and Chatham Harbormaster vessels. Stage Harbor is the primary deep draft mooring harbor in Chatham and is heavily used by commercial and recreational vessels.
  - The cumulative project has the potential to impact up to 1,820,336 sf of Land Under Ocean, 1,546,885 sf of Barrier Beaches, and 1,270,336 sf of Land Containing Shellfish. These assumptions are based upon a worse-case scenario (i.e. dredging of the entire channel and disposal in each sub-aqueous disposal site in their entirety. Historical dredging data provided in the EENF notes that dredging in excess of 100,000 cy in a one year period has not occurred in over 20 years, and is not anticipated in the near future. The channel has not been dredged since 2000 and as such the Town of Chatham is anticipating an initial dredge volume of approximately 50,000 cy. Therefore, actual impacts are likely to be much less than the cumulative impacts presented in the EENF.
  - Dredge disposal areas include two nearshore sub-aqueous sites (referenced as SAE and SAW), as well as upland beach nourishment sites at Cockle Cove and Hardings Beach (referenced as HBE and HBW). The current sub-aqueous site (SAE), the upland beach nourishment at Cockle Cove and HBE are currently, or have historically, been permitted. Additional area on Hardings Beach (HBW) is proposed for beach nourishment to enhance beach conditions in the more actively used public portions of the beach. The second, more westerly sub-aqueous site (SAW) is seeking permitting approval because it lies near the western end of Hardings Beach and will assist in the natural downdrift nourishment of the public beach.
  - The Town of Chatham will file a c.91 Permit application and Section 401 Water Quality Certification application with the MassDEP. Permit applications and plans submitted to MassDEP will include information regarding monumentation of sub-aqueous disposal site boundaries, cross sections of existing and proposed conditions at upland beach nourishment sites and the potential provision of public access easements on privately held beach nourishment sites.
  - The SAW disposal site may contain eelgrass according to the MassDEP Eelgrass Mapping Project. As part of the permitting process, the proponent will contact Charles Costello, MassDEP-Boston, to discuss the methodology and results of the eelgrass survey conducted on behalf of the Town of Chatham.
  - The project site is located within *Priority Habitat* and *Estimated Habitat* as indicated in the 12<sup>th</sup> Edition of the Massachusetts Natural Heritage Atlas. The proposed project will occur

within the habitat of the Least Tern (*Sterna antillarum*), Common Tern (*Sterna hirundo*), Piping Plover (*Charadrius melodus*), and Roseate Tern (*Sterna dougalii*). The project will require a direct filing with NHESP for compliance with the Massachusetts Endangered Species Act (MESA 321 CMR 10.00). The work will be conditioned to avoid a prohibited “take” of state-listed species. Possible conditions to be mandated as part of MESA review are likely to include, but are not limited to, timing restrictions, specific design constraints (e.g. elevation, slope, etc.), as well as requirements for long-term monitoring and protection of state-listed species at these sites. Resolution of outstanding rare species issues will be resolved through the MESA review process.

- The proponent will conduct additional sediment sampling, vegetation surveys and potential monitoring of protected wildlife as necessary in accordance with State permit application and approval requirements.
- The Town of Chatham will investigate the possibility of conducting horseshoe crab surveys in the Stage Harbor/Hardings Beach area in the summer of 2008. The Town should work with MassAudubon or other resources if surveys are conducted. State permitting authorities should consider placement of a time of year restriction from May 1 to June 30 to protect spawning horseshoe crabs as a permitting condition.

2. Ample and unconstrained infrastructure facilities and services exist to support those aspects of the project within subject matter jurisdiction:

- The project consists of a dredging and deposition of dredged materials in both sub-aqueous and upland beach disposal sites and does not require new or improved infrastructure facilities or services to support it.

### Conclusion

Based on these findings, I have determined that this waiver request has merit, and am issuing this Draft Record of Decision (DROD), which will be published in the next edition of the Environmental Monitor on May 21, 2008 in accordance with 301 CMR 11.15(2), which begins the public comment period. The public comment period lasts for 14 days and will end on June 4, 2008. Based on written comments received concerning the DROD, I shall issue a Final Record of Decision (FROD) or a Scope within seven days after the close of the public comment period, in accordance with 301 CMR 11.15(6). I hereby **propose to grant the waiver** requested for this project from the requirement to prepare a mandatory Environmental Impact Report (EIR), subject to the above findings and conditions.

May 9, 2008

Date

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Ian A. Bowles

Comments received:

03/26/2008 Massachusetts Board of Underwater Archaeological Resources  
03/26/2008 Office of Coastal Zone Management  
04/24/2008 Cape Cod Commission  
04/25/2008 Division of Marine Fisheries  
04/28/2008 Division of Fisheries and Wildlife  
04/29/2008 MassAudubon  
04/29/2008 Massachusetts Department of Environmental Protection - SERO

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