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February 8, 2019

SECOND AMENDED FINAL RECORD OF DECISION

PROJECT NAME : Pleasant Bay Dredge Project (previously reviewed as Morris Island Cut Improvement Dredging)  
 PROJECT MUNICIPALITY : Chatham/Orleans  
 PROJECT WATERSHED : Cape Cod  
 EEA NUMBER : 14774  
 PROJECT PROPONENT : Town of Chatham  
 DATE NOTICED IN MONITOR : January 23, 2019

Pursuant to the Massachusetts Environmental Policy Act (MEPA) (M.G.L. c.30, ss. 61-62I) and Section 11.11 of the MEPA Regulations (301 CMR 11.00), I have reviewed this project change and hereby **grant a waiver** from the categorical requirement to prepare an Environmental Impact Report (EIR).

Procedural History

The Town of Chatham (Town) submitted an Expanded Environmental Notification Form (EENF) in August 2011 for a project that consisted of improvement dredging in an area referred to as Morris Island Cut to maintain a navigable connection between an area referred to as “the Southway” and Stage Harbor/Nantucket Sound for recreational and commercial interests in the Town. The Town proposed a “zone of dredging” approach to adaptively manage this dynamic environment to minimize the dredge impact area and the volume of dredged material while still maintaining the navigation channel. The project included dredging the Morris Island Cut channel to a maximum width of 75 feet with a depth of -4 feet mean low water (MLW), with a one foot allowance for overdredge. The length of the channel is dependent upon the location of the shifting natural channel, but has an approximate theoretical maximum of 3,500 linear feet (lf).

The project included the consolidation of seven (7) dredge sites and 17 dredged material disposal

sites into a single Town Wide Comprehensive Dredge and Dredged Material Disposal Permit (Town-Wide Comprehensive Permit). State Agencies have encouraged towns to adopt comprehensive plans for dredging and dredge material disposal sites to streamline permitting and facilitate planning efforts. The dredge sites included four permitted maintenance dredging sites (as of 2011), two previously permitted maintenance dredging sites, and one new area of improvement dredging (Morris Island Cut). The 17 dredged material disposal sites had all been previously reviewed and permitted, and were proposed for use dependent upon need for nourishment material and transportation cost limitations.

The Certificate on the EENF was issued on September 16, 2011. Concurrently, a Draft Record of Decision (DROD) was issued that proposed to grant a Waiver from the requirement to prepare a Mandatory EIR for the project. On October 7, 2011, the Secretary of Energy and Environmental Affairs issued a Final Record of Decision (FROD) granting the EIR waiver.

The Town submitted a Notice of Project Change (NPC) (1<sup>st</sup> NPC) in March 2015 that described expansion of dredge and disposal sites under the Town-Wide Comprehensive Permit to facilitate improvement dredging between Ministers Point and Strong Island leading from the upper portions of Chatham Harbor to Pleasant Bay. Specifically, the project change included the following additions:

- A new 339-acre “zone of dredging” in Pleasant Bay to accommodate three proposed navigation channels:
  - Main Channel – a 100-foot wide channel from the new inlet to the south to allow access to Chatham Fish Pier dredged to -8 MLW with a one-foot overdredge. This channel is estimated at 4,900 lf, but is contingent upon shoaling and channel drift;
  - Strong Island Channel – a 100-foot wide channel from the new inlet to Pleasant Bay dredged to -6 MLW with a one-foot overdredge. This channel is estimated at 11,800 lf but is contingent upon shoaling and channel drift; and
  - Bassing Harbor Channel – a 75-foot wide channel from Strong Island Channel into Bassing Harbor dredged to -4 MLW with a one-foot overdredge.
- A maintenance dredging project at Mitchell River with a total estimated dredge volume of 500 cubic yards (cy) and a footprint of 8,450 square feet (sf). The Town recently acquired the property at 90 Bridge Street and is seeking to renew historic dredging permits to dredge to -6 MLW;
- New disposal sites:
  - Scatteree Landing – expansion of the existing approved beach nourishment area along approximately 800 feet of beach from 18,320 sf to 80,995 sf;
  - Linnell Lane – previously permitted by private land owners for beach nourishment, the Town proposed to incorporate this location into the Town-Wide Comprehensive Program as a disposal site for dredge material from Town dredging projects. Total impact was estimated as 41,140 sf along approximately 600 feet of beach;
  - Pleasant Street - previously permitted by private land owners for beach nourishment, the Town proposed to incorporate this location into the Town-Wide Comprehensive Program as

a disposal site for dredge material from Town dredging projects. Total impact was estimated as 96,450 sf along approximately 600 feet of beach; and

- Nearshore – a new nearshore disposal site proximate to the new Nauset Beach inlet to provide an alternative nearshore disposal site if/when existing nearshore sites (proximate to old inlet) become infeasible to access due to changing beach morphology. The proposed location is 0.25 miles offshore, outside Cape Cod National Seashore jurisdiction in approximately 25 feet of water. This 6.3-acre site (274,430 sf) is located downdrift of the existing channel and its design assumes the probable southward migration of the channel.

While the total area of approved and proposed dredge zones exceeded EIR thresholds, the anticipated impact in any single dredging event was anticipated to be less than the EIR threshold for alteration of wetlands or the Environmental Notification Form (ENF) threshold for removal of dredge material (10,000 cy). The Town does not intend to dredge the entire area of the proposed channel. Instead, limited areas will be targeted as necessary to achieve a consistent channel width and depth in response to the dynamic channel and shoal movements. A suggested likely scenario presented in the 1<sup>st</sup> NPC was an annual dredge of 4,000 to 10,000 cy to address recurrent spot shoals.

The proposed Pleasant Bay dredge zone includes improvement dredging in the Pleasant Bay Area of Critical Environmental Concern (ACEC). As noted in the 1<sup>st</sup> NPC, improvement dredging within the ACEC was previously prohibited. Under the revised Massachusetts Waterways Regulations (310 CMR 9.40(1)(b)), the revised Wetlands Protection Act (WPA) Regulations (310 CMR 10.24(5)(b)), and Section 401 Water Quality Certification (WQC) Regulations (314 CMR 9.07(1)(k)(5)(b)), improvement dredging by a public entity may be allowed for the sole purpose of the maintenance or restoration of historic, safe navigation channels or turnaround basins of a minimum length, width, and depth consistent with a Resource Management Plan (RMP) adopted by the municipalities and approved by the Secretary of Energy and Environmental Affairs. The most recent Pleasant Bay RMP (2013), which was approved on December 2, 2014, specifically included new recommendations and conditions for Limited Improvement Dredging. The project appears consistent with the conditions set forth in the RMP.

The following table identifies dredging projects included in the Town-Wide Comprehensive Dredging Program:

Site Name	Volume (cy)	Area (sf)	Depth (MLW)*	Width (feet)	Category
Mill Creek	16,500	55,500	-3 and -5	Variable	Maintenance
Stage Harbor	150,000	450,000	-10	150 (typical)	Maintenance
Barn Hill Landing	100	525	-3	N/A	Maintenance
Old Mill Boatyard	100	2,550	-3	N/A	Maintenance
Ryder's Cove Landing	150	2,350	-2	N/A	Maintenance
Aunt Lydia's Cove (zone)	150,000	2,600,000 <sup>1</sup>	-8	100 (typical)	Maintenance
Morris Island Cut (zone)	20,000	7,155,200	-4	75 (typical)	Improvement
Main Channel	4,500	25,000	-8	100	Improvement
Strong Island Channel	5,050	91,000	-6	100	Improvement
Bassing Harbor Channel	2,150	29,250	-4	75	Improvement
Mitchell River	500	8,450	-6	N/A	Improvement
Pleasant Bay Zone of Dredging	N/A	14,766,840	N/A	N/A	Improvement

\* Depths include a one-foot overdredge allowance

The Town-Wide Comprehensive Permit includes the following disposal sites:

Site Name	Category	Area (sf)
Pleasant Street	Beach Nourishment	96,450
Forest Beach	Beach Nourishment	115,157
Cockle Cove Beach	Beach Nourishment	114,495
Hardings Beach	Beach Nourishment	1,196,154
Oyster Pond Beach	Beach Nourishment	14,794
Cotchpinicut Landing	Beach Nourishment	2,579
Scatteree Landing	Beach Nourishment	80,995 <sup>2</sup>
Claflin Landing Beach	Beach Nourishment	164,007
Andrew Hardings Lane/ Lighthouse Beach	Beach Nourishment	489,532
Barn Hill Landing	Beach Nourishment	883
Battlefield Landing	Beach Nourishment	5,165
Strong Island	Beach Nourishment	5,433
Ryder's Cove	Beach Nourishment	1,337
Mill Creek	Beach Nourishment	30,162
Hardings Beach West	Nearshore	561,924
Hardings Beach East	Nearshore	1,219,680
Outside Bar (1987 Inlet)	Nearshore	10,018,800
Linnell Lane	Beach Nourishment	41,140
Nauset Beach Inlet (2007 Inlet)	Nearshore	274,430

<sup>1</sup> The Certificate on the NPC issued on May 22, 2015 inaccurately reported this area as 26,000,000 sf.

<sup>2</sup> The Certificate on the NPC issued on May 22, 2015 inaccurately reported this area as 18,320 sf.

Description of 2<sup>nd</sup> Notice of Project Change

The 2<sup>nd</sup> NPC describes changes to the project consisting of the following:

- Increase in the proposed depth of dredging at the Morris Island Cut site from -4 feet to -8 feet MLW with a one foot allowance for overdredge and increase in width from 75 feet to 150 feet resulting in a doubling of the maximum potential single dredge volume from 20,000 to 40,000 cy of sediment;
- Increase in proposed depth of dredging of the Mill Creek channel from -3 feet to -5 feet resulting in an increase in the dredge volume from 16,500 to 25,000 cy;
- Expansion of the boundary of the zone of potential dredging in the vicinity of the Bassing Harbor inlet of the Pleasant Bay area to allow for greater flexibility in avoiding eelgrass identified in the northern area of the zone; and
- Expansion of the zone of potential dredging in Pleasant Bay by approximately 994,000 sf to the south and creation of a new channel with a width of 100 to 150 feet and a depth of 6.5 feet with a one foot allowance for overdredge.

The following table identifies the changes identified in the 2<sup>nd</sup> NPC:

Site Name	Volume (cy)	Area (sf)	Depth (MLW)*	Width (feet)	Category
Mill Creek	<b>25,000</b>	55,500	<b>-5</b>	Variable	Maintenance
Morris Island Cut (zone)	<b>40,000</b>	7,155,200	<b>-8</b>	<b>150 (typical)</b>	Improvement
Pleasant Bay Zone of Dredging	N/A	<b>15,760,840</b>	N/A	N/A	Improvement
North Harbor Inlet	<b>95,000</b>	N/A	<b>-6.5</b>	<b>100 to 150</b>	Improvement

\* Depths include a one-foot overdredge allowance

\*\* Changes are highlighted in bold

Jurisdiction and Permitting

The project described in the EENF and 1<sup>st</sup> NPC was subject to MEPA review and required the preparation of a mandatory EIR because it required State Agency Action and would result in alteration of ten or more acres of wetlands (301 CMR 11.03(3)(a)(1)(b)). The project change described in the 2<sup>nd</sup> NPC will require an amended 401 WQC and a Chapter 91 (c. 91) Permit from the Massachusetts Department of Environmental Protection (MassDEP). The project change will require review by the Natural Heritage and Endangered Species Program (NHESP) to ensure compliance with the Massachusetts Endangered Species Act (MESA).

An amended Individual Permit from the U.S Army Corps of Engineers (ACOE) will be required in accordance with Section 404 of the Federal Clean Water Act. The Town must also file for Federal Consistency review with the Office of Coastal Zone Management (CZM). The project will also require an amendment to the Order of Conditions issued by the Chatham Conservation Commission, or in the case of an appeal, a Superseding Order of Conditions from MassDEP.

The project was subject to review under the May 2010 MEPA Greenhouse Gas (GHG) Emissions Policy and Protocol (GHG Policy). However, the project meets the de minimis exception outlined in the MEPA GHG Policy.

Because the Proponent is not seeking Financial Assistance from the Commonwealth for the project, MEPA jurisdiction extends to those aspects of the project that are within the subject matter of required or potentially required state permits and that may cause Damage to the Environment as defined in the MEPA regulations. In this case, MEPA jurisdiction extends to wetlands and waterways and rare species.

### Waiver Request

The Town submitted a 2<sup>nd</sup> NPC for the project. The project change did not exceed EIR thresholds.

### 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 Town and after consultation with the relevant State agencies, I find that the waiver request has merit and that the Town 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 Town as sufficient means to avoid, minimize and mitigate Damage to the Environment have been demonstrated in the 1<sup>st</sup> NPC and 2<sup>nd</sup> NPC and any outstanding issues can be addressed through the subsequent thorough State permitting processes. In addition, although the project exceeds a mandatory EIR threshold for wetland impacts, this is a result of identifying the maximum area of the zone of dredging associated with the channels to maintain access between Chatham Harbor and Pleasant Bay, only a portion of which will be actively dredged to maintain a navigation channel. Actual dredging and

associated impacts will be lower than estimates provided in the 1<sup>st</sup> NPC and 2<sup>nd</sup> NPC.

State Agency comments have noted that the permitting process will support resolution of remaining issues. The Town presented sufficient information regarding potential project alternatives, existing and proposed environmental conditions and impacts, and appropriate and feasible mitigation in support of the waiver request. The Town will obtain an amended Order of Conditions from the Town of Chatham, an amended Section 401 WQC, and an amended c. 91 Permit to incorporate the project change into the Town-Wide Comprehensive Permit.<sup>3</sup> The Town will file an application with NHESP pursuant to the Massachusetts Endangered Species Act (MESA 321 CMR 10.00) and its implementing regulations. NHESP previously issued a Conditional No-Take letter on September 30, 2015 in order to avoid a “take” of State-listed shorebirds which identified time-of-year (TOY) restrictions.

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 not likely to cause Damage to the Environment. The project will employ the following mitigation measures to ensure the impacts of the project are avoided, minimized and mitigated:
  - Use of a “zone of dredging” approach which will allow the Town to work with the dynamic nature of this coastal system, limiting the potential resource area impact and cost of attempting to create and maintain a specific channel location. The zone of dredging will allow spot dredging as necessary, provide flexibility in the dredging location based upon natural channel formation and will support avoidance of eelgrass beds and/or shellfish resources.
  - The Town has proposed a variety of dredging methods to meet the specific needs of the dredge sites identified for inclusion in the Town-Wide Comprehensive Permit; mechanical dredge equipment, a hydraulic pipeline dredge, and a hopper dredge. Options for disposal include pipeline/direct pump out, nearshore open water, and off-site truck haul and will be selected based upon the specific needs of each site with preference for placement on beaches closest to the dredge location. All dredged materials are anticipated to be suitable for beneficial reuse and the Town intends to use material within the Town of Chatham for either direct or indirect beach nourishment.
  - The Town will adhere to TOY restrictions to protect sensitive species such as horseshoe crabs, winter flounder, and/or shorebirds (i.e., plovers) as determined by the conditions of permits subsequent to consultation with DMF, MassDEP, and NHESP.
  - The Town will perform eelgrass surveys prior to improvement dredging and will maintain a 100 foot buffer zone to eelgrass. The Town will continue to comply with existing permit requirements for eelgrass for maintenance dredging.
  - Beach nourishment activities will generally be conducted from mean low water (MLW) to the natural dune line. The final slope of each beach face will not exceed 10:1 as recommended by guidance documents. Beach nourishment activities will be conducted in a manner consistent with previously approved permits with regard to methodology, location and scale.

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<sup>3</sup> The project change described in the 2<sup>nd</sup> NPC does not require an amended Order of Conditions from the Town of Orleans.

The Town will continue to work collaboratively with State, regional, and local agencies during the permitting process to refine project mitigation measures. The Town will consider the recommendations provided by the NHESP and DMF regarding potential mitigation strategies to reduce potential impacts to fisheries, plant and wildlife resources and, if deemed infeasible, will address why as part of the MassDEP permit amendment process. These recommendations may be incorporated as conditions of approvals.

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

- The project does not require any infrastructure or services to accomplish its overall goal of dredging and beach nourishment. Therefore, this criterion has been met by the project.

Conclusion

Based on these findings, I determined that the Waiver request has merit. A second Amended DROD was issued on December 21, 2018 and was published in the Environmental Monitor on January 23, 2019 in accordance with 301 CMR 11.15(2), which began the public comment period. The 14-day public comment period concluded on February 6, 2019. Accordingly, I hereby **grant a Waiver** from the requirement to prepare a mandatory EIR.

February 8, 2019

Date



Matthew A. Beaton

Comments received on DROD:

None

MAB/PPP/ppp