



CAPE COD COMMISSION

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Date: January 15, 1998

To: Towns of Dennis and Yarmouth; Department of Environmental Management, Division of Waterways

From: Cape Cod Commission

Re: Development of Regional Impact, Section 12 (i), Cape Cod Commission Act

Project #: EIR97006

Project: Bass River Dredging
Towns of Dennis and Yarmouth

Applicant: Towns of Dennis and Yarmouth; Department of Environmental Management, Division of Waterways

Book/Page: N/A

DECISION OF THE CAPE COD COMMISSION

SUMMARY:

The Cape Cod Commission (Commission) hereby approves with conditions the application of the Towns of Dennis and Yarmouth for a Development of Regional Impact permit for a ten year dredging program in Bass River, and for beach and dune nourishment, as proposed, pursuant to Section 12 (i) of the Cape Cod Commission Act.

PROCEDURAL HISTORY:

The Cape Cod Commission held a public hearing on the Final EIR (FEIR) on August 28, 1997. The Subcommittee held a public meeting on the FEIR on September 4, 1997, and submitted comments to the Secretary of Environmental Affairs on September 9, 1997. The FEIR was certified as adequate by MEPA on September 16, 1997.

The Commission conducted a public hearing on October 28, 1997 for the purpose of reviewing the project as a Development of Regional Impact (DRI) as required after the MEPA review process. The Commission held an additional hearing on December 10, 1997

and a subcommittee meeting on December 18, 1997 to consider the DRI. The final hearing on the DRI was held on January 15, 1997 before the full Cape Cod Commission.

The Subcommittee voted unanimously to approve with conditions the maintenance and improvement dredging of the channel in Bass River and out into Nantucket Sound, and the maintenance and improvement dredging in mooring basins 3 and 4. The Subcommittee voted unanimously to approve with conditions the application for the maintenance and improvement dredging in mooring basins 1 and 2 for the sole purpose of allowing the proponents to pursue permits from other governmental agencies. A draft decision was presented to the full Commission at their public hearing on January 15, 1997.

TESTIMONY:

AUGUST 28 PUBLIC HEARING:

Bob Randolph opened the hearing on the FEIR review at 7:25 PM.

Joe Freeman, of The BSC Group and consultant to the proponents, presented a summary of the project including its impacts and schedule. He stated that over ten years 182,000 cubic yards (cy) of material would be removed as part of maintenance and improvement dredging to create two new mooring basins and maintain two established ones. He stated that disposal of dredged material would be used for beach nourishment on West Dennis Beach in Dennis, and for dune nourishment on South Middle Beach in South Yarmouth. He stated that the placement of dredged material for nourishment is restricted by the location of existing eelgrass beds. He stated that 1,000 feet of beach has been identified where dredged material can be placed, and that littoral drift may carry material eastwards, down the beach. He indicated that the primary goal of the project was to improve navigation in the channel.

He stated that there would be some impacts to 2.8 acres of eelgrass beds and no significant impacts to fisheries because of the timing of the dredging. He stated that there would be impacts to 9.2 acres of shellfish beds, but that the proponents have worked closely with shellfish officers in towns to minimize these impacts. He indicated that beach nourishment will improve tern and piping plover habitat.

Mr. Freeman noted the recreational benefits, including the reduction of tidal delays, more leisure time, better access to boat ramps, larger beach area, improved public safety and access to beaches. He added that the elimination of tidal delays may have a positive effect on the commercial fleet in the area.

Mr. Freeman responded to questions from the Commissioners: He stated that 13-14,000 cy of dredge spoils, on average, would be removed in years subsequent to year one, pending the towns' appropriation of funds. Mr. Freeman stated that sand grain size had been analyzed and is appropriate for placement on area beaches. Mr. Freeman indicated that the total cost of the project was approximately \$1.2 million; a bargain at approximately \$4.10 per cy. Mr. Freeman indicated that grainsize compatibility studies had been conducted on

several area beaches where erosion was occurring, but not all. Mr. Freeman indicated that chemical testing of the dredge spoils was not required, but that they did look at the history of spills in the surrounding area, and found that it was basically a clean environment.

Mr. Freeman responded to questions from town officials, indicating that dredging of the entrance channel, main channel, and mooring basin 1 (MB1) and a portion of mooring basin 2 (MB2) were all planned for the first year. He added that it would be several years before the area north of Rt. 28 would be dredged. He indicated that there would not be grass plantings on the beach, but there would be plantings in the dune nourishment areas, and that some initial erosion of nourished areas was normal to establish an equilibrium profile.

Comments from the public included: Henry Gill, in favor of the channel dredging, but in opposition to MB1; Bill Henry, opposed to MB1; Janet Teglas, concerned about the impacts to the Georgetown Flats area of the river; Gary Garabrant spoke in favor of the dredging; Tom Broidrick, spoke in concern of the West Dennis Beach area and plans for access to the new moorings; Richard Staff indicated concern about erosion in Yarmouth, and asked if some of the dredge spoils could be used for additional beach nourishment; Dick Zeoli asked if the proponent had drawn on the prior dredging work done by the Army Corps of Engineers; Tom Kelly indicated interest in construction at the Veterans' Park in conjunction with the dredging; Charles and Madeline Mason indicated concern about erosion in the Georgetown Flats; Bob Childs asked if beach nourishment could be made available in Yarmouth; Tom Kelly (different from the previous) expressed concern about the impact to the Georgetown Flats area; Pat Anderson expressed concern about the channel north of Rt. 28; An unidentified gentleman wondered why the town needs a 27 acre mooring basin; Chris Starkey wondered about access to mooring basin 1; Bob Anderson expressed concern about dredging in the Georgetown Flats area. A letter from Martin Talbot, Manager of Ship Shops in support of the dredging was read.

Heather McElroy summarized the staff report on the final EIR. She stated remaining staff concerns on coastal resources had been addressed to the satisfaction of MCZM staff. A review of aerial photos and a field survey of the area revealed that the dredging would result in no impacts to existing eelgrass beds, and impacts to shellfish beds would be minimized through extraction and relocation. She stated that grain size compatibility issues had been addressed through additional core sampling and resiting of dredged material. On the issue of natural resources, she stated that some of the dredged areas fell under the jurisdiction of the Wetlands Protection Act, and that staff recommends that the proponent delineate those areas which fall within the 100 foot buffer, that the proponent identify the magnitude of the impact and minimize to the extent possible. She also stated that the project would impact rare species habitat, and that while the proponent has discussed impacts of the project with the Natural Heritage and Endangered Species Program and with the Massachusetts Audubon Society's Shorebird Monitoring Program, the proponent should provide a letter from the former agency indicating that the project will have no adverse impacts to shorebirds. She stated that staff had concerns that the project would reduce overall flushing of the system, resulting in an adverse impact to water quality. She stated that staff retained Aubrey Consulting to review the FEIR, whose

preliminary analysis showed that no overall adverse impact to water quality would result from the project.

Mr. Travelo made a motion to continue the hearing at the Boat Ramp at Smuggler's/Bass River Beach, Yarmouth. Mr. Kaufman seconded the motion. All voted in favor.

SEPTEMBER 4 PUBLIC MEETING:

A public meeting, including a site visit and tour, was held at Smuggler's Beach, and then continued to the Dennis Town Hall. Staff comments included concern about access to MB1 and the impacts of additional boats on the river. Staff raised concerns about the long-term plans for the river area. The application of the Wetlands Restriction Program and the Rivers Protection Act to the area was discussed. The project is in compliance with the former, and is exempt from the latter.

Some residents spoke in opposition to the project, including: Chris Starkey and Henry Gill, indicating their skepticism about the need for MB1, and concern about the loss of the recreational area and the impacts to natural resources. Armand Cloutier and Les Johnston spoke in support of the Harbormaster's plans for Bass River.

OCTOBER 28 PUBLIC HEARING:

Bob Randolph opened the hearing at 7:05 PM at the Yarmouth Library. Joe Freeman, BSC Group, resummarized the project. He stated that there was a critical need to dredge the entrance channel for navigational safety reasons. He added that dredging the entrance channel would provide 17,000 cy of material to nourish area beaches.

Mr. Freeman explained that there are permit plans from the Board of Public Works and the Army Corps of Engineers from 1971 for mooring basin 1 (MB1). He stated that there is a sliver on the eastern edge of the mooring basin that is new, or improvement dredging.

The proponents commented on the impacts of MB1 to recreational boaters, stating that the town had submitted their plan for the number of moorings and access considerations, but that this plan does not consider impacts to recreational boaters. The proponent stated that MB1 has not been used as a mooring area during his tenure as harbormaster.

The proponent clarified the Town of Dennis' plans to put 35 moorings into MB1, and the Town of Yarmouth plans no additional moorings to the 10-12 that are presently permitted. The proponents indicated that the Town of Dennis was setting aside 16 parking spaces in the existing parking lot on West Dennis Beach and had identified an area to place a dingy dock, to be permitted in accordance with Ch. 91.

Comments from the public included one resident in favor of the dredging, Richard Gegenwarth, though he added that he was concerned about aesthetic considerations. Several residents spoke in opposition to the dredging of MB1, though supported dredging of the channel, including: Bob Childs, Marion Broidrick, Bernard Caniff, Jim Robertson, Richard Staff, Mary Leigh Houston, Henry Gill, Norton Nickerson, and Maria King. Ms.

Houston also requested that some of the dredge spoils be used for nourishing the beach area at the Town Steps in Yarmouth.

Heather McElroy, Commission Planner, summarized staff concern about the mooring basins, and outlined reasons why staff recommends that the towns undertake a harbor management plan for the entire area. She stated that staff is concerned about several factors: the unclear impacts to small boaters, including the loss of protected sailing area for novice sailors; both National and Massachusetts Marine Fisheries concerns about the loss of potential shellfish and eelgrass habitat; the lack of plans for access to the mooring sites in MB1, and lack of an articulated vision for the long-term plans in the entire project area. She stated that the sum of these concerns leads to staff's recommendation that the mooring basins be approved only if the impacts to the natural resources are sufficiently addressed through a harbor management planning process. She added that the channel dredging could go ahead independently of approval of a harbor management plan.

Steve McKenna discussed some of the aspects of harbor planning. A harbor management plan is part of Yarmouth's draft local comprehensive plan.

David Ernst made reference to the Association for the Preservation of Cape Cod's suggestion that the Bass River area be designated a District of Critical Planning Concern.

DECEMBER 10 PUBLIC HEARING:

Bob Randolph opened the hearing at the Yarmouth Senior Center at 6:10 PM.

Heather McElroy summarized the staff's draft decision on the DRI.

Joe Travelo stated that he would like to see a continuing process for considering mooring basins 1 and 2, and does not want to see them divorced from the project at this time. David Ernst suggested a change in the language of the decision such that mooring basins 1 and 2 be denied "at this time." Sumner Kaufman made reference to finding #6 which finds that a Bass River Management Plan would be helpful in evaluating mooring basins 1 and 2.

Ed Goggin stated that the applicants were opposed to the denial of mooring basins 1 and 2, and would prefer approval with conditions, as originally discussed with Commission staff. He also commented that the shellfish constable had tried several times, unsuccessfully, to propagate the shellfish resources in the areas in question.

Several members of the public spoke in opposition to dredging mooring basins 1 and 2, including Bill Henry, Bob Vernazza, Henry Gill, Lesley Miller, David Lillie, Marion Broiderick, and Norton Nickerson.

Armand Cloutier spoke in favor of dredging mooring basins 1 and 2.

Joe Freeman stated that the applicants disagreed with the Division of Marine Fisheries on the shellfish issue. He also stated that the state was looking at Bass River as a model for dredging projects in the state. Karl von Hone commented that dredging may improve

habitat for eelgrass. Ed Goggin stated that a conditional approval would make the permitting process easier. Dorr Fox stated that a denial only precluded the acquisition of local permits, not state or federal ones.

Bob Deane asked if the mooring basins could be approved with conditions instead of denied. Mr. Fox said yes, though this was not staff intent, and that it was a question of semantics. Mr. Ernst raised the comment that the area might be considered as a DCPC.

DECEMBER 18 PUBLIC MEETING:

Bob Randolph opened the public meeting at 4:30 PM.

The subcommittee discussed alternative wordings for the draft decision. Joe Travelo stated that he was concerned that denying mooring basins 1 and 2 would make the permitting of these basins difficult. Patty Daley stated that she was concerned that by approving these mooring basins with conditions at this time and requiring them to return as a DRI after a management plan has been completed would be inconsistent.

The subcommittee and Commission staff resolved the inconsistency with wording in the decision that approves mooring basins 1 and 2 for the sole purpose of pursuing permits, at the applicants' risk, from other agencies.

JANUARY 15 FULL COMMISSION MEETING:

The Commission considered the draft decision, and voted 9 for, 4 against to approve the project with conditions. Tom Broidrick recused himself from the proceedings.

MATERIALS SUBMITTED FOR THE RECORD:

MATERIALS SUBMITTED BY THE APPLICANT:

1. Draft Environmental Impact Report, February 1997
2. Application for Joint Review from MEPA Unit/Cape Cod Commission 3/20/97
3. Final Environmental Impact Report, July 1997
4. A letter, with enclosures, from Ed Goggin, Dennis Harbormaster to the Cape Cod Commission 10/28/97
5. A letter from Joseph Freeman, BSC Group to the Cape Cod Commission 12/9/97
6. A letter from Karl von Hone, Yarmouth Natural Resources Director, to DEM, Office of Waterways 12/5/97
7. A letter from Joseph Freeman, BSC Group to the Cape Cod Commission 12/17/97

MATERIALS SUBMITTED BY STATE OFFICIALS:

1. Certificate of the Secretary of Environmental Affairs on the DEIR 4/4/97
2. A comment letter from MEPA on the FEIR 9/5/97
3. Certificate of the Secretary of Environmental Affairs on the FEIR 9/16/97
4. Confirmation from Massachusetts Historical Commission that this project likely will not impact historic or archaeological resources 12/15/97

MATERIALS SUBMITTED BY THE CAPE COD COMMISSION:

1. A letter from the Cape Cod Commission to the Secretary of Environmental Affairs on the Environmental Notification Form 11/27/95
2. A letter from the Cape Cod Commission to the Secretary of Environmental Affairs on the Draft Environmental Impact Report 3/26/97
3. A letter from Tana Watt, Commission Staff to Joseph Freeman, BSC Group 4/9/97
4. A letter from Jeff Levine, Commission Staff to Joseph Freeman, BSC Group 8/7/97
5. A staff report on the FEIR 8/28/97
6. Minutes from the Public Hearing on the FEIR 8/28/97
7. Minutes from the Public Meeting on the FEIR 9/4/97
8. A letter from the Cape Cod Commission to the Secretary of Environmental Affairs on the FEIR 9/9/97
9. A staff report on the DRI 10/28/97
10. Minutes from the Public Hearing on the DRI 10/28/97
11. A draft decision prepared for the public hearing 12/10/97

MATERIALS SUBMITTED BY LOCAL OFFICIALS:

1. A letter from the Town of Yarmouth Planning Board to the Cape Cod Commission 11/20/97
2. A letter from Alan Marcy, Dennis Shellfish Constable to the Cape Cod Commission 12/9/97
3. A letter from the Town of Yarmouth Waterways Committee to the Cape Cod Commission 3/19/97

MATERIALS SUBMITTED BY THE PUBLIC:

1. A letter from the South Yarmouth Association to Trudy Coxe, Executive Office of Environmental Affairs 9/9/97
2. A letter from Richard Staff to Trudy Coxe, Executive Office of Environmental Affairs 9/9/97
3. A letter from Alan Grinberg to the Cape Cod Commission 10/4/97
4. A letter from Frederick Jordan to the Cape Cod Commission 10/7/97
5. A letter from Paul Grinberg to the Secretary, Executive Office of Environmental Affairs 10/7/97
6. A letter from Edith Churchill to the Cape Cod Commission 10/14/97
7. A letter from Mary Janowitz to the Cape Cod Commission 10/9/97
8. A letter from Andrew Grinberg to the Cape Cod Commission (received) 10/17/97
9. A letter from the Yarmouth Citizens for Responsible Development to the Cape Cod Commission 10/17/97
10. A letter from Chris Starkey to the Cape Cod Commission 10/18/97
11. A letter from the South Yarmouth Association to the Cape Cod Commission 10/21/97
12. A letter from Diana Post Churchill to the Cape Cod Commission (received) 10/22/97
13. A letter from the Bass River Yacht Club to the Cape Cod Commission (received) 10/22/97
14. A letter from Edie Hartshorne to the Cape Cod Commission 10/23/97
15. A letter from Kate Grinberg to the Cape Cod Commission 10/20/97
16. A letter from Ginny, Eric & Nicholas Churchill to the Cape Cod Commission 10/22/97

17. A letter from Patricia and David Acheson to the Cape Cod Commission 10/24/97
18. A letter from Edith Churchill to Dorr Fox 10/25/97
19. A letter from Anne Seeley to the Cape Cod Commission 10/24/97
20. A letter from John Reilly to the Cape Cod Commission 10/23/97
21. A letter from Mrs. L.M. Phillips to the Cape Cod Commission 10/25/97
22. A letter from Mary Cochran to the Cape Cod Commission 10/25/97
23. A letter from Lee Britton to the Cape Cod Commission 10/23/97
24. A letter from Carolyn Jozokos to the Cape Cod Commission (received) 10/27/97
25. A letter from Catherine Mary Salmon to Dorr Fox 10/24/97
26. A letter from Evelyn Crocker-Harrold to the Cape Cod Commission 10/23/97
27. A letter from William Higgin to the Cape Cod Commission
28. A letter from Christopher Churchill to the Cape Cod Commission 10/25/97
29. A letter from Ruth Lincoln to the Cape Cod Commission 10/24/97
30. A letter from Kate Churchill to the Cape Cod Commission 10/24/97
31. A letter from Theodore Loizeaux to the Cape Cod Commission 10/27/97
32. A letter from Joyce Dane to the Cape Cod Commission 10/27/97
33. A letter from Brooke and Deborah Seckel to the Cape Cod Commission 10/27/97
34. A letter from Tim Kallman to the Cape Cod Commission 10/26/97
35. A letter from Ganson Purcell to the Cape Cod Commission 10/26/97
36. A letter from Ellen Murray to the Cape Cod Commission 10/27/97
37. A letter from Donald Grinberg to the Cape Cod Commission 10/26/97
38. A letter from Allison Churchill to the Cape Cod Commission 10/27/97
39. A letter from Paul Keel to the Cape Cod Commission 10/27/97
40. A letter from Carolyn Davies to the Cape Cod Commission 10/27/97
41. A letter from Boardman Lloyd to the Cape Cod Commission 10/24/97
42. A letter from Winthrop Churchill to the Cape Cod Commission 10/21/97
43. A letter from Frank Gibson to the Cape Cod Commission 10/27/97
44. A letter from Lisbeth Kamborian to the Cape Cod Commission 10/24/97
45. A letter from Aubrey & Nancy Groskopf to the Cape Cod Commission 10/24/97
46. A letter from Florence & Charles Kohler to the Cape Cod Commission 10/23/97
47. A letter from Stanley and Edna Maynard to the Cape Cod Commission 10/23/97
48. A letter from Margaret Lyne to the Cape Cod Commission 10/24/97
49. A letter from Kathleen O'Neil to the Cape Cod Commission (received 10/27/97)
50. A letter from Edward McIlveen to the Cape Cod Commission 10/24/97
51. A letter from William Weil to the Cape Cod Commission 10/27/97
52. A letter from William Henry to the Cape Cod Commission 10/27/97
53. A letter from C. Allen Gove to the Cape Cod Commission 10/25/97
54. A letter from Robert and Sally Churchill to the Cape Cod Commission 10/25/97
55. A letter from DeWitt Davenport to the Cape Cod Commission 10/27/97
56. A letter from Robert & Patricia Fitzgerald to the Cape Cod Commission 10/23/97
57. A letter from Harriet Anne Clarke-Gilman to the Cape Cod Commission 10/25/97
58. A letter from Ruth Hendrickson to the Cape Cod Commission 10/24/97
59. A letter from Joyce Tuers to the Cape Cod Commission 10/24/97
60. A letter from Patricia DeConte to the Cape Cod Commission 10/24/97
61. A letter from Malcolm, Lucinda, Sarah, and Clark Lloyd to the Cape Cod Commission 10/27/97

62. A letter from Benjamin Gordon to the Cape Cod Commission 10/25/97
63. A letter from Robert Savage to the Cape Cod Commission 10/25/97
64. A letter from Alice Erickson to the Cape Cod Commission 10/27/97
65. A letter from Ture and Elizabeth Holmes to the Cape Cod Commission 10/24/97
66. A letter from Scott Mitchell, the Association for the Preservation of Cape Cod to the Cape Cod Commission 10/27/97
67. A letter from Norton and Joan Nickerson to the Cape Cod Commission 10/27/97
68. A letter from Peter & Barbara Sutherland to the Cape Cod Commission 10/22/97
69. A letter from the Bass River Yacht Club to the Cape Cod Commission 10/28/97
70. A letter from Paul Fitzsimmons to the Cape Cod Commission 10/28/97
71. A letter and map from Maria King to the Cape Cod Commission 10/28/97
72. A plan and correspondence to and from the Army Corps of Engineers regarding the planned dredging of Bass River in 1953, submitted by Maria King
73. A letter from Nicholas Rudenstine to the Cape Cod Commission 10/28/97
74. A letter from Maria King to the Cape Cod Commission (received) 11/10/97
75. A letter from Edward and Barbara Carey to the Cape Cod Commission 10/24/97
76. A letter from Bernard Caniff to the Cape Cod Commission 10/25/97
77. A letter from Ganson Purcell to the Cape Cod Commission 10/26/97
78. A letter from Anthony & Jeanne Aurette to the Cape Cod Commission 10/27/97
79. A letter from Edward Burling to the Cape Cod Commission 10/22/97
80. A letter from Peter and Holly Broderick to the Cape Cod Commission 10/27/97
81. A letter from Carol Holden to the Cape Cod Commission 10/24/97
82. A letter from Galbert O'Mara to the Cape Cod Commission 10/24/97
83. A letter from "JB" to the Cape Cod Commission 10/22/97
84. A letter from Alex Blum to the Cape Cod Commission 10/28/97
85. A letter from Ginny Thomas to the Cape Cod Commission 10/27/97
86. A letter from Karam Skaff to the Cape Cod Commission 10/29/97
87. A letter from Kita Grinberg to the Cape Cod Commission (received) 10/31/97
88. A letter from John and Virginia Weld to the Cape Cod Commission 10/31/97
89. A letter from Carol and Ralph Lincoln to the Cape Cod Commission 10/27/97
90. A letter from Richard Bronske to the Cape Cod Commission 11/1/97
91. A letter from Bob Johnson to the Cape Cod Commission 10/28/97
92. A letter from Rich Johnson to the Cape Cod Commission 10/27/97
93. A letter from Richard Zeoli to the Cape Cod Commission 10/28/97
94. A letter from Yarmouth Citizens for Responsible Development to the Cape Cod Commission 11/1/97
95. A letter from Maria King to the Cape Cod Commission (received 11/7/97)
96. A letter from Paul and Mary Ahern to the Cape Cod Commission 12/1/97
97. A letter from Anne Seeley to the Cape Cod Commission 12/1/97
98. A letter from Henry Gill to the Cape Cod Commission (received 12/4/97)
99. A letter from William Henry to the Cape Cod Commission 12/4/97
100. A letter with attachment from Norton and Joan Nickerson to the Cape Cod Commission 12/4/97
101. A letter from John Reilly to the Cape Cod Commission 12/8/97
102. A letter from the Lloyd Family to the Cape Cod Commission 12/9/97
103. A letter from Lorens Persson to the Cape Cod Commission 12/14/97

104. A letter from James and Elaine Carter to the Cape Cod Commission 12/9/97
105. A letter from the South Yarmouth Association to the Cape Cod Commission 12/7/97
106. A letter from the South Yarmouth Association to the Cape Cod Commission 12/8/97
107. A letter from P.J. Cunningham to the Cape Cod Commission 12/8/97
108. A letter from James and Elaine Carter to the Cape Cod Commission (received) 12/10/97
109. A letter from Ralph Lincoln to the Cape Cod Commission 12/10/97
110. A letter from Patricia and James Leighton to the Cape Cod Commission 12/10/97
111. A letter from Norton and Joan Nickerson to the Cape Cod Commission 12/10/97
112. A statement from William Henry read at the 12/10/97 hearing
113. A letter from David Lillie to the Cape Cod Commission 12/11/97
114. A letter from William Henry to the Cape Cod Commission 12/17/97
115. A letter from Carolyn Davies to the Cape Cod Commission 1/8/97
116. A letter from Mrs. Edward Burling to the Cape Cod Commission 1/8/97
117. A letter from Maria King to the Cape Cod Commission 1/9/97
118. A letter from Jeanne Oppel to the Cape Cod Commission 1/9/97
119. A letter from Patricia and David Acheson to the Cape Cod Commission 1/10/97
120. A letter from Rosamond Westmoreland to the Cape Cod Commission 1/11/97
121. A letter from Carolyn Davies to the Cape Cod Commission 1/12/97
122. A letter from John and Sarah Yoder to the Cape Cod Commission 1/14/97

The application and notice of public hearings relative thereto, the Commission's staff reports, correspondence, notes and exhibits, minutes of all hearings and all written submissions received in the course of the proceedings are incorporated into the record by reference.

FINDINGS:

The Commission has considered the application of the Towns of Yarmouth and Dennis and the Massachusetts Department of Environmental Management for the dredging of Bass River in Dennis and Yarmouth, MA and based upon consideration of such application and upon the information presented at the public hearings makes the following findings pursuant to section 12 of the Act:

1. The Bass River dredging project includes maintenance dredging of approximately 182,000 cubic yards (cy) within 11.2 acres of the navigation channel and both maintenance and improvement dredging of 33.6 acres in four mooring basins in Bass River in the Towns of Dennis and Yarmouth, MA over a ten year period. Beach nourishment along West Dennis Beach in Dennis is proposed with dredged material from the river channel and mooring basin areas. Dune restoration and nourishment will be conducted at South Middle Beach in Yarmouth. Additional volumes of dredged material may be dewatered at the Bass River Beach parking lot adjacent to the river mouth in Yarmouth for transport to other Yarmouth or Dennis beaches for beach nourishment.
2. Bass River is a regional resource, significant not only to the towns of Dennis and Yarmouth, but also to Barnstable County. The area is significant because of the regional

shellfish and finfish resources, the access to the area to many different types of recreational boaters, swimmers, birdwatchers, commercial fishermen, year round and summer residents, and others visiting the area.

3. The project as proposed would provide several benefits: A. Dredging the channel will improve navigability in the river, and thereby improve public safety. B. The proposed project would have recreational benefits, including a deeper channel which would reduce tidal delays and thereby decrease damage to boats, and would provide additional mooring sites in new and expanded mooring basins. C. The beach nourishment portion of the program at West Dennis Beach has been designed in consultation with the Massachusetts Audubon Society and the Natural Heritage and Endangered Species Program to improve habitat for several coastal bird species, including the piping plover, and the least and common terns. D. The beach and dune nourishment portion of the project has a recreational public benefit.

4. Other Development Review Policy 2.2.2.13 states that "Wherever feasible, dredge material should be used for beach nourishment in areas subject to erosion. Such material should be clean and compatible with existing strata." The proponents have demonstrated that the dredge spoils are clean and compatible with the nourishment sites on West Dennis and South Middle Beaches. In addition, a minimum 50 foot buffer landward of existing eelgrass beds will be provided on West Dennis Beach to reduce potential impacts to this resource. The Department of Environmental Management will conduct surveys of South Middle and West Dennis beaches following nourishment to determine the effects of the nourishment on these areas.

5. The project as proposed would result in several impacts to the Bass River area: A. The maintenance and improvement dredging, as proposed, would result in the loss of potential shellfish and eelgrass habitat in mooring basins 1 & 2, a loss of particular concern to the Division of Marine Fisheries (see comment letter in FEIR). B. Staff have some remaining concerns about the adequacy of proposed plans for access to the mooring sites in MB1. C. Some recreational interests may be affected, including small boat operation and views to a natural, undeveloped shoreline.

6. A plan for the long term recreational and commercial use of the Bass River Area, including plans for parking, access to and traffic on the river, would be helpful in evaluating the proposed dredging.

7. One of the goals of the RPP is to "...protect coastal ecosystems which support shellfish and finfish habitat." The planned dredging in mooring basins 1 and 2 may not protect shellfish habitat, but may instead alter 9.2 acres of potential shellfish habitat. The Commission acknowledges the Towns' efforts to support shellfish propagation and enhancement programs elsewhere in Yarmouth and Dennis.

8. MPS 2.2.3.6 states that "New dredging projects or expansion of existing dredging projects shall not occur unless a substantial public benefit can be demonstrated..." "New" or "expansion" dredging is interpreted as equivalent to "improvement" dredging as described in the proposed dredging schedule for Bass River, including the proposed improvement

dredging in mooring basins 1, 2, and 3. MPS 2.2.3.6 defines a substantial public benefit to include, but not be limited to "enhancement of fish or shellfish habitat, improvements to the flushing capacity of nitrogen sensitive embayments, or necessary improvements to navigational safety." The proponents have demonstrated that the maintenance dredging in the channel would provide significant navigational improvements, and thus improve safety. The mooring basins may provide some navigational improvements.

9. Goal 2.2.1 of the RPP includes protecting "...public interests in the coast and rights for fishing, fowling, and navigation, and to preserve and manage coastal areas so as to safeguard and perpetuate their biological, economic, historic, maritime, and aesthetic values, and to preserve, enhance and where appropriate, expand public access to the shoreline." This goal supports harbor management planning as a tool to address protection of shellfish and finfish habitat and public access to and interests in the coastline. Such a plan in Bass River, a "Bass River Management Plan," would assist the two towns in developing a vision for achieving these related goals.

A "Bass River Management Plan" is defined here for the purposes of this decision as a planning process and resultant plan where: the scope of the planning process is modelled after the "Review and Approval of Municipal Harbor Plans" (301 CMR 23.0); the scope is approved by Cape Cod Commission staff; but where the resulting plan need not be certified by MCZM. The towns should seek input from relevant federal and state agencies in development of the scope.

A Bass River Management Plan shall address diverse interests in coastal waters, and take a system-wide look at the river, incorporating both natural functions and diverse human recreational and commercial interests.

RPP Implementation actions also include related Recommended Town Actions in support of harbor planning and protecting harbor waters:

D. Towns should develop harbor management plans in accordance with state guidelines and implement watershed zoning.

E. Towns should identify and designate areas as federal No Discharge Zones for boats in conjunction with state and federal guidelines.

10. MPS 2.2.1.3 states that "Development and redevelopment should... be designed to maintain and enhance views of the shoreline from public ways, access points and existing development." The planned establishment of mooring basin 1 as a development on Bass River may neither maintain nor enhance the view of the shoreline along West Dennis Beach.

11. MPS 2.2.2.10 permits several activities in coastal areas, including "boat launching facilities, navigational aids, piers, docks, wharves and moorings;... [and] projects that are approved... by the Division of Marine Fisheries that are specifically intended to increase the productivity of land containing shellfish..., or to maintain or enhance marine fisheries..." The Cape Cod Commission confers with the Division of Marine Fisheries

(DMF) regarding projects that impact marine fisheries or land containing shellfish, and in regard to this project has deferred to DMF for guidance on the impacts of the proposed dredging in mooring basins 1 and 2.

12. MPS 2.2.3.7 states that "Undisturbed buffer areas of at least 100' width surrounding coastal wetlands and/or landward of the mean high water mark of coastal water bodies shall be protected as specified in Section 2.3.1.2." Though some areas of the proposed dredging may impact resources within the 100 foot buffer to coastal wetlands, this impact is allowable for water dependent structures in Section 2.3.1.2.

DECISION:

The Cape Cod Commission approves the maintenance dredging of the channel in Bass River and out into Nantucket Sound, and the maintenance and improvement dredging in mooring basins 3 and 4 as proposed, subject to Condition 2. The application for the maintenance and improvement dredging in mooring basins 1 and 2 is approved for the sole purpose of allowing the proponents to pursue permits from other governmental agencies, at the proponents' risk, and subject to Conditions 1 and 2.

CONDITIONS:

1. Should the proponents, the Towns of Dennis and Yarmouth, wish to pursue the establishment of mooring basins 1 and 2, then the proponents shall prepare a Bass River Management Plan. The scope and process of a Bass River Management Plan, as defined in the Findings section of this decision, shall be developed in consultation with MCZM and Cape Cod Commission staff, and approved by Cape Cod Commission staff. Such a plan should identify the number of current and future mooring sites for the Bass River area; access to the proposed moorings; demand for moorings; parking capacity to serve the planned mooring sites; the capacity of the river for current and future moorings and boat traffic; and provisions for pumpout facilities, restrooms, and adequate collection facilities for solid waste and waste oil for marina and mooring site patrons, and other elements as identified in the scope. Such a plan shall represent the diverse interests in the Towns of Dennis and Yarmouth.

Diverse interests shall include, but not be limited to, as appropriate: local, state, regional and federal planning and regulatory agencies, neighboring communities, private property owners, special interest groups, and others concerned about Bass River.

Once such a plan has been developed, and should the proponents wish to proceed with mooring basins 1 and 2, mooring basins 1 and 2 shall be reviewed by the Cape Cod Commission as a Development of Regional Impact, at which time the Commission may approve, approve with conditions, or deny the dredging of mooring basins 1 and 2.

If the Cape Cod Commission denies mooring basins 1 and 2, they cannot be dredged.

2. The proponent shall provide a letter from the Natural Heritage and Endangered Species Program indicating support of the beach nourishment portion of the project on West Dennis Beach.

Madeleine A. Bebout

Madeleine A. Bebout, Commission Chair

1-16-98

Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

Subscribed and sworn to before me this 16th day of Jan 1998

Katharine L. Peters

Name, Notary

My Commission expires:

