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October 28, 1997

Jo-Ann Taylor
Planning Representative
Martha's Vineyard Commission
P.O. Box 1447
Oak Bluffs, MA 02557

Dear Ms. Taylor:

I am pleased to inform you that I have approved the ^{Municipal}Edgartown Harbor Plan, dated September 12, 1997, pursuant to the regulations at 301 CMR 23.00. My Approval Decision is attached.

I want to congratulate you and all who participated in the harbor planning process on your accomplishments. I particularly want to praise the obvious vitality and commitment of the Town's Harbor Planning Group. I am aware of the sustained performance of this group in seeing the Plan through to its completion.

As you undoubtedly know, Edgartown is the third community in the Commonwealth to obtain state approval for its Harbor Plan and the first to obtain approval for the Scope that served as the work program for this planning effort. The Town deserves to feel proud of this achievement.

I also want to congratulate the Town for the coherence of its Plan and the clear vision it expresses. Edgartown's Harbor Plan stands out in its statement of both a land and water use plan for its harbor and in defining the character of planning subareas as the basis for formulating goals and policies.

There are a number of additional elements of the Plan that are noteworthy. It includes a strong action program to implement the Town's vision and goals for the harbor. This program is progressive in many ways: in the use of water surface zoning to control the proliferation of docks and piers; in establishing and providing the means to protect priority public views of the harbor across specific waterfront parcels; and in mapping a continuous walkway system knitting the waterfront with the Town center.

The policies used in the development of the Plan's implementation program reflect a harmonization of local, regional, and state policies. The Plan stands as an excellent example of how a coastal community can "tailor" the state's Chapter 91 licensing requirements and ensure they will be applied in a manner that is responsive to municipal objectives and priorities, harbor-specific conditions,



and other local and regional circumstances.

An impressive array of resources -- organizational, financial, and regulatory -- were brought to bear on the Plan. Both private and public sector entities played pivotal roles, including, e.g., the Edgartown Harbor Associates, Inc. that sponsored a comprehensive water quality study and the regional Martha's Vineyard Commission that provided coastal planning services used in the development of the Plan. In addition to the technical assistance provided from many quarters, direct funding came from state grants programs and private groups, among others. Regulatory tools used in the implementation of the Plan include land and water zoning, an historic district by-law, and the state waterways regulations.

The State Department of Environmental Protection, Department of Environmental Management, Division of Marine Fisheries, Massachusetts Office of Business Development, federal Army Corps of Engineers as well as Massachusetts Coastal Zone Management (MCZM) participated in the review of the Plan, as a result of the Town's seeking state approval. Overwhelmingly, representatives of these agencies spoke in very positive terms about elements of the Plan of which they had first-hand knowledge.

The Plan demonstrates the contribution of an approved Scope in establishing a clear blueprint for the planning process. Fully responsive to the Scope, the Plan provides a model for the treatment of water quality and public access issues, reflecting what I think has been a profitable partnership between the community and the Commonwealth.

Again, I want to praise you for the work you have completed to date, encourage you in your on-going and future projects, and I look forward to working with you on these efforts.

Please feel free to contact the staff of MCZM's Harbor Planning Program, if you have any questions about the attached Approval Decision.

Cordially,

Trudy Coxé

att.

cc: Peg Brady, MCZM Director
Phil Smith, MCZM Deputy Director
Laurel Rafferty, Harbor Planning Coordinator, MCZM
Dennis Ducsik, Tidelands Policy Coordinator, MCZM
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John Simpson, Division of Wetlands and Waterways, DEP
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Andrea Langhauser, Division of Wetlands and Waterways, DEP
Peter Webber, Commissioner, DEM
Leigh Bridges, DMF
Karen Kirk Adams, ACOE

**DECISION ON THE TOWN OF EDGARTOWN
REQUEST FOR APPROVAL OF THE
EDGARTOWN HARBOR PLAN
PURSUANT TO 301 CMR 23.00**

municipal

October 2, 1997

**Commonwealth of Massachusetts
Executive Office of Environmental Affairs, Trudy Coxe, Secretary**

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REQUEST FOR APPROVAL OF THE
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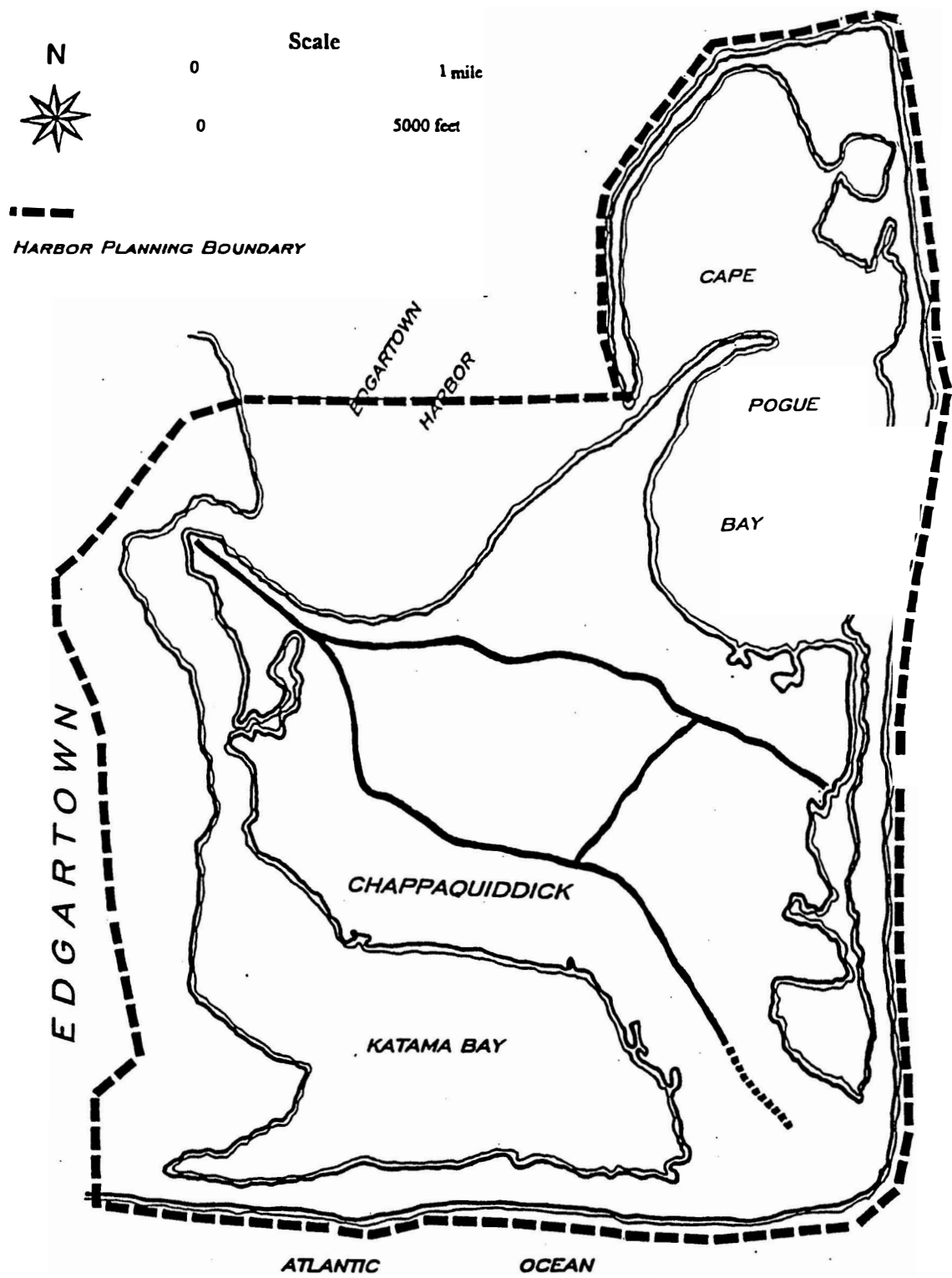
I. INTRODUCTION

Today, I am approving the Edgartown Harbor Plan, dated September 12, 1997, covering the planning area identified in Figure 1. My approval is pursuant to the municipal harbor planning (MHP) regulations at 301 CMR 23.00. In effect, this Decision serves to establish a joint venture of the State and the Town, with the former establishing the basic regulatory framework and the latter providing a more detailed plan with harbor-specific guidance for the Department of Environmental Protection's (DEP) review of Chapter 91 license applications. This will result in DEP decisions that are tailored more effectively to local needs and circumstances, to the benefit of the public-at-large as well as affected property owners.

This Decision presents my findings and determinations on how the Edgartown Harbor Plan ("Plan") satisfies each of the standards that must be met in order to approve an MHP. Pursuant to the MHP regulations, these standards can be summarized as follows:

- 1) The plan must be consistent with the Harbor Planning Guidelines and all applicable Coastal Zone Management Policies [301 CMR 23.05 (1)-(2)];
- 2) The plan must be consistent with State Tidelands Policy objectives and associated regulatory principles, as set forth in the Waterways regulations of DEP [301 CMR 23.05(3)];
- 3) The plan must include all feasible measures to achieve compatibility with the plans and planned activities of all State agencies owning real property or otherwise responsible for the implementation or development of plans or projects within the harbor planning area [301 CMR 23.05(4)]; and

Harbor Planning Boundary



- 4) The plan must include enforceable implementation commitments to ensure that, among other things, all measures will be taken in a timely and coordinated manner to offset the effect of any plan requirement less restrictive than that contained in the Waterways regulations [301 CMR 23.05(5)].

II. PLAN CONTENT

A. Public Access

Enhancement of public access to the waterfront, both pedestrian and boating, is a key goal of the Plan. A priority issue concerns how to achieve this goal in ways consistent with the other goals of the Plan, most particularly the goal to maintain the character of the planning subareas of the Harbor. Visual access is also a concern, including the protection of views both from the land to the water and from the water to the land.

The Plan identifies two basic planning subareas: a) the "Village Waterfront", which is the bustling hub of commercial, recreational, and municipal activity that lies within the larger B-1 zoning district, where the stated policy of the community is "to provide a compact pedestrian-oriented environment for a mixture of residential and business uses servicing Edgartown's year-round population and visitors"; and b) the outlying lands and waters collectively known as the "quiet harbor", characterized as such because the existing character is one of low-density residential use mixed with wild and remote places of great natural beauty.

The primary regulatory goals for each subarea are: a) in the village waterfront, to improve public access along and to the commercial waterfront and more effectively link it with Main Street and existing circulation patterns throughout Historic Edgartown; and b) in the "quiet harbor", to preserve the existing conditions of excellent water quality and highly productive shellfish habitat, and the low density and unobtrusive character of structures for recreational boating.

The community had already implemented a series of local harbor management controls in pursuit of these goals. These include a pioneering surface water zoning ordinance, pier permitting guidelines, and dockage/mooring regulations. The Plan builds upon these prior regulatory achievements by taking advantage of the opportunity to establish a direct link with the state's program for licensing development on tidelands, as administered by the Waterways Regulation Program of the Department of Environmental Protection (DEP) in accordance with M.G.L. c. 91 and implementing regulations at 310 CMR 9.00. This link takes the form of Plan provisions which adapt various discretionary requirements of these state regulations to local objectives (See Plan Appendix D, "Guidance to DEP".)

In the village waterfront subarea, these regulatory provisions focus on measures to enhance public pedestrian access, both in physical and visual terms. The measures are stipulated both generally and on a parcel-by-parcel basis, and include such elements as identifying the location and preferred materials for a continuous Harborwalk, and identifying special vi stas along the waterfront and a set of protection policies applicable to each. In the quiet harbor subarea, the Plan centers on measures to control the proliferation of new and expanded piers, through a combination of outright prohibition in certain designated waterway segments and a limit on seaward projection in other areas (the plan also specifies recommended locations for small-scale boat ramps to accommodate public launching needs in this subarea).

The Plan proposes to establish a Municipal Waterways Improvement and Maintenance Fund to receive tidelands displacement fees otherwise payable to the state. Such payments to a local fund are permissible under the state waterways regulations. Once the fund is established, all such monies will be available to directly provide public improvements in both pedestrian and navigational access to the harbor.

B. Harbor Management

Harbor management issues concern how to address a number of harbor needs, including the unmet demand for mooring space, facilities and services needs of the boating public, and dredging needs. The financial management of the harbor is another

issue, particularly with regard to the options associated with the harbor's revenue-generating capacity.

The Plan documents the finding that mooring demand exceeds supply and identifies the constraints on expanding mooring areas, including shellfish resource areas and navigation channels in need of protection from encroachment. Recommendations include the construction of additional boat launch ramps and community piers with slips to reduce the demand for moorings for small vessels and thus to free up existing moorings for larger vessels; mooring realignment is cited as a potential measure to be considered.

The Plan identifies the facilities and services necessary for good harbor management. Several actions have been taken to address service needs: Town Meeting votes to provide an appropriate mooring rental service, potentially under public management, and to acquire property allowing for the return of fuel service; provision of certain services through the parcel-by-parcel public access agenda (see above) -- services for commercial fishermen, commercial dockage, and additional commercial services to be carried out by the private sector; and the recommendation to lease an available vacant building to provide public toilet facilities.

With regard to revenue-generating options, the Plan recommends the objective of zero cost, rather than profit, and the establishment of two new fund accounts to facilitate this objective, one of which will be used for receipt of tidelands displacement fees, as noted above.

A dredge management plan and permit application process was developed and included as an appendix to the Plan.

C. Character

Character issues concern the sense of identity of Edgartown Harbor as a whole and its various subareas -- the identity of the harbor as a destination port, the downtown harborfront area as a "village waterfront", and the surrounding outlying

lands and waters as "quiet harbor" areas. These issues include consideration of the mix and density of uses allowable in the village waterfront versus the surrounding quiet harbor area and the protection of the historic and scenic qualities of these sub-areas.

The Plan cites existing controls, zoning of both the land and the water, the Historic District By-law, and the Pier Permitting Guidelines designed to protect the character of the harbor planning area. Recognizing the visual impact of bulkhead maintenance on the historic character of the harbor, the Plan recommends the use of appropriate materials determined to be consistent with this character.

D. Water Quality

The Plan identifies three key issues concerning water quality protection: the relation between water quality and concentration of boating, the affect of water quality on a protected resource, shellfish, an important economic resource, and the pollution potential of stormwater discharge.

Overall, studies found that the waters of Edgartown Harbor were found to be of excellent quality, meeting state water quality standards all of the time. The Plan cites a comprehensive water quality study that analyzed the impacts of vessel sewage on coliform counts. This study found that while peak periods of vessel use correlate with increases in coliform counts, vessel sewage is not a significant source of pollution. However, based on the number of vessels with sleeping quarters, certain areas of Edgartown Inner Harbor are classified as "Seasonally Approved", limiting the harvest of shellfish for direct consumption from May to November. Concentration of vessels, as well as quality of water, are recognized as factors to manage to ensure the ability to harvest shellfish.

Water quality data from two studies indicated that toxicity from metals in the stormwater discharge from identified Inner Harbor outlets is an issue.

The Plan identifies implementation measures that have been put in place or recommended to address water quality issues. The Plan cites a number of regulations and guidelines already enacted that confine growth in vessel berthing to the Inner Harbor, where existing boating numbers limit shellfish harvest, and that restrict berthing in Cape Poge Bay and lower Katama Bay, to protect these areas for the preferred use as shellfish resource. The Plan also recommends management of mooring and anchoring in these Bay areas to further protect the shellfish resource. "No Discharge Area" designation is a recommendation of the Plan. While it is recognized that such designation will not affect the seasonal closure of the inner Harbor areas, the Town believes it will have educational value about its commitment to water quality protection. The Town has existing pumpout facilities, which have been upgraded, to address boat sewage. Best management practices are recommended to address the toxic metals found in stormwater discharges.

III. COMPLIANCE WITH APPROVAL STANDARDS

A. Consistency with the Harbor Planning Guidelines

The criteria for consistency with Massachusetts Coastal Zone Management's (MCZM's) Harbor Planning Guidelines (Revised, 1988) are defined in the Scope for a plan. I issued a Scope for the Edgartown Harbor Plan in December, 1993 (see Attachment A). I find that the Plan adequately and properly complies with this Scope and therefore find the Plan consistent with the MCZM Harbor Planning Guidelines as required by 301 CMR 23.05 (1).

The Scope identifies the key elements of the Plan: priority issues, the planning area, the specific study program for addressing the issues, and the public participation program. As discussed above, the Scope identifies four main categories of issues. The planning area, illustrated in the map of Figure 1, includes the Inner and Outer Harbor, adjacent Katama Bay and Cape Poge Bay, the Island of Chappaquiddick on the east side of the Harbor and the land area approximately to the nearest public way on the western shore. The study program specifies the particular issues to be addressed

under each of the four categories, the data to be analyzed, the method of analysis, the criteria for assessing alternatives, and the recommended implementation measures. In addition to explaining the make-up and role of the Harbor Planning Group and other key participating bodies, the public participation program identifies the proposed schedule for meetings of these groups, as well as for public workshops and hearings, and Town Meeting. The Plan closely follows the study program articulated in the Scope.

In addition, the Plan has been developed with full public participation. Pursuant to the regulations at 301 CMR 23.04(3), a thirty-day public comment was held and a public hearing was held on April 24, 1997, during which time oral comments were accepted. In response to the request of an interested party, the public comment period was extended for another thirty days, ending on May 28, 1997. Five written comment letters were received prior to this date. These included government agency comments from the Army Corps of Engineers, the Department of Environmental Management, and the Massachusetts Office of Business Development. Oral and written comments were taken into consideration and revisions made to the Plan, as appropriate.

B. Consistency with MCZM Policies

In 1978, the Executive Office of Environmental Affairs (EOEA) adopted an overall program to manage the Massachusetts coastal zone, based on 27 broad statements of policy. I find that the Plan is consistent with such policies, as required by 301 CMR 23.05(2).¹

The Plan cites the specific MCZM policies relevant to the Town's planning effort. These include the following:

- Policy 1: protect ecologically significant resource areas, such as shellfish beds
- Policy 2: protect complexes of marine resource areas of unique productivity

¹ Revised CZM policies took effect in March, 1997. While policies were re-organized under categories and renumbered, changes in content were minimal. The Plan is consistent with these policy revisions.

- Policy 3: support attainment of national water quality goals
- Policy 4 : condition construction in water bodies... to preserve water quality and marine productivity
- Policy 14: encourage and assist...restoration and management of fishery resources
- Policy 18: encourage the compatibility of proposed development with local community character and scenic resources
- Policy 21: improve public access to coastal recreational facilities
- Policy 23: provide technical assistance concerning the development of private recreational facilities that increase public access to the shoreline
- Policy 24: expand existing recreational facilities and acquire and develop new public areas for coastal recreational activities

These policies were used in the choice of implementation measures to address each of the four major issues: policies 21, 23, and 24 were cited as relevant to addressing access issues, policies 5, 14, 20, 21, and 24 were relevant to addressing harbor management issues, policy 18 was relevant to addressing character issues, and policies 1-4 and 14 were relevant to addressing water quality issues. The Plan provides ample evidence of how the implementation measures that were selected are consistent with these policies.

C. Consistency with Tidelands Policy Objectives

As required by 301 CMR 23.05(3), I find the Plan is consistent with state tidelands policy objectives and associated regulatory principles, as set forth in the state waterways regulations of DEP (310 CMR 9.00). In particular, as regards the specific Plan provisions that amplify upon discretionary requirements of the regulations, cited in Plan Appendix D, I find that such provisions are complementary in effect with the regulatory principles underlying the respective requirements of DEP. DEP is in agreement with this finding, as stated in a letter of support for Plan approval, dated September 17, 1997 (see Attachment B).

D. Relationship to State Agency Plans

There are no state agencies owning real property adjacent to or on filled or flowed tidelands nor are there any known state plans that would affect the harbor planning area.

E. Enforceable Implementation Commitments

Important elements of the Town's regulatory framework, which existed prior to the development of its Plan, serve to implement the policies of the Plan, particularly, the Surface Water Zoning District and the Pier Permitting Guidelines. Except as has been specifically identified in Appendix D of the Plan as amplifications of discretionary requirements in the state waterways regulations, these existing laws and regulations constitute implementation measures which the Town will continue to have sole responsibility for enforcing, independent of the state waterways licensing process.

Some of the Plan remains to be implemented through further codification of its policies. Through the plan amendment process, the Town may propose additional amplifications of the State Waterways regulations based on implementation activity occurring subsequent to my approval.

IV. STATEMENT OF APPROVAL

Based on the planning information and public comment submitted to me pursuant to 301 CMR 23.04 and evaluated herein pursuant to the standards set forth in 301 CMR 23.05, I hereby approve the Edgartown Harbor Plan as the municipal harbor plan for the Town of Edgartown (subject to the exclusions noted below). This Decision shall take effect immediately upon issuance on October 2, 1997, and shall expire on October 2, 2002, unless a renewal request is filed by the Town of Edgartown prior to that date in accordance with 301 CMR 23.06(2)(a).

The Approved Edgartown Harbor Plan ("Approved Plan") shall be the plan as finally revised and submitted on September 15, 1997, except however that for

waterways licensing purposes the Approved Plan shall not be construed to include any of the following:

- (1) any subsequent addition, deletion, or other revision to the final revised version dated September 12, 1997, except as may be authorized in writing by the Secretary as a modification unrelated to the approval standards of 301 CMR 23.05 or as a plan amendment in accordance with 301 CMR 23.06(1);
- (2) any provision of the Edgartown laws and regulations contained in Appendix B, except for the provisions which have been specifically identified in Appendix D as amplifications of discretionary requirements in the waterways regulations;
- (3) any determination by DEP, express or implied, as to geographic areas or activities subject to licensing jurisdiction under M.G.L. c.91 and the waterways regulations; in particular, the approximate location of the historic high water mark for the Village Waterfront area has been provided by DEP for planning purposes only, in order to estimate the extent of filled tidelands in said area, and does not constitute a formal ruling of jurisdiction for any given parcel; and
- (4) any provision which, as applied in the context of a specific license application, is determined to be inconsistent with MCZM Policies or with state tidelands policy objectives and associated regulatory principles, as set forth in the waterways regulations, in a manner that was not reasonably foreseeable at the time of plan approval; such determination shall be made by MCZM, in consultation with DEP.

Bound copies of the Approved Plan, which shall include this Decision as a final attachment, shall be kept on file by the Edgartown Town Clerk and at the DEP/Waterways and MCZM offices in Boston and Lakeville.

By letter from the Program Chief of the Waterways Regulation Program, dated September 17, 1997, DEP has stated that the Approved Plan will become operational for waterways licensing purposes in the case of all applications for which the effective

waterways licensing purposes the Approved Plan shall not be construed to include any of the following:

- (1) any subsequent addition, deletion, or other revision to the final revised version dated September 12, 1997, except as may be authorized in writing by the Secretary as a modification unrelated to the approval standards of 301 CMR 23.05 or as a plan amendment in accordance with 301 CMR 23.06(1);
- (2) any provision of the Edgartown laws and regulations contained in Appendix B, except for the provisions which have been specifically identified in Appendix D as amplifications of discretionary requirements in the waterways regulations;
- (3) any determination by DEP, express or implied, as to geographic areas or activities subject to licensing jurisdiction under M.G.L. c.91 and the waterways regulations; in particular, the approximate location of the historic high water mark for the Village Waterfront area has been provided by DEP for planning purposes only, in order to estimate the extent of filled tidelands in said area, and does not constitute a formal ruling of jurisdiction for any given parcel; and
- (4) any provision which, as applied in the context of a specific license application, is determined to be inconsistent with MCZM Policies or with state tidelands policy objectives and associated regulatory principles, as set forth in the waterways regulations, in a manner that was not reasonably foreseeable at the time of plan approval; such determination shall be made by MCZM, in consultation with DEP.

Bound copies of the Approved Plan, which shall include this Decision as a final attachment, shall be kept on file by the Edgartown Town Clerk and at the DEP/Waterways and MCZM offices in Boston and Lakeville.

By letter from the Program Chief of the Waterways Regulation Program, dated September 17, 1997, DEP has stated that the Approved Plan will become operational for waterways licensing purposes in the case of all applications for which the effective

date of plan approval occurs prior to the close of the public comment period. With the exception of applications for existing structures and uses reviewed under the amnesty provisions of 310 CMR 9.28, a determination of conformance with the Approved Plan will be required for all proposed projects in accordance with the provisions of 310 CMR 9.34(2). In the case of amnesty projects, DEP has stated that it will adhere to the greatest reasonable extent to the applicable guidance specified in the Approved Plan.


Trudy Coxe
Secretary of Environmental Affairs

Oct. 2 1997
Date

