



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS
OFFICE OF COASTAL ZONE MANAGEMENT
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Public Notice

Notice to Proceed for Edgartown's Municipal Harbor Plan Renewal in accordance with 301 CMR 23.03

On January 18, 2022, the Town of Edgartown submitted a request for a Notice to Proceed for a state approved Municipal Harbor Plan renewal for the Edgartown waterfront. Notice of this request was published in the Environmental Monitor on February 23, 2022 and public comments were accepted for a thirty-day period ending on March 25, 2022. On April 25, 2022, CZM issued the following Notice to Proceed for the Edgartown Municipal Harbor Plan Renewal.

Notification Date: May 11, 2022





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April 25, 2022

James Hagerty, Town Administrator
70 Main Street
P.O. Box 1518
Edgartown, MA 02539

RE: Edgartown Harbor Plan Renewal

Dear Mr. Hagerty,

Pursuant to 301 CMR 23.03, the Municipal Harbor Plan (“MHP”) Regulations, the Town of Edgartown submitted a Request for Notice to Proceed (“RNTP”) for the renewal of the state-approved Edgartown Harbor Plan on January 18, 2022. Notice of this request was published in the Environmental Monitor on February 23, 2022 and public comments were accepted for a thirty-day period ending on March 25, 2022. No public comments were received. Based on a review of the Town’s request and on comments received, I am pleased to issue the following Notice to Proceed for the Edgartown Harbor Plan renewal.

Overview

The MHP Regulations (301 CMR 23.00) establish a voluntary procedure by which municipalities may obtain approval of MHPs from the Secretary, promoting long-term, comprehensive, municipally-based planning of harbors and other waterways that fully incorporates state policies governing stewardship of trust lands. Additionally, approved plans guide and assist the Massachusetts Department of Environmental Protection (MassDEP) Wetlands and Waterways Division in making regulatory decisions pursuant to MGL Chapter 91 and the Waterways Regulations (310 CMR 9.00) that are responsive to harbor specific conditions and other local and regional circumstances. As promulgated, the Waterways Regulations provide a uniform statewide framework for regulating tidelands projects and developments. Municipal Harbor Plans present communities with an opportunity to adopt a vision that modifies these uniform standards through the amplification of the discretionary requirements of the Waterways Regulations or through the adoption of provisions, which if approved, are intended to substitute for the minimum use limitations or numerical standards of 310 CMR 9.00. While the Town’s plan may embody the vision for the development of its waterfront, the scope of an MHP is generally limited to the modification of certain Chapter 91 standards to fulfill the local planning goals. Project specific issues such as traffic and broader environmental impacts will be described, analyzed, and assessed during any requisite reviews by the Massachusetts Environmental Policy Act Office (MEPA) or the local planning and zoning boards.



I. Municipal Harbor Planning Area

The harbor planning area (Figure 1) identified in the RNTP remains unchanged from the previous 2003 Edgartown Harbor Plan, and includes the Inner Harbor and Outer Harbor, adjacent Katama Bay and Cape Poge Bay, the Island of Chappaquiddick on the east side of the harbor and land area approximately to the nearest public way on the western shore. The harbor planning area includes the shellfish grounds of Cape Poge Bay and Katama Bay. It includes the “Village Waterfront,” a compact area of pedestrian-oriented activity, which abruptly gives way to quiet residential and open space lands which dominate the remainder of the shoreline. The planning area extends into the water of Edgartown Inner Harbor, a narrow constriction between Edgartown proper and the Island of Chappaquiddick.

For consideration as you develop your MHP, I call particular attention to the provisions of 301 CMR 23.04, Review Procedures, and 301 CMR 23.05, Standards for Approval. The MHP should contain a clear and detailed discussion of the relationship between the harbor planning area and land subject to Chapter 91 jurisdiction. Pursuant to 301 CMR 23.02, a harbor planning area should include all areas that are relevant to the functional use and management of the harbor or other waterway segment in question. Functional use refers to those activities that have the potential to promote or impair water-dependent activity or public use or enjoyment of waterways or shorelines. At a minimum, the landward boundary of any harbor planning area subject to these regulations shall encompass all filled tidelands subject to the jurisdiction of DEP pursuant to 310 CMR 9.04.

To facilitate review of the MHP and future implementation, at a minimum, the MHP should contain one or more maps that present a well-defined boundary of the proposed MHP and its approximate relationship to Chapter 91 jurisdictional tidelands. Pursuant to 301 CMR 23.03(4) for planning purposes, the MHP should depict the boundaries of such tidelands based on guidance for historic tidelands delineation provided by MassDEP’s Waterways Program.

II. Substitution Guidance

A state-approved MHP can allow greater flexibility in the application of certain Waterways requirements in that it may include provisions that substitute for certain Chapter 91 limitations or numerical standards as long as the substitute provisions are at least as effective at meeting the state tidelands policy objectives as those stated in the corresponding Chapter 91 provisions and certain specific conditions are met. When a project conforms to a state-approved MHP, MassDEP will apply the use limitations or numerical standards specified in the MHP as a substitute for the respective limitations or standards contained in 310 CMR 9.00 as part of the licensing process.

Substitutions as described above will be allowed only if the municipality demonstrates in the MHP that the substitution provisions will promote state tidelands objectives with comparable or greater effectiveness than the corresponding Chapter 91 provision. Substitute provisions may be less restrictive than the Chapter 91 requirements only if the plan includes other requirements that adequately offset adverse effects on public-related interests. In determining whether comparable or greater effectiveness is achieved by the substitute offsets in the MHP, the Secretary will consider the following general provisions:

- a. The planning analysis and data must be organized to clearly identify the substitute provisions proposed and the relative effects of the less restrictive provisions on the related tidelands policy objectives.
- b. Offsetting measures should be applied within reasonable proximity to the locus of adverse effects to ensure a balance in the distribution of public benefits and potential detriments.

III. MHP Planning Guidance

As described in the Request for a Notice to Proceed, the town seeks to create a plan that balances commercial and recreational harbor uses, natural resource protection and community character and historic preservation. The MHP renewal should clearly articulate the implementation goals and recommendations of the 2003 Plan that have been achieved, and how the community's goals and objectives for the harbor planning area have changed to address new and emerging issues since the submittal of the 2003 Plan. The renewal should identify any changes in policies or regulations that have been established to guide development and other activities impacting the planning area.

The planning process used to inform and develop the MHP should ensure that alternatives and priorities to meet the vision, goals, and objectives of the MHP are developed through the iterative and defensible public participation process. This iterative process should be documented within the MHP including opportunities for public engagement, how alternatives were considered, vetted, and preferred alternatives selected.

One of the goals of the planning process stated in the RNTP is to assess the vulnerability of critical harbor infrastructure and historic structures to coastal flooding due to storm surge and sea level rise. This assessment should utilize the most current climate data to determine vulnerabilities and analyze appropriate approaches to address them. CZM can provide technical assistance and data as needed for this task.

IV. MHP Renewal

Pursuant to 301 CMR 23.06(2)(a), the MHP should include a discussion recommending the period of time for which the MHP shall be in effect. Approved MHPs expire on the date specified in the Secretary's Approval Decision and must be renewed periodically to ensure continuing use by MassDEP in its licensing decisions.

V. Public Participation

The RNTP describes the role of the Marine Advisory Committee (MAC) in the harbor planning process, and states that prior to the start of the public planning process the MAC will expand its membership to include, but not be limited to, a resident of Chappaquiddick Island, a resident of Katama, the shellfish constable, and representatives of the aquaculture industry, the downtown business community, the downtown residential community, and the town climate change committee. The MHP should contain a detailed discussion of the harbor planning process, and

document the public participation to date, and the continued public planning process, and detail the public input solicited and included in the MHP recommendations and actions.

VI. Compatibility with State Agency Responsibility

The MHP must demonstrate that the municipality has worked with all relevant state agencies maximize compatibility of the harbor plan with the plans or planned activities of all state agencies owning real property or responsible for the development/implementation of plans or projects in the harbor planning area.

VII. Implementation Strategy

It is essential that the MHP include enforceable implementation commitments to ensure that all measures will be taken in a timely and coordinated manner to offset the effect of any MHP requirement that is less restrictive than that contained in the Waterways regulations (310 CMR 9.00).

EEA and CZM look forward to working collaboratively with the Town in this MHP planning process. Pursuant to 301 CMR 23.04 and 301 CMR 23.04, the submission deadline will be April 25, 2024. As you develop the Edgartown Harbor Plan renewal, we look forward to consultation with the Town to provide guidance to ensure that the process is meaningful, efficient, and productive.

In closing, I extend my sincere thanks to you and your staff for your continuing support for the pro-active management of our coastal resources. I encourage your staff to continue working closely with CZM and our Cape & Islands Regional Coordinator on the renewal of the Edgartown Harbor Plan.

Sincerely,



Lisa Berry Engler
Director

Cc: James Hagerty, Town Administrator, Edgartown
Adam Turner, Director, Martha's Vineyard Commission
Daniel Padien, MassDEP Waterways Program Chief

Figure 1.

Edgartown Harbor Planning Area

