

SELECT BOARD MEETING AGENDA*

Donn B. Griffin Room, Town Hall

732 Main Street, Harwich, MA

Executive Session 5:00 P.M.

Regular Meeting 6:00 P.M.

Monday, September 25, 2023

Remote Participation Optional:

Please join my meeting from your computer, tablet or smartphone.

<https://meet.goto.com/663325405>

You can also dial in using your phone.

Access Code: 663-325-405

United States: +1 (872) 240-3212

**As required by Open Meeting Law, you are hereby informed that the Town will be video and audio taping as well as live broadcasting this public meeting. In addition, anyone in the audience who plans to video or audio tape this meeting must notify the Chairman prior to the start of the meeting.*

I. CALL TO ORDER

II. JOINT MEETING IN EXECUTIVE SESSION WITH SELECT BOARD AND BOARD OF WATER/WASTEWATER COMMISSIONERS

- A. Pursuant to G.L. c. 30A, sec. 21(a)(2) to conduct strategy sessions in preparation for negotiations with non-union personnel and to conduct contract negotiations with non-union personnel; Water/Wastewater Superintendent and Assistant Wastewater Superintendent
- B. Pursuant to MGL c.30A section 21 (a)(3) to discuss with respect to collective bargaining for all town unions and the Chair has determined that open session would have a detrimental effect on the town’s bargaining position; Assistant Wastewater Superintendent

III. EXECUTIVE SESSION – SELECT BOARD ONLY – 5:30 P.M.

- A. Pursuant to G.L. c. 30A, sec. 21(a)(2) to conduct strategy sessions in preparation for negotiations with non-union personnel and to conduct contract negotiations with non-union personnel: Water/Wastewater Superintendent and Assistant Wastewater Superintendent
- B. Pursuant to MGL c.30A section 21 (a)(3) to discuss with respect to collective bargaining for all town unions and the Chair has determined that open session would have a detrimental effect on the town’s bargaining position; Assistant Wastewater Superintendent

IV. PLEDGE OF ALLEGIANCE

V. PUBLIC COMMENTS/ANNOUNCEMENTS

VI. JOINT MEETING WITH SELECT BOARD AND BOARD OF WATER/WASTEWATER COMMISSIONERS

- A. Discussion on Department of Environmental Protection (DEP) Notice of Intent
- B. Discussion on Order to Connect Forbearance
- C. Discussion on Legislation for exemptions
- D. Discussion on creating a Wastewater Department and staffing
- E. Discussion on Harwich Chatham Intermunicipal Agreement
- F. Discussion on regional approaches
- G. Discussion on establishing and identifying funding sources for future design and construction projects
- H. Discussion on planning a Community Forum

VII. ADJOURNMENT

**Per the Attorney General’s Office: The Select Board may hold an open session for topics not reasonably anticipated by the Chair 48 hours in advance of the meeting following “New Business.” If you are deaf or hard of hearing or a person with a disability who requires an accommodation contact the Selectmen’s Office at 508-430-7513.*

Authorized Posting Officer:

Danielle Freiner, Executive Assistant

Posted by: _____

Town Clerk

Date: _____

September 21, 2023

JOINT MEETING
WITH SELECT BOARD &
BOARD OF
WATER/WASTEWATER
COMMISSIONERS

7-21-23: Not an official copy.

314 CMR 21.00: Massachusetts Watershed Permit Regulations

Section

21.01: General Provisions

21.02: Definitions

21.03: Application for a Watershed Permit

21.04: Application Review Process

21.05: Elements of a Watershed Permit

21.06: Modification, Revocation, Termination, and Renewal of a Watershed Permit

21.07: Continuation of an Expiring Watershed Permit

21.08: Signatories to Permit Applications and Reports

21.09: Enforcement, Violations and Right of Entry

21.10: General Conditions

21.11: Appeals

21.12: *De Minimis* Nitrogen Load Exemption

21.01: General Provisions

- (1) Purpose. The purpose of these regulations is to establish a watershed permitting strategy and process to restore and protect water quality in nutrient impacted watersheds. The development and implementation of a Watershed Management Plan that will eliminate these water quality impacts are essential to this purpose.

A Watershed Permit establishes performance standards, authorized activities, and the timeframes that will be utilized under an adaptive management framework to achieve nutrient load reductions that are necessary to meet the specific water quality and habitat quality restoration goals that have been identified in a watershed analysis as being necessary to meet the designated uses of the waterbody established by the Department under 314 CMR 4.00: *Massachusetts Surface Water Quality Standards*, for the nutrients identified in the watershed analysis.

- (2) Authority. The Massachusetts Clean Waters Act, M.G.L. c. 21, §§ 26 through 53, charges the Department with the duty and responsibility to protect the public health and enhance the quality and value of the water resources of the Commonwealth. The Massachusetts Watershed Permit Regulations are promulgated pursuant to M.G.L. c. 21, § 27 and St. 2014, c. 259, § 2A. Consistent with this authority, any Watershed Permit that the Department issued prior to the effective date of these regulations shall remain valid and binding on the permittees.

21.02: Definitions

For the purposes of 314 CMR 21.00, the following terms shall have the following meanings, unless the context clearly requires otherwise:

208 Plan – An Areawide Waste Treatment Management Plan certified by the Governor or his or her designee and approved by EPA pursuant to § 208 of the federal Clean Water Act, 33 U.S.C. § 1288.

Alternative Control Approach or Technology – A technology or approach that is not a Conventional Control Approach or Technology but can be effectively used to remove pollutants from a waterbody or prevent or reduce the introduction of pollutants into a waterbody. Examples include but are not limited to permeable reactive barriers, enhanced natural attenuation, restored or constructed wetlands, fertilizer reduction, and pollutant credits or trading.

Alternative Restoration Plan – A near-term plan or description of actions with a schedule and milestones under the federal Clean Water Act § 303(d), 33 U.S.C. § 1313(d), that is expected to be more immediately beneficial or practicable in achieving water quality standards in the near term than pursuing development of Total Maximum Daily Load(s). An Alternative Restoration Plan was previously identified as an Alternative Total Maximum Daily Load.

Baseline Nitrogen Load – A Local Government Unit’s proportion of the Controllable Attenuated Nitrogen Load that existed during the evaluation period for, and as reported in, the applicable TMDL, Alternative Restoration Plan, MEP Report, or Scientific Evaluation. It is sometimes referred to as the “present-day” load that existed during the evaluation period.

Best Management Practices or BMPs – Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the Commonwealth. BMPs include, but are not limited to, treatment requirements; operating procedures; and structures, devices, or practices to control plant site runoff, spillage, leaks, sludge or waste disposal, or drainage from raw material storage.

Clean Water Act or CWA – The Federal Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*

Comprehensive Wastewater Management Plan or CWMP - A plan which develops and evaluates alternatives that can be implemented to meet a community’s wastewater infrastructure and management needs and which is consistent with the Department’s Guide to Comprehensive Wastewater Management Planning.

Comprehensive Water Resource Management Plan or CWRMP – A plan developed in accordance with the Department’s Guide to Water Resource Management Planning that identifies a community’s needs and problem areas in one sector of its water resource structure, evaluates alternative means of addressing those needs and problem areas, selects the most cost-effective and environmentally appropriate remedy, and proposes an implementation plan and schedule. CWRMPs include (i) plans that evaluate a community’s wastewater infrastructure and management needs (*e.g.*, CWMP), (ii) plans that focus on the community’s water supply infrastructure and management issues, and (iii) plans that focus on the community’s stormwater management needs.

Controllable Attenuated Nitrogen Load – The total nitrogen load from all controllable loads within the watershed that reaches the embayment or estuary.

Conventional Control Approach or Technology -- A combination of physical, chemical, and biological processes that provide primary, secondary, or tertiary treatment and have been proven to be consistently effective for treating wastewater or sewage to remove suspended solids, dissolved solids, biological decomposition of organic matter, pathogens, and nutrients from wastewater. Examples of Conventional Control Technology include but are not limited to sewage treatment plants and enhanced nutrient removal alternative septic systems that the Department accepts as conventional.

Core Sewer Area – The area identified in a CWMP, CWRMP, or TWMP requiring wastewater collection using Conventional Control Technology as the optimal control technology because of factors such as the extent of the local wastewater impact, proximity to impacted resources, and existing density and anticipated growth.

De Minimis Nitrogen Load Exemption – An exemption from the permitting requirements of 314 CMR 21.00 issued by the Department pursuant to 314 CMR 21.12.

Department – The Massachusetts Department of Environmental Protection.

District – Any county, regional or local district, commission, board or other political subdivision or instrumentality of the Commonwealth, howsoever named, which is authorized to provide itself or through an officer, board, department or division thereof local water pollution abatement, sewer or stormwater services, or public water supply services, whether established under general law or special act.

Environmental Justice (EJ) Population –

(a) A Neighborhood that meets one or more of the following criteria:

1. the annual median household income is not more than 65% of the statewide annual median household income;
2. minorities comprise 40% or more of the population;
3. 25% or more of households lack English language proficiency;
4. minorities comprise 25% or more of the population and the annual median household income of the municipality in which the neighborhood is located does not exceed 150% of the statewide annual median household income; or

(b) A geographic portion of a Neighborhood designated by the Secretary as an Environmental Justice Population pursuant to M.G.L. c. 30, § 62; provided, however, that a Neighborhood or a geographic portion of a Neighborhood that the Secretary has determined shall not be designated an Environmental Justice Population pursuant to M.G.L. c. 30, § 62 shall not be considered an Environmental Justice Population under 314 CMR 21.00.

EPA – The United States Environmental Protection Agency.

Local Government Unit – Any town, city, district, county, commission, agency, authority, board or other instrumentality of the commonwealth or of any of its political subdivisions, including any Regional Local Governmental Unit.

Massachusetts Estuary Project Report or MEP Report – A technical report produced by the Massachusetts Estuaries Project that has been accepted by the Department and was created to: determine current nitrogen loads to estuaries; evaluate reductions that would be necessary to support healthy ecosystems based on a linked model to evaluate nitrogen inputs to estuaries; and provide technical guidance to support appropriate wastewater, watershed, and embayment management techniques to reduce nitrogen loading.

Necessary Nitrogen Load Reductions – The proportion of the total Controllable Attenuated Nitrogen Load that must be reduced in order to restore the waterbody to applicable water quality and habitat quality restoration goals that have been identified in a TMDL, Alternative Restoration Plan, MEP Report, or Scientific Evaluation as being necessary to meet the designated uses of the waterbody established by the Department under 314 CMR 4.00: *Massachusetts Surface Water Quality Standards*.

Person – Any agency or political subdivision of the Commonwealth, the Federal government, any public or private corporation or authority, individual, partnership or association, or other entity, including any officer of a public or private agency or organization.

Pollutant – Any element or property of sewage, agricultural, industrial or commercial waste, runoff, leachate, heated effluent, or other matter, in whatever form and whether originating at a point or major non-point source, which is or may be discharged, drained or otherwise introduced into any sewerage system, treatment works or waters of the Commonwealth.

Quality Assurance Program Plan or QAPP – A planning document for a specific monitoring project or program that describes the quality-control elements to be implemented to help ensure that the data collected will be of known and documented quality to meet the project or program needs. Implementation of an approved QAPP is generally required for any monitoring data used by the Department.

Regional Local Government Unit – Any Local Government Unit which is responsible for the ownership or operation of a Regional System.

Regional System – An entity or legal arrangement that is designed to provide public water supply or wastewater services through facilities, sources, or distribution networks and has the authority to set rates and charges for the consumers of such services, including but not limited to: a Local Government Unit or District serving two or more municipalities, a private water system serving two or more municipalities, or a county in which all municipalities of the county have agreed to provide shared public water or wastewater services and set rates and charges for such services.

Scientific Evaluation – A watershed assessment that is accepted by the Department because it is scientifically rigorous and based upon information, data, modeling, and analyses that could be

used to: (1) delineate the watershed; (2) develop and implement an EPA-approved TMDL; and (3) develop and implement wastewater and nutrient management plans to satisfy the TMDL; and which produces, at a minimum, the following:

- (a) quantitative and qualitative assessments of the nutrient related health of the waterbodies being assessed;
- (b) identification of all controllable and uncontrollable nutrient sources and their respective contributions to the waterbodies for the present day and the next 20 years, including any projected buildout;
- (c) nutrient threshold concentrations that must be achieved to comply with 314 CMR 4.00: *Massachusetts Surface Water Quality Standards* to support the ecosystem and restore and maintain indicator habitats, such as eel grass and benthic species, associated with nutrient impacts;
- (d) analyses of watershed nutrient loading reductions that will be necessary to achieve at least the minimum nutrient threshold concentrations in the waterbody and restore and maintain the indicator habitats; and
- (e) site-specific, calibrated, watershed-waterbody model(s) that can be used to simulate the efficacy of strategies towards restoration and maintenance of the waterbodies.

(A TMDL is not required to complete the Scientific Evaluation.)

Surface Waters – All waters other than ground waters within the jurisdiction of the Commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands and coastal waters.

Surface Water Quality Standards – The Massachusetts Surface Water Quality Standards set forth in 314 CMR 4.00: *Massachusetts Surface Water Quality Standards*.

Targeted Watershed Management Plan or TWMP – A plan that is consistent with a 208 Plan, if a 208 Plan exists, as determined by the designated areawide planning agency under § 208 of the CWA, 33 U.S.C. § 1288, and that contains all elements of a CWMP or a CWRMP developed to address the waterbody impairments or impacts identified in a TMDL, Alternative Restoration Plan, MEP Report, or Scientific Evaluation, or to implement a TMDL or Alternative Restoration Plan, in a watershed or sub-watershed.

Total Maximum Daily Load or TMDL – The sum of a receiving water's individual waste load allocations and load allocations and natural background, which, together with a margin of safety that takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality, represents the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards in all seasons.

Updated Nitrogen Load – The sum of the Baseline Nitrogen Load and any changes in that load that occur between completion of the applicable TMDL, Alternative Restoration Plan, MEP Report, or Scientific Evaluation and the filing of an application for either a Watershed Permit or a *De Minimis* Nitrogen Load Exemption.

Watershed – The boundary of the area described by either surface hydrology, subsurface hydrology, or both, delineating a drainage divide to a specific body of water.

Watershed Management Plan or WMP – A plan that:

- (a) is consistent with a 208 Plan, if such plan exists, as determined by the designated areawide planning agency under § 208 of the Clean Water Act, 33 U.S.C. § 1288;
- (b) includes or is supplemented with the information and documentation specified in 314 CMR 21.03(2), unless the Department determines otherwise;
- (c) is based on one or more CWMPs, CWRMPs, or TWMPs, which may serve as the WMP if all requirements of this definition are met; and
- (d) provides a schedule and description of actions to achieve Necessary Nitrogen Load Reductions. Unless otherwise determined by the Department, the WMP may address pollutants other than nitrogen.

Watershed Permit – A permit issued by the Department pursuant to 314 CMR 21.00 for one or more watersheds with a term of no longer than 20 years, including the Pleasant Bay Watershed Permit (Permit No. 001-0) that was issued August 3, 2018, by the Department prior to the promulgation of 314 CMR 21.00.

21.03: Application for a Watershed Permit

- (1) Any Local Government Unit seeking a Watershed Permit may file an application with the Department. A Watershed Permit application or a Notice of Intent for a Watershed Permit must be filed pursuant to 310 CMR 15.215(2) to suspend any Title 5 New Construction requirements under 310 CMR 15.215(2)(b) or to prevent any applicable Title 5 system upgrade requirements under 310 CMR 15.215(2)(a) from going into effect. Multiple Local Government Units that share a watershed or sub-watershed may apply jointly for a Watershed Permit, provided they have entered into a mutually enforceable agreement among the parties that confirms each applicant's percentage share of the Necessary Nitrogen Load Reductions and provides a framework to coordinate resource management decision-making and arrangements relating to the receipt and expenditure of funds for implementation. Unless otherwise stated in the mutually enforceable agreement among the parties, each Local Government Unit is only responsible for the proportion of the Controllable Attenuated Nitrogen Load that originates from within its political boundaries. Authority to enforce the Watershed Permit is reserved to the Department.
- (2) Contents of an Application. An application for a Watershed Permit shall contain sufficient information for the Department to evaluate whether the application meets the applicable review criteria. Unless otherwise determined by the Department, the application shall include:
 - (a) a complete application using a form provided by the Department for such purposes;
 - (b) a Watershed Management Plan, signed and stamped by a Massachusetts Registered Professional Engineer, for the watershed or sub-watershed that is the subject of the application and includes:

1. maps depicting the watershed boundary, including each parcel of land within the area proposed for coverage, and a narrative describing the area proposed to be covered under a Watershed Permit;
2. a description of the current and historic water quality conditions, including short-term (daily/seasonal) and long-term (annual) variability;
3. any earlier planning approaches taken prior to filing the application, including any related findings and recommendations;
4. the types, locations, and timing of any ongoing and proposed TMDL, Alternative Restoration Plan, MEP Report, or Scientific Evaluation implementation activities within the watershed or sub-watershed proposed for coverage, including a table identifying:
 - a. the Updated Nitrogen Load that the area proposed for coverage under the Watershed Permit contributed to the Surface Waters of the watershed, specifying and accounting for implementation of all nitrogen reduction measures;
 - b. projected loads for the following 20 years (projections must include scenarios for proposed nitrogen-load reducing activities; a MEP Report or other Scientific Evaluation buildout scenario may suffice);
 - c. the percentage of Necessary Nitrogen Load Reductions to be attained during the term of the permit and a concise description of the means of achieving those specified reductions;
 - d. the Conventional Control Technologies and Alternative Control Approaches or Technologies selected for pollutant load reductions and identification of each permittee that will be responsible for implementing each activity;
 - e. the area each selected Conventional Control Technology and Alternative Control Approach or Technology would service;
 - f. the apportionment of Necessary Nitrogen Load Reductions for each of the selected Conventional Control Technologies and Alternative Control Approaches or Technologies;
 - g. the implementation schedule for each Alternative Control Approach or Technology proposed, including a timeframe for demonstration, testing, and acceptance or abandonment of such approaches or technologies;
5. maps depicting the watershed boundary, including each parcel of land within the area proposed for coverage, and a narrative describing the Core Sewer Area, if applicable, and the service areas prioritized for wastewater collection and treatment after accounting for implementation of the selected Alternative Control Approaches and Technologies;
6. documentation of what each permittee proposes to do to reduce its pollutant load in the watershed or sub-watershed and when those reductions would occur;
7. if Alternative Control Approaches and Technologies are proposed, a contingency plan for a back-up Conventional Control Technology in the

- event that the Alternative Control Approaches and Technologies selected do not function as predicted;
8. a description of each of the proposed pollutant reduction actions to reduce current and projected loads identified above;
 9. cost estimates for the infrastructure and programs associated with the proposed actions, if available;
 10. an implementation schedule, not to exceed 20 years, currently envisioned by the applicant(s), including a designated set of activities that will occur in each five-year period and a methodology for analyzing the results of those activities and making necessary adjustments for each subsequent five-year period of the permit to meet required load reductions;
 11. a watershed or sub-watershed scale monitoring plan that defines the goals of the monitoring plan, the selected water quality parameters, the method(s) of monitoring to be employed, the sampling frequency, locations, timing and duration, and a Quality Assurance Program Plan;
 12. the information sources relied upon to develop the proposed Watershed Management Plan;
 13. if the application seeks a Watershed Permit based on a Watershed Management Plan that will not attain Necessary Nitrogen Load Reductions during the permit term, documentation showing the financial costs and environmental impact of: (i) complete compliance with those goals and (ii) a proposed alternative that makes reasonable progress toward achievement of the goals in accordance with 314 CMR 21.04(1)(a); and
- (c) if there is more than one applicant, an inter-municipal agreement or other legally binding and appropriate agreement among the applicants that confirms each permittee's percentage share of the aggregate pollutant reduction responsibility and provides a framework to administer implementation of the Watershed Management Plan, including arrangements for the receipt and expenditure of funds.

21.04: Application Review Process

- (1) Permit Review Standard. The Department shall not issue a Watershed Permit if the proposed Watershed Management Plan does not provide for either achievement of the Necessary Nitrogen Load Reductions during the permit term or reasonable progress in achievement of those Necessary Nitrogen Load Reductions within the permit term. The Department will make a finding of reasonable progress if it determines that:
- (a) the Applicant's proposed alternative provided under 314 CMR 21.03(2)(b)13. is reasonable considering the financial costs and environmental impacts of the complete and proposed alternative compliance scenarios provided under 314 CMR 21.03(2)(b)13;

- (b) the Applicant cannot reasonably achieve the Necessary Nitrogen Load Reductions within the permit term; and
- (c) either:
 1. at least 75% of the Necessary Nitrogen Load Reduction will be achieved within 20 years, or
 2. an alternative schedule is appropriate based on watershed-specific issues (e.g., number or complexity of watersheds, proportion of community's land area in watershed, total nitrogen load to be reduced, logistical and financial planning for wastewater infrastructure, complexity of achieving nitrogen reduction targets). The alternative schedule must, at a minimum, include planning and a schedule to achieve all Necessary Nitrogen Load Reductions.

(2) Tentative Determination and Preparation of Draft Permits

- (a) After receiving a complete application, the Department will issue for public comment a draft permit or a tentative determination to deny a permit.
- (b) If the Department issues a draft permit, the draft permit shall contain such terms and conditions as the Department deems necessary to ensure that the permitted discharges, activities and facilities will comply with all applicable requirements of 314 CMR 21.00.
- (c) The Department may determine to withdraw a draft permit before issuing a final permit. The Department may provide a written statement to the applicant and any other person who requests it stating why the Department has withdrawn the draft permit and whether the Department intends to issue a revised draft permit for public comment in the future.
- (d) Public Notice. The applicant shall provide public notice of the draft Watershed Permit or tentative determination to deny a permit at the applicant's expense in accordance with the requirements of 314 CMR 21.04(2)(d)1. through 6. Public notice shall afford a period of at least 60 days after the date of publication during which the public may comment or request a public hearing. The Department may elect to extend the public comment period. If the Department provides such an extension, the applicant shall provide notice thereof in the same manner as the original notice.
 1. The applicant shall publish public notice of the Watershed Permit proceeding in the *Environmental Monitor* and in a local or regional newspaper with the largest readership distribution both online and in hardcopy, if hardcopy exists, within the area that will be affected by the Watershed Permit. The applicant will also request that notice be published in the local town or city hall and on the website of the community or communities that may be affected. The Department will post the notice on the Department's webpage. The applicant shall send a copy of the public notice to the Department at least two business days before the date of publication.

2. In municipalities with Environmental Justice Populations where the preceding manner for publishing public notice does not specifically serve the Environmental Justice Population(s), the applicant shall provide public notice to at least one additional news organization that primarily serves the Environmental Justice Population(s) within the area that may be affected by the Watershed Permit. The public notice shall be translated into other languages that are prevalent in areas with persons of limited English proficiency.
 3. Within seven days after the date of publication, the applicant shall submit to the Department a copy of the public notice as published in the *Environmental Monitor* and the name and address of the newspaper(s) in which it was published and the date the notice appeared in the newspaper(s).
 4. The Department will post the notice on the Department's webpage and shall send a copy of a public notice to any person who has submitted a written request for notice of the proceeding.
 5. The date of publication in the *Environmental Monitor* shall constitute the date of publication of public notice for purposes of 314 CMR 21.00.
 6. The public notice shall contain the following minimum information and any additional information the Department deems appropriate:
 - a. the name and address of the applicant;
 - b. identification of the watershed or sub-watershed to be addressed by the Watershed Permit;
 - c. the statutory and regulatory authority under which the final determination will be made;
 - d. the name, telephone number, and e-mail address of the person from whom a copy of the draft Watershed Permit or tentative determination may be obtained; and
 - e. the time within which the public may comment or request a public hearing.
- (3) Public Hearings. If the applicant requests a public hearing, or if the Department determines a public hearing to be in the public interest, then the Department shall schedule and conduct such hearing either remotely or in a community within the area that may be affected by the Watershed Permit. The applicant shall provide public notice of the public hearing in accordance with 314 CMR 21.04(2)(d)1. through 6. at least 30 days prior to the hearing. Where a public hearing is held, the public comment period shall be extended to the conclusion of the public hearing or such later date as may be established by the Department.

- (4) Issuance or Denial of Permit. After the conclusion of the public comment period, the Department may issue or deny a final Watershed Permit. The Department's determination shall be effective upon the date of issuance or denial of the permit, unless an appeal is filed during the 21-day period following issuance or denial, pursuant to 314 CMR 21.11 and 310 CMR 1.01: *Adjudicatory Proceeding Rules for the Department of Environmental Protection*. If the filing of the Watershed Permit application or a Notice of Intent for such application operated to suspend the application of any applicable Title 5 upgrade or New Construction requirements under 310 CMR 15.215(2), then within 28 days of a permit denial becoming effective, the Department will publish notice of the denial and that the mandatory Title 5 upgrade and New Construction requirements are invoked in accordance with the timeframes established in 310 CMR 15.215(2)(d) as if a Watershed Permit had been terminated or revoked, effective on the date the Department publishes the notice of denial. The Department shall publish the notice: in the forthcoming Environmental Monitor; on the Department's website; in the town hall where similar notices are published; and in a local or regional newspaper with the largest readership distribution within the area that may be affected by the Title 5 upgrade and New Construction requirements. In municipalities with Environmental Justice Populations where the preceding method for publishing public notice does not specifically serve the Environmental Justice Population(s), the Department must also provide the preceding notice to at least one additional news organization that primarily serves the Environmental Justice Population(s) within the area that may be affected by the designation. The public notice shall be translated into other languages that are prevalent in areas with persons of limited English proficiency.

21.05: Required Elements of a Watershed Permit

- (1) Approved Watershed Management Plan and Implementation Schedule.
A Watershed Permit shall establish a schedule for the permittee's implementation of the pollutant reduction actions identified in the Watershed Management Plan approved by the Department. The proposed activities, schedule, and facilities set forth in the applicant's Watershed Management Plan, with Department-approved modifications, shall be enforceable requirements of, and incorporated within, the Watershed Permit. The Department may modify the Watershed Management Plan or the approved implementation schedule in accordance with the terms and conditions of 314 CMR 21.00 and the Watershed Permit.
- (2) Monitoring and Reporting. The permittee shall monitor water quality in accordance with the monitoring requirements contained in the Watershed Permit and shall report the results annually to the Department, or as otherwise required by the Department.
- (3) Adaptive Management Framework.
- (a) The Watershed Permit shall establish an adaptive management framework in which the permittee will make future decisions, subject to the approval of the Department, as part of an ongoing science-based process that is consistent with:

1. any applicable TMDL, Alternative Restoration Plan, MEP Report, or Scientific Evaluation; and
 2. the Permittee's progress in attaining Necessary Nitrogen Load Reductions during the permit term.
- (b) The permittee shall implement the framework, as set forth in the approved Watershed Management Plan, to evaluate the results of the permittee's water quality management program and adjust and modify the strategies and practices, as needed, to address conditions that are causing the water quality impairments.
 - (c) The permittee shall provide a contingency plan in its approved Watershed Management Plan that relies on Conventional Control Technologies to achieve Necessary Nitrogen Load Reductions. The contingency plan shall be updated whenever the approved Watershed Management Plan or implementation schedule is modified.
 - (d) Subject to Department approval, a permittee may assume pollutant reduction credit for Alternative Control Approaches and Technologies only if the permittee or other responsible party implements and maintains such approaches and/or technologies and the related reductions in accordance with the terms and conditions of the Watershed Permit.
- (4) Identification of Other Permits Incorporated by Reference. The Department shall identify any other permits previously issued by the Department that comprise a component of the implementation activities described in the approved Watershed Management Plan. Any such permits shall be incorporated into the Watershed Permit by reference.
- (5) Conditions.
- (a) The Watershed Permit shall include the General Conditions described at 314 CMR 21.10.
 - (b) The Watershed Permit may contain other conditions deemed necessary or appropriate by the Department to attain and maintain Necessary Nitrogen Load Reductions.

21.06: Modification, Revocation, Termination, and Renewal of a Watershed Permit

- (1) The Department may propose and determine to modify or revoke any Watershed Permit, in whole or in part, for cause including, but not limited to, violation of the permit, obtaining the permit by misrepresentation, or failure to disclose fully all relevant facts or any change in or discovery of conditions relevant to the permit. Revocation of a permittee's coverage shall operate as a termination of the Watershed Permit with respect to that permittee and the terms of 310 CMR 15.215(2)(d) requiring Title 5 system upgrades and Best Available Nitrogen Reducing Technology for New Construction shall become effective in the watershed area for each permittee to whom the termination is

applicable. Termination of a permit because (a) its term expires without attainment of the Necessary Nitrogen Load Reductions and (b) it has not been continued pursuant to 314 CMR 21.07 or renewed pursuant to 314 CMR 21.06(5), will cause the requirements of 310 CMR 15.215(2)(d) for system upgrades and New Construction to become effective in the watershed area to which the termination applies.

- (2) If the Watershed Permit operated to suspend the effectiveness of any applicable Title 5 upgrade or New Construction requirements under 310 CMR 15.215(2), then within 28 days of the Department issuing a notice of termination for cause and any other termination that operates to invoke the mandatory Title 5 upgrade and New Construction requirements in 310 CMR 15.215(2)(d), the Department will publish notice of the termination and that the mandatory Title 5 upgrade and New Construction requirements in 310 CMR 15.215(2)(d) are invoked, effective on the date the Department issues the notice of termination to the Local Government Unit. The Department shall publish notice of the termination and invocation of the Title 5 upgrade and New Construction requirements: in the forthcoming Environmental Monitor; on the Department's website; in the town hall where similar notices are published; and in a local or regional newspaper with the largest readership distribution within the area that may be affected by the requirements. In municipalities with Environmental Justice Populations where the preceding method for publishing public notice does not specifically serve the Environmental Justice Population(s), the Department must also provide the preceding notice to at least one additional news organization that primarily serves the Environmental Justice Population(s) within the area that may be affected by the designation. The public notice shall be translated into other languages that are prevalent in areas with persons of limited English proficiency.
- (3) The Department may modify the permit at the request of the permittee upon a showing, satisfactory to the Department, that the requested modification is appropriate in view of circumstances for which the permittee is not at fault.
- (4) The Department shall process a significant modification or revocation of the Watershed Permit in the same manner as an application for a Watershed Permit under 314 CMR 21.04, but the public comment period for significant modifications will be limited to 30 days. Unless otherwise determined by the Department, significant permit modifications are those that would materially change: (a) the permit's required pollutant load reductions and require an extension in the permit schedule or a permit renewal to achieve the revised reductions; (b) the method or technology to achieve Necessary Nitrogen Load Reductions if such method or technology was not part of the approved Watershed Management Plan; or (c) the timeframe to achieve said reductions. Unless otherwise determined by the Department, other modifications are minor modifications and not subject to the requirements of 314 CMR 21.04. The Department may revise a Watershed Permit to accommodate minor modifications. Only the significant permit modifications shall be subject to a request for an adjudicatory hearing pursuant to 314 CMR 21.11. Significant

permit modifications shall not be implemented until the Department issues the revised Watershed Permit that includes those modifications.

- (5) Renewal of a Watershed Permit shall be processed in accordance with the provisions of 314 CMR 21.03 through 21.05, except as provided in 314 CMR 21.06(5)(c).
- (a) The Department may renew a Watershed Permit.
 - (b) To seek renewal, the permittee must file an application for renewal at least six months before the expiration date of the existing Watershed Permit.
 - (c) The Department shall not renew a Watershed Permit if the proposed Watershed Management Plan provided with the renewal application does not provide for attainment of Necessary Nitrogen Load Reductions.
 - (d) If the Department withdraws a draft permit renewal, in accordance with 314 CMR 21.04(2)(c), the existing permit will remain in effect in accordance with 314 CMR 21.07.
- (6) The Department may modify, revoke, reissue, or terminate a Watershed Permit it issued prior to the effective date of these regulations, consistent with the terms of these regulations, the previously issued permit, and the Massachusetts Clean Waters Act, M.G.L. c. 21, §§ 26 through 53.

21.07: Continuation of an Expiring Watershed Permit

- (1) In accordance with M.G.L. c. 30A, § 13, a Watershed Permit shall not expire until the Department has issued a decision denying or approving the permittee's renewal application if:
- (a) the permittee submitted a complete renewal application at least six months prior to the date of expiration of the Watershed Permit; and
 - (b) the Department, through no fault of the permittee, does not issue or deny a renewed permit on or before the expiration date of the previous permit.
- (2) Effect. Watershed Permits continued under this section remain fully effective and enforceable until the Department issues a decision denying or approving the permittee's renewal application.

21.08: Signatories to Permit Applications and Reports

- (1) Applications. All permit applications shall be signed by either a principal executive officer or ranking elected official with authority to legally bind the applicant.
- (2) Reports. All reports required by a Watershed Permit and other information requested by the Department shall be signed by a person described in 314 CMR 21.08(1), or by a duly authorized representative of that person. A person is a duly authorized representative only if:
- a. The authorization is made in writing by a person described in 314 CMR 21.08(1);

- b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, or position of equivalent responsibility; and
 - c. The written authorization is submitted to the Department.
- (3) Certification. Any person signing a document under 314 CMR 21.08 shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

21.09: Enforcement, Violations, and Right of Entry

- (1) The Department may take enforcement action pursuant to applicable law to enforce the provisions of 314 CMR 21.00 and any Watershed Permit issued thereunder. Such action may include, without limitation, the following:
- (a) Requiring a permittee to provide information, within a timeframe specified by the Department, to enable the Department to determine whether such permittee is subject to, in violation of, or has violated 314 CMR 21.00 or any Watershed Permit issued thereunder;
 - (b) Revoking the Watershed Permit in accordance with 314 CMR 21.06;
 - (c) Assessing civil administrative penalties pursuant to M.G.L. c. 21A, § 16, and M.G.L. c. 21, § 42; and
 - (d) Taking any other actions authorized by these regulations or any other authority by which the Department may act.
- (2) Without limitation, it shall be a violation of 314 CMR 21.00 to:
- (a) Make any false, inaccurate, incomplete, or misleading statement in any submission required by 314 CMR 21.00 or a Watershed Permit;
 - (b) Make any false, inaccurate, incomplete, or misleading statement in any record, report, plan, file, log, register, or other document which the permittee is required to keep under 314 CMR 21.00 or a Watershed Permit;
 - (c) Fail to meet deadlines established by, or otherwise fail to comply with an implementation schedule established by 314 CMR 21.00 or a Watershed Permit;
 - (d) Fail to conduct water quality monitoring in accordance with a permittee's monitoring plan;
 - (e) Fail to report monitoring results as required by 314 CMR 21.05(2) and 314 CMR 21.10(8);
 - (f) Fail to file a five-year report pursuant to 314 CMR 21.10(10); or

(g) Fail to comply with any other term, requirement, or provision of 314 CMR 21.00, an approved Watershed Management Plan or other Department approval, or a Watershed Permit.

(3) Without limitation, the owner, operator, or other person in charge of the permittee's property, facility, operation, or activity, upon presentation of proper identification, shall give the Department and its authorized representatives free and unrestricted access to conduct inspections to verify compliance or investigate suspected violations relative to 314 CMR 21.00, a Watershed Permit, or other Department approvals issued pursuant to 314 CMR 21.00, by:

(a) entering the permittee's premises at all reasonable times to examine and copy any records pertaining to the implementation of pollutant reduction actions authorized by an approved Watershed Management Plan or Watershed Permit and any records that must be kept under the conditions of the Watershed Permit;

(b) entering and examining the permittee's properties, facilities, equipment, operations or activities regulated or required under the approved Watershed Management Plan or Watershed Permit; or

(c) sampling or monitoring at reasonable times for the purpose of determining compliance with the terms and conditions of the approved Watershed Management Plan and Watershed Permit.

21.10: General Conditions

The following general conditions apply to all Watershed Permits and shall be included therein:

- (1) Duty to Comply. Except as provided in 314 CMR 21.10(2), each permittee shall comply with all terms and conditions of this permit, 314 CMR 21.00, M.G.L. c. 21, §§ 26 through 53, and all other applicable state and federal statutes and regulations. Noncompliance with any of the foregoing is grounds for enforcement action, permit termination, permit revocation, permit modification, or denial of a permit renewal application.
- (2) Treatment of Co-permittees. Notwithstanding 314 CMR 21.10(1), each co-permittee is severally liable for those activities they agree to carry out under the approved Watershed Management Plan.
- (3) Notification of Delays. Each permittee shall promptly notify the Department, in writing, upon learning of any delay in compliance with the implementation schedule established by this permit. Such notice shall state the anticipated length and cause of the delay, the measure or measures to be taken to minimize the delay, and a timetable for implementing the measure or measures. The permittee shall take appropriate measures to avoid or minimize any such delay. Notification will not shield the permittee from liability associated with noncompliance with the permit's implementation schedule.

- (4) Proper Operation and Maintenance. Each permittee, at all times, shall properly operate and maintain all Conventional and Alternative Control Approaches and Technologies and related appurtenances which are installed or used by the permittee pursuant to, or to achieve compliance with, the terms and conditions of this permit.
- (5) Duty to Mitigate. Each permittee shall take all reasonable steps to minimize or prevent any significant adverse impact on human health or the environment that may result from non-compliance with this permit.
- (6) Relationship to Other Permits. This permit shall not be construed to relieve the permittee, individually or collectively, of the obligation to comply with the terms and conditions of any other permit, order or approval, including any Section 401 Water Quality Certificate, issued by the Department.
- (7) Duty to Monitor. Each permittee shall carry out the approved monitoring activities established by this permit. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity. Monitoring information required by this permit shall be retained for five years following the life of the permit, or as otherwise approved by the Department. Records of monitoring information include:
- (a) the date, exact location, and time of sampling or measurements;
 - (b) the individual(s) who performed the sampling or measurements;
 - (c) the date(s) analyses were performed;
 - (d) the individual(s) who performed the analyses;
 - (e) the analytical techniques or methods used; and
 - (f) the results of such analyses.
- Monitoring must be conducted according to test procedures approved by the Department or the EPA for such purposes, unless other test procedures are specified in the permit.
- (8) Duty to Report Monitoring Results. Each permittee shall report to the Department the results of monitoring required by this permit pursuant to 314 CMR 21.05(2). Each permittee shall report to the Department the results of monitoring performed for purposes of this permit at the intervals specified in this permit or in the permittee's approved monitoring plan. All reports prepared in accordance with the terms and conditions of this permit shall be available for public inspection.
- (9) Toxics Control. In conducting activities under this permit, each permittee shall not discharge any pollutant or combination of pollutants in toxic amounts. Any toxic components of such activities shall not result in any demonstrable harm to aquatic life or violate any state or federal law, regulation, or water quality standard.
- (10) Five-year Reporting. Each permittee shall submit reports to the Department every five years. The initial five-year report is due five years from the effective date of this permit and every five years thereafter until the end of the permit term. The reports shall contain

information regarding activities of the previous five years. The following information shall be contained in each five-year report:

- (a) a description, including dates, of the installation of any treatment and control systems and facilities, or approaches taken, during the reporting period;
 - (b) a summary of results of any monitoring information that has been collected and analyzed during the reporting period;
 - (c) a performance evaluation of the treatment and control systems and facilities, and approaches taken, during the reporting period, including identification of any non-compliance, performance shortcomings, or challenges along with recommended corrective actions and optimization activities, as necessary;
 - (d) a discussion of the activities planned, and the associated critical path for the next five-year reporting cycle, consistent with the implementation schedule;
 - (e) a self-assessment review of compliance with the terms and conditions of this permit during the reporting period; and
 - (f) a progress report which describes the progress made in achieving the Necessary Nitrogen Load Reductions and water quality and habitat quality restoration goals required to achieve the designated uses for the waterbody, including an evaluation of the results of the permittee's water quality management program to date, any proposed adjustments and modifications to the strategies and practices under the approved Watershed Management Plan, pertinent sampling and monitoring results, including sentinel station monitoring results (if applicable), as well as other data pertinent to the technologies installed and approaches taken under the approved Watershed Management Plan as of the date of the report, any proposed nitrogen reduction credits for Alternative Control Approaches and Technologies, any changes requested to the approved implementation schedule, and any other information requested by the Department.
- (11) Modification of the Approved Watershed Management Plan or Implementation Schedule. A request for any modifications to the approved Watershed Management Plan or the implementation schedule established by this permit must be in writing. A modification of the plan or schedule shall become an effective and enforceable requirement under this permit upon the Department's approval of that modification in accordance with 314 CMR 21.06.
- (12) Notification of Contract Changes. In the event the permittees agree to amend an Intermunicipal Agreement or other mutually binding agreement governing their obligations under the Watershed Permit or one or more of the permittee(s) unilaterally rescinds, terminates or otherwise withdraws from the agreement, then the permittees shall promptly notify the Department in writing of such action. A permittee's withdrawal, termination, or rescission with respect to the agreement shall operate as a termination of the Watershed Permit with respect to that permittee and the terms of 310 CMR 15.215(2)(d) requiring individual system upgrades and Best Available Nitrogen Reducing Technology for New Construction shall go into effect in the corresponding watershed

area for each permittee to whom the termination is applicable pursuant to 314 CMR 21.10(14).

- (13) Duty to Provide Information. Each permittee shall furnish to the Department any information which is requested to determine compliance with this permit or whether cause exists for modifying, revoking, reissuing, or terminating the permit. Each permittee shall also furnish the Department, upon request, copies of records required to be kept by this permit.
- (14) Termination of Permit Coverage. Any one or more of the permittees may terminate coverage under this permit by providing written notice to the Department at least 60 days in advance of the date such termination is to take effect. Such notice shall include public notice of a public hearing to be held at least 30 days prior to the termination date. At least 30 days before the hearing, the permittee terminating coverage shall publish notice of the public hearing in the Environmental Monitor and in a local or regional newspaper with the largest readership distribution both online and in hardcopy, if hardcopy exists, within the area that may be affected by the termination and in accordance with the provisions in 314 CMR 21.04(2)(d) for Environmental Justice Populations. The permittee terminating coverage will also request that notice be published in the local town or city hall and on the website of the community or communities that may be affected. The Department will post the notice on the Department's webpage. Such notice will not be construed to relieve any permittee, individually or collectively, of the obligations to comply with the terms and conditions of this permit while such coverage remains in effect. A permittee's termination of coverage under this permit shall operate as a termination of the Watershed Permit with respect to that permittee and the terms of 310 CMR 15.215(2)(d) requiring individual system upgrades and Best Available Nitrogen Reducing Technology for new construction shall go into effect in the corresponding watershed area for each permittee to whom the termination is applicable.
- (15) Facility Closure Requirements. Each permittee shall notify the Department in writing at least 30 days prior to the closure of any treatment or control system or facility covered by this permit. The Department may require specific measures during deactivation of such systems to prevent any significant adverse health or environmental impacts.
- (16) Planned Changes. Each permittee shall notify the Department in writing as soon as possible of any planned alterations or additions to any treatment or control system or facility covered by this permit, provided that such alterations or additions are not subject to any other permit issued by the Department pursuant to 314 CMR 3.00: *Surface Water Discharge Permit Program* or 314 CMR 5.00: *Ground Water Discharge Permit Program*, or any Section 401 Water Quality Certificate issued by the Department. The Department may require specific measures to prevent any significant adverse health or environmental impacts that may result from such changes.
- (17) Anticipated Non-compliance. The permittee shall give advance notice to the Department of any planned changes in the treatment, facilities, operations or activities authorized by the permit which may result in non-compliance with permit requirements

within 30 days of acquiring knowledge or information that may result in non-compliance with the permit requirements.

- (18) Permit Actions. This permit may be modified or revoked by the Department in accordance with 314 CMR 21.06. The filing of a request by the permittee for a permit modification or a notification of planned changes or anticipated noncompliance does not stay any permit term or condition.
- (19) Inspection and Entry. Each permittee shall allow the Department and its authorized representatives to enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records required by this permit are kept, to: access and copy, at reasonable times, any records pertaining to the implementation of pollutant reduction actions authorized by the approved Watershed Management Plan or the permit and any records that must be kept under the conditions of the permit; inspect at reasonable times any properties, facilities, equipment, activities, or operations regulated or required under this permit; and sample or monitor at reasonable times for the purpose of determining compliance with the terms and conditions of the approved Watershed Management Plan and this permit. In addition, each permittee shall make reasonable efforts upon request of the Department to secure from the owners and operators of premises owned or operated by third parties access at all reasonable times to conduct such activities.
- (20) Property Rights. The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, or authorize any injury to private property, or any invasion of personal rights.
- (21) Compliance with Laws. The issuance of this permit does not relieve the permittee of the permittee's obligations to comply with applicable federal, state, and local laws, regulations, ordinances and bylaws.
- (22) Severability. The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.
- (23) Duty of Public Availability. The permittee shall make all documents identified in 314 CMR 21.00 (including but not limited to: the application, draft permit, final permit, requests for modification, and annual reports) available to the public on the permittee's public website. The permittee shall put all documents on the website within five days of providing them to or receiving them from the Department, and all posted documents shall remain on the website throughout the permit term.
- (24) Permit Renewal. Any Watershed Permit issued under 314 CMR 21.00 may be renewed pursuant to 314 CMR 21.06. To seek renewal, the permittee must file an application for renewal at least six months before the expiration date of the existing permit in accordance with the provisions of 314 CMR 21.06(5).

(25) Other Permits and Authorizations Unaffected. To the extent that any permittee is subject to a permit or legal authorization more stringent than the terms and conditions of the Watershed Permit, the permittee shall comply with the more stringent requirements. Further, the Department may issue permits and conduct other regulatory and enforcement activities as necessary within the watershed boundaries subject to the Watershed Permit without limitation.

21.11: Appeals

During the 21-day period following issuance of the Watershed Permit, the determination to deny the permit, or the issuance of significant permit modifications under 314 CMR 21.06(4) the applicant or any person aggrieved by the issuance or the determination, if that aggrieved person also filed comments during the public comment period or provided testimony at a public hearing, may file a request for an adjudicatory hearing. The appeal of a significant permit modification(s) shall be limited to the significant modification(s). The requirement to file written comments or provide testimony at a public hearing may only be excused if the final Watershed Permit reflects significant changes from the Department's tentative determination that could not be reasonably anticipated. If the Department revokes or terminates a Watershed Permit, the permittee may request an adjudicatory hearing within 21 days following issuance of the revocation or termination. The standing of a person to request an adjudicatory hearing and the procedures for filing such request are governed by M.G.L. c. 30A and 310 CMR 1.01: *Adjudicatory Proceeding Rules for the Department of Environmental Protection.*

21.12: De Minimis Nitrogen Load Exemption

- (1) Any Local Government Unit may apply for a *De Minimis* Nitrogen Load Exemption. Within 28 days of filing the application, the applicant shall publish notice of the suspension of any applicable Title 5 upgrade and New Construction requirements under 310 CMR 15.215(2) in the forthcoming Environmental Monitor; on the applicant's official website; in the town hall where similar notices are published; and in a local or regional newspaper with the largest readership distribution within the area that may be affected by the exemption. In municipalities with Environmental Justice Populations where the preceding method for publishing public notice does not specifically serve the Environmental Justice Population(s), the applicant must also provide the preceding notice to at least one additional news organization that primarily serves the Environmental Justice Population(s) within the area that may be affected by the designation. The public notice shall be translated into other languages that are prevalent in areas with persons of limited English proficiency.
- (2) Contents of an Application. The application shall contain sufficient information for the Department to evaluate whether it meets the applicable review criteria. At a minimum, the application shall include:
 - (a) A complete application form provided by the Department for such purpose;

- (b) Any planning documents, such as a CWMP, TWMP, or equivalent wastewater planning document applicable to the area for which the exemption is sought, if available;
 - (c) Sufficient evidence (e.g., MEP, TMDL, or other Scientific Evaluation) to show that the Baseline Nitrogen Load attributed to the applicable watershed or sub-watershed area, as applicable, is less than or equal to 3% of the Controllable Attenuated Nitrogen Load for the entire watershed or sub-watershed, as applicable; and
 - (d) Sufficient evidence (e.g., records of water usage, building permits, zoning information, census data and, if necessary, modelling) demonstrating that the applicant's Updated Nitrogen Load does not exceed 3% of the Controllable Attenuated Nitrogen Load for the watershed or sub-watershed, as applicable.
- (3) Approval of a *De Minimis* Nitrogen Load Exemption. The Department shall approve a *De Minimis* Nitrogen Load Exemption application and issue an exemption approval letter to the applicant if it satisfies the requirements of 314 CMR 21.12(1) and (2).
- (4) Conditions for *De Minimis* Nitrogen Load Exemption. The exemption shall continue unless it is terminated by the Department or the Local Government Unit and shall be conditioned on the following requirements:
- (a) Upon request by the Department, the exempt Local Government Unit shall provide:
 - 1. the Department with all requested information that is pertinent to nitrogen loading in the exempt area and within the Local Government Unit's possession, custody, or control and
 - 2. access to inspect the exempt area to verify compliance.
 - (b) The Local Government Unit shall not increase its Updated Nitrogen Load.
 - (c) If the Local Government Unit gains knowledge of any increase in the Updated Nitrogen Load, it shall promptly report that to the Department. The report shall include an assessment (deemed sufficient by the Department) of the extent to which the Updated Nitrogen Load has increased or may increase in the future.
 - 1. If the assessment demonstrates the Updated Nitrogen Load has increased after considering any proposed attenuated load reduction strategies, the exemption shall terminate.
 - 2. Such termination shall operate to cause any applicable mandatory Title 5 upgrade and New Construction requirements in 310 CMR 15.215(2)(d) to become effective.

- (d) If the *De Minimis* Nitrogen Load Exemption operated to suspend the effectiveness of the Title 5 upgrade and New Construction requirements under 310 CMR 15.215(2), then within 28 days of the Department issuing a notice of termination to the exempt Local Government Unit or the Department receiving notice that the exempt Local Government Unit has terminated the exemption, the Department will publish notice of the termination and that the mandatory Title 5 upgrade and New Construction requirements in 310 CMR 15.215(2)(d) are invoked, effective on the date the Department issues the notice of termination to the Local Government Unit. The Department shall publish notice of the termination and invocation of the Title 5 upgrade and New Construction requirements: in the forthcoming Environmental Monitor; on the Department's website; in the town hall where similar notices are published; and in a local or regional newspaper with the largest readership distribution within the area that may be affected by the Title 5 upgrade requirement. In municipalities with Environmental Justice Populations where the preceding method for publishing public notice does not specifically serve the Environmental Justice Population(s), the Department must also provide the preceding notice to at least one additional news organization that primarily serves the Environmental Justice Population(s) within the area that may be affected by the designation. The public notice shall be translated into other languages that are prevalent in areas with persons of limited English proficiency.
- (5) Withdrawal or Denial. If the applicant withdraws from the *De Minimis* Nitrogen Load Exemption application process or is denied an exemption, the Department will issue notice of the withdrawal or denial and invocation of the mandatory Title 5 upgrade and New Construction requirements under 310 CMR 15.215(2), if applicable, in conformity with the notice publication requirements in 314 CMR 21.12(4)(d).

REGULATORY AUTHORITY

314 CMR 21.00: M.G.L. C. 21, § 27, St. 2014, C. 259, § 2A.

MEMORANDUM



Harwich Water & Wastewater
Department

196 Chatham Road
Harwich MA 02645
P: 508-432-0304
F: 888-774-3557

www.harwichwater.com

To: Harwich Selectboard
From: Dan Pelletier, Water/Wastewater Superintendent
Date: September 21, 2023
RE: Notice of Intent to File Watershed Permit Proposal

Included with this memo is a scope & fee proposal from GHD in the amount of \$4,500 to prepare and submit a Notice of Intent to file a watershed permit to the Massachusetts Department of Environmental Protection (MassDEP) for the Herring River, Allen Harbor, Wychmere Harbor, and Saquetucket Harbor watersheds. Submission of this Notice of Intent will inform MassDEP of the Town of Harwich's intent to pursue a watershed permit, establish a timeframe for submitting the watershed permit application, provide relief from the new Title V regulations requiring all new construction to install best available nitrogen reducing septic systems effective January 2025, and further relieve the Town from future implementation of best available nitrogen reducing septic systems as a means to address nitrogen. As such, I recommend the Selectboard approve the scope & fee proposal included herein.

September 20, 2023

Mr. Dan Pelletier
Town of Harwich, MA
196 Chatham Road
Harwich, MA 02645

Professional Services Agreement – Harwich Watershed Permitting Notice of Intent

Dear Mr. Pelletier

GHD is pleased to present this proposal to complete WP-94 – Notice of Intent for a Watershed Permit Applications for the Herring River, Allen Harbor, Wychmere Harbor, and Saquatucket Harbor watersheds.

SCOPE OF SERVICES

1. WP94 – Notice of Intent for Watershed Permit Application.

- a. **Prepare Draft WP94.** Notice of Intent for Watershed Permit application for Town Review. Draft application shall include a draft Pre-Application Schedule per 310 CMR 15.215(2)(c). The Pre-Application Schedule shall outline milestones for the filing of a Watershed Permit application as soon as practicable but no later than 2030 (seven years from the watershed's designation as a Nitrogen Sensitive Area). Incorporate comments provided by Town within 14 days of receiving draft application, as appropriate. Submit final application on behalf of the Town.
- b. **Within 28 Days of Filing WP94.** Notice of Intent for Watershed Permit application, coordinate publication of the notice of filing in the Environmental Monitor. GHD to provide notice language to the Town for use in posting to the Town's website, in Town Hall, and in a local or regional newspaper. Fees associated with the publication in the local or regional paper will be paid by the Town.

ADDITIONAL SERVICES REQUESTING OWNER'S WRITTEN AUTHORIZATION

Additional services that could be provided upon future written authorization by the Town of Harwich include the following:

- WP-95 Watershed Permit Applications
- WP-98 De Minimus Load Exemption Applications
- Inter-Municipal Agreement coordination and nitrogen load responsibility allocation negotiations

PAYMENTS TO ENGINEER FOR SERVICES

The Scope of Services outlined above shall be conducted for a not-to-exceed total amount of Four Thousand Five Hundred Dollars and Zero Cents (\$4,500.00).

PERIOD OF SERVICE

If a signed agreement is provided by November 1, 2023, the above Scope of Services is anticipated to be completed by January 2024.

Regards,



Marc R. Drainville
Principal

774-470-1634
marc.drainville@ghd.com



Town of Harwich Board of Health

732 Main Street Harwich, MA 02645
508-430-7509 – Fax 508-430-7531
E-mail: health@town.harwich.ma.us

HARWICH BOARD OF HEALTH SEWER CONNECTION REGULATION

AUTHORITY AND PURPOSE

These regulations are enacted under the authority of Massachusetts General Laws, Chapter 83, Sections 3, 10, and 11, and Chapter 111, Sections 31, 122, and 127, and are enacted for protection of the public health safety, welfare, and environment, and for the further purpose of ensuring the protection of wetland resources and the public water supply.

CONNECTION TO THE SANITARY SEWER SYSTEM

- a. The owners of all houses, buildings or properties used for human occupancy, employment or recreation, or structures which in any way generate wastewater flows, situated within the Town of Harwich and abutting on any street, alley or right-of-way in which there is located a public sanitary sewer line of the building sewer as defined in the Town of Harwich Sewer Regulations. Such connection shall be within two years from the official mailed notice of sewer availability, by the Town of Harwich, acting by and through the Board of Health.
- b. All properties as to which such notice has been mailed and to which ownership is thereafter transferred, shall be required to connect to the sewer line within 30 days of transfer, or two years from the date of the official notice to connect, whichever is later.
- c. The Board of Health shall have the authority to defer deadlines in this regulation if, in the opinion of said Board, the provisions of this regulation impose an exceptional burden on a property owner. Requests for deferment must be submitted in writing.
- d. Any property owner who has installed an alternative septic system, as defined in 310 CMR: Department of Environmental Protection, Title 5, less than 10 years prior to an order to connect may, upon approval by the Board of Health, defer connection to town sewer to allow them to utilize their alternative septic system for a total of ten years from the date of the issuance of the certificate of compliance for said system. The owners of said system must prove a history of compliance in operation and maintenance of the system, as contained in the Board of Health and Department of Environmental Protection approval. If the property is transferred during that time, the property shall be connected to the public sewer at the time of transfer, unless the Board of Health has approved an extension prior to the transfer. Requests for extension must be submitted in writing to the Board of Health.
- e. All costs and expenses associated with the installation and connection to the public sewer shall be the sole responsibility of the property owner, and shall be governed by the Town of Harwich Rules and Regulations of the Wastewater Department.

- f. Property owners shall immediately following connection to the public sewer abandon any septic tanks, cesspools, and similar private wastewater disposal facilities serving said property in a manner approved by the Board of Health, in accordance with the requirements of Title 5. Any abandonment procedure requires a Disposal Works Construction Permit issued by the Board of Health.

SEVERABILITY

If any portion, sentence or clause is held invalid, the remainder of the regulation shall remain in full force and effect.

VIOLATIONS AND PENALTIES

Any person who violates these regulations shall be subject to a fine or \$200.00 per day. Each day a violation continues shall be deemed a separate offense. Violation of this order may be enforced through non-criminal disposition per Chapter 1 of the Code of the Town of Harwich. In addition, the Board of Health may enforce these regulations through the assessment of a civil penalty of up to \$5,000 for each day of violation in accordance with Massachusetts General Law Chapter 83 Section 10. The Board of Health may also seek injunctive relief in court to enforce these regulations.

Adopted: September 24, 2021

Effective: Immediately

Harwich Board of Health

Chair, Pamela Howell, R.N.

Vice Chair, Sharon Pflieger, M.S.

Ronald Dowgiallo, D.M.D.

Matthew Antoine

Kevin DuPont, R.N.

BOARD OF HEALTH POLICY FOR SEWER EXTENSION REQUEST CURRENT ORDER TO CONNECT

The Board of Health will adopt the following guidelines for review of request for an extension of an order to connect to sewer.

The following shall be the criteria for being placed on the agenda:

Mandatory Requirements (if the Board chooses)

- The property is the applicant's primary residence. (will the board accept second homes? rental properties?)
- The system is not currently experiencing any failing criteria.

One of the following (This list can be expanded if the Board wants to add to it):

- The age of the system is less than 10 years old (based on the Certificate of Compliance date)
- The applicant s claiming a hardship.
A Hardship may need to be evaluated on a case-by-case basis by the Board.
Circumstances to consider: age, family size, income, ect. (Board to expand)

The following materials shall be submitted before close of business on the date of filing deadline:

8 Packets of:

- Draft letter to the Board of Health-Letter should outline what the applicant is requesting and why.
- Copy of the order letter
- Applicants plan of action/timeline for connection.
- Affidavit statement of facts signed and notarized
- Filing fee of \$125.00 (Do we want to charge a fee?)

INTERMUNICIPAL AGREEMENT

For

Wastewater Collection and Treatment by and between

(CHATHAM/HARWICH)

This Intermunicipal Agreement ("Agreement") is entered into as of _____ (the "Effective Date") by and between the Town of CHATHAM, Massachusetts ("Chatham"), a municipal corporation, and the Town of HARWICH, Massachusetts ("Harwich"), a municipal corporation (collectively, with their successors and assigns, the "Parties").

RECITALS

WHEREAS, Chatham owns and operates a sewage collection, treatment and disposal system, including customer service operations for which the Commonwealth of Massachusetts Department of Environmental Protection ("DEP") has issued a Ground Water Discharge Permit (Permit No.: 44-1), located within the municipal corporate boundaries of Chatham; and

WHEREAS, Harwich plans to construct and operate a sanitary wastewater system within the boundaries of Harwich to service the East Harwich area but desires to deliver its wastewater from the East Harwich area to the Chatham System for treatment and recharge; and

WHEREAS, Chatham and Harwich deem it to be in the public interest to enter into an intermunicipal agreement whereby Chatham would receive and treat Harwich's wastewater and septage at the Chatham Water Pollution Control Facility (the "WPCF") in consideration of Harwich's contribution toward the capital and operational expenses generated by said connection and the other terms and conditions set forth herein, and

WHEREAS, in order to accommodate the additional flow of wastewater from East Harwich as set forth on Figure 13-1 attached hereto as Exhibit A, Chatham must allow construction of a connection with Harwich (the "Connection Point"). Costs associated with the Connection Point shall be borne by Harwich in accordance with Section 9.a herein. Costs associated with the collection system from the Connection Point to the WPCF shall be apportioned in accordance with the Harwich Project Share. The Chatham WPCF can accommodate the flow from East Harwich as set forth in Exhibit A while it continues to expand the Chatham collection system to other parts of Chatham not currently connected to the Chatham collection system. Chatham will continue to evaluate the need to design and build upgrades to the WPCF taking into account Chatham's needs, the Harwich flow, and water conservation efforts in both communities; and

WHEREAS, municipalities are authorized in accordance with G.L. c. 40 §§ 4 and 4A to enter into intermunicipal agreements for the purpose of aiding the prevention or abatement of water pollution; and

WHEREAS, Chatham and Harwich have been authorized to enter into this Agreement as evidenced by the execution of this Agreement by their respective Boards of Selectmen.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and for the mutual covenants, promises, obligations and agreements contained herein, the Parties hereto, intending to be legally bound, agree as follows:

AGREEMENT

1. DEFINITIONS.

The below terms, as used in this Agreement, shall have the following meanings:

- a. "Connection Point" means an underground sewage pipe at which the Chatham collection system is connected to the Harwich collection system and which Connection Point is in approximately the location indicated on the diagram attached hereto as Exhibit B.
- b. "Harwich Flow" means the sum of metered flow, which is metered at the Connection Point, and Unmetered Flow.
- c. "Harwich Project Share" means Harwich's proportionate share of Project Costs which shall be calculated on the ratio between the 300,000 gpd and the total treatment capacity of the WPCF at the time of the Project (1.3 mgd). With respect to PS6 and associated piping, the Harwich Project Share shall be a proportional share as mutually agreed to by the Parties prior to design and construction.
- d. "East Harwich Flow" means the amount of wastewater flowing into Chatham from East Harwich Service Area via the Connection Point.
- e. "East Harwich Service Area" means the areas in East Harwich, specifically sub-watersheds to Upper Muddy Creek, Lower Muddy Creek, Pleasant Bay, Round Cove, and potentially the Great Sand Lakes Area provided the combined flow does not exceed 300,000 gpd daily annual average, as described in the Harwich Comprehensive Wastewater Management Plan dated March 2016. (Figure 13-1, Exhibit A).
- f. "Operation and Maintenance Expenses" (O&M Expense) includes the total annual expenses actually incurred by Chatham in the operation and maintenance of the System pursuant to a budget covering the categories of annual operating and maintenance expense listed on Exhibit C attached hereto, which budget shall be adopted prior to the commencement of each

Fiscal Year; provided, however, that O&M Expense (a) shall not exceed in the aggregate the total amount of the budget for such fiscal year, (b) shall not include any principal, interest or other charges in connection with any indebtedness incurred by Chatham, and (c) shall not include any Chatham expenses not directly attributable to and included in such annual budget of the System except for supplemental and/or emergency appropriations.

- g. "O&M Share" means that portion of Harwich's Fixed and Flow Variable O&M Expenses determined quarterly as defined in Section 4.
 - h. "Project" means any future upgrades or capital improvements to the System required by regulatory or other legal authority, including without limitation by MassDEP, any future capital improvements to the System deemed necessary by Chatham to preserve the System's useful life, add/improve treatment quality or parameters treated, or maintain capacity to the System and any cost-saving capital modifications to the System. The term "Project" shall also include pumping station(s), gravity sewer, forcemain and any other wastewater infrastructure used to convey Harwich wastewater to the Chatham WPCF.
 - i. "Project Cost" means the total cost to be incurred in the execution of the Project, including, but not limited to, assessment/feasibility, architectural, permitting, and engineering services, and construction work and construction phase services, interest or other costs of borrowing.
 - j. "System" means the WPCF, including the effluent recharge beds, the Connection Point(s), pumping station(s), and the gravity sewer and forcemain to convey the collected wastewater from Harwich to the Chatham WPCF.
 - k. "Total Flow" means the sum of measured flow received at the WPCF including, but not limited to, wastewater from Chatham, East Harwich Service Area, septage, and grease. Flow shall be calculated on a 12 month rolling average. Exhibit D depicts the average daily Total Flow into the WPCF for the period July, 2015 through June, 2016.
 - l. "Unmetered Flow" means flow from Harwich which is not measured by Harwich metering devices at the Connection Point as a result of Harwich residential sewer users being connected directly to the Chatham collection system and billed directly by Harwich. Unmetered flow shall be calculated based upon water usage of those users as set forth in the regulations and shall be paid by Harwich directly to Chatham on a quarterly basis.
 - m. "WPCF" means the Chatham Water Pollution Control Facility and all components thereof, including improvements constructed and as may be amended from time to time.
2. EAST HARWICH SERVICE AREA.

2.1 Chatham agrees to receive and treat wastewater from Harwich users in the East Harwich Service Area at an annual average daily volume of up to 300,000 gpd at the Connection Point, and at such other mutually agreeable connection locations as may be designated by Chatham and Harwich. Notwithstanding the foregoing, Harwich may expand the East Harwich Service Area to serve the Great Sand Lakes Area, subject to the approval of Chatham, which approval shall not be unreasonably withheld, provided that Harwich shall not extend its sewer system beyond the East Harwich Service Area if the result of such an extension would cause Harwich to deliver wastewater to Chatham for treatment in excess of 300,000 gpd, unless this Agreement is amended.

2.2 Flow Management Plan. When the Harwich total annual flow metered at the Connection Point exceeds 80 percent of the purchased capacity for a three month period, then Harwich shall present, within 90 days, a plan to Chatham explaining how Harwich intends to manage the remaining 20 percent of the purchased capacity so that total flow exceedances do not occur on a 12-month rolling average. The plan shall 1.) define measures to be taken by Harwich to limit flow connection areas in the future; 2.) define measures to be taken by Harwich to reduce existing flows entering the system; 3.) discuss potential expansion options at the Chatham WPCF; or 4.), define other appropriate action as may be required to enforce the flow capacity allocation. Such Flow Management Plan measures shall be subject to Chatham's approval, which shall not be unreasonably withheld, and, upon written notification to Harwich of such approval, Harwich shall be bound to undertake such measures. Any failure of Harwich to satisfactorily complete such Flow Management Plan measures shall be deemed a material breach of this Agreement. Likewise, Chatham's failure or refusal to approve a Flow Management Plan without reasonable basis shall be deemed a material breach of this agreement.

3. CAPACITY PURCHASE FEE

Harwich will purchase 300,000 gpd average annual daily flow capacity of the Chatham WPCF, for the amount of \$6,765,000. Harwich shall make an initial payment of \$2,265,000 upon execution of this Agreement; a second payment of \$1,500,000 shall be made upon the commencement of flow from the East Harwich Service Area to the WPCF; a third payment of \$1,500,000 shall be made upon an average daily flow of over 50,000 gpd or five (5) years from the date of signing of this Agreement, whichever occurs first; and, a fourth payment of \$1,500,000 shall be made upon an average daily flow of over 150,000 gpd or seven (7) years from the date of signing this Agreement, whichever occurs first.

4. O&M EXPENSES

Terms for paying these costs will be defined into two categories: Fixed and Flow Variable.

A. WPCF

- 1) Given that Chatham will be reserving capacity for Harwich which will require ongoing O&M expenses to maintain the WPCF, Harwich shall pay Fixed O&M expenses (including but not limited to Contract Services, Plant Maintenance, 20% of Chatham DPW Director salary, SCADA contracts, etc.) based on the actual percentage (%) of wastewater flow capacity for East Harwich Service Area to Chatham WPCF Phase I design flow capacity (300,000 gpd/1,300,000 gpd = 23.08%). Fixed O&M payments shall begin at the time of Harwich connection.
- 2) Flow Variable O&M expenses for the WPCF (including but not limited to chemicals, electricity, natural gas, diesel, sludge removal/disposal, testing, etc.) shall be paid based on the actual percentage (%) of wastewater flow from the East Harwich Service Area as measured at the Connection Point(s) to Total Flow. Flow Variable O&M payments shall begin once flow is measured at the Connection Point.

B. Collection System

- 1) Harwich shall pay Fixed O&M costs in a ratio of Harwich design flow to Chatham design flow for that portion of the conveyance system from the Connection Point(s), through pumping station(s), to the WPCF and any off-site effluent recharge location within Chatham, if applicable. Fixed O&M payments shall begin at the time of Harwich connection.
- 2) Flow Variable O&M expenses for the collection system (including but not limited to chemicals, electricity, natural gas, diesel, testing, etc.) shall be paid based on the actual percentage (%) of wastewater flow from the East Harwich Service Area as measured at the Connection Point(s) to total flow measured at Pump Station 6 or other such pump station designation. Flow Variable O&M payments shall begin once flow is measured at the Connection Point.
- 3) For the avoidance of any doubt, Harwich shall not be responsible for the payment of any O&M expenses incurred by Chatham that relate solely and exclusively to the operation and maintenance of any portion of the Chatham sewer collection system or other components thereof that are not used by Harwich.

C. Within thirty (30) days after the end of each calendar quarter, Chatham will send a statement to Harwich showing, for the period since the beginning of the Fiscal Year to the end of such quarter, Total Flow, flow for that quarter as measured at the Connection Point and the total flow measured at Pump Station 6 or other such pump station designation.

5. EFFLUENT RECHARGE

Chatham shall recharge effluent originating from the East Harwich Service Area at the Chatham WPCF site during the initial years of the Agreement. While the existing recharge system was sized for the capacity of the Chatham WPCF, the Groundwater Discharge Permit (GDP) is limited to five (5) years. The discharge allowed by the current GDP is 1.0 MGD, below the WPCF's capacity of 1.3 MGD. The duration of the initial recharge of Harwich effluent at the Chatham WPCF would be at least until the Chatham facility reaches 80% of its permitted flow capacity. Upon being notified by MassDEP that Chatham must redirect effluent recharge, Chatham shall notify Harwich, in which case Harwich shall construct, maintain and repair the necessary infrastructure to redirect the Harwich flow to a suitable site in Harwich, in an amount necessary to meet the requirements of the MassDEP. In the event that Chatham notifies Harwich of the need to construct infrastructure required to redirect treated effluent back to Harwich for recharge, Harwich shall, at its sole cost and expense, complete the infrastructure construction within three years of said notice from Chatham. Thereafter, the Harwich share of O&M costs shall not include any costs incurred by Chatham for effluent recharge for the portion of effluent directed back to Harwich for recharge. Chatham shall provide any easements necessary at the Chatham WPCF to locate a treated effluent pumping station and appurtenances, including forcemain easements necessary on town-owned properties or within existing rights-of-way from the Chatham WPCF to Harwich. Chatham shall have the right to review and comment on the location of any proposed easements to ensure coordination with other Chatham infrastructure. Chatham shall not unreasonably deny, delay or condition the granting of such easements.

6. SEPTAGE

Chatham shall accept septage pumped from properties located in the East Harwich Service Area upon abandonment of the septic system as part of the connection to sewer process, subject to appropriate documentation, and at the prevailing rate of the Chatham WPCF.

7. FLOW BUY BACK PROVISION

Harwich shall notify Chatham upon completion of the sewerage of the East Harwich Service Area in accordance with the Harwich Comprehensive Wastewater Management program. In the event Harwich does not use the entirety of the 300,000 gpd allocated to it at any time during the term of this Agreement, Chatham may buy back any unused flow at a price reflecting the ratio of the amount of gallons to be bought back to the total number of gallons purchased by Harwich at the commencement of this Agreement multiplied by \$6,765,000 which amount shall be adjusted for inflation in accordance with the Consumer Price Index – Northeast Region or any other mutually accepted cost method. Harwich shall not transfer any portion of the 300,000 gpd allocation to any other entity. Harwich shall not divert any portion of the 300,000 gpd allocation to any area outside the East Harwich Service Area.

8. TERM.

This Agreement shall commence on Execution of the Agreement and shall continue, unless sooner terminated, for a Term of twenty five (25) years. This Agreement shall continue in full force and effect on the Expiration Date unless it is modified in writing by the Parties or notice is provided by one of the Parties to the other Party of the intent not to renew this Agreement. Such notice shall be provided no later than five (5) years prior to the Expiration Date. If this Agreement is not renewed, Harwich shall pay to Chatham any unpaid amounts owing hereunder. If this Agreement is extended beyond the original 25 year Term Harwich shall not be responsible for any additional Capacity Purchase Fee.

9. CONNECTION POINT.

- a. Harwich may construct and connect the East Harwich Service Area portion of its wastewater system as set forth on Exhibit A in coordination with Chatham's infrastructure implementation schedule. Chatham will furnish to Harwich wastewater conveyance and treatment services. The connection of Harwich with the System shall take place by means of the Connection Point at or near the Chatham town line. The cost for initial design, construction, and any future expansion or additions to the Connection Point necessary to accommodate any increases in wastewater flow of the East Harwich Service Area shall be borne by Harwich at no cost to Chatham and shall be subject to approval by Chatham.
- b. Harwich hereby grants Chatham and its agents and independent contractors the authority, right and license at all times to have access to such portion of the Connection Point located within Harwich for the purpose of improving, repairing, using and inspecting the same and will issue, promptly upon request therefor, such permits and licenses as shall be necessary to accomplish any of such purposes.
- c. Harwich will pay its proportional share of System Project Costs to convey the collected wastewater from the Connection Point to the Chatham WPCF. The proportional share shall be based on the ratio of Harwich's design flow and Chatham's design flow for that segment of the collection system.

10. REGULATIONS.

- a. Sewer Use Regulations. Harwich shall adopt local Sewer Use Regulations ("Harwich Regulations") for residential and commercial users of the Harwich System located in East Harwich, which is no less stringent and is as broad in scope as the sewer use regulations set forth in the Chatham Regulations, as amended. The Harwich Regulations shall include pollutant specific local limits which address at least the same pollutant parameters and are at least as stringent as the local limits enacted by Chatham. Harwich shall forward to Chatham for review a proposed draft of the Harwich Regulations within six (6) months, or such longer period of time as may be reasonably agreed upon by the parties, of the date of this Agreement, and shall adopt the Harwich Regulations within

sixty (60) days of receiving approval from Chatham of the content thereof or by any other time as reasonably agreed to by the parties..

- b. Revisions by Chatham. Whenever Chatham proposes to adopt revisions to its sewer use Regulations it shall forward to Harwich for review the proposed revisions. Whenever Chatham adopts a revision to its sewer use Regulations, it shall forward a copy of the revisions to Harwich within ten (10) business days of enactment thereof. Harwich shall adopt revisions to the Harwich Regulations that are consistent with and at least as stringent as those adopted by Chatham. Harwich shall forward to Chatham for review its proposed revisions within thirty (30) days of receipt of Chatham's revisions. Harwich shall adopt its revisions within sixty (60) days of receiving approval from Chatham of the content thereof or by any time as reasonably agreed to by the parties.
- c. Revisions by Harwich. Harwich shall forward a copy of any proposed revisions to the Harwich Regulations to Chatham for review and comment no later than forty-five (45) days prior to proposed adoption. Chatham shall provide comment to Harwich within fifteen (15) days of receipt. Harwich shall not enact any such revisions inconsistent with this Agreement.
- d. Review. The Parties shall periodically review their respective sewer use Bylaw(s) and/or Regulations and jointly draft and adopt amendments (which are equivalent in scope and stringency) when deemed necessary for the effective administration and operation of Chatham's or Harwich's pretreatment program or may be responsive to requirements of MassDEP or address other matters which Chatham or Harwich deem appropriate to maintain the System. This review shall be conducted not less than once every five (5) years. However, either Party may request a joint review whenever such party believes that a review is necessary.
- e. Compliance with Law. Each of the Parties shall comply with all applicable current and subsequent regulations of the U.S. E.P.A. and MassDEP relating to the administration, operation and control of the System during the term of this Agreement, and no party shall be liable for the act or neglect of the other. Chatham shall maintain compliance with the MassDEP permit requirements applicable to the WPCF and all federal, state, and local laws, water quality standards, orders and decrees of governmental authorities with jurisdiction over the treatment and discharge of wastewater. Chatham shall comply with any orders issued by governmental entities relating to the WPCF and shall pay any fines, penalties, or costs resulting from such enforcement actions without recourse to Harwich, except to the extent the violation is caused by flow entering the System from Harwich or other acts or omissions directly attributable to Harwich.

11. IMPLEMENTATION; ENFORCEMENT.

- a. Agency. As holder of Groundwater Discharge Permit #44-1 Chatham is responsible for complying with all conditions in said Permit. In order to ensure that flow entering the Harwich collection system does not place Chatham in a potential Permit violation, Harwich designates Chatham as an agent of Harwich for the purposes of implementation and enforcement of Harwich's sewer use Regulations against all users located in the East Harwich Service Area. Chatham may take any action under Harwich's sewer use Regulations that could have been taken by Harwich, including the enforcement of the Regulations in courts of law. Chatham shall have concurrent authority with Harwich to enforce its sewer use Regulation in Harwich. The foregoing authorization is not an abdication of Harwich's obligations to in good faith enforce this Agreement but in addition thereto. Harwich's Regulations shall indicate said designation of Chatham as a supplemental implementation/ enforcement authority. Notwithstanding the foregoing, Harwich shall have the responsibility of all collections related to users of Unmetered Flow. Harwich shall be required, regardless of the users' collection status, to pay Chatham on a quarterly basis for all Unmetered Flow.
- b. Duties. Chatham, on behalf of and as agent for Harwich, may, at its sole option, perform any and all technical and administrative duties necessary to implement and enforce Harwich's sewer use Regulations or its own sewer use Bylaw. Chatham may, at its sole option: (1) update the industrial waste survey; (2) issue permits to all industrial users required to obtain a permit; (3) conduct inspections, sampling, and analysis; (4) take all appropriate enforcement action; and (5) perform any other technical and administrative duties the Parties mutually deem appropriate.
- c. Permitting. Under no circumstances may Harwich discharge any industrial waste or other waste requiring pretreatment into Chatham's wastewater treatment system until an industrial wastewater pretreatment permit (or modification to an existing permit) is issued by Chatham which allows such industrial waste discharges. Any future industrial user must apply for a permit in conformance with this Agreement and the controlling sewer use Bylaw. Chatham shall not unreasonably deny, delay or condition the granting of such an application.
- d. Right of Access. Harwich grants to Chatham the authority to access all parts of Harwich's sewer system which flow to the Connection Point and, as permitted by applicable law, all parts of the facilities of industrial users located within Harwich that contribute to Chatham's System, including the right to review and copy all records compiled by Harwich and, as permitted by applicable law, industrial users in relation to discharge activities, to periodically verify compliance with all applicable permits, orders, rules, Regulations and Bylaws, including pretreatment standards and requirements. On-site inspections and monitoring may be conducted (i) during business hours without prior notice or (ii) during non-business

hours with notification to the Harwich Police Department or Public Works Department.

- e. Restriction on Foreign Wastewater. Harwich shall not authorize the use of the Connection Point for the transmission of wastewater to the System generated by any source of wastewater that is not located in East Harwich Service Area.
- f. Violations. Industrial users of the system in Harwich, if any, shall be subject to enforcement action by Chatham for any violation of Harwich's or Chatham 's sewer use Bylaw or Regulations, or any applicable federal, state or local pretreatment regulation or standard, including, but not limited to, administrative orders, fines and penalties (up to such limits as may be then applicable under state and federal law), injunctive relief, and/or termination of sewer service; provided, however, that Chatham shall be entitled to implement the remedy of termination of sewer services only if any such violation by the industrial user results in a discharge which, in Chatham's sole determination, reasonably appears to present a danger or threat as described in Section (11)(g) of this Agreement.
- g. Emergencies. Notwithstanding anything to the contrary contained herein, Chatham shall have the immediate and effective authority, on its own behalf and as the agent of Harwich, to take emergency action to halt or prevent any discharge to the System which (i) presents or may present an imminent danger to the health or welfare of humans, (ii) reasonably appears to threaten the environment, (iii) threatens to cause to pass through sludge contamination or substantial interference with the appropriate operation of the System, or (iv) may result in a Permit violation.
- h. Costs. All costs and expenses (including, but not limited to, labor, equipment, attorneys' fees, etc.) incurred by Chatham in implementing and enforcing Harwich's sewer use Regulations against users of the System located in East Harwich shall be paid by Harwich upon issuance of a quarterly invoice by Chatham itemizing the same.
- i. Secondary Authority. If the authority of Chatham to act as agent for Harwich under this Agreement is questioned by an industrial or any other user, court of law, or otherwise, Harwich will take whatever action is necessary to ensure the implementation and enforcement of its sewer use Regulations against any of its users, including, but not limited to, implementing and enforcing its sewer use Regulations on its own behalf and/or amending this Agreement to clarify Chatham's authority.
- j. Natural Disasters. In the event of floods or other natural disasters that cause water flows in the System to exceed capacity limits and/or that result in an unsafe condition, and/or that cause, or threaten to cause, harm to the public health, the Parties shall cooperate fully and reasonably to resolve such capacity, safety and public health concerns in accordance

with the broad objectives of this Agreement and applicable laws and regulations.

12. ALLOCATIONS OF MAXIMUM FLOWS; FLOW CHARACTERISTICS.

- a. Maximum Flows. The annual average daily flow from the East Harwich Service Area shall be 300,000 gpd or less calculated on a 12 month rolling average. This represents 23.08% of the initial design average annual flow of the WPCF. Because the flow from Harwich will be pumped to the Chatham WPCF, Harwich is allowed 23.08% of other measured or calculated flows including, but not limited to, maximum 30 day average, peak day, and peak hour.
- b. Flow Characteristics. Harwich will not authorize, and Chatham shall exclude, wastewater flows into the System in excess of the rates of flow specified above for the East Harwich Service Area; provided, however, that before excluding flow from the East Harwich Service Area hereunder, a determination based on actual data over a period of at least twelve (12) months shall have been made that the average flow from the East Harwich Service Area shall have exceeded the limitation applicable thereto and Harwich shall have been given at least ninety (90) days prior written notice thereof. Chatham and Harwich shall take all reasonable steps to preclude the introduction into the System of wastewater having characteristics, including, but not limited to, BOD, TSS, Total Nitrogen, Nitrate Nitrogen, Turbidity, TOC, Oil & Grease, Sodium, not in accordance with the local limits in place from time to time as established by Chatham.

Local Limits shall be defined as follows:

1. BOD, TSS, Total Nitrogen – Harwich shall be allowed a share of the influent load planned for the WPCF that is commensurate with the flow from the East Harwich Service Area. Preliminary Design Memo M-1B defines the Chatham WPCF loads (Exhibit E).
2. Turbidity, Oil & Grease, TOC, and Nitrate Nitrogen – are expected to be similar to Chatham’s influent.
3. Harwich shall not discharge into the Harwich or Chatham system waste originating from marine pumpout facilities, or other non-standard sources, without the prior written approval of Chatham.

13. METHODS OF DETERMINING FLOWS.

- a. East Harwich Service Area Flow, other than Unmetered Flow, shall be measured by a standard metering device to be located and installed at the Connection Point in the location indicated on Exhibit B. Unless replaced or changed pursuant to a future agreement between the parties, such standard metering device will consist of the following apparatus: One

Venturi Meter, a direct reading totalizer, indicator, and recorder-transmitter with instantaneous flow signal data transmitted to the Chatham Water Pollution Control Facility SCADA system on a continuous basis. Chatham shall be responsible for maintaining the SCADA system. Said apparatus shall be subject to the approval of Chatham, which shall not be unreasonably withheld.

- b. Chatham will cause the flow of wastewater from East Harwich to be measured and recorded on a continuous basis in the same manner as set forth in Section 13(a) above, so that the Total Flow (other than Unmetered Flow) and flow from East Harwich shall at all times be known.
- c. In the event any metering device fails to register or registers incorrectly the flow of wastewater, Chatham and Harwich will agree on an estimate (if an historic record is not available from earlier similar periods) of the period of time during which the metering device failed to register or registered incorrectly and the quantity of wastewater that would have been measured were the metering device operating correctly, and an appropriate adjustment based thereon shall be made in the wastewater flow to be used as the basis on which to determine Harwich's O&M Share.
- d. For billing purposes, Chatham shall read the metering devices at intervals of approximately thirty (30) days. Harwich, at its expense, shall periodically, but not less than twice each year (spring and fall), inspect, test and calibrate the Venturi metering device referred to in Section 13(a) and within 48 hours after any failure of the meter.
- e. Harwich recognizes that the System has a maximum permitted flow of One (1) MGD and that further there are portions of Chatham that still require connection to the System. Harwich, therefore, shall be entitled to no more than 300,000 gpd of permitted Flow into the System.

14. COLLECTION OF AMOUNTS PAYABLE.

- a. O&M Share. Within thirty (30) days after the end of each calendar quarter, Chatham will send a statement to Harwich showing, for the period since the beginning of the Fiscal Year to the end of such quarter, (a) East Harwich Flow, (b) the Total Flow, (c) O&M Expense incurred, (d) Harwich's O&M Share thereof and (e) the amount, if any, previously paid by Harwich on account thereof. Harwich shall remit payment of the balance due to Chatham within thirty (30) days of receipt of such statement.
- b. Harwich Project Share. Harwich shall pay the Harwich Project Share of the Project Costs. Such payments shall be based upon the payments actually made by Chatham pursuant to all financings and/or borrowings, including, without limitation, interest costs, in connection with the Project, but shall not include any amounts reimbursed to Chatham under

any federal or state grant program. Chatham will send a monthly statement to Harwich showing the amount actually paid to Chatham's lender. Harwich shall remit payment to Chatham within thirty (30) days of receipt of such statement.

- c. Construction Costs Following Early Termination. In the event of any termination of this Agreement prior to the Expiration Date, Harwich shall pay to Chatham the full amount of (i) Harwich's Project Share of the Project Costs for work actually performed and invoiced to Chatham and which remains unpaid as of the date of termination, (ii) Harwich's Project Share of the Project Costs for all then-remaining work to be performed in connection with the Upgrades resulting from Harwich's use of the WPCF and (iii) any other amounts owing hereunder. Such payment shall be made to Chatham within thirty (30) days of the date of notice of termination or, for work not yet performed at the time of the notice of termination, within thirty (30) days of the date of invoicing for work when it is actually performed. In the event that any payment due under this Section 14 is not received by Chatham within forty-five (45) days of Harwich's receipt of Chatham's statement, interest on the amount overdue shall accrue at the rates and in the manner as is charged to Chatham ratepayers who have amounts owed and past due. The provisions of this Section 14 shall survive any termination of this Agreement.
- d. Fees. Harwich shall be responsible for collecting, and Chatham shall be entitled to receive the proceeds from, the issuance and collection of sewer use and pretreatment fees and assessments, if any, as set forth in the controlling sewer use Bylaw or Regulations, as amended, from any and all contributing users located within Harwich. Harwich hereby covenants and agrees that East Harwich-based users of the System shall be subject to and responsible for the payment of such fees, including without limitation any special assessment or similar charge to the extent such fees, assessments or charges are also payable by Chatham-based users of the System, and that Harwich shall bill and collect said amounts and pay to Chatham, at no cost or expense to Chatham, all such amounts on a quarterly basis.

15. MATTERS SUBJECT TO CONFERENCE BETWEEN THE PARTIES.

Chatham and Harwich recognize and agree that they are both users of the System and contribute financially to the O&M Expense of the same, and that such use of the System and financial contribution to Chatham from Harwich shall be considered whenever such facts are pertinent to the observance and performance of this Agreement. Representatives of Harwich may be requested to attend any conference with Chatham where the matters discussed are or may be affected by such use and contribution or may affect such use and contribution. Further, Chatham and Harwich shall create an advisory board for the purpose of exchanging communication regarding the System. Such board shall consist of five (5) members, comprised of three (3) from Chatham and two (2) members from Harwich. The Chatham Town Manager shall serve as one of Chatham's

designated members and shall also act as chair. The board shall meet quarterly to discuss the status of the System and any major issues related thereto. The board shall be advisory in nature, and may make recommendations to Chatham with respect to proposed improvements or other modifications to the administration of the System, but shall not have the legal authority to require or direct that its recommendations be implemented. Each Town shall determine on their own, how to designate their remaining members of the board.

16. DISPUTE RESOLUTION.

Any disputes arising out of this Agreement shall be submitted to non-binding mediation performed by an independent mediator stipulated by Chatham and Harwich. A resolution reached in mediation shall in no way limit Chatham's power to enforce pretreatment standards and requirements directly against industrial users or other users located in Harwich, nor shall it preclude the parties from seeking other remedies against each other including without limitation proceedings in a court of competent jurisdiction. The cost of such mediation, except for the cost of each Party's direct representation, shall be shared equally between the Parties.

17. REMEDIES.

- a. Legal and Equitable Relief. The Parties acknowledge and agree that money damages may not be a sufficient remedy for any breach of this Agreement, that either Chatham or Harwich may be entitled to equitable relief (including, without limitation, injunction, specific performance and termination of this Agreement) as a remedy for any such breach or threatened breach, and that neither Party shall oppose the granting of any such relief to Chatham. Such remedy shall not be deemed to be the exclusive remedy for a breach of this Agreement but shall be in addition to all other remedies available to either Party for all damages, costs and expenses, including reasonable attorneys' fees, incurred by it in this regard.
- b. Waiver. No delay or failure to exercise a right resulting from breach of this Agreement shall impair such right or be construed as a waiver thereof, so that such right may be exercised from time to time and as may be deemed expedient. Any waiver shall be in writing and signed by the party granting such waiver. If any provision contained in this Agreement is breached by either Party and thereafter waived by the other Party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach under this Agreement.

18. TERMINATION.

- 18.1 Either party may terminate this Agreement for convenience by providing at least five (5) years advance written notice to the other party, provided that such notice is delivered to the other Party on or after the Tenth Anniversary of this Agreement. All benefits and obligations under this Agreement will cease upon

the termination date set forth in such written notice. Upon the effective date of such termination, Chatham shall discontinue the services of its System, including collection and treatment of wastewater discharge, for any and all residential, industrial and other users located in Harwich. All users located in Harwich shall cease and desist discharging into Chatham's System upon Chatham's election to discontinue services. In the event of any termination of this Agreement prior to the Expiration Date, Harwich shall pay to Chatham the amount described in Section 14 hereof, in addition to any other amounts owing hereunder.

In the event that Chatham terminates this Agreement pursuant to this section, Chatham shall pay to Harwich the unamortized portion of the Capacity Purchase Fee remaining on the effective date of the termination in accordance with the following formula:

$((50 \text{ year WPCF Life}) \text{ minus } (\text{Year from Date of original agreement that Termination takes effect})) \text{ times } (\$135,300)$.

- Where \$135,300 is the Capital Purchase Fee divided 50.
- Payment to Harwich shall be reduced by \$135,300 per year up to the “Initiate Termination” year 44 from the execution date of the original Agreement following renewal of said Agreement.

Example:

- Chatham Initiates Termination in Year 10 (notice not allowed prior to Year 10 per Agreement)
- Termination takes effect in Year 15 (Agreement requires 5 years minimum Notice)
- Therefore, Payment to Harwich = $(50 - 15) * \$135,300 = \$4,735,500$

Table below shows full schedule estimated for 50 year WPCF system life.

Initiate Termination at year (years from original agreement date)	Year Termination takes effect (5 years after “Initiate Termination”)	Years remaining in WPCF Life	Payment to Harwich
10	15	35	\$ 4,735,500
11	16	34	\$ 4,600,200
12	17	33	\$ 4,464,900
13	18	32	\$ 4,329,600

14	19	31	\$ 4,194,300
15	20	30	\$ 4,059,000
16	21	29	\$ 3,923,700
17	22	28	\$ 3,788,400
18	23	27	\$ 3,653,100
19 ⁽¹⁾	24	26	\$ 3,517,800
20	25	25	\$ 3,382,500
21	26	24	\$ 3,247,200
22	27	23	\$ 3,111,900
23	28	22	\$ 2,976,600
24	29	21	\$ 2,841,300
25	30	20	\$ 2,706,000
26	31	19	\$ 2,570,700
27	32	18	\$ 2,435,400
28	33	17	\$ 2,300,100
29	34	16	\$ 2,164,800
30	35	15	\$ 2,029,500
31	36	14	\$ 1,894,200
32	37	13	\$ 1,758,900
33	38	12	\$ 1,623,600
34	39	11	\$ 1,488,300
35	40	10	\$ 1,353,000
36	41	9	\$ 1,217,700
37	42	8	\$ 1,082,400
38	43	7	\$ 947,100

39	44	6	\$ 811,800
40	45	5	\$ 676,500
41	46	4	\$ 541,200
42	47	3	\$ 405,900
43	48	2	\$ 270,600
44	49	1	\$ 135,300
45	50	0	\$ -

Notes:

1. Termination for convenience per the Agreement may not be initiated after year 19 without the renewal or renegotiation of the Agreement between Chatham and Harwich.

18.2.

- A. For any material breach of this Agreement, either party may terminate this Agreement by giving the other party written notice thereof with an effective termination date twelve (12) months after receipt of the notice to terminate and after providing an opportunity to cure such material breach. For purposes of this Agreement, a material Breach is defined as a substantial failure of a party to perform its duties or obligations hereunder which prevents the Agreement from being completed, alters the financial burdens of the Parties, or defeats the purpose of the Agreement.
- B. No failure or delay in any performance hereunder shall be deemed to be a breach of this Agreement when such failure or delay is occasioned by or due to an Act of God, strike, lockout, war, riot, epidemic, explosion, sabotage, breakage, or accident to machinery or line or pipes or binding order of any court or governmental authority, or any other cause whether of the kind herein enumerated or otherwise not attributable to or within the control of the Party against whom the breach is alleged.
- C. It shall be deemed a material breach of this Agreement if sixty (60) days passes after which Chatham has sent to Harwich a written notice of overdue payment of any undisputed amount and Harwich does not pay same within ten (10) days after receipt of said overdue notice. It shall further be deemed a material breach of this Agreement if Harwich fails to timely adopt/revise Sewer Use Regulations as required by Section 10 or fails to timely fund, construct, maintain and repair the necessary effluent recharge infrastructure to redirect the Harwich flow to a suitable site in Harwich as required by Section 5 as triggered by notification from DEP that Chatham must re-direct effluent recharge.

19. NOTICES.

Whenever notice shall be required to be given pursuant to the terms of this Agreement, it shall be in writing and shall be deemed given when mailed by United States registered or certified mail, postage prepaid, return receipt requested and addressed as follows:

To Chatham:

Town Manager
549 Main St.
Chatham, MA 02633
With copy to Board of Selectmen

To Harwich:

Town Administrator
732 Main St.
Harwich, MA 02645
With copy to Board of Selectmen

20. MISCELLANEOUS.

- a. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to implementation and enforcement of a pretreatment program to control wastewater discharges from all industrial users of the System.
- b. Periodic Review. The Parties will review and revise this Agreement to ensure compliance with the Federal Clean Water Act (33 U.S.C. § 1251 et seq.) and rules and regulations (see 40 C.F.R. Part 403) and the rules and regulations of the DEP, as necessary.
- c. Further Assurances. Each of the Parties hereto shall execute and deliver any and all additional documents or instruments (including easements and other rights in land), in recordable form as appropriate, shall provide other assurances, shall make any necessary applications or filings and submit any records or data to any regulatory body, governmental entity or agency having jurisdiction as necessary to obtain any additional permits, licenses and approvals required, and shall do any and all acts and things reasonably necessary to carry out the intent of the Parties hereto and to confirm the continued effectiveness of this Agreement. Without limiting the foregoing, the Parties agree to amend their respective facilities plans as necessary in connection with any change in applicable industrial pretreatment requirements.
- d. Industrial User Contracts. Nothing in this Agreement precludes Chatham from entering into direct contracts with users located in Harwich establishing wastewater discharge restrictions and pretreatment

requirements that are at least as stringent as those provided for in Harwich's sewer use Regulations.

- e. Relationship. This Agreement does not create a fiduciary relationship between the Parties. Nothing in this Agreement is intended to constitute either Party an agent, legal representative, subsidiary, joint venture, partner, employee, or servant of the other for any purpose.
- f. Modification. No modification, alternation, amendment or waiver of any provision of this Agreement shall be effective or binding on either party unless mutually agreed to in writing by the Parties.
- g. Captions. The captions appearing in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit construe or describe the scope or intent of any provisions of this Agreement nor in any way affect this Agreement.
- h. Governing Law. This Agreement shall be governed by, construed and interpreted in accordance with the laws of the Commonwealth of Massachusetts, which shall also be determinative in any litigation in connection with, or enforcement of this Agreement.
- i. Severability. If any term of this Agreement is held to be invalid in any judicial action, it shall be severed from this Agreement and the remaining terms will be unaffected.
- j. Third Parties. Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against any or all of the Parties.
- k. Binding Effect. The terms, covenants, and conditions contained in this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective legal representatives, successors and assigns and any person or persons, natural or corporate, claiming through or under them, or any of them.
- l. Assignment. No assignment of this Agreement or any Party's rights, interests or obligations hereunder may be made without the other Party's consent, which shall not be unreasonably denied, withheld, delayed or conditioned.
- m. The obligation of Harwich to pay Chatham the Capacity Purchase Fee and its proportionate share of the improvements to the System required to deliver wastewater to the WPCF, including the construction of conveyance infrastructure, shall be subject to appropriation. Notwithstanding the legal requirement for an appropriation, any failure of Harwich to pay any sum due hereunder to Chatham in a timely basis shall constitute a material breach of the terms hereof for purposes of Article 18.2.

[Signature page follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers and their respective seals to be affixed as of the dates given below.

Board of Selectmen, Town of Chatham

Board of Selectmen, Town of Harwich

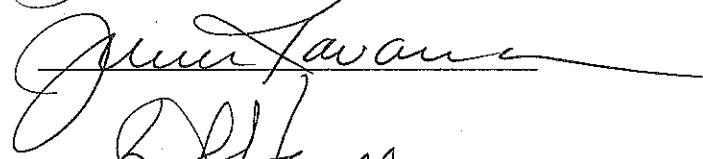




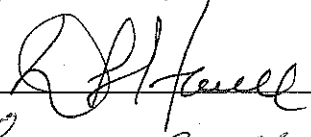
Dean P. Nicastro

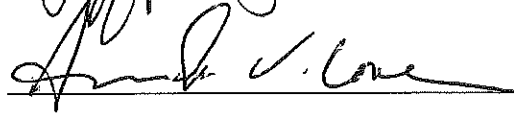


Sharon Davis









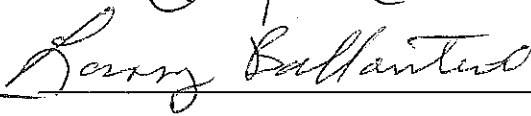
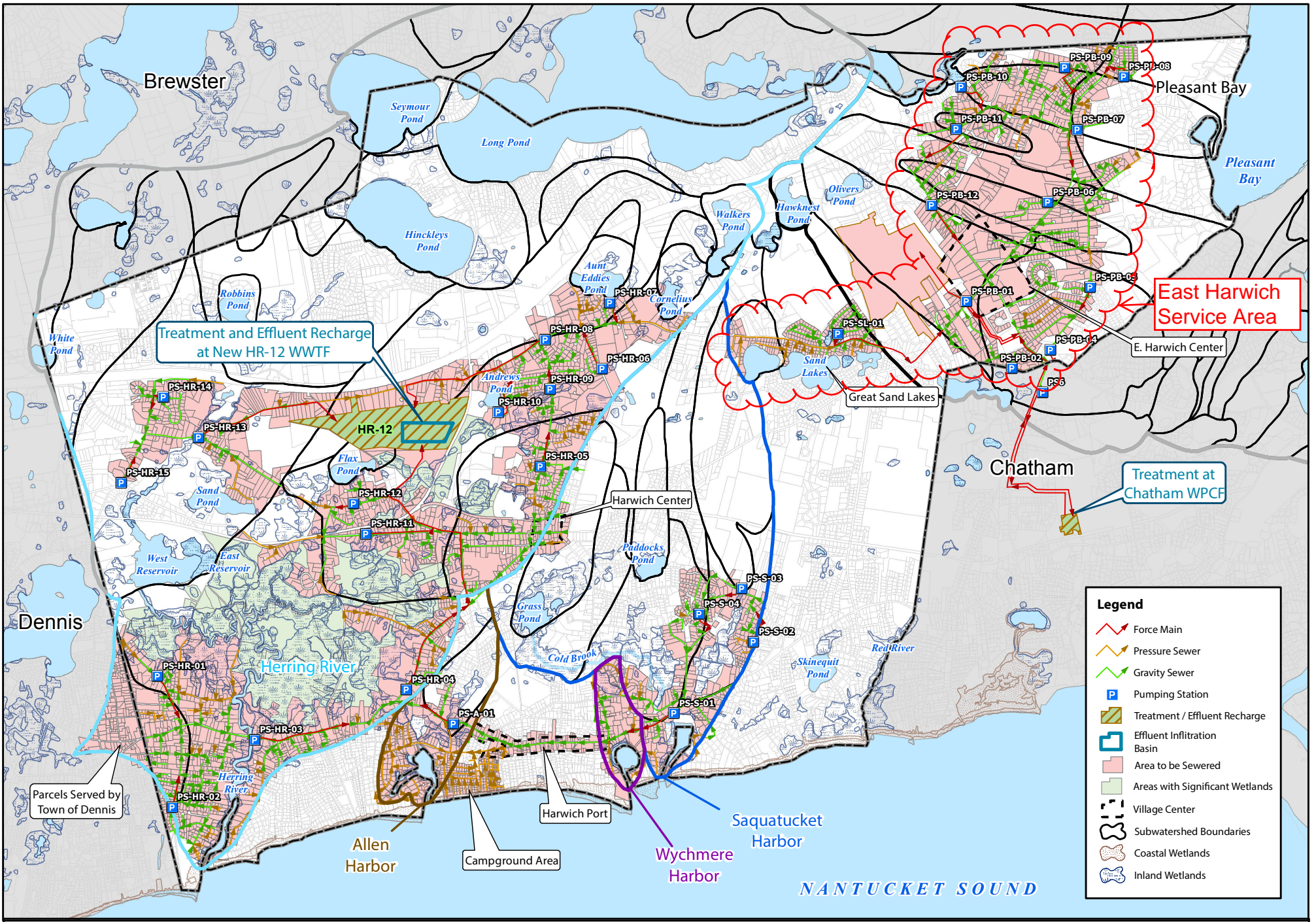


Exhibit A

East Harwich Service Area



Legend

- Force Main
- Pressure Sewer
- Gravity Sewer
- Pumping Station
- Treatment / Effluent Recharge
- Effluent Infiltration Basin
- Area to be Sewered
- Areas with Significant Wetlands
- Village Center
- Subwatershed Boundaries
- Coastal Wetlands
- Inland Wetlands



Town of Harwich
Comprehensive Wastewater
Management Plan

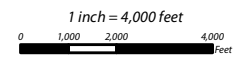
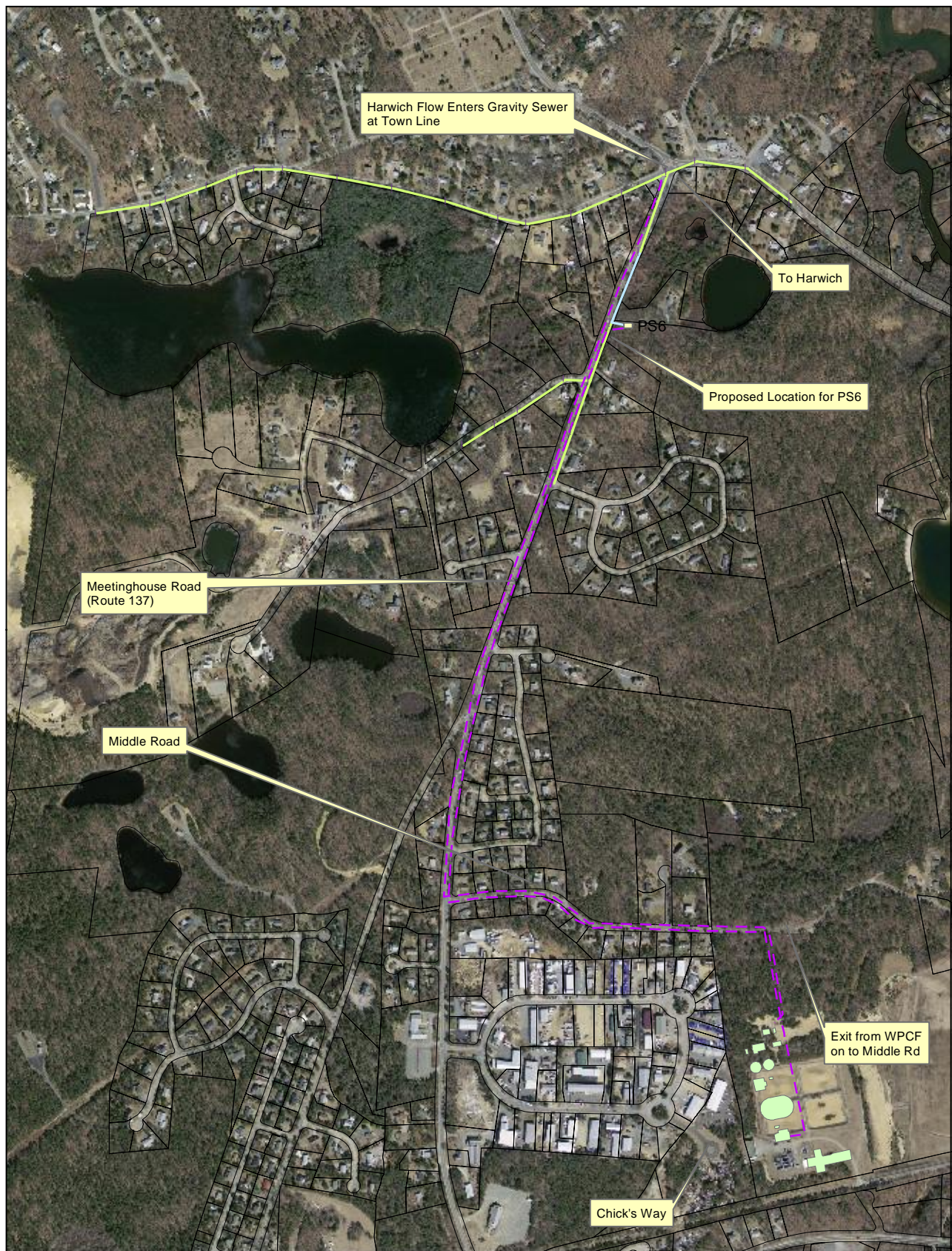


Figure 13-1
Recommended Areas to be Sewered

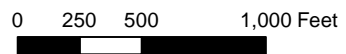


Exhibit B
Connection Point



Legend

Force Main	Gravity Sewer	Manholes
10" -	8" -	•
	12" -	New Buildings



Paper Size ANSI B



CDM Smith Inc.
Harwich Comprehensive
Wastewater Management Plan

Job Number | 86-14969
Revision | A
Date | 11 Jun 2012

**Site 6 Gravity
and Force Main Extents**

Figure 5

Map Projection: Lambert Conformal Conic
Horizontal Datum: North American 1983
Grid: NAD 1983 StatePlane Massachusetts Mainland FIPS 2001 Feet

Exhibit C

O&M Expenses

Department Detail



FY 2018 Budget

**Dept - 443
Sewer**

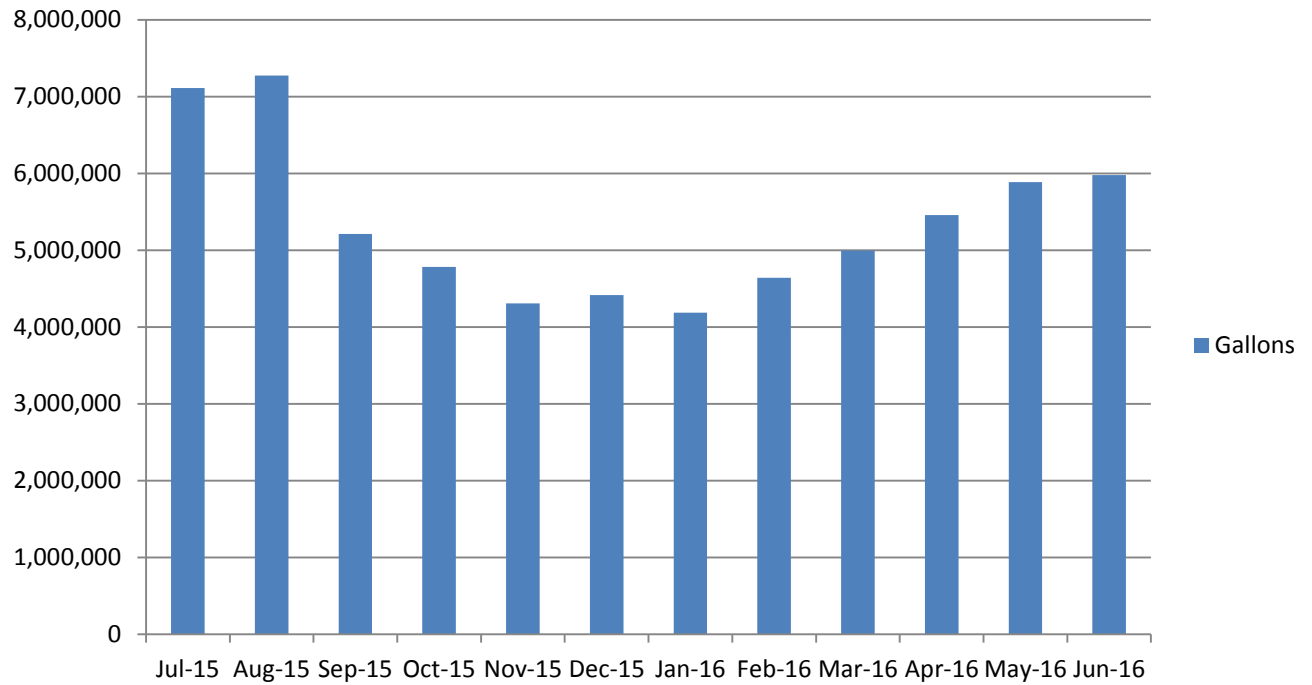
Department Detail

		FY 2015 Actual	FY 2016 Actual	FY 2017 Budget	FY 2017 YTD 12/31/16	FY 2018 Dept Req	Supplemental Request	FY 2018 Town Manager
5110	Regular Wages	22,884	27,021	22,753	10,971	23,910	-	23,910
5120	Temporary Wages	-	-	-	-	-	-	-
5130	Overtime	-	-	-	-	-	-	-
5141	Longevity	-	-	-	-	-	-	-
	Personnel Services	22,884	27,021	22,753	10,971	23,910	0	23,910
5200	Purchase of Services	-	8,083	500	-	500	-	500
5203	Testing	17,261	17,225	20,000	9,259	20,000	(1,500)	18,500
5209	Electric WWFT	106,099	116,207	140,000	69,713	140,000	(8,000)	132,000
5210	Electric-Pump Station	37,511	35,168	45,000	16,658	45,000	4,000	49,000
5212	Gas Heat	35,528	24,709	40,000	3,603	40,000	(2,700)	37,300
5249	Plant Maintenance	107,763	100,603	90,000	63,935	90,000	30,000	120,000
5289	Solid Waste Disposal	26,537	32,831	26,000	14,066	26,000	16,000	42,000
5307	Contract Services	487,630	497,410	507,190	252,780	516,970	-	516,970
5312	Traffic Control/Public Safety	6,584	7,958	5,000	5,786	5,000	5,400	10,400
5317	Professional/Legal/Consulting	7,630	3,652	5,000	1,874	5,000	-	5,000
5340	Telecommunications	-	-	500	-	500	(500)	-
5343	Advertising	129	185	500	-	500	-	500
5344	Printing	420	-	100	-	100	-	100
5345	Postage	183	47	100	-	100	-	100
5400	Operational Supplies	585	2,643	500	-	500	-	500
5420	Office Supplies	212	416	250	577	250	-	250
5430	Building & Grounds Maintenance	-	175	500	-	500	-	500
5432	Chemicals	36,696	34,308	30,000	19,287	30,000	6,000	36,000
5481	Vehicle & Equipment Maint	9,999	6,028	4,800	2,705	4,800	1,500	6,300
5705	Meetings/Dues & Travel	189	-	250	-	250	-	250
5800	Capital Outlay-Operating	-	-	200	-	200	(200)	-
5805	Ground Water Monitoring	23,806	20,850	24,000	-	24,000	-	24,000
	Expenses	904,761	908,498	940,390	460,243	950,170	50,000	1,000,170
	Total Sewer	927,645	935,518	963,143	471,214	974,080	50,000	1,024,080

Exhibit D

WPCF Flow

Total Monthly Effluent Flows July 2015 to June 2016



Average Daily Effluent Flows July 2015 to June 2016

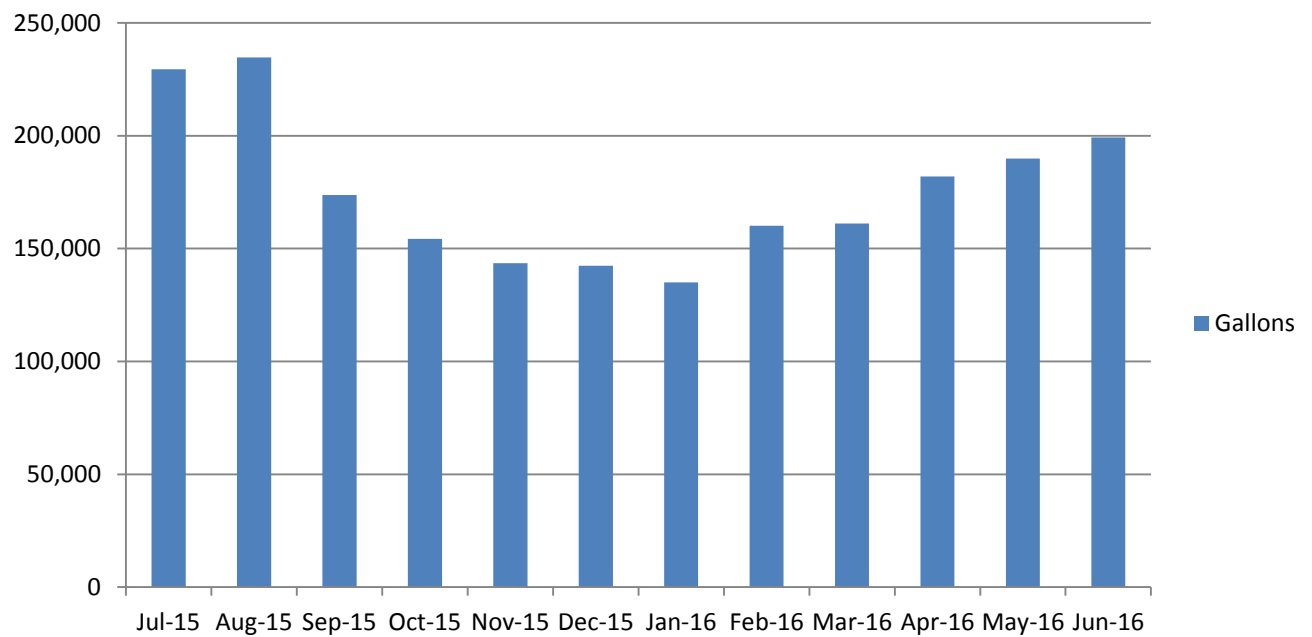


Exhibit E

Draft Preliminary Design Memorandum M-1B Flows and Loadings



From: J. Jefferson Gregg, P.E.
Date: April 21, 2006
Re: Chatham, MA Preliminary Design
Flows and Loadings

Purpose of Memo

The purpose of this memorandum is to summarize the development of wastewater flows and loadings for the Town of Chatham (Town) to be used in the preliminary design of wastewater facilities.

Average Wastewater Flows Development

To remain consistent with the facilities planning process to date and the Massachusetts Estuaries Project Efforts, the Town's existing water consumption data has been used as the basis for the future Wastewater Treatment WWTF design flows and loadings.

The following is a summary of the Town's water data analysis and how it is being applied to this project:

1. 2002-2003 Water data (provided by the Town – summer to summer, and used as part of the Massachusetts Estuaries Project (MEP)). Currently approximately 90 percent of the Town is on public water.
2. Ninety percent reduction applied to convert water use to wastewater generation (facilities plan, and MEP). This 90% reduction is based on an analysis of the wastewater flows to the existing Chatham WWTF.
3. Calculated average water use per parcel for those parcels without known irrigation systems, as identified by Town.
4. Actual water data was used where available, if no water data was available the following approach was used:
 - a. Average water use for single family home was estimated to be 120 gpd/parcel (rounded to two significant figures). Estimations based on the parcel by parcel analysis.
 - b. For non-single family homes, estimated water use assigned to these parcels was based on the average water use of parcels with the same state class code (similar property type).
 - c. Build-out parcels (future) were assigned 120 gpd/parcel.
5. Build-out projections based on the approach established as part of the facilities planning effort and accepted by the Town and Cape Cod Commission (CCC).



6. Existing developed-properties wastewater flow compared to projected build-out flow, and the higher of the two values used.

7. Additional build-out criteria used, as agreed upon with the Town:

- Residential properties are redeveloped to full extent based on current zoning.
- Commercial and Industrial, vacant-developable land is converted to residential.
- All other existing uses remain the same.
- Maps were reviewed with the Town and site specific modifications were made.

Wastewater Flows and Peaking Factors

Table 1 presents the average flows seen at the existing Chatham wastewater treatment facility, generated from the existing collection system.

TABLE 1

EXISTING WWTF FLOWS (2002-2005)

CONDITION	FLOW (MGD)
Average Flow	0.10
Minimum Month Flow	0.07
Maximum Month Flow	0.16

Water use and wastewater flow peaking factors were evaluated and compared to TR-16. The peaking factors considered for the preliminary design are presented in Table 2. As part of the evaluation, both the wastewater flows recorded at the existing WWTF and the drinking water well pumping records were evaluated for the following reasons:

- The limited size of the existing collection system may not be representative of the Town demographics.
- Existing WWTF peaking factors may represent a more year round population and might not be representative of the entire Town (if sewerred).
- Town water supply well pumping records are more likely to show the seasonal impacts of the entire Town.
- Well pumping records also reflect higher peak pumping rates in the summer because of additional uses like car washing, lawn irrigation, etc, and therefore would require downward adjustments to the wastewater estimate.
- Well pumping does not equate to 100% wastewater generation, and therefore should not be considered as the sole means of estimating peaking factors.

Therefore, peaking factors falling between those seen at the WWTF and from the well pumping records were considered as a reasonable approximation of those for a Townwide system and were compared to estimated TR-16 values, for validation purposes. The peak day and peak hour estimates



were well within the range recommended by TR-16. TR-16 does not have estimates for summer average, minimum month or maximum month flows.

TABLE 2

PEAKING FACTORS

CONDITION	EXISTING WWTF ⁽¹⁾	TR-16 ⁽⁵⁾	PROPOSED
Minimum Month	0.7		0.5
Summer Average ⁽²⁾	1.3		1.6
Maximum Month ⁽³⁾	1.6		1.9
Peak Day ⁽⁴⁾	1.8	2.1	2.2
Peak Hour		3.4	3.4
Notes: 1. Based on 2002 through 2005 data 2. Three month average (June, July, and August) divided by average annual 3. Maximum month divided by average annual 4. Peak day divided by average annual 5. TR-16 estimates based on average annual flow of 1.5 mgd			

Summer average flows during the years 2002 through 2005 were evaluated for June through August, June through September and July through September. The highest average summer flow occurred during the June through August period, although all three periods yielded similar results.

Table 3 presents the Townwide wastewater flow estimates. Existing average annual flow and build-out flows are based on the previously agreed upon approach. Peaking factors are then applied to calculate the remaining build-out flows. Build-out is considered the design conditions for this project.

TABLE 3

**TOWN-WIDE FLOW ESTIMATES
(not including I/I)**

CONDITION	FLOW (MGD)
Existing (2003) Average Annual Flow ⁽¹⁾	1.0
Build-out (BO) Average Annual Flow	1.3
BO Summer Average Flow	2.1
BO Minimum Month Flow	0.86
BO Maximum Month Flow	2.5
BO Peak Day Flow	2.9
BO Peak Hourly Flow	4.5
Note: 1. Calculated flow based on 2002-2003 water data and existing Town wide land use and units based on 2004 Town assessors data.	



The future Chatham collection system will be a new system over very significant areas of Town. The new gravity PVC sewers and manhole joints and covers will be gasketed. Portions of the Town will be low pressure sewers. All new connections will be wye-connections with new laterals to the house, and no roof leaders or sump pumps and/or foundation drain connections will be allowed under any condition. In addition, public education programs should be employed to prevent illegal connections. Because of this, inflow is expected to be negligible.

Table 4 summarizes the projected Infiltration and Inflow (I/I) estimates for the collection system. The “startup” condition is based on the existing collection system and an infiltration rate of 500 gpd/in-mile (based on TR-16). I/I was calculated based on the preliminary sewer layouts developed at the time of this memorandum, and based on 8-inch diameter pipe, and using an I/I rate of 500 gpd/in-mile. I/I for laterals is based on 500 gpd/in-mile for approximately 5,100 4-inch connections each approximately 80 feet long. Estimated length based on Town-wide average distance of building to property line based on GIS information. Although 500 gpd/in-mile is on the high end of the TR-16 range for just infiltration, for this preliminary design it will be used to represent infiltration and inflow.

TABLE 4

INFILTRATION / INFLOW ESTIMATE

CONDITION	FLOW (GPD)
Existing Collection System	20,000
Preliminary Gravity Sewer Layout	350,000
Laterals (All Phases)	160,000
Total	530,000

The proposed sewer areas presented in Table 4 are based on future areas of Town to be sewered as presented in a memorandum to the Town dated June 7, 2005 and entitled Wastewater System Implementation Capital Improvement Planning Items.

Once the proposed sewer layouts are finalized, the estimated I/I values will be adjusted. At this time, the lengths of pressure sewers and gravity sewers have not been finalized. I/I values are not peaked and represent the condition of maximum I/I occurring under any flow condition.

Table 5 presents the proposed WWTF design flows, which are the total of the Townwide flows under build-out conditions presented in Table 3 and the I/I flows presented in Table 4.



TABLE 5

TOTAL PROPOSED WWTF DESIGN FLOWS ⁽¹⁾

CONDITION	FLOW (MGD)
Startup Minimum Month Flow	0.08
Average Annual Flow	1.9
Average Summer Design Flow	2.7
Minimum Month Design Flow	1.2
Maximum Month Design Flow	3.1
Peak Day Design Flow	3.5
Peak Hourly Design Flow	5.1
Note: 1. Includes I/I	

Maximum month flows and loadings will be critical for meeting any effluent nitrogen limit. Peak flows are also critical for process design and hydraulic considerations and effluent disposal. Also, with continued reconstruction of homes in Chatham, it is quite possible that a higher proportion of year-round residents may eventually reside in Town. However, such projections are not available at the time of this technical memorandum, so for planning purposes the present distribution of seasonal and year-round properties (outside of the projected growth due to Build-out) would remain the same in the future. To minimize the impact of future conversion of seasonal to year round homes, the facility will also consider a summer average flow rate and loading, which would account for the majority of the potential residential sewer users in the future. However the fact that the facility will be designed around maximum month and peak day conditions will address this increase in flow and loading.

Development of Loadings

Table 6 presents TR-16 factors for loading variability.

TABLE 6

TR-16 LOADING FACTORS

CONDITION	MAXIMUM MONTH	PEAK DAY
BOD	1.14	1.8
TSS	1.3	2.1



Table 7 presents the existing loadings for the Chatham WWTF (2002-2005).

TABLE 7
EXISTING WWTF FLOWS AND LOADINGS (2002-2005)

CONDITION	AVERAGE	MINIMUM MONTH	MAXIMUM MONTH
Flow, mgd	0.1	0.08	0.16
BOD ₅ , lb/day	180	70	420
TSS, lb/day	180	80	300
TKN, lb/day	30	10	60
Ammonia, lb/day	20	< 10	40
Note: Flows and loadings represent a 4 year average (through October 2005) Rounded to two significant figures			

Table 8 presents the flows and loads for the entire WWTF (Phase 1 and 2). Loadings were based on concentrations currently seen at the existing WWTF, increased with build-out estimates, and TR-16 factors were applied for Maximum Month and Peak Day conditions for TSS, and BOD.

TABLE 8
WWTF DESIGN FLOWS AND LOADINGS

CONDITION	STARTUP ⁽³⁾	AVERAGE ANNUAL	DESIGN SUMMER AVERAGE	MINIMUM MONTH	MAXIMUM MONTH	PEAK DAY	PEAK HOUR ⁽²⁾
Flow, mgd	0.08	1.9	2.7	1.2	3.1	3.5	5.1
BOD ₅ , lb/day ⁽¹⁾	100	3,200	6,200	1,400	7,400	8,500	-
TSS, lb/day ⁽¹⁾	160	3,400	5,900	2,200	7,000	8,100	-
TKN, lb/day	20	600	900	200	1,100	1,300	-
Ammonia, lb/day	10	400	600	100	800	900	-
Notes: 1. BOD and TSS loadings for Maximum Month and Peak Day adjusted based on recommended Loading Factors listed in Table 8. 2. Peak Hour loadings not calculated. 3. Start-up loadings based on 2005 data.							

For design purposes, seasonal correlations were developed showing under what temperature conditions the facility might see its maximum loading conditions. This impacts the sizing of the facility.



TABLE 9

SEASONAL CORRELATION OF FLOWS AND LOADS

SEASON	DESIGN FLOW	DESIGN LOAD	DESIGN AVERAGE MONTHLY TEMPERATURE (DEGREES C)
Dec-Feb	Use Min. Month	Use Min. Month	7
March-May	Use Average Design Flow	Use Average Design Flow	10
June-Aug	Use Max Month	Use Max Month	20
Sept-Nov	Use Average Design Flow	Use Average Design Flow	16

WWTF Phasing

Preliminary design of the WWTF is based on two phases, based on a preliminary division of the Town to address potential sewerage options. Phase I flows would cover portions of the Town located generally south of Route 28, and Phase II would encompass the remaining areas of Town.

Table 10 summarizes the approximate flow split.

TABLE 10

PHASED WWTF DESIGN FLOWS ⁽¹⁾

CONDITION	PHASE I FLOWS (MGD)	PHASE II FLOWS (MGD)
Startup Minimum Month Flow	0.08	0.8
Average Annual Flow	1.3	1.9
Average Summer Design Flow	1.8	2.7
Minimum Month Design Flow	0.8	1.2
Maximum Month Design Flow	2.1	3.1
Peak Day Design Flow	2.3	3.5
Peak Hourly Design Flow	3.5	5.1
Note: 1. Includes I/I		



Other Flow Considerations

1. Future Harwich Sewer Extensions:

The Town is currently in discussions with the Town of Harwich regarding the possible extension of any proposed collection system into Harwich. This would require an inter-municipal agreement between the two Towns establishing the quantity of flow and other requirements. No flow estimate is available at this time, and the ultimate ability of Chatham to extend sewers into Harwich will be dependant on the effluent disposal capacity of the Town of Chatham.

2. Septage:

As identified in the 1999 Needs Assessment Report (Table 5-8), “Septage and grease are treated in the sludge holding tanks and the decant liquid and belt filter press filtrate from these flows have minimal contributions to the wastewater treatment process.” Therefore for this analysis concentrations from septage are considered to have minimal impact on the new WWTF. Also, the Town of Chatham only receives septage from the Town, therefore as more of the Town is sewered, an even smaller portion of the wastewater flow stream will originate from this source. However, the septage will be considered in the sludge processing and disposal calculations.

AMENDMENT No. 1
TO INTERMUNICIPAL AGREEMENT

For

Wastewater Collection and Treatment by and between the Towns of Chatham and
Harwich

This Amendment to Intermunicipal Agreement ("Amendment") is entered into as of _____ (the "Effective Date") by and between the Town of CHATHAM, Massachusetts ("Chatham"), a municipal corporation, and the Town of HARWICH, Massachusetts ("Harwich"), a municipal corporation (collectively, with their successors and assigns, the "Parties").

RECITALS

WHEREAS, Chatham and Harwich entered into an Intermunicipal Agreement on June 20, 2017 (the "Agreement") whereby Chatham will receive and treat Harwich's wastewater and septage at the Chatham Water Pollution Control Facility (the "WPCF") in consideration of Harwich's contribution toward the capital and operational expenses generated by said connection and the other terms and conditions set forth herein;

WHEREAS, in order to accommodate the additional flow of wastewater from East Harwich, Chatham is designing and constructing a connection with Harwich (the "Connection Point") and Chatham has agreed to receive and treat wastewater from Harwich users in the East Harwich Service Area the Connection Point, and at such other mutually agreeable connection locations as may be designated by Chatham and Harwich;

WHEREAS, the Parties wish to further clarify their respective duties and responsibilities relating to such other connection points and to establish terms and conditions to enable Chatham, its employees, agents and contractors to access, construct, operate, maintain and repair certain sewer mains and related improvements located in Harwich to facilitate implementation of the Agreement.

WHEREAS, the Parties wish to revise and amend certain Agreement terms relating to Harwich's payment obligations thereunder.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

- 1) Grant of License. Harwich hereby grants to Chatham, its employees, agents and independent contractors the authority, right and license at all times to have access to and to enter upon and occupy such portions of the rights of way, sewer mains

and related wastewater collection improvements located within Harwich for the purpose of constructing, operating, maintaining, repairing, using and inspecting the sewer mains and related infrastructure, as specified and shown on the plan entitled "Chatham/Harwich Inter Municipal Agreement; Chatham Sewer Extents", dated 6/23/21, appended hereto as Attachment A, and Harwich will issue, promptly upon request therefor, any such permits and licenses as shall be necessary to enable Chatham to accomplish any of said purposes. Chatham agrees to indemnify, defend, and hold harmless Harwich against any claim by any person for any injury or death to persons or loss or damage to property relating to or resulting from Chatham's exercise of its rights hereunder.

- 2) The language of Article 3 (Capacity Purchase Fee) of the Agreement is hereby amended and revised to read as follows:

Harwich will purchase 300,000 gpd average annual daily flow capacity of the Chatham WPCF, for the amount of \$6,765,000. Harwich shall make an initial payment of \$2,265,000 upon execution of this Agreement; a second payment of \$1,500,000 shall be made upon the commencement of flow from the East Harwich Service Area to the WPCF; a third payment of \$1,500,000 shall be made upon an average daily flow of over 50,000 gpd or seven (7) years from the date of signing of this Agreement, whichever occurs first; and a fourth payment of \$1,500,000 shall be made upon an average daily flow of over 150,000 gpd or nine (9) years from the date of signing this Agreement, whichever occurs first.

- 3) The language of Article 4.B.1) of the Agreement is hereby amended and revised to read as follows:


A. Collection System

- 1) Harwich shall pay Fixed O&M costs in a ratio of Harwich design flow to Chatham design flow for that portion of the conveyance system from the Connection Point(s), through pumping station(s), to the WPCF and any off-site effluent recharge location within Chatham, if applicable. Further, Harwich shall be responsible for and shall pay to Chatham as Fixed O&M costs an additional sum equal to any increase in contract payments to the Chatham Contract Operator relating to or resulting from said Contract Operator's operation and maintenance of the Harwich collection system. Fixed O&M payments shall begin at the time of Harwich connection.
- 4) All terms and conditions of the Agreement not specifically supplemented, amended, or modified hereby shall remain in full force and effect throughout the term thereof.


IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed by their duly authorized officers and their respective seals to be affixed as of the dates given below.

Select Board, Town of Chatham

Board of Selectmen, Town of Harwich



J. Ballantyne



R. Fuller

Attachment A

(Chatham/Harwich Inter-Municipal Agreement; Chatham Sewer Extents)

AMENDMENT No. 1

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For

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and related wastewater collection improvements located within Harwich for the purpose of constructing, operating, maintaining, repairing, using and inspecting the sewer mains and related infrastructure, as specified and shown on the plan entitled "Chatham/Harwich Inter Municipal Agreement; Chatham Sewer Extents", dated 6/23/21, appended hereto as Attachment A, and Harwich will issue, promptly upon request therefor, any such permits and licenses as shall be necessary to enable Chatham to accomplish any of said purposes. Chatham agrees to indemnify, defend, and hold harmless Harwich against any claim by any person for any injury or death to persons or loss or damage to property relating to or resulting from Chatham's exercise of its rights hereunder.

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- 3) The language of Article 4.B.1) of the Agreement is hereby amended and revised to read as follows:

A. Collection System

- 1) Harwich shall pay Fixed O&M costs in a ratio of Harwich design flow to Chatham design flow for that portion of the conveyance system from the Connection Point(s), through pumping station(s), to the WPCF and any off-site effluent recharge location within Chatham, if applicable. Further, Harwich shall be responsible for and shall pay to Chatham as Fixed O&M costs an additional sum equal to any increase in contract payments to the Chatham Contract Operator relating to or resulting from said Contract Operator's operation and maintenance of the Harwich collection system. Fixed O&M payments shall begin at the time of Harwich connection.
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Select Board, Town of Chatham

Les K. Coe

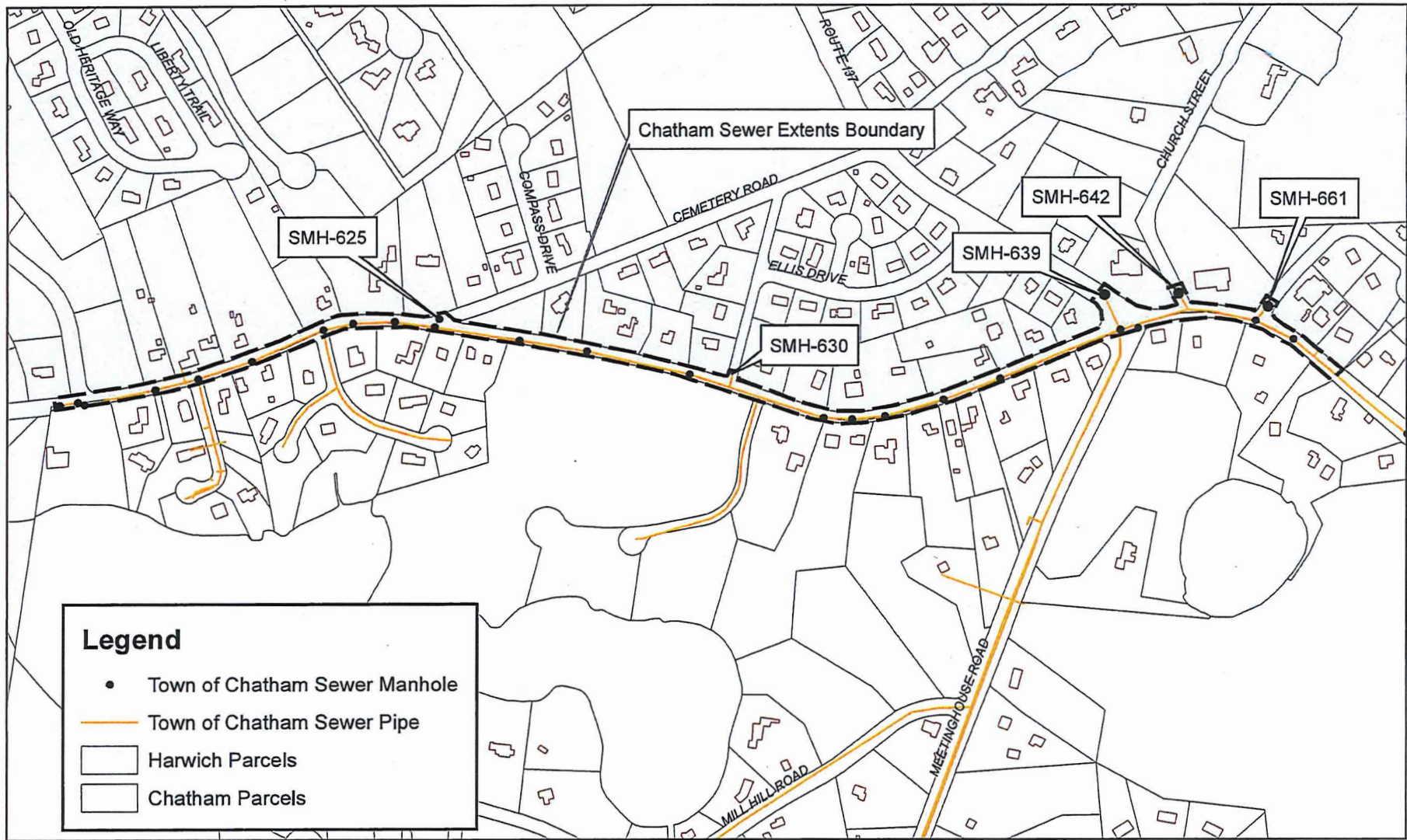
Shereen Davis

[Signature]

Jeffrey [Signature]

Dean P. Nicastro

Board of Selectmen, Town of Harwich



Legend

- Town of Chatham Sewer Manhole
- Town of Chatham Sewer Pipe
- Harwich Parcels
- Chatham Parcels

Paper Size ANSI A

0 230 460
Feet

Map Projection: Lambert Conformal Conic
Horizontal Datum: North American 1983
Grid: NAD 1983 StatePlane Massachusetts Mainland FIPS 2001 Feet



TOWN OF CHATHAM, MASSACHUSETTS
**Chatham/Harwich Inter
 Municipal Agreement**
 CHATHAM SEWER EXTENTS

Project No. 11144208
 Revision No. -
 Date 06/23/2021

FIGURE 1


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 Print date: 23-Jun-2021 - 17:12

Data source: Created by: gshrin

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Select Board, Town of Chatham

Board of Selectmen, Town of Harwich



J. Ballantyne

[Signature]

[Signature]
