

## HARWICH CHANNEL DREDGING AND BEACH NOURISHMENT POLICY



### TOWN OF HARWICH BEACH NOURISHMENT WITHIN THE TOWN OF HARWICH POLICY

Adopted by the Board of Selectmen  
January 12, 2009

In an effort to quantify specifics for beach nourishment requests from private home owners and commercial establishments, the Town of Harwich has adopted the following plan. As Town resources and funding allows, the Town will continue to dredge its channels and maintain the required channel depth, 6' MLW mid channel depth. The town will make every attempt to make use of all the sand generated from this effort to replenish and stabilize beaches. All town-owned public beaches will be the primary deposition of dredged material from a town-financed dredge project.

Projects funded by town meeting through its dredging articles and alternative sources will first be used to replenish public beaches or placed on private lands to protect the public good, so as to sustain the public beach through littoral drift of material or wind carried sand. Source channels within the plan include: Saquatucket Harbor entrance channel, Wychmere Outer Harbor and its spur channel, Allen Harbor entrance channel, Herring River entrance channel, and Round Cove channel.

#### Purpose

This section of the Beach Management Plan sets forth procedures and standards for the nourishment of public and private beaches through the use of dredged material. The purpose of this section is also to ensure protection of environmental interests and values of the Town of Harwich.

When the Town determines it has a surplus of channel sand available, or a cap or limit on municipal funds available to do the project, private shorefront property owners and

beach associations are strongly encouraged to participate and become a receiving beach. Since more than eighty percent of the beaches along the Harwich shoreline are privately owned, this relationship is critical for the overall replenishment and stabilization of our beaches and protection of shorefront property as a whole.

Because spoil (beach sand) has a high monetary value as top quality beach nourishment material, at a cost of 7 to ten times less than land trucked material, it is the opinion of Town Counsel that private property owners and associations are not allotted the material free of charge.

### Standard

When a proposed project involves the dredging of any land under the ocean, the Town of Harwich will determine the location and placement of the dredged material to augment the existing beach profile. The Town of Harwich has developed a Comprehensive Dredging Plan (CDP) i.e. a comprehensive permit from the Commonwealth of Massachusetts which allows the dredged material to be periodically placed on these receiving beaches with the individual property owner needing only to apply for a Notice of Intent (NOI) and receive a current Order of Conditions from the Conservation Commission for each event. The property owner will need to contract with a professional engineer to certify the NOI application. The Water Quality Certificate and MEPA certificate verbiage are now standard and will not change under the Harwich Comprehensive Dredging Plan. Any projects proposing to place dredged material below the MHW line will need to apply for a Massachusetts Ch 91 License along with a permit from the U.S. Army Corps of Engineers.

### General Guideline

The opportunity to reimburse the Town for expenses of sand nourishment to private property beach by individual residents, neighborhood beach associations, and private businesses may occur during publicly financed dredging projects by the Town of Harwich if the following criteria are applied:

- A. The entity within which the potential placement site is located has expressed an interest in obtaining beach nourishment material.
- B. Beaches with a demonstrated need for and capability of accepting all or a part of the available material are within proximity of the dredging site.
- C. All town-owned public beaches will be the primary deposition site of dredged material from a town-financed dredge project. The actual dredging contract between the Town and Barnstable County, which is a political subdivision of the Commonwealth, is exempt from c. 30B, pursuant to the following exemption which can be found at c. 30B, sec. 1(9):

(9) a contract to purchase supplies or services from, or to dispose of supplies to, any agency or instrumentality of the federal government, the commonwealth or any of its political subdivisions or any other state or political subdivision thereof;

Therefore, the Town may enter into the dredging contract with the County without conducting any procurement process.

D. Any excess material not needed on a public beach may be procured by request from the Town by a private homeowner or beach association at the Town's cost through the public bidding process.

The Town can not properly characterize the contribution of funds by private beach owners towards the dredging as a "gift" if the private property owner receives something of value in return. If the Town agrees, in exchange for the monetary contribution towards the dredging project, to deposit beach sand on the private property of the individual making the contribution, then the transaction is properly characterized as the disposition of a supply or service by the Town, and if the value of the sand exceeds \$5,000, then the Town is obligated to engage in a public bidding process before entering into the arrangement.

If the home owners expect to receive beach sand valued at more than \$5,000 in exchange for the contribution, then the Town shall follow the public procurement process. The Town will issue an invitation for bid that sets forth a minimum unit bid price, which should be calculated to cover the cost to the Town for performing the extra dredging service. The Town should establish minimum criteria which include the distance from the dredging area to the private beach nourishment area. Bidders may bid higher than the minimum unit bid price, and the Invitation for Bids should spell out the priority that bids will receive based upon the bid price. In the case of equal bid prices, the IFB should specify, for example, a lottery procedure to determine who will be awarded the bid or state that it goes to the closest beach. This cost effective system will be two tiered based upon distance of the dredging project from the disposal beach and the need for the added expense of a booster pump. Effectively,

Tier I shall be beaches within one mile and the minimum bid should be the County base cost plus 10%.

Tier II shall be beaches more than one mile from the source and the minimum bid should be the County base cost including the booster pump plus 10%

E. The Town will establish a dredging revolving account under MGL Chapter 44 section 53D in which any excess funds within a given fiscal year may be spent on public dredging expenses.

F. Bid Zones may be established limiting the distance that material can be transferred for the benefit of private beaches.

G. The Harwich Natural Resources Department will review each request for use of available dredged material and make an annual recommendation to the Board of Selectmen. This recommendation will be based on a variety of factors, including channel maintenance needs, current conditions of both public and

private beach areas within the CDP area, local coastal processes trends, and overall sediment management goals of the Town. The BOS will grant final approval for such a contract based upon what would result in the greatest overall benefit to the Town of Harwich.

H. In accordance with Commonwealth of Massachusetts Chapter 91 regulations, private property owners shall be required to grant an easement regarding public strolling rights along the private project area if the material is placed below the existing mean high water line. The easement must be recorded with the Barnstable County Registry of Deeds. The easement will expire when and if the material erodes back to pre-project conditions. (see exhibit A) Legal easements and public rights-of-way must be obtained from property owners which preserve public use and state ownership of all state-owned submerged land existing seaward of mean low water shoreline prior to the placement of any material. These legal documents are the responsibility of the dredging applicant or property owners, or both.

I. If there is an excess of sand being dredged and accommodated only on town owned land with the public funds available, the Town may place the excess sand on adjacent private beaches, with the property owners consent, at no additional cost. Legal easements and public rights-of-way must be obtained from property owners since these preserve public use and state ownership of all state-owned submerged land existing seaward of mean low water shoreline prior to the placement of any material.

J. These legal documents are the responsibility of the dredging applicant or property owners, or both. Because of certain liability contained in the standard Department of Environmental Management easement documents, the adjacent property owners may be unwilling to grant the town the necessary easements to allow for the disposal of the dredged material. In this case the town may take alternative action by eminent domain powers and take the easements necessary for the disposal of that sand.

K. If more than two abutters are promised material that cannot be delivered by the dredge, a waiting list for abutters not receiving material should be maintained by the Harwich Natural Resources Department.

L. Private property owners and associations, individual residents, neighborhood beach associations, and private businesses participating in the project should establish and carry out a plan to hold material on the beach through some mitigation effort such as beach fencing, beach grass plantings etc. This may be specified by the conservation commission in the order of conditions.

M. Notification of private property owners to be accommodated within the bidding process must be accomplished twelve (12) weeks prior to the start date of the project.

## Addendum

### Removal of Accreted Sand for nourishment of a Public Beach

1. Private property owners who have an accumulation of material along a channel may petition the town to remove sand if it is impacting a dock pier or boat slip and not in conflict with any shellfish or other significant area. There is also a reasonable expectation that the usable quantity of suitable beach nourishment material to be dredged is free from toxic compounds. Cost of moving the material by the dredge shall be born by the private homeowner, commercial establishment or beach association at the Town's dredging cost. The owner would pay into the gift account for this purpose.

a. If the persons making the contribution are not interested in receiving any of the sand, then the material may be placed on a town beach. Since the Town is receiving a general public benefit from the extra dredging services, the extra funds will pay for additional dredging within public channels and waters. The fact that the property owners receive an incidental benefit, in that the water in the immediate vicinity of his or her property is dredged, does not alter the basic nature of the gift.

2. The applicant understands that they will be required to undertake the necessary task of locating private property owners willing to accept the material if no publicly owned shoreline is within reasonable proximity to the source material.

3. Neither the dredging nor dredged material disposal activities are likely to be approved if they might damage sensitive environments.

4. Dredge spoils shall not be hauled out of the Town of Harwich.

Exhibit A

**EASEMENT**

I (WE) \_\_\_\_\_ of  
\_\_\_\_\_, the “Grantor(s)”, which term shall include for all purposes all successors in interest including heirs, successors, assigns, of lessees grant to said Town of Harwich and its inhabitants, the “Grantee”, acting through its Board of Selectmen an easement, in perpetuity, of the nature and character and to the extent hereinafter set forth, over a parcel (the “Property”) located in Harwich, at the following address: \_\_\_\_\_.

**WITNESSETH:**

WHEREAS, Grantor is sole owner in a fee simple of certain real property (the “Property”) in Harwich, more particularly described above; and

WHEREAS, the property possesses natural, scenic, and open space values of great importance to the people of Harwich and the people of the Commonwealth of Massachusetts; and

WHEREAS, the value of the property has been (or will be) restored, enhanced, and protected (“The Nourished Area”) by a locally funded beach nourishment project more particularly described in the plans provided at Town Hall; and

WHEREAS, the Grantor has received a direct benefit from said publicly-funded beach nourishment project;

NOW, THEREFORE, in consideration of the facts recited above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to laws of the Commonwealth of Massachusetts, the Grantor hereby voluntarily grants and conveys to the Grantee an easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth:

There is granted to the Grantee, the residents of Harwich, and the public generally, a public on-foot right-of-passage along and across the shore of the coastline

between the mean high water line and the entire “nourished area” subject to the following restrictions and limitations:

1. Said public on-foot right-of-passage shall not be exercised (a) later than one-half hour after sunset nor earlier than sunrise; (b) where the Commissioner of the Department of Environmental Management for the purpose of protecting marine fisheries and wildlife or for controlling erosion, designates and posts natural areas of critical ecological significance as areas in which, on either a regular or seasonal basis as circumstances in each situation require, the public may not exercise the on-foot free right-of-passage; (c) where there exists a structure, enclosure, or other improvements made or allowed pursuant to any law or any license, permit, or other authority issued or granted under the General Laws or where exist agricultural fences for the purposes of enclosing livestock, provided that such area is clearly and conspicuously posted.
2. The Grantor(s), and the heirs, successors, and assigns of the Grantor(s) covenant and agree to reimburse the Grantee all reasonable cost and expenses (including without limitation counsel fees) incurred in enforcing this easement or in remedying or abating and violation thereof. By its acceptance, the Grantee does not undertake any liability or obligation relating to the condition of the Property.

The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties: each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

The Grantor agrees to incorporate the terms of this Restriction in any deed or other legal instrument by which he divests himself of any interest in all or a portion of the Property.

The Grantor(s) shall record this instrument in timely fashion in the Barnstable County Registry of Deeds.

Executed under seal this \_\_\_\_\_ the day of \_\_\_\_\_, 20\_\_\_\_\_.

X \_\_\_\_\_

X \_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, sis. \_\_\_\_\_,  
20\_\_\_\_\_.

Then personally appeared the above-named \_\_\_\_\_ and  
acknowledged the forgoing instrument to be their free act and deed, before me.

\_\_\_\_\_  
Notary Public

Exhibit B

TOWN: Harwich

LOCATION: Allen Harbor

**RELEASE OF LAND DAMAGE**

To the Town of Harwich:

WHEREAS, THE TOWN OF HARWICH, has petitioned the Massachusetts Department of Environmental Protection for permission to undertake certain construction work under the provisions of Chapter 91 of the General Laws, or other Special Acts of the Legislature, substantially as shown on a preliminary plan drawn by Town of Harwich Engineer and dated 2008 on file at the Harwich Town Hall.

I/WE, owner(s) of the land at the site of the proposed work, in order to facilitate the work, as aforesaid, hereby accept the sum of One Dollar (1.00), the receipt of which is hereby acknowledged in full settlement of any and all land damages which may be caused by said construction, and I/WE do hereby release the Town of Harwich and their agents or servants from all claims for land damages that I/WE have or may have by reason of said construction. I/WE further agree to permit the Town of Harwich, and its agents or servants, to enter upon my property at any reasonable time to make repairs, alter or maintain the work on the proposed project.

IN WITNESS WHEREOF, I/WE have hereunto set my/our hands and seal this \_\_\_\_ the day of \_\_\_\_\_ A.D. 20\_\_\_\_.

X \_\_\_\_\_

Owner

X \_\_\_\_\_

Owner

X \_\_\_\_\_

Signed in Presence of:

Exhibit C

**Typical Immediate abutter letter**

RE: Proposed Dredging of \_\_\_\_\_ Harbor Channel

Dear \_\_\_\_\_ ,

The Town of Harwich is planning to dredge the entrance channel to Allen Harbor and use the resulting dredge spoils to nourish the public beach at Grey Neck Road.

Your property is currently included in the proposed area of beach nourishment. The State requires that any private property owner who receives beach nourishment sign the enclosed "Release of Land Damage" and Public Access Easement. The easement allows the public to pass on foot over the nourished area. It is similar to the rights of passage which already exist in tidelands. It does not allow the public to use the beach for picnicking, spreading blankets and chairs, etc.

If you have any questions concerning the project or the enclosed forms, please contact me. The forms should be signed where indicated with an X and returned to my office. The easement form must be notarized. The land release form must be witnessed. A notary public is available at Town Hall in Harwich.

If an owner fails to submit the forms, his/her property will be passed over for nourishment. Please return the forms as soon as possible. We appreciate your cooperation and look forward to a successful project.

Sincerely,

Harwich Natural Resources Director

Exhibit D

**Typical Property Owner Notification letter**

re: Dredging;

Dear Property Owner:

The US Army Corps of Engineers has granted the Town of Harwich a permit to maintenance dredge, as needed, the Allen Harbor channel. The last time this was done was in \_\_\_\_ ?. Because of the extent to which the channel has filled in, the Town plans to undertake a new dredging project to remove this sand from the channel and place it on Town beaches for nourishment. All of the necessary federal, state, and local permits have been obtained for the project to be underway this fall.

As part of our dredging program the Town is contracting the Barnstable County Dredge to begin this project the week of November 8<sup>th</sup>. We need to ensure that the recreational and commercial vessels in the harbor are able to safely navigate the channel. At the same time, much of the beach front in this area more than ½ mile west of the harbor channel is subject to erosion and desperately needs replenishment. The Town has made a decision to nourish two public beaches, i.e. Gray Neck Road and Earle Road. Although the primary intent of this project is to benefit public owned beaches, abutting property owners and down drift beaches are expected to benefit as well through sand accretion over time.

By law, we are required to notify property owners that abut within 100' of the affected area. We are expecting the adverse impacts from this small-scale project to be minimal, and the benefits to be great. The project plans and Notice of Intent are available in Town Hall for those with further interest.

Those property owners who will be receiving sand on their property as part of the nourishment project will be receiving additional information in the mail. We thank you for your support in this project.

Sincerely,

Harwich Natural Resources Director



## HARWICH BEACH NOURISHMENT PRE-APPLICATION

Property Owner should use this form along with a cover letter to the Board of Selectmen requesting approval to participate in the harbor channel dredging and beach nourishment program.

Name \_\_\_\_\_

Deed \_\_\_\_\_

Harwich Address \_\_\_\_\_

\_\_\_\_\_

Permanent Address \_\_\_\_\_

\_\_\_\_\_

Telephone(s) \_\_\_\_\_

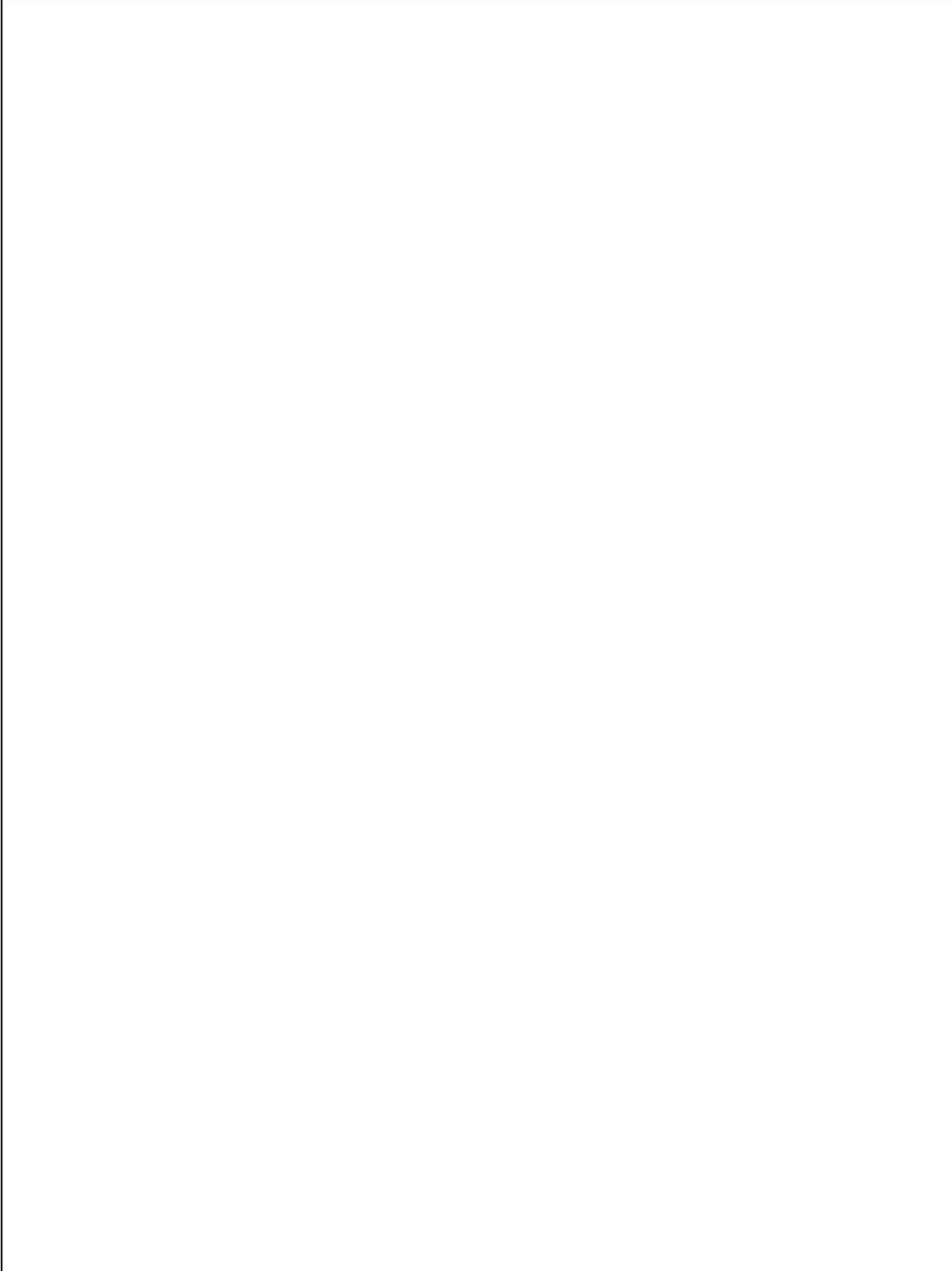
\_\_\_\_\_

Engineering Firm \_\_\_\_\_

Contact Person \_\_\_\_\_

Telephone(s) \_\_\_\_\_

Request Description – Please indicate amount of yardage sought, position on beach, and time period that you are interested in having work done below:

A large, empty rectangular box with a thin black border, intended for the user to provide details about their request, such as the amount of yardage, position on the beach, and the time period of interest.