



Provincetown Harbor Plan

Proposed Amendments and Updates

For Town Meeting

**With changes adopted at HC Public Hearing
On March 2, 2005**



Provincetown Harbor Committee

Gerard Irmer, Chairman
Kerry Adams
Heather Bruce
Alice Brock
Ann Colbourn
Mel Cote, alternate

Table of Contents

Introduction	3
Land Use	4
Land Use Patterns	4
FEMA Velocity Zones	6
Environmental Impacts and Stormwater Management	6
Harbor Beaches	8
Beach Nourishment	8
Beach maintenance	9
Decreasing Source Input	9
Summary of Land Use Actions	9
Town Landings Recommendations	10
Water Use	16
Commercial Fishing	17
Aquaculture	17
Other Commercial Boating	18
Recreational Boating	18
Town Moorings	19
Navigation and Dredging	19
Water Quality	20
Summary of Water use Actions	21
Public Facilities Recommendations	22
Regulatory Framework for Waterways Licensing	23
Chapter 91 Jurisdiction	26
Amnesty Standards	27
Non-Amnesty Standards 1990	29
Non-Water Dependent Facility Standards	31
Guidance to DEP Chapt. 91 Licensing	31
On-Site Public Benefit Recommendations	32
Off-Site Public Benefit Requirements	33
Tidewater Displacement Fee	34
Appendices	
A- Individual Property Listings	34
B-On-Site Regional Recommendations	35
On-Site Public Benefits Recommendations	37
Off-Site Public Benefits/Improve Town Landings	38
C-Amnesty/ Non-Amnesty Contribution Recommendations	38-40
Matrix of Completed or in Progress Recommendations	41

Introduction

“When the Mayflower first dropped anchor in our harbor, the Pilgrims surely must have been attracted not only by the protection our harbor afforded them, but also by the spectacular beauty that beckoned them. Provincetown Harbor hasn’t changed much since that fateful day. What has changed many times is the landscape that surrounds our harbor. Where there once stood fish plants, piers and wharves, now stand shops, hotels and beautiful homes. A once thriving fishing village has transformed itself into a tourist community.

Naturally protected by a large, curved spit of sand, Provincetown Harbor has attracted fishermen, artists and tourists for over a century. Its sheer beauty, inspiring light and historic charm draws multitudes of visitors to its shores. This vital, yet fragile asset, stands on the threshold of a new era, one in which preservation of traditional uses vies with pressure for new uses that meet the needs and wants of visitors and tourists. The goal of this Harbor Plan is to balance the needs of all its users, while ensuring minimal negative impact on its traditional uses, ecological balance, natural resources and visual aesthetic.”

The Provincetown Harbor Plan is a planning tool to consolidate the variety of interests and needs of private property owners, public recreational and commercial uses with regulatory and planning agencies and is as valid today as when the original Harbor Planning Committee completed it in November of 1998. Its effect as a planning tool should not be underestimated. The Plan allows the Town access to grant funds for improvements and protection of the harbor, provides guidance to the Massachusetts Department of Environmental Protection with respect to Chapter 91 licensing of waterfront properties and coordinates multiple committees and departments to the recommendations of the Plan.

The Provincetown Harbor Plan is composed of a series of both general and specific planning recommendations. The recommendations reflect the strengths of the planning alternatives studied and respond to current conditions at Provincetown Harbor as well as the directions of the town's citizens as expressed in public meetings and through the Harbor Planning Committee. The recommendations address issues of Land Use, such as use patterns, environmental impacts of various land uses, and the Harbor beaches. Under a general heading of Water Use, the recommendations discuss different kinds of fishing, boating and navigation, as well as water quality. A discussion of Public Facilities focuses on the publicly owned land and facilities, such as MacMillan Wharf.

An entire section is also devoted to recommendations concerning M.G.L. Chapter 91 and its regulations.

The original Plan was approved on May 4, 1999 and had a five-year effective period before a required amendment process. Prior to expiration of the Plan in 2004, the Harbor Committee requested a one-year extension to continue their work on amendments. While thorough, the original Plan was difficult for laymen to use and had a number of contentious issues, primarily concerning Chapter 91.

Throughout the two year review process, the Harbor Committee has endeavored to find consensus with the affected parties and to create a workbook or manual that could be used by our citizens, Town volunteers and Provincetown Administrators as a guide to the resource protections, planning and development embodied in Provincetown Harbor Plan.

Sections I-IV of the original Harbor Plan were illustrative of the process used to create Section V- *Planning Recommendations* and have been removed from this package. The original Plan will still be available to people interested in the process, planning maps and the background information it contained. The original Plan and amended Plan are available at the Town Clerk's office, the Harbormaster's office on MacMillan Pier or on-line at www.provincetown-ma.gov

Section V of the original contained the *Planning Recommendations* and that section along with the appendices is updated in this package. The appendices immediately follow the Chapter 91 section to which they relate. Also included is a matrix of progress Provincetown has made in relation to the recommendations in the Plan. The Amended Plan follows the layout of the original section V and the sections are summarized below.

Land Use

Land Use Patterns

In general, the Provincetown Harbor Plan accepts the existing land use patterns along the water's edge as appropriate for the future of the community. The Plan acknowledges that the mixture of retail, commercial, residential and civic uses that fill most of the waterfront properties should be retained as a vital and appropriate mix. The Plan seeks to protect and extend the role of water-dependent uses along the waterfront and enhance views and access to the waterfront where possible.

Because the pattern and density of development of the downtown was established prior to current zoning regulations, much of the waterfront area is legally non-conforming in terms of the dimensional and, to a lesser extent, the use requirements of the Zoning By-Laws. Under Massachusetts statutes and the municipal by-laws, non-conforming structures and uses can be maintained and, under certain circumstances, expanded, altered, and changed either by right or by special permit of the Board of Appeals. As a result, there is a strong interest on the part of property owners to retain the existing

improvements and to modify them incrementally, often resorting to variances or special permits to allow expansion or reconfiguration of improvements. These modifications led to a steady expansion of development towards the water's edge, building within zoning setback limits and other small but gradual changes that often are not in keeping with the spirit of the underlying zoning regulations, nor with the goals and objectives of this Plan.

To reinforce the underlying goals of the existing zoning and the conclusions of this Plan, its goals, objectives, and recommendations should be incorporated into the criteria for special permit applications and be stringently applied along the waterfront. This should improve consistency of regulatory decisions and simplify the development approval process.

The Provincetown Harbor Plan has several recommendations in regard to water-dependent uses.

- The first is to protect and maintain existing water-dependent uses. This objective is a primary concern in the area of the waterfront that retains the greatest concentration of water-dependent uses, in an area that has been designated as "Chapter 91 Region B" as discussed below.
- The second recommendation is to ensure that new non water-dependent development does not impede or interfere with the operations or viability of water-dependent uses. Likewise, this Plan seeks to balance the needs of commercial and recreational boaters with the rights of bathers and strollers to enjoy clean beaches and clean water.
- The third is to encourage new water-dependent facilities whenever appropriate in response to expressed need.
- The fourth recommendation is to increase public access to the waterfront wherever possible.
- The final recommendation is to disallow new or expanded commercial parking for non water-dependent uses consistent with the Chapter 91 regulations.

This Plan includes a detailed local approach to the review and licensing of properties within Chapter 91 jurisdiction. This is an important land use tool, and has been described in detail in a separate discussion below. In addition, the Plan includes detailed recommendations for direct public improvements through investments, enhancements, and expenditures through the Harbor Access Gift Fund, a dedicated fund for water access improvements that is also detailed below.

The town may wish to pursue additional proactive measures regarding water-dependent uses along the waterfront.

- Keep the existing zoning but include criteria to protect and promote water-dependent uses from new development, changes of uses, or modification of uses.
- Prevent interference with existing water-dependent uses. An example of interference would be a use that diminishes public and working access to the beach. In another case, the development of certain types of non water-dependent uses, such as a new residence on an adjacent property, might create a conflict with a boat repair facility. The zoning regulations could include a provision recognizing such a potential incompatibility and

prohibit a particular type of use from being established near existing water-dependent uses.

- Prevent reduction of waterfront capacity to accommodate present and future water-dependent uses. Long-term impacts of new development on water-dependent uses should be considered when reviewing permit applications.
- Increase public access whenever appropriate. The local by-laws should reflect the objectives for the waterfront articulated in this Harbor Plan.
- Explore the potential of economic development areas utilizing special tax and other advantages, in part by utilizing mechanisms and potential resources from state programs.

FEMA Velocity Zones

As noted in the existing conditions evaluation, there are numerous properties along the Provincetown waterfront that include improvements within "velocity zones" as designated by the Federal Emergency Management Administration. These improvements are at risk in the event of extreme storm conditions. This affects the ability to insure properties, including the availability and the cost of insurance.

It is recommended that the town seek funds from FEMA and/or its Massachusetts equivalent (MEMA) to undertake a study of measures to reduce storm damage risks to existing improvements in FEMA velocity zones. This study should be administered by the Harbor Committee, and should investigate the potential for:

- Providing an information program and potential loan or grant programs that would assist property owners in undertaking improvements to their sites or buildings to decrease the chance for damage.
- Providing engineered improvements such as beach extensions associated with dredging program, sacrificial dunes, or other measures to remove the velocity zone designation from affected properties.

Environmental Impacts of Land Use and Storm Water Management in Provincetown Harbor

With the new sewer system now in place, a significant source of land based pollutants in the harbor has been reduced. As of this date not all waterfront properties have connected to the sewer. A goal is to have all waterfront properties connected. The problem of storm water still needs to be addressed. There needs to be a scheduled ongoing program of testing and monitoring harbor water quality, using multiple indicators of the overall health of the water. Funding for these projects also needs to be on a continual basis. A 1996 application for a state grant to investigate the character and impact of storm water was turned down. Our first priority should be to re-assess and re-submit this application, as well as investigate other sources of grants and/or funding. The town did receive a grant to install a storm drain filter system at the West

Vine St. Landing, but neither the state nor the town made any provision for the funding of maintenance.

A program should be established to eliminate storm sewer out-falls from the harbor, and the planning effort should include representatives from the Harbor Committee (see below). Limiting the flow from out-fall pipes is a complex and costly issue. However, cleaning and installing a filter on the catch basin system would be a cost-effective strategy to reduce the flow of debris from out-fall pipes on the short run. However, before a catch-basin filter system can be recommended, selected, or installed, more data is required to resolve the types and the sources of pollution into the harbor.

Groundwater, out-fall pipes and their receiving waters need be tested for bacteria, nutrients, residual trace metals, and petroleum products from automobiles. Such a sampling regime would enable the town to determine the most significant source of pollution and to make the most appropriate and cost-effective pollution abatement decisions.

A significant conclusion of the Stearns and Wheler 1997 Assessment Report is the determination that "minimal positive effects to stormwater quality can be expected from a wastewater management plan that removes subsurface disposal systems from the waterfront." The report found that wastewater and stormwater are mutually exclusive sources of pollution, and that the high concentrations of fecal coliform measured in the storm sewer system likely emanate from sources other than septic system leachate.

Stearns and Wheler (1997) recommend sampling of storm sewer systems using the same suite of indicators as Normandeau (1988) a sampling regime referred to as 'water quality pollutant constituent monitoring.' In addition, they recommend using inorganic leachate indicators to indicate the presence of septic tank effluent (i.e., groundwater intrusion).

Water quality constituent monitoring is only one type of water quality indicator which, in turn, is only one type of indicator of environmental health; there are many others. Other water quality indicators that should be included in a stormwater management plan include toxicity testing, non point source loadings, exceedence frequency monitoring, (which is sometimes done in Provincetown), sediment contamination, and human health criteria. Similarly, other types of environmental indicators that should be considered in the design of Provincetown's stormwater management program include physical and hydrological indicators (e.g., physical habitat monitoring), biological indicators (e.g., marine phytoplankton and macro-invertebrate monitoring), social indicators (e.g., public attitude surveys), programmatic indicators (e.g., number of best management practices in use), and site indicators (e.g., growth and development of the drainage area).

A comprehensive storm water management program should include multiple indicators, as listed above, selected on the basis that they can (1) provide a realistic assessment of the overall health of the aquatic system, (2) track general improvements or deteriorations in overall aquatic health, (3) assess and evaluate which components of the program work and which do not, and (4) assess the overall success--or failure--of management efforts. Moreover, the storm water program has to be based on what is

realistically achievable for Provincetown Harbor, as well as for its underlying aquifer.

Harbor Beaches

The beach along Provincetown Harbor has a greater recreational potential than is currently being enjoyed. This Public stretch of sand, with its protected swimming and boating, along with the views to be enjoyed from it's shores, offers both residents and visitors all the pleasures of the seaside along the entire length of the main street. Currently 13 of our Town Landings have new signs indicating Public Access. There are more town owned and public rights-of-way still to be reclaimed. This is a tremendous asset. All that needs to be done to create the most unique and friendly Harbor of any Town on the Cape is to make these many public paths to the shore more inviting, more welcoming and more interesting. Access points are generally limited and ill defined, supporting facilities and amenities are lacking, and a significant amount of debris and dog feces is allowed to accumulate which detracts from the shore's attractiveness and utility as a recreational beach.

One of the harbor issues identified during the planning process is the concern regarding beach stability and erosion patterns. These factors are relevant to the Harbor Plan and its recommendations in several ways: the siting of potential future dredge material disposal for beach nourishment, degree of threat to structures and property from coastal storm erosion, and the effect on public access.

Beach Nourishment

Studies show that the shoreline of Provincetown Harbor has been relatively stable for over 150 years. Historical shoreline changes in Provincetown Harbor are primarily the result of:

(1) The direct placement of dredged material on the beach and (2) alteration of wave induced erosion caused by the construction of seawalls along the shore and the U.S. Army Corps of Engineers breakwater off shore. Beach nourishment guidelines have been developed which include standards for judging suitability and compatibility of source material for various site-specific uses. Since beach nourishment is a highly sensitive area, the Harbor Committee recommends that all such projects be well researched and that public input be taken into consideration.

One final issue connected with the placement of fill or dredged material along the shoreline is that of ownership and control of the land thus created. The Corps of Engineers and the Commonwealth of Massachusetts hold that the placement of material in areas where there are public rights, i. e., areas below the existing or historic high tide line, in no way restricts or extinguishes those public rights. Licenses issued by the MDEP to conduct such activity contain a provision that specifically conditions approval on that basis. The Corps of Engineers expects similar assurances.

General Strategy for Beach Maintenance

The following strategies are proposed as part of the Harbor Plan to address the problems of beach maintenance. In 1994, the Provincetown Marine Debris Task Force thoroughly studied the issue of marine debris in Provincetown Harbor and issued the report *Strategies to Reduce Marine Debris in Provincetown, Massachusetts*. That report contains numerous recommendations that should be implemented as part of this Harbor Plan.

The general strategy for improving the conditions of the beaches is to decrease the sources of debris and increase its removal from the beach. The major sources of debris are land-generated debris, marine debris and out-fall pipes. Land-generated debris is caused by improper disposal of garbage on the beach or by the action of the wind blowing trash onto the beach. Marine debris originating in Provincetown Harbor comes from MacMillan Pier, restaurants and bars located adjacent to the beach and the boat berthing areas; tide and current move the debris onto the beach. After heavy rain or storm a quantity of debris is carried with the flow from outfall pipes and ends up on the beach. Seaweed is another issue that needs to be addressed. It is also likely that significant debris originates outside of the harbor. Such sources should be studied as part of an ongoing maintenance program.

Removal of beach debris should be accomplished through a variety or combination of approaches such as increasing the municipal commitment of public works staff and resources, organizing citizens to take on the responsibilities on a voluntary basis, and utilizing Sheriff's Department and or AmeriCorps workers.

Decreasing Input from Sources

The major sources of land-generated debris are humans. In addition to a public awareness campaign and providing more trash barrels with automatically closing lids, the beautification of our Town Landings and the availability of various amenities will do a great deal to encourage people to pick up after themselves.

Large accumulations of seaweed left to decompose on the beach can be unattractive, have an unpleasant smell, and otherwise limit recreational uses. On the other hand, some people find none of the above to be the case and seaweed does play a role in beach and dune stabilization. Most beach maintenance programs do, however, include periodic removal of seaweed from the beach. This committee strongly suggests the DPW acquire and use a beach cleaning machine.

Public education directed at visitors to, and users of the harbor and beachfront areas is a key element in making these strategies work.

Summary of Land Use Actions

- Incorporate Harbor Plan recommendations into all other appropriate committees issued special permits, variances, and similar reviews, including protection of water dependent uses and limitation of any expansion of commercial parking as a waterfront

use consistent with the Chapter 91 guidelines.

- Provide for representation of the Harbor Committee and other relevant harbor interests in the sewer out fall removal program.
- Provide for continuation and improvement of the water quality monitoring program.
- Enhance the removal of beach debris by providing additional assignment of maintenance responsibility and funding to the DPW and additional trash receptacles.
- Dog poop post & bags must be provided and maintained year round.
- Enhance the removal of beach debris by increasing volunteer activities and increasing public awareness.

Town Landings

The following goals form the basis for the public access and landing recommendations and actions proposed in the Provincetown Harbor Plan:

- The term “Public Access” should be understood as referring to the free access from the street to the shoreline for pedestrians and for water-dependent vehicles where appropriate. Public Access also refers to pedestrian passage along the length of the shoreline as it currently exists, or should exist according to Public Record. Public Access also refers to the visual access of what are called “historic view corridors”.
- One of the most unique and charming assets of Provincetown is the view of the harbor that can be continually glimpsed between each building on Commercial Street. These view corridors are being compromised by individual property owners; much to the detriment of the town.
- To reclaim, maintain and protect all Town Landings and Public Access Ways as well as protect the public’s foot passage and water dependent vehicle access from obstructions and construction from Commercial Street to the shore line including pedestrian passage along the length of the shoreline to the maximum extent possible.
- To encourage the public to safely enjoy our waterfront by providing attractive and well marked “Public Access” signs. By creating and maintaining an inviting approach to our shoreline at Town Landings. By using more of the town owned areas outside of the portion for vehicular access, a series of “Pocket Parks” should be created. Amenities to be provided as appropriate should include: Bicycle Racks, Benches, Picnic Tables, Fishing Piers, Rest Rooms, and Educational Tools and Displays.
- To take legal steps to perforate the barrier between Commercial Street and the waterfront by reducing visual obstructions and to request the Historical Committee’s approval for all new “landscaping”, fencing, and other sight-line obstructions, thus improving and increasing access between the two. This goal

reflects a concern expressed by the Provincetown Historical Commission over the loss of view corridors to the harbor.

- To increase substantially the dry sand area of the beach dedicated to public use by removing undue encroachments that exist as accessories to non water-dependent uses.
- To make the beach more attractive and suitable for all water-dependent uses.

The Harbor Plan includes a list of projects and improvements that will serve to upgrade the public access areas to the waterfront. The list of proposed improvements is included.

Steps to improve and restore views must be made; including the immediate enforcement of building/zoning/Chapter 91 rules in the harbor area by a coordinated effort of all involved Boards and Committees or Commissions that pass on or issue permits for all waterfront construction including “repairs and replacements”. As part of this process, the historic and existing town rights to waterfront access ways needs to be confirmed in some cases. There are instances where historic rights-of-way may be useful to establish potential restoration of access. In other cases, private development has intruded significantly onto the public landings. As a result, this Plan recommends that after preliminary research of Town Landings by the Harbor Committee, a lawyer and surveyor could be hired to legally re-establish true boundary lines. This could be paid for (if determined) out of the existing Harbor Access Gift Fund monies already collected. Without proof of Town ownership or rights, we stand little chance of reclaiming town owned properties.

For all Public Landings and publicly owned lands, the current signage system should be properly installed and maintained in a place that indicates public access and amenities on both the beach and Commercial Street.

Trash receptacles and dog poop-bags and posts should be placed at all town landings and town-owned access points, and maintained on a year round basis. Bike racks and benches should be located wherever feasible. Paved portions of town landings should be maintained. Sand portions of public access ways should be refreshed each spring as needed.

Funding for improvements and maintenance of our Public Landings can be financed primarily through the Harbor Access Gift Fund, a dedicated fund used solely to directly benefit the Provincetown harborfront such as grants as well as from other sources, etc.

Recommendations for Public Landings and Publicly Owned Lands

Location #1 **Kendall Lane**

- This area serves anchorages in the harbor, and dinghy storage is required. This is the only usable Public Landing in the East End. The addition of a small area of fill to the environs of the landing to create a larger area above high tide that does not restrict the public landing, and a simple post created to facilitate tie-ups.

- A bicycle rack should be provided in this location.
- A search of Town and Registry of Deeds records should be done to establish the extent of public ownership and public rights to this land.

Location #2 **Washington Avenue**

- View corridor should be improved.
- The extent of public ownership and public rights to the land should be confirmed. There have been many incursions into the town landing by private development.
- Benches, dog poop bags & post, and trash receptacles should be provided.
- Simple post improvement to allow for dinghy tie-ups should be provided.

Location #3 **Pearl Street**

- The storm drain cover should be used as a location for a small deck with benches and other improvements such as a bicycle rack.
- Attention to private parking and landscaping by abutters should be paid so as to ensure it does not encroach on the Town Landing.
- Dog poop bags & post should be provided
- Simple post improvement to allow for dinghy tie-ups should be provided.
- Landing area needs cleaning.

Location #4 **Johnson Street**

- This location is no longer considered a viable area for a boat ramp.
- A bicycle rack should be provided in this location.
- Simple post improvement to allow for dinghy tie-ups should be provided.

Location #5 **Freeman Street**

- Encroachment onto Public Lands here needs to be investigated. Discrepancies should be resolved in a manner that restores original Town ownership and removes all obstacles to Public Access. Adjoining properties should be in compliance with Chapter 91.
- Special paving that is attractive for pedestrians and supports heavy vehicles should be provide for the paved areas of the landing connecting to Commercial Street.
- Landscaping and benches should be provided in areas not required for vehicle access or other uses.

- Simple post improvement to allow for dinghy tie-ups should be provided.
- This area requires the attention of the Police Dept. due to numerous private vehicles parked and stored along Town owned lands as well as directly on the beach.

Location #6 **Municipal Parking Lot**

- Public access and open space improvements should be undertaken as listed in the Provincetown Transportation Center Plan that has been adopted by the town. This includes additional walkways along the entire perimeter of the pier, provision for landscape improvements, and provision for increased and inviting open space along the water's edge.
- A canopy shelter for cruise ship tenders along the edge of the pier should be provided as well as a second courtesy float.

Location #7 **Gosnold Street**

There appears to be room for many amenities at this location.

- Dog poop bags & post should be provided
- A bicycle rack should be provided in this location.
- Simple post improvement to allow for dinghy tie-ups should be provided.
- Picnic Tables and benches should be provided.

Location #8 **Court Street**

- The historic firehouse should either be relocated to another site within Provincetown in a manner and for a use that is consistent with the preservation of the historic qualities of this building, or it should be restored with at least a portion of its use for Public Rest Room facilities
- The Court Street landing should continue to serve as a landing and have paved access for trucks and vehicles requiring access to boats and equipment.
- The remaining area at Court Street not required for water-dependent access should be converted to a park with landscaping, paving, benches, bike racks and other amenities.
- Simple post improvement to allow for dinghy tie-ups should be provided.

Location #9 **Atlantic Avenue**

- Special paving that is attractive for pedestrians and supports vehicle access should be provided for the paved areas of the landing connecting to Commercial Street.

- The legality of a large fence extending out on to the beach should be investigated.
- The legal boundaries of this Public Landing should be restored. Adjoining properties should be in compliance with Chapter 91 conditions.
- Dog poop bags & post should be provided

Location #10 **Good Templar Place**

- This access way is very uninviting. Paving that is attractive for pedestrians and supports vehicle access should be provided for the paved areas of the landing connecting to Commercial Street. The area for boat launching needs to be graded to correct a dangerous drop-off.
- The existence of a marine business adjoining this Town Landing should not prevent the town from improving and maintaining this Public Access.

Location #11 **Franklin Street**

- This area serves anchorages in the harbor, and dinghy storage is required. The Coast Guard sea-wall appears to impinge on any area that may have served as dinghy storage before the building of the Coast Guard Station. Subject to negotiation and approval by the Coast Guard, a small area of fill should be added to the environs of the landing on land controlled by the Coast Guard seaward of the existing bulkhead to create a larger area above high tide that does not restrict the public landing and a simple post improvement created to facilitate dinghy tie-up.

Location #12 **West Vine Street**

- This wide landing adjoins the historic Captain Jack’s Wharf, the last “authentic” looking fishing wharf on Provincetown Harbor.
- Appropriate gravel that is attractive for pedestrians and supports vehicle access should be provided for the paved areas of the landing connecting to Commercial Street.
Heavy rains and storm tides wash out this landing. This problem needs to be addressed.
- The storm drain needs to be maintained properly, most of the time it is buried in the sand. The two filters installed are also buried and need to be restored and cleaned on a regular schedule.
- Dog poop bags & post should be provided
- A bicycle rack should be provided in this location.

Location #13 **West End Boat Ramp**

- The boat ramp needs to be enlarged to accommodate launching and retrieval of at least 2 (two) boats at any given time. During times of pending bad weather, numerous boat owners are attempting to remove their vessels at the same time.
- Floats should be added to assist arriving and departing boaters. Limited expansion of the parking lot seaward including some fill and re-grading of the beach in this area should be studied, and if feasible, implemented to accommodate increased trailer parking.
- The area for parking boat trailers should be metered like the rest of the parking spaces to prevent those limited spaces from being used as long term storage.
- Unregistered and abandoned dinghies need to be removed.
- This area has a serious need for Public Rest Room facilities.
- Sidewalk improvements for the sake of safety should be considered to connect the waterfront to Commercial Street without losing any existing parking spaces.
- A bicycle rack should be provided in this location.
- A banister on one side of the stairs going to the beach is needed here to prevent potential accidents.

This list of 13 Town Landings is not all-inclusive. Other landings apparently exist, as well as rights of way and cart roads. These original grants and their legal boundaries need to be researched and reclaimed. Some of the Provincetown accesses are: Dewey Avenue, Snail Road, Berry Lane, Conant Street and Mermaid Avenue. Further research into these potential access ways will be necessary.

Town Landing Goals

The Harbor Committee recommends the following priorities:

1. Mitigate storm water run-off damage and pollution at all Town Landings. Work is to be done by the Provincetown D.P.W. in concert with Coastal Zone Management (C.Z.M.) grants with partial funding from the Harbor Access Fund. The D.P.W. will prioritize the work.
2. Provide for public amenities at appropriate Town Landings to include: trash barrels, dog poop bags and posts. Also, where possible to include: benches, bicycle racks, and lighting, in that order.
3. Work with Town and State to mitigate encroachment and to remove obstacles from abutting private properties.
4. The non-paved portion of access from Commercial Street of all Town Landings should get clean sand and gravel where indicated.

5. Request that owners of abutting properties remove any obstacles that limit or inhibit free Public Access to areas beyond their legal property lines.

Water Use

The future use of the harbor should be accommodated through a planned process that reduces existing or potential conflicts and protects its economic, ecological, and scenic value. The Plan recognizes areas of the harbor that have different physical characteristics, attributes, and natural resources that present opportunities and constraints for uses. Among the relevant characteristics are water depth, (including tidal variation), water quality, exposure (degree of protection from severe winds and waves), benthic resources (such as crustaceans, bivalve mollusks and eelgrass), distances from shore to navigable waters, obstructions, and holding ground. In addition, the use and character of upland adjacent to the harbor waters influence the possible and appropriate uses of the water area.

As discussed earlier in the Plan, the water area of Provincetown Harbor accommodates a number of activities and uses. These include piers and wharves, berthing and moorage space for commercial and recreational boats, navigation channels and fairways for vessels, lobstering, recreational shell fishing, shellfish aquaculture, sport fishing, swimming, jet skiing, and water skiing. Many of these uses can share the resource compatibly, but others are inherently exclusive or conflicting. Multiple use of the resource is possible because uses vary in terms of spatial and temporal requirements, that is, the degree to which they commit the resource (e.g., seasonal, temporary, intermittent, permanent).

The demand from a variety of uses and the importance of the harbor to the economy and life style of Provincetown justifies planning to manage and optimize the utility of the harbor (see Figure 8- Original Plan. Proposed Water Use Plan (2 pages). In general, there are relatively few conflicts in the use of the harbor by the existing uses. These conflicts are generally already regulated, and simply require ongoing management and enforcement of the existing Harbor Regulations by the Marine Superintendent.

The following principles should guide the future use of the water area of the harbor:

- Mooring areas should be designated only in those areas where benthic resources will not be damaged.
- Areas requiring protection of water quality to protect plant (eelgrass) and animal (shellfish) resources should be off-limits for overnight transient anchorage and moorings.
- Anchorage areas should be designated more precisely so as to reduce conflicts with other uses in the harbor such as sailing, swimming, shellfishing and aquaculture.
- To the extent that these principles are not reflected in the Town's Harbor Regulations, appropriate amendments to those regulations should be adopted.

Benthic living resources such as eelgrass and areas of shellfish concentration should be protected through all available means. Maintaining harbor water quality is an important fundamental condition for the health of these resources. The three designated shellfishing areas, the two areas of private hard shell clam grants, and the oyster spatfall resource area should be adequately marked and moorings and anchoring controlled in accordance with the recommendations of this Plan. Once eelgrass mapping is finalized, the extent of the resource should be assessed against the mooring plan and adjustments made as appropriate to protect the eelgrass.

It should be noted that the National Park Service has ownership and jurisdiction over land and waters immediately adjacent to the planning area. It is the recommendation of this Plan that no action be taken by the National Park Service that would reduce or alter the activities recommended by this Water Use Plan.

Commercial Fishing

The Plan reinforces the ongoing importance of commercial fishing in the economic and cultural life of Provincetown. In the short term, the finfish industry is experiencing substantial stress due to resource scarcity and an emerging regulatory structure. As a result, there are shifts in the requirements for both waterside and shore-side facilities. In the longer term, requirements remain difficult to predict. As a result, the Plan recommends that commercial fishing facilities be maintained and supported when economically feasible. In support of small boat commercial fishing, the original Harbor Plan called for an off-loading dock designed and dedicated for use by small-boat fishermen. The dock has been constructed to remain in the water year-round and have electricity, water, winch, and lights available

As part of the operation of MacMillan Pier, the Harbor Plan supports for the creation of support facilities for fishermen and other visitors that would provide fresh water, restroom facilities, staging area, small lift for off-loading catch and for the exchange of equipment and supplies. A direct hookup to the town's sewer treatment would ease the addition of these facilities.

Aquaculture

Aquaculture of types that will not harm the ecology of the harbor should be one of the priority uses of the harbor, reflecting both its considerable potential and role in sustaining and revitalizing the commercial fishing industry. Aquaculture will be supported by and benefit from the improved small boat support facilities as shell fisher/farmers need access to storage floats and the ability to offload their product.

Specific recommended actions include:

- Encourage studies and programs to grow other types of shellfish such as steamers, oysters, mussels, or sea urchins, as well as one or more species of finfish if ecologically safe.

- Continue to cooperate with the Massachusetts Division of Marine Fisheries, Woods Hole Oceanographic Institution, and others to investigate and solve the QPX problem. Investigate the possibility of a different species of quahog that may not be genetically susceptible to the parasite.
- Identify and mark areas of the harbor naturally suited for shellfish and reserve areas and control use of the areas for boat mooring and anchorage.
- Coordinate funding for investments made in improving waterfront facilities with the needs of the shellfishers and the shellfish aquaculture program.
- Continue to investigate the potential utility of the natural oyster spat fall area offshore of the Johnson Street parking lot. Actions should be considered that better mark the perimeter; manage/prohibit incompatible competing uses (e.g., mooring in the area), maximize yield of the area and create a program for grant holders to transplant oyster to habitat suitable for grow-out.
- Monitor water quality closely for different types of pollution such as differentiation between human and animal fecal matter and coliform bacteria, and implement programs to ensure clean harbor water.

In general, sufficient financial resources should be directed at shellfish propagation (seed and equipment) for recreational shell fishing. At the same time, the seeding program of the public shellfish areas should be continued.

Other Commercial Boating

Other commercial boating in Provincetown Harbor consists of cruise ship and passenger boat operations and the operation of excursion boats, including the whale watch fleet, party fishing and sightseeing boat operations. The economic benefit of these activities to the town is positive and substantial attention and adequate resources should be dedicated to improvements. While it is possible that small-scale freight operations could be in demand in the future, accommodation of this use does not warrant current action.

As the waterways in the harbor become more congested, the Harbormaster will need additional resources to maintain order and safety. Adequate patrol boats and properly trained personnel should be a priority as the need occurs.

Recreational Boating

Provincetown should take advantage of the opportunity to increase the attractiveness, hospitality and safety of Provincetown Harbor for recreational boaters. This effort should particularly focus on increasing amenities and services that bring economic benefits with minimal impacts. Recommendations may include replacing bottom tackle and reorganization of moorage for vessels according to draft. The Harbor Committee would hold hearings on this subject.

Other measures are generally discussed in more detail as part of the proposed improvements to public facilities and include:

- Provision of appropriately located dinghy docks, showers, laundry facilities, lockers, and other facilities available to the transient boater.
- Provision of a boat ramp available at all tides and provision for parking within a reasonable distance of the ramp.
- Improvements to West End boat ramp including the provision of floats and widening while being sensitive to the environment.
- Provision of improved dinghy tie-ups at various town landings.
- Provision of marina facilities for transient and seasonal docking of recreational boats if it can be economically self-supporting.

The recommendation to provide adequate public landing facilities could necessitate both dredging and the construction of new ramps and float structures, as well as parking facilities. Based on current economic factors of cost and probable revenues, state or federal aid would be necessary for development. Funding for recreational facilities is often available through those sources.

Town Moorings

During the development of the original Harbor Plan, a study of the mooring system indicated that the layout of moorings was generally efficient because of both location and density. However, in the past seven years, because of the proliferation of moorings and the demand for new growth, it has become apparent that a newly organized mooring system covering the entire harbor must be established.

A goal of the Harbormaster over the next few years is to establish a uniform mooring and anchorage system that can be readily inspected and managed. Care will be taken to protect such elements as the sailing areas near the West End Sailing Club, shellfish and aquaculture areas, fairways and navigation channels, swimming and fishing areas. Enforcement must be possible as well as the maximum use of the harbor resource without damaging the scenic or ecological environment.

A number of town moorings will be set aside for emergency and storm usage. The actual details of regulations will be developed through the usual process and appear in current Harbor Regulations.

Navigation and Dredging

Provincetown Harbor is a natural harbor that nevertheless is subject to shifting bottom conditions in certain areas that are necessary for navigation. The maintenance of the Federal Channel is a responsibility that is managed for access by the Coast Guard. However, a regular maintenance program should be established for areas outside the

Federal channel by the town. Some dredging and beach improvement has been accomplished, however, a sustained program should be maintained as part of the responsibilities of the Harbor Committee and appropriate Town officers. The Town and State Coastal Zone Management will determine priorities and where dredged material is placed.

The dredging program should provide for regular studies of bottom conditions, seek outside funding to support the program, make recommendations concerning the creation of a dedicated local fund as a match for outside funding, schedule permitting, and generally provide advice and recommendations to the Board of Selectmen on a regular basis. A County dredge is available at a reasonable cost. The Harbormaster should be responsible for all dredge permit applications and coordination of harbor operations when dredging occurs.

The Plan also reinforces the responsibility of the Harbormaster to move or remove any bottom-held boat moorings that encroach into or allow encroachment by a vessel into the harbor navigation fairways and channels and the continued monitoring of placement of these moorings by the Harbormaster. In addition, wrecks and other hazards should be marked and removed if necessary to ensure the safety of divers and transient boaters wishing to anchor.

Water Quality

Water quality is an area of significant importance with regard to Provincetown Harbor. A key concern in this regard is the proper treatment and disposal of boat sewage. Consequently, the Harbor Plan calls for the continued maintenance and enforcement of the current pump out program.

Boat sewage contains water pollutants such as fecal coliform, alcohol, formaldehyde, zinc, ammonium salts, and chlorine. Boat sewage as well as chemicals used to deodorize and disinfect the sewage degrades water quality. Resource uses most likely to be affected by sewage dumping in Provincetown Harbor are shellfishing, aquaculture, and swimming as well as aesthetics.

Article 5 of the Provincetown Harbor Regulations makes it illegal to discharge sewage, gray water or holding tank wastes into Provincetown Harbor. The practice known as “bucket dumping” is illegal. The regulation may require the use of dye tablets in vessel MSDs (Marine Sanitation Device) to ensure compliance and encourages use of the boat pump-out facilities.

Provincetown Harbor’s pump-out facility consists of a 300-gallon pump-out boat that serves all moored boats in the harbor. The town received a CVA (Clean Vessel Act) grant from the state to purchase the boat and to subsidize the costs of operation and maintenance. Annual O & M (Operation and Maintenance) funds have been provided by the state and will likely continue at some level as long as CVA funds are available.

According to the State, the number of boats pumped and the volume of effluent removed are relatively high. The Harbormaster reports that compliance with the

discharge regulations is high: An education effort that includes informational brochures distributed to boaters and a sign on a buoy advertising the free pump-out service contribute to this success. However, a modern solution to human waste in the harbor from all sorts of boats must be pursued. A connection on the pier to the town sewer system must be established. The pump out boat, public toilet facilities, the tour boats, whale watch boats and fishing boats would all be able to tie into this sewer connection rather than dumping at sea or inadvertently in the harbor. This would be a major step forward for the health of the harbor.

In addition to overboard discharge, another serious source of harbor pollution is street and beach runoff from the oils and fuels of motor vehicles, dog and other animal feces, and building discharges such as paints, asbestos, cleaning compounds, etc. This problem can be addressed by specially designed street runoff water discharge systems.

An improved ongoing water quality testing system, starting with baseline studies, will be necessary to improve and maintain our harbor water quality. Action to implement this project is underway.

Summary of Water Use Actions

- Maintain an active program of ecologically sound aquaculture and shell-fishing improvements.
- Improve the Town mooring and anchorage system.
- Areas requiring protection for water quality, sailing, swimming, and shellfish resource protection should be marked as off-limits for moorage or anchorage. Anchorage areas should be designated, promoted and clearly marked to reduce conflicts with other uses in the harbor. Set aside a sufficient number of town-owned moorings for emergency and storm usage.
- Mark wrecks and other hazards to ensure safety. For example, use the Harbor Access Gift Funds to purchase “headstones” for the ends of existing beach groins.
- Continue the process to develop a plan for short-term and long-term maintenance dredging and beach nourishment.
- Provide a connection to the pier to the town sewer treatment plant for public facilities and boating effluent.
- Refine the safety regulations for personal watercraft and other vessels.
- Support the water-testing program for the harbor including monitoring storm drain and street runoff.
- Encourage facilities and services to meet the needs of recreational boaters including dinghy moorings, launch services and dockside amenities.

- Improve and widen the West End Ramp. Investigate the development of a new boat launching area in the cove at the west end of Commercial Street.
- Review the Harbor Regulations yearly and update if necessary.
- Communicate to the National Park Service the recommendation that no action be taken by the National Park Service that would reduce or alter the activities recommended by this Water Use portion of the Harbor Plan.
- Maintain commercial fishing facilities as economically feasible. Provide for improvements for other commercial boating as part of the MacMillan Pier operation.
- Maintain an off-loading dock designed and dedicated for use by small-boat fishermen with appropriate facilities including off-loading parking.
- Increase the number of skiff and dingy dock floats near several public landings.

Public Facilities

The Provincetown Harbor Plan recommendations for public facilities in large part address the reconstruction of MacMillan Pier. The areas that still need attention on the pier are:

- Bathrooms, passenger waiting area or shelters, telephones and appropriate services for the public and pier users. A grant is in process to replace the courtesy float adding handicap accessibility. A surcharge on ferry passengers passed at Town meeting in 2004. This should first be used to fund a transportation shelter for the passengers paying the fee and then aimed at improving other aspects of the marine related facility in the spirit of the legislation.
- There must be a permanent year round adequately protected slip provided for the Harbormaster patrol SAR (Search and Rescue) craft and seasonal sheltered slip for pump out boat.
- Improvements for commercial fishing need to be carefully planned and executed considering the changes to fishing permits and quotas being adopted by National Marine Fisheries. Their needs can be expected to change over the next five years as the regulations take effect. Enhanced electrical and water service is needed on the finger piers.
- The floating docks on the east end of the pier need to be redesigned and/or protected from adverse weather.

- Other improvements to public facilities throughout the town should be considered. A small gangway and pile held float should be provided at the West End Boat Ramp or any other boat ramp under consideration.
- Should Water Taxis be considered as alternative transportation, they will need landing sites. Potential locations include; Snail Road on the east end, Ice House Condominium at Howland Street, Freeman Street landing (Lands End Marine Hardware), Atlantic Street Town Landing (The Boatslip), West End Boat Ramp and Commercial Street Rotary (Provincetown Inn). These small floats would also serve as additional dinghy dock tie-ups. A public-private effort could be used to facilitate construction as the businesses and residents near these floats will gain from their use.
- The West End Ramp should be widened slightly with a centerline curb installed to facilitate simultaneous launch or recovery of two vessels on trailers. This is needed not only to reduce congestion during busy times but also to aid in removal of vessels when severe weather threatens.

Regulatory Framework for Waterways Licensing

Massachusetts's principal tool for protection and promotion of water-dependent uses of its tideland and other waterways is M.G.L. Chapter 91 (Public Waterways Act, 1866). Chapter 91 and the Waterways Regulations (310 CMR 9.00) are administered by the Waterways Regulation Program of the Massachusetts Department of Environmental Protection (DEP).

The Chapter 91 statute of 1978 was amended in 1984 with new substantive and procedural requirements to ensure that tidelands-both presently flowed and previously filled-are utilized only for water-dependent uses or otherwise serve a proper public purpose that provides greater public benefit than detriment to the rights of the public in tidelands. Projects involving non-water-dependent use also are required by the statute to be consistent with CZM Policies.

Major revisions of the waterways regulations followed in October 1990. Key provisions of the new regulations are designed to promote water-dependent use of the shoreline; preserve and promote public access; and encourage local involvement in Chapter 91 licensing decisions through municipal harbor plans, which provide harbor-specific guidance to the regulatory decisions of DEP under Chapter 91. A companion set of regulations (301 CMR 23.00) governing the development and approval of municipal harbor plans was also adopted that same year.

The Chapter 91 regulations stipulate that where a State-approved harbor plan exists, projects requiring a DEP license or permit and subject to the current regulations must conform to the plan (310 CMR 9.34(2)). The municipal harbor plan is used by DEP for guidance which amplifies upon discretionary requirements of the waterways regulations. The regulations also provide that the municipal harbor plan may contain substitute standards for certain use limitations or numerical standards specified in the waterways regulations for non-water-dependent uses. The alternatives established by

the plan must achieve the objectives of Chapter 91 and the waterways regulations as effectively as the standards they replace.

A long and fruitful relationship between Provincetown's inhabitants and their harbor produced the special character of the Provincetown waterfront. Historically, Provincetown Harbor was a thriving fishing port containing numerous wharves. The natural tides were much higher than they are now, coming up to and underneath the buildings that were built on pilings. As the fishing industry dwindled, tourism took its place in the town's economy. The coast was filled with dredged sand creating artificial beaches in front of and underneath the buildings that line this harbor. Most of these buildings have since become non-water dependent.

There currently exist several areas devoted primarily to water-dependent use. It is important that we support the protection of these water dependent uses and promote new water dependent projects as need arises, while ensuring compatibility within their environ. This Harbor Plan honors and retains the unique historical and cultural features, which make this seaside village so attractive a tourist destination; even after time has changed the way the town uses the foreshore and the harbor. This Plan seeks to be consistent with the goals and aspirations the Provincetown community expressed in its Local Comprehensive Plan and its historic bylaws.

This revised Harbor Plan recommends how the DEP licensing program can best serve the people of Provincetown. It stands on the shoulders of previous consultations with CZM and DEP staff, and has been carefully crafted to reflect the principles and standards used consistently by DEP in licensing projects on tidelands. Its recommendations reflect the town's goals and objectives for the waterfront and comprise a comprehensive and cohesive plan for the proper and optimum use of Provincetown Harbor.

The objectives of the present Harbor Plan as it relates to Chapter 91 licensing are:

- New license Applications (including Water Dependent Use License Applicants) and amenities are to be carefully reviewed. Where there is a demonstrated need and suitable location for same, the Harbor Plan should seek to accommodate that need, where justified and provided it does not adversely impact the scenic and historic character of the shoreline and that said use will be compatible with existing uses of the impacted area. In keeping with the importance and tradition of the Provincetown Fishing Fleet, the Harbor Plan recognizes the need to preserve and protect this valuable asset that has helped to define and enrich our town for so many years. The Plan also recognizes the needs of the recreational boating community and must protect those needs while ensuring that the harbor upon which they are used will be preserved and protected for the enjoyment and use of all. Marine related services that benefit the needs of both the Commercial and Recreational boating communities are of significant importance, thus the Harbor Plan must seek to protect and preserve these critical resources.
- Preservation and continued use of historic structures that are established features of the harbor shoreline.

- Maintenance of natural features of the shoreline such as coastal dunes and the natural, changing contour of the beach.
- Minimizing all constructed material walkways and excessive beach nourishment.
- Enhancing public access to and along the shoreline of Provincetown Harbor by improvement of town landings and establishing vertical access to the beach as close as possible to the beginning and end of any section of beach that is submerged at current mean high water.
- Eliminating undue encroachments by abutters on the dry sand beach and on town landings, and minimizing visual obstructions.
- Offering property owners incentives to permit public passage to the waterfront through their property.
- Providing passage past the seaward perimeter of existing hard surface structures, when appropriate.
- Clean up of dirty, debris-ridden beaches and maintenance of high water quality, especially during the summer months.
- Encouraging the Harbor Committee to develop standards for evaluation of on-site improvements and Harbor Access Gift Fund contributions for off-site harbor improvements.
- Ensure that this Plan meet state requirements no more punitive than the state regulations.
- Support the implementation of the 1978 regulations and fees for amnesty property owners.
- Requests DEP to allow Provincetown to replace the Schofield line with a more reliable line.

Chapter 91 licensing on Massachusetts's tidelands proceeds in three steps: (1) DEP determines in each case whether a property needs a license, and whether the owner is entitled to apply under the amnesty provisions; (2) DEP reviews the license application to determine whether applicable standards have been met, and considers community recommendations obtained during a public comment period in accordance with the recommendations of this Harbor Plan and (3) DEP issues a license which may require the owner either to make on-site improvements to the property and or contribute money to a Harbor Access Gift Fund, to compensate the public for private use of Commonwealth tidelands. The license typically sets a time by when the owner must complete the authorized work and satisfy the license requirements.

Chapter 91 Jurisdiction in Provincetown

Chapter 91 applies in tidelands, great ponds, and along certain rivers and streams. Tidelands are all land presently or formerly beneath the waters of the ocean, including lands that are always submerged as well as those in the intertidal area between the Mean High and Low Water marks. These areas are governed by a concept in property law known as the public trust doctrine, which establishes that all rights in tidelands and the water are held by the state "in trust" for the benefit of the public.

There are two types of tidelands. *Commonwealth tidelands* are, for most of the Massachusetts coastline, all lands below the historic Low Water mark extending out three miles to the limit of state jurisdiction. This area is owned by the Commonwealth or held by private persons in accordance with the trust for the benefit of the public. (2) *Private tidelands* are those areas between historic High and historic Low Water, which are usually privately owned but on which the Commonwealth reserves and protects public rights of fishing, fowling and navigation.

The historic High Water marks are the farthest landward tide lines which existed "prior to human alteration" by filling, dredging, impoundment or other means (310 CMR 9.02). Thus, Chapter 91 applies to filled as well as flowed tidelands, so that any filled areas, moving inland to the point of the historic high tide line, are subject to jurisdiction.

In Provincetown east of Howland Street—land formerly part of Truro—the colonial government of Truro granted owners of upland property ownership rights to the intertidal area adjacent to their property area. These private tidelands are subject to easements guaranteeing the public rights of fishing, fowling and navigation.

Land west of Howland Street was known as the Province Lands. The Provincetown charter of 1727 did not provide the new town with authority to grant land to its settlers. Therefore, all titles are quick-claim deeds. St. 1893, s. 470 (presently found in M.G.L. c. 91, s.25) divided the Province Lands into two parts. The *town* is the coast west of Howland Street; the *wild lands* are the area northeast of Howland Street. On the town side of the former Province Lands, private ownership of property is limited to the area landward of the Mean High Water mark, so west of Howland Street, land seaward of the Mean High Water mark is Commonwealth tidelands.

Present regulation locates the historic Mean High Water mark at the 'Schofield Line,' a recent interpretation of an 1848 line which was delineated on a map prepared under contract to the Department of Environmental Protection by Schofield Brothers of New England, Inc. dated April 12, 1996 and presented at a public information meeting in Provincetown on September 4, 1996. Subsequent public comment and reaction revealed that many residents who supported the former 1999 Harbor Plan did not understand the consequences this disputed line would create.

Coastal Engineering, the firm which has performed much of the surveying to date, asserts its position in many letters addressed to DEP that the historic Mean High Water line so defined is in fact subject to a margin of error ranging from 20 to 30 feet laterally

along the length of the line. The Town believes there are more accurate depictions of the Mean High Water line and requests reconsideration by DEP of the 1939 line which was determined by the legislature and has been an accepted legal delineation between Commonwealth tidelands and private property.

Appendixes A and B of the previous Harbor Plan were found to contain numerous inaccuracies. As a result, a Town Meeting vote on April 7, 2003 voted to discard them. The Town requests that DEP use the general recommendations listed in this revised Appendix B for On-Site Improvements. This Amended and Updated Harbor Plan strongly recommends that the Town and the Harbor Committee begin assembling an accurate list of all licensed properties to create a replacement for the 1999 Appendix A, starting with a list of all currently licensed properties and adding new listings as licenses are approved. The list should contain a description of property use (residential or commercial, water dependent or non-water dependent), an accounting of square footage on Commonwealth tidelands and a list of all fees and betterments applicable to each license.

This Plan requests that DEP proceed with processing applications from the west end eastward except in the case of properties needing immediate licensing in order to proceed with work. This will be a tremendous benefit for becoming familiar with the particular needs of beachfront areas for DEP and the Harbor Committee who are responsible for making the appropriate recommendations. In addition it will facilitate communication and awareness among property owners in neighborhoods to help identify areas of concern.

Appendix C of the previous Plan was also discarded at the April 7, 2003 Town Meeting. It failed to distinguish between amnesty and non-amnesty licenses and the calculation of fees was found to be frustratingly complex. This Amended and Updated Harbor Plan calls upon DEP to use the attached "Non-Amnesty Fee Schedule" to assess license fees and to direct that all monies collected from both amnesty and non-amnesty applications be deposited into the Harbor Access Gift Fund. Amnesty applicants would be assessed the fees shown on the attached "Amnesty Fee Schedule" based on the 1978 regulations. All non-amnesty applicants are subject to the present day fees and regulations in place at the time of their filing.

Licensing under the Amnesty Standards of the Waterways Regulations

In order to bring properties on tidelands into compliance with Chapter 91, the 1990 revisions of the waterways regulations included an amnesty provision (310 CMR 9.28). Amnesty applies to unlicensed structures or fill in existence and in use since January 1, 1984, which have not undergone unauthorized substantial structural alteration or change in use since that date. The period during which an amnesty license application could be submitted to DEP expired October 4, 1996.

Amnesty license applications are subject to substantive standards found at 310 CMR 9.07 and 9.20 through 27 that were in effect on September 15, 1978, instead of the later substantive standards found at 310 CMR 9.31 through 9.60. Before 1978, licenses had

no time limits. The 1978 standards also made no distinction between water-dependent and non-water-dependent uses, and offered the option of 30 year or 99 year licenses for non-water-dependent projects. They imposed no fee on property owners beyond the \$2.00 per square yard tidewater displacement fee, and no fee at all on properties that meet certain standards. No occupation fees are charged for amnesty licenses for structures in great ponds or for occupying private tidelands.

The 1978 standards did include a basic requirement that a project...”Does not interfere with or abridge any rights of the public, abutters, or the Commonwealth in tidelands, as set forth in Sections 22(1)-22(8); and... “Has public benefit which outweighs public detriment if the project is located on or over Commonwealth tidelands. Environmental, social, economic, legal, aesthetic, safety and navigational aspects of the project shall be considered when making this finding.” (9.07) (2) (d) (k)(1978)

Additional standards from the 1978 regulations of particular relevance to Provincetown:

The Department may, in making its determination regarding harm to public ownership from any project in Commonwealth tidelands in addition to other provisions of these regulations, consider such factors as:

- (a) The extent to which the project blocks the public view of the coast and the ocean or is incompatible with the existing characteristics of its neighborhood;
- (b) Its shadowing or noise impacts;
- (c) Its impacts on wind velocity; or
- (d) The degree to which it affects public access to the water from the shore or from the water to the shore. 310 CMR (9.22(5) (1978)

The Department shall not license any project in or over the Commonwealth tidelands if it would have a significant adverse effect on a public recreational facility. (9.22) (6) (1978)

The Department shall not license any project in or over Commonwealth tidelands that are within 300 feet of an historic site or district if it would have a significant adverse effect on such site or district. (9.22(8a)(1978)

A project shall be considered to have an adverse effect on an historic site or district when it causes or may cause any adverse change in the quality of the historical, architectural, archeological, or cultural character that qualified the site of district for state, local or federal designation. Such adverse effects generally occur under conditions, which include, but are not limited to:

- o The destruction or alteration of all or part of a property;
- o The restriction or impairment of access to the site or district or the isolation of the site or district from its surrounding environment; or
- o The introduction of visual, audible, or air quality characteristics that are out of character with the property or alter its setting. (9.22(8b)(1978)
- o Any project on a coastal beach, except any project permitted under section 23(5) (a), shall not have an adverse effect on such coastal beach or an adjacent or downdraft coastal beach by increasing erosion,

decreasing the volume or changing the form of any such coastal beach or an adjacent or downdrift coastal beach. (9.23)(a)(1978)

By the close of the amnesty period, DEP had received 196 amnesty applications, 87 of which were for properties between the Provincetown Inn and Howland Street (the zone of Commonwealth tidelands). To date, DEP has acted on only a small number of these applications. A significant amount of existing non-water-dependent development along Provincetown Harbor requires Chapter 91 licensing. The previous Harbor Plan expected that much of this licensing would be done under the amnesty provisions of the waterways regulations.

To relieve confusion about standards and fees that arose from the language of the previous Harbor Plan, the Town hereby requests that DEP review license fees already collected from amnesty property owners and recalculate the license fees on the basis of the regulations in force in 1978. If DEP finds that the fees charged were higher than what would have been collected under the 1978 regulations, the amnesty property owner shall be entitled to an abatement of the excess fees and shall have the right to apply to the Town for reimbursement. All reimbursements shall be paid solely from the amnesty property owners' license fees previously paid into the Harbor Access Gift Fund.

Licensing Under the 1990 Standards of the Waterways Regulations (non-amnesty)

Projects subject to the 1990 standards include (1) those involving structural alteration or change of use and (2) existing development that does not qualify for amnesty either because (a) there have been substantial unauthorized changes in use or structural alterations on the site since 1984 or (b) the applicant did not file an application during the amnesty period, which closed October 4, 1996. The non-amnesty standards have higher fees, shorter license terms, a different set of standards and distinguish between water dependent and non-water dependent use.

The waterways regulations of 1996 used for non-amnesty licensing, contain several core provisions that are essential to the control of non-water-dependent uses of Commonwealth tidelands in Provincetown Harbor. These are:

- The project shall preserve any rights held by the Commonwealth in trust for the public to use tidelands...for lawful purposes
...[Specifically], the project shall not interfere with public rights of navigation ... public rights of free passage over and through the water ... public rights associated with a common landing, public easement, or other historical legal form of public access from the land to the water that may exist on or adjacent to the project site ... public rights of fishing, fowling, and the natural derivatives thereof
...[and on Commonwealth tidelands] all other lawful activities including swimming strolling, and other recreational activities
... (§9.35)(1996)

- A non-water-dependent use project that included fill or structures on any tidelands shall not unreasonably diminish the capacity of such lands to accommodate water-dependent use. (9.51)(1996)
- (1) If the project includes non-water-dependent facilities of private tenancy, such facilities must be developed in a manner that prevents significant conflict in operation between their users and those of any water-dependent facility which reasonable can be expected to locate on or near the project site. Characteristics of the respective facilities that may give rise to such user conflict include, but are not limited to:
 - (a) Presence of noise and odors;
 - (b) Type of equipment and accessory services;
 - (c) Hours of operation and spatial patterns of activity;
 - (d) Traffic flows and parking needs;
 - (e) Size and composition of user groups;
 - (f) Privacy and security requirements;
 - (g) Requirements for public infrastructure.

 - (2) If the project includes new structures or spaces for non-water-dependent use, such structures or spaces must be developed in a manner that protects the utility and adaptability of the site for water-dependent use, such structures or spaces must be developed in a manner that protects the utility and adaptability of the site for water-dependent purposes by preventing significant incompatibility in design with structures and spaces which reasonably can be expected to serve such purposes, either on or adjacent to the project site. Aspects of built form that may give rise to design incompatibility include, but are not limited to:
 - (a) The total surface coverage by buildings and other permanent structures, insofar as it may affect the amount of open space where flexibility to serve water-dependent purposes will be retained;
 - (b) The layout and configuration of buildings and other permanent structures, insofar as they may affect existing and potential public views of the water, marine-related features along the waterfront, especially along sight lines emanating in any direction from public ways and other areas of concentrated public activity;
 - (c) The scale of buildings and other permanent structures, insofar as it may affect wind, shadow, and other conditions of the ground level environment that may affect users of water-dependent facilities; and
 - (e) The landscape design of exterior open spaces, insofar as it may affect the attainment of effective pedestrian and vehicular circulation within and to areas of water-dependent activity. (9.51) (1) (2) (1996)

Associated with each of these core provisions are a number of discretionary requirements, several of which are of primary relevance to Provincetown

and are thus amplified upon by the recommendations of this Plan. The specific discretionary requirements on which the Plan provides guidance for DEP applications are listed below.

Access to Town Landings. “The project shall not significantly interfere with public rights associated with a common landing, public easement, or other historic legal form of public access from the land to the water that may exist on or adjacent to the project site.” (9.35) (2) (C) (1996)

Management of Areas Accessible to the Public “...shall provide for long-term management of such areas which achieves effective public use and enjoyment while minimizing conflict with other legitimate interests, including the protection of private property and natural resources. Any project required to provide public access facilities...shall encourage public patronage of such facilities by placing and maintaining adequate signage at all entryways and at other appropriate locations on the site...”(9.35) (5) (b) (1996)

“No gates, fences, or other structures may be placed on any areas open to public access in a manner that would impede or discourage the free flow of pedestrian movement...”(9.35) (5) (c) (1996)

Standards for Non-Water Dependent Infrastructure Facilities

- (1) Shall include mitigation and or compensation measures as deemed appropriate by the Department to ensure that all feasible measures are taken to avoid or minimize detriments to the water-related interests of the public. Such interests include, but are not limited to:
 - (a) the protection of maritime commerce, industry, recreation and associated public access;
 - (b) the protection, restoration, and enhancement of living marine resources;
 - (c) the attainment of water quality goals;
 - (d) the reduction of flood and erosion-related hazards on lands subject to the 100-year storm event or to sea level rise, especially those in damage-prone or natural buffer areas’
 - (e) the protection and enhancement of public views and visual quality in the natural and built environment of the shoreline;
 - (f) the preservation of historic sites and districts, archaeological sites, and other significant cultural resources near waterways.
- (2) shall take reasonable measures to provide open spaces for active or passive recreation at or near the water’s edge, wherever appropriate. Such measures may be provided by any means consistent with the need to avoid undue interference with the infrastructure in question, and to protect public health, safety, or the environment. (9.55) (1) (2) (1996)

Guidance to DEP for Chapter 91 Licensing in Provincetown Harbor

In any matter in which this Provincetown Harbor Plan makes no explicit recommendation, DEP should interpret it as no more restrictive nor more demanding than applicable law and regulation. The Harbor Committee — the municipal body with

lead responsibility for Harbor Plan implementation—understands that DEP will adhere to the greatest reasonable extent to the guidance specified in the Plan. DEP will require conformance with all applicable recommendations of the approved Harbor Plan in the case of waterways license applications submitted subsequent to the effective date of Plan approval, as well as to pending applications for which the public comment period has not expired.

On-Site Public Benefit Recommendations

When a license requires a mitigating public benefit, DEP should prefer on-site improvements to monetary contributions wherever possible, (An example of an on-site benefit of high value would include permission for the public to cross private property to reach the beach). This Harbor Plan supports an increase in perpendicular access where needed, such as the areas outside the central commercial area where town landings are widely spaced. Also, properties identified as currently blocking legal access, or those which could easily accommodate access with minimal impact to current use patterns should also be considered. The request for individual perpendicular public access through private property must be considered carefully and on a case-by-case basis. In some areas the excessive flow of pedestrian traffic and or the proximity of private dwellings to potential passageways make this option unfeasible. Pedestrian foot traffic can be enormous in some areas during the summer months, especially surrounding commercial enterprises. Every effort needs to be made to consider the special circumstances of each property to ensure that one use does not interfere with or dominate another use. Fortunately, Provincetown is blessed with numerous town landings, although several areas in regions A, C, F and G (refer to appendix B) are in need of more perpendicular access.

The owner of private property zoned for residential use who grants the public a right of passage, grants that right only during the hours from dawn to dusk. Licenses issued by DEP on these properties should include that limitation, and should specifically authorize the licensee to manage public use of the access way by adopting reasonable rules (subject to prior review and written approval by DEP) as may be necessary to protect public health and safety and private property, and to discourage trespass and other unlawful activity by users of the area intended for public passage. Finally, each license should contain a statement to the effect that the exercise of free public passage within these access ways shall be considered a permitted use to which the limited liability provisions of M.G.L. c.21 sec. 17c shall apply on behalf of the property owner in question.

This Plan requires that applicants for licensing whose property abuts town landings, or other historic public rights of way must submit evidence (e.g., title search survey) as part of their application to ensure that the property is not encroaching on such public accessways. Town owned public landings would be the appropriate location for providing access amenities such as benches, trash receptacles, etc.

The licensing program should preserve and enhance public open space along the waterfront, to the maximum reasonable extent. *Public open space* means outdoor space

dedicated to public recreation, natural resource conservation or public water-dependent activity.

Where possible, there should be continuous lateral passage along the Provincetown Harbor shoreline to the maximum extent practicable within normally dry areas, immediately landward of the high water mark. In many cases, this area will be free of structural encroachment, but in some locations existing structures such as piers, seawalls, bulkheads, or decks impede or prevent lateral access, forcing pedestrian passage into the intertidal zone or blocking passage entirely when the tide is in. Where such an impediment arises from historic or traditional structures or uses and does not permit reasonable pedestrian passage under, around or over the structure, the Harbor Plan encourages connection to upland passage by access ways the shortest reasonable distance away from the obstruction. Property owners who have unnecessary impediments (such as unnecessary cross bracing of piers) should, however, be made to remove them as part of their compliance.

To encourage local awareness and participation in planning the future of the Provincetown waterfront, improvements required in lieu of public access may be proposed by either the owner of the property or the Harbor Committee, and negotiated between those parties in order to arrive at a proposal to be submitted for DEP approval.

(Specific On-Site Public Benefit Recommendations are listed in Appendix B at the end of this section)

Off-Site Public Benefit Requirements (Contributions to the Harbor Access Gift Fund)

Although the general premise for obtaining a Chapter 91 license is that a property owner will be expected to provide public open space and related physical improvements, in certain situations provision of such benefits on the project site may be difficult or impossible. In such cases where on-site public benefits are insufficient to compensate for the detriments to public rights on Commonwealth tidelands, DEP has traditionally sought alternative benefits in the form of monetary contributions to fund the provision of off-site benefits elsewhere in the harbor, preferably in a nearby location. For such situations in Provincetown, the Provincetown Board of Selectman established the Harbor Access Gift Fund on August 26, 1996 to receive Chapter 91 public benefit mitigation funds. The purpose of the fund is “to receive Chapter 91 public benefit mitigation funds and other donations, the proceeds of which shall be used without further appropriation to enhance the public's access to, and use and enjoyment of the shoreline and waters of Provincetown Harbor-especially in the preservation and protection of the waters, beaches and town landings therein. For example, the Fund should support maintenance and improvement of town landings and help the Town to meet its obligations for removing debris and cleaning the beaches, particularly where beach nourishment has created wide swaths of sand that the tides do not clean naturally.

Tidewater Displacement Fee

“Except as provided in 310 CMR 9.16(4), prior to issuance of a license for any fill or structure that will displace tides below the high water mark, the applicant, or his/her heirs or assignees responsible for such displacement, shall, at the discretion of (DEP)...(consider) a contribution to a special fund or other program managed by a public agency or non-profit organization in order to directly provide harbor improvements.”(9.16) (2) (c)

The revised Appendix C uses the state fee structure to collect monies. The licensee has the option of making annual payments amortized over 30 years. In addition, upon recommendation of the Harbor Committee, an alternative payment schedule involving partial deferrals may be authorized in unusual cases.

The Town is responsible for collecting the moneys and administering the Harbor Access Gift Fund, into which all collections will be deposited. As part of this collection program, the Town may create liens against the property for overdue accounts. Also, DEP’S enforcement powers may be useful if the Town has difficulty with overdue payments. Licenses should include a condition stating that non-payment over a specified time period (maybe three years) will be grounds for enforcement action including penalties and possible license revocation.

“No application for license or license amendment shall be required for maintenance and repair activity. Maintenance and repair include...restoration to the original license specifications of licensed fill or structures that have been damaged by catastrophic events, provided that no change in use occurs and that...in the case of flood-related damage, the cost of such restoration does not exceed 50 percent of the cost of total replacement according to the original license specifications.” (9.22) (1) (1996)

“The licensee may undertake minor modifications to a license project without filing an application for license or license amendment. Such modifications are limited to...no such modifications shall be undertaken until the licensee has submitted written notice to the Department describing the proposed work in sufficient detail with reference to any relevant license plans, for the Department to determine compliance with the above conditions.” (9.22) (3) (1996)

This Plan calls for strict enforcement of this requirement and for close coordination between DEP and the Building Inspector to determine where further licensing is required for structures that have been damaged beyond the 50% replacement cost. (Specific Off-Site Benefits are listed in Appendix B at the end of this section)

Appendix A

The Amended Plan includes a recommendation that Appendix A be reviewed and completed in concert with issuance of individual licenses due to inaccuracies and omissions that need correcting in the original Plan. When complete, Appendix A will contain a complete listing of all properties on the Provincetown waterfront with listings

for size and type of buildings, square footage of property on Commonwealth tidelands and formulas used to calculate payments.

Appendix B

General Recommendations For On-Site Improvements

Because Provincetown's waterfront is so densely developed there is not one set of recommendations that can be applied uniformly. For this reason, the waterfront was divided into **seven** distinct regions for the Amended Plan.

Region A: Provincetown Inn to 111 Commercial Street

This region consists mostly of residential properties and a few inns. This beachfront is particularly picturesque due to the close proximity of historic structures to the water and the old wharves and jetties that dot its coast. Beaches are clean and inviting for strollers and bathers although perpendicular and lateral access is difficult or impossible in some areas.

Recommendations: property owners with wharves that jut into tidal zones at high tides will be asked to keep clear passage beneath the wharves; property owners who have blocked legal perpendicular access will be asked to reopen those access routes. Perpendicular access is especially needed in this area when appropriate. The West End Boat Ramp and the Franklin Street Landing are both used extensively by small boat fishermen and recreational boaters. Beach cleaning upkeep in the West End Boat Ramp area is needed. This area is also frequented by large groups of children who swim and play on these beaches. Other general improvements recommended in this region include increased visual access from Commercial Street to the beach whenever possible and appropriate.

Region B: Coast Guard Station to Flyers Boatyard

This region is devoted almost entirely to water-dependent use for boaters. As a result, the beach is inhospitable for swimming and difficult for strolling. The beach area is not clean, full of obstacles, and the water quality is poor.

Recommendations: cleaning of debris on the beaches, better monitoring of water quality, more dinghy tie up facilities and increased visual access from Commercial Street to the beach whenever possible and appropriate.

Region C: 135 Commercial Street to Atlantic Ave Landing

This region consists mostly of historical, residential properties bordering a small area of beachfront. It is extremely inviting for strollers and bathers, due to its picturesque nature, yet perpendicular access to and from the street is very limited.

Recommendations: property owners who have blocked legal perpendicular access will be asked to re-open access routes; increased visual access from Commercial Street to the beach shall be encouraged wherever possible and appropriate.

Region D: Atlantic Ave Landing to Gosnold Street Landing

This region is comprised primarily of commercial buildings; commercial inns, hotels, restaurants and retail businesses. The beachfront remains a popular stretch for swimming and strolling. Many of the large businesses decks and parking lots extend into the tidal zone.

Recommendations: Owners of large parking lots in this area shall be asked to provide lateral access for beachgoers; regular cleaning of the beachfront just to the west of Gosnold ; increased visual access from Commercial Street to the beach shall be encouraged wherever possible and appropriate.

Region E: Gosnold Street Landing to 343 Commercial Street (Lands End Marine)

This area is characterized by primarily water-dependent usage – which, combined with region B comprise Provincetown’s working waterfront. As a result of its congested boating activity – the water quality in this region make it inhospitable for swimming. Its overall congestion create a particularly debris-ridden beachfront unpleasant to stroll.

Recommendations: As it is one of the most widely seen beachfront areas due to MacMillan Pier, it is essential that this area be made a prime target of a major and ongoing clean-up effort. Due to the high congestion of boats in this area the water quality is particularly poor. Better monitoring of boat-related pollution is warranted. The Municipal Parking Lot adjoining MacMillan Pier is a particular eyesore and major obstruction to beach-goers. An effort needs to be made to create a waterside access so that one can continue to walk the beach without having to walk from the waters edge to the entrances on the two sides of the large parking lot. Beach nourishment, which has become trapped by the bulkhead of the Municipal Parking Lot, has kept an uncharacteristically large beach on both the east and west sides that are hard to traverse and especially prone to debris due to size and usage.

Region F: 345 Commercial Street to Howland Street

A mix of residential and commercial structures, many of which are historical, characterizes this region. With a small but ample and picturesque beach, this is a very popular stretch for beachgoers to enjoy due to its easy access from the street (although the area closer to Howland Street has need for more perpendicular access) and its relatively clean water and beach. The beach is wide enough to accommodate dinghies and kayaks and is a popular mooring area for smaller boats.

Recommendations: The upper portions of the beaches, which the tides rarely clean, are in need of regular beach cleaning and designated areas for dinghy and kayak tie-up need improvement.

Region G: Howland Street to Truro Town Line

This region is private property to mean low water mark, subject to the rights of fishing, fowling and navigation.

On-Site Public Benefits Recommendations

- Provide a perpendicular access-way from Commercial Street to the beach
- Provide signage on both Commercial Street and beach indicating coastal access route
- Provide signage that indicates public use is permitted
- Improve and maintain existing access-way
- Remove “no beach access, “no trespassing” or “private property” signs
- Remove fence
- Lower fence
- Plant beach grass and/or remove beach grass when appropriate
- Survey property in disputed claims of public right of way/private property rights
- Allow for dinghy storage along waterfront
- Increase and improve visual access when possible and appropriate
- Recognition of historically significant structures as a cultural, aesthetic contribution

Other Considerations for State Licensing

(Not to be included in monetary contributions when present property owner is responsible – otherwise use as on-site betterment.)

- Remove septic tanks, Title V systems and leaching fields on beach
- Remove foreign material from beach such as gravel, wood and soil from owners nearby building projects
- Replace dirty sand with clean beach sand

**Off-Site Public Benefits
(Contributions to The Harbor Access Gift Fund)**

All monies should be devoted to improving the quality and aesthetics of the beaches and town landings and enhancing the water quality. It is important that the Harbor Access Gift Fund monies be limited to these types of improvements and not spent on commercial development- nor put into the Town's General Fund. The Harbor Access Gift Fund should report all contributions and disbursements to the public no less often than annually.

- Providing labor and machinery for regular cleaning of beaches and removal of debris during the summer months.

Improvement of Town Landings:

- Make more attractive by replacing dirty sand with clean sand, paving, providing fences and landscaping with low maintenance, indigenous species.
- Clean and maintain on a regular basis.
- Provide public amenities at each landing to include benches, lights, and waste receptacles, bike racks, poop bag posts.
- Designate area for dinghy, canoe and kayak tie-ups.
- Address water runoff damage.
- Eliminate and/or improve storm water drains into harbor.
- Improve upon water quality testing. Lab tests need to differentiate between human and animal fecal coliform to better address sources of pollution.
- Create better beach access route around the Municipal Parking Lot.
- Add marker rocks to ends of underwater groins to aid in boat navigational safety (The rocks should not be removed as they are considered an aesthetic contribution to the harbor).

Appendix C follows

NON-AMNESTY

TABLE I - FEES

TERMS	LICENSES WITH NORMAL TERMS		LICENSES WITH EXTENDED	
	Water-Dependent Use Projects ¹	Nonwater- Dependent Use Projects	Any Project	Small Scale Under 310 CMR
Project 9.10				
Determination of Applicability Application	\$ 50.00	\$ 50.00	\$ 50.00	\$ 50.00
License or Permit Application	\$100.00	\$500.00	\$1,000.00	\$ 50.00
License or Permit Amendment or Renewal Application	\$ 50.00	\$250.00	\$ 500.00	\$ 25.00
Certificate of Compliance Application	\$ 50.00	\$100.00	\$ 200.00	N/A
Tidewater Displacement Fee (per cubic yard)	\$ 2.00	\$ 10.00	\$10.00	N/A
Occupation Fee ² (per square yard of land held by the Commonwealth)	\$ 1.00 x term of license	\$ 2.00 x term of license	Appraisal	\$1 x term license

¹ Except for facilities subject to 310 CMR 9.16(3)(b)2., for which the applicable fees shall be the same as those listed for licenses with extended terms.

² The fee is calculated by multiplying the dollar rate shown by the length of the license term, in years, and by the area of occupied land held by the Commonwealth. This is a fixed fee for the term of the license and is assessed on a lump sum basis, except as provided in 310 CMR 9.16(3)(d).

- (1) TIDEWATER DISPLACEMENT FEE - Prior to granting a license for any structure or filling that will displace water below the high water mark, the applicant shall, at the direction of the Department:
- (a) Pay to the Commonwealth a tidewater displacement fee at the statutory rate* for water displaced;
 - (b) Excavate in the same harbor, between the high and low water marks subject to the requirements of these regulations and the approval of the Department, a basin for a quantity of water equal to that displaced; or
 - (c) Improve the harbor in some other manner satisfactory to the Department. The Department may consider the following improvements to be satisfactory if their costs are generally comparable to the amount otherwise due for displacement:
 - (i) An enforceable public right to use a licensed structure;
 - (ii) A harbor cleanup program;
 - (iii) A shellfish reseeding program;
 - (iv) A beach nourishment program; or
 - (v) Any other program that will improve the harbor or benefit the public.
- (2) LIABILITY FOR FEE - Any applicant for a license for a structure which has already been constructed or fill which is already in place prior to application for the license shall not be liable for a tidewater displacement fee if:
- a The applicant was not responsible for the construction of the structure or the placing of the fill; and
 - b The applicant acquired the real estate upon which the structure was constructed or the fill placed before January 4, 1974.
- (3) COMMONWEALTH TIDELANDS - Any person who places any structure on, fills or otherwise occupies land in tidewaters belonging to the Commonwealth shall pay a fee determined by the Governor.** Placement of permanent floats or rafts over tidelands belonging to the Commonwealth is occupation of tidelands. An applicant shall be responsible for such fee regardless of when the real estate involved was acquired.
- (4) PAYMENT FOR STRUCTURES OR FILL WHICH WAS PLACED WITHOUT PAYMENT - Any person who is granted a license for a structure which has already been constructed or existing fill, the fee for which has not been paid, shall pay the fee in effect at the time the application is filed.

* The current statutory rate is \$2.00/cubic yard of water displaced.

** The current fee is \$2.00/square foot. It can be changed by order of the

Matrix of Completed or In Progress Harbor Plan Recommendations

The following matrix summarizes key actions required to implement the Harbor Plan recommendations, identifies those with responsibility in implementing the recommendations, and identifies a time frame within which implementation should be initiated.

	<i>Categories and Recommendations</i>	<i>Required Actions</i>	<i>Responsibilities (Primary in bold)</i>	<i>5th year progress report</i>
	Land Use Recommendations			
1.	Incorporate Harbor Plan recommendations into special permit, variance, and similar reviews	Zoning ordinance amendment	Town Meeting; Harbor Committee to draft refined regulations; Planning Board review	Ongoing as needed with LCIP and Planning Board
2.	Establish a working committee to consider proactive measures for protecting and enhancing water-dependent uses	Establish committee charge and time-frame	Board of Selectman Planning Board Harbor Committee	Harbor Committee working with these responsibilities.
3.	Seek funds and establish process to study measures to protect properties in the FEMA velocity zones	Seek funding sources and initiate studies	Harbor Committee Town Manager	See dredging
4.	Establish a stormwater mitigation program	Direction from the Board of Selectmen	DPW Board of Selectman Harbor Committee	Conducted comprehensive WQ testing at all stormwater outfalls under assessment program; installed 4 new stormwater mitigation systems around MacMillan Pier; ongoing project with CZM assistance, including a Town wide assessment of prioritized needs

	<i>Categories and Recommendations</i>	<i>Required Actions</i>	<i>Responsibilities (Primary in bold)</i>	<i>5th year progress report</i>
5.	Request county aid to supplement a harbor water quality monitoring program	No change from existing policy and practice Conduct labs tests to separate human and animal fecal coliform	DPW Harbor Committee	DCD and DPW continue working toward a comprehensive water quality-testing program. Partnered with Center for Coastal Studies.
6.	Construction of a site specific sewer system	Financing, Engineering Construction	Town Manager DPW Water & Sewer Board Board of Selectmen	Phase 1 sewer construction, operation and testing on-going
7.	Removal of beach debris: Provide additional assignment of maintenance responsibility and funding to the DPW, additional trash receptacles, seasonal weekly removal of seaweed and debris	Work assignments and additional funding Purchase beach cleaning machine	DPW Board of Selectmen	Work done as needed
8.	Removal of beach debris: Increase volunteer activities and increase awareness	Sponsor larger program	Harbor Committee	HC annually in spring partners with Americorp volunteers and DPW for a town wide beach cleanup. Several problem areas have been addressed with additional Americorp/DPW support (cove area, abandoned boats)
9.	Removal of beach debris: Permitting and	Include as a	Harbor Committee,	

	<i>Categories and Recommendations</i>	<i>Required Actions</i>	<i>Responsibilities (Primary in bold)</i>	<i>5th year progress report</i>
	licensing criteria	condition on various permits, approvals	Zoning Board of Appeals, Planning Board	
	Water Use Recommendations			
1.	Initiate and maintain program of aquaculture improvements	Establish priorities and implement recommendations	Shellfish Constable Board of Selectmen Harbor Committee Shellfish Committee	Upwellers for shellfish seed stock grow out have been installed on MacMillan Pier. Shellfish Constable partners with CCNS to produce GIS-based mapping of aquaculture grants.
2.	Undertake new town mooring system including allocation of five spaces for emergency and storm-related use	Establish mooring technology, contract for mooring layout plan, establish fee structure and implementation timetable	Marine Superintendent Board of Selectmen Harbor Committee	Underway
3.	Initiate process for short-term and long-term maintenance dredging	Fund engineering studies, seek resources, implement the plan	Harbor Committee Board of Selectman Barnstable County Dredge Committee representative State Agencies	Initial dredging for reconstructed MacMillan Pier provided for beach nourishment in FEMA velocity zone on east side of town. Ongoing maintenance dredging addressed by Marine Superintendent participation on County Board.

	<i>Categories and Recommendations</i>	<i>Required Actions</i>	<i>Responsibilities (Primary in bold)</i>	<i>5th year progress report</i>
5.	Protect water quality and shellfish resource from anchorage and mooring, and mark wrecks	Mark as off-limits for moorage or anchorage areas requiring protection	Marine Superintendent	Updated mooring field maps are in progress.
6.	Reduce conflicts between anchorages and other uses in the harbor	Anchorage areas should be designated more precisely	Marine Superintendent	Plan moving through public process to coincide with mooring field map update above.
7.	Communicate to the National Park Service the recommendation that no action be taken to reduce or alter the activities recommended by this Water Use Plan	Forward plan with letter	Board of Selectmen Town Manager	
8.	Provide for interim improvements to the dinghy dock	Provide for year-round use and expansion	Marine Superintendent Board of Selectmen Town Manager Harbor Committee	Interim improvements were provided during pier reconstruction. Dinghy docks expansion was part of MacMillan Pier reconstruction and is available year round. Floating docks have been successfully tested at west end ramp for dinghy and launching use. Pursuing permanent gangway and pile floating dock system.

	<i>Categories and Recommendations</i>	<i>Required Actions</i>	<i>Responsibilities (Primary in bold)</i>	<i>5th year progress report</i>
	Public Facility Recommendations			
1.	Undertake the engineering analysis and design of the reconstruction of MacMillan Pier	Approve funding and initiate process	Commonwealth of Massachusetts, Town Meeting	Done
2.	Undertake detailed study to implement new MacMillan Pier Management entity	Establish funding, participate in the planning process	Massachusetts Development and Finance Agency, Seaport Advisory Council, Harbor Committee	Done
3.	Create new MacMillan Pier Management entity	Provide for incorporation or other procedural steps, approve mechanism through Town Meeting	Town Meeting Board of Selectmen	Done
4.	Fund and Construct MacMillan Pier improvements	Provide for State bond source funds, local matching funds and financing mechanisms, other sources	Commonwealth of Massachusetts; Public Pier Corporation, Town Meeting, Others	Substantially complete with some punch list items outstanding. Pursuing transportation infrastructure improvements, offloading improvements and bathrooms.
5.	Undertake planned program of public access and water-dependent capital improvements including small boat commercial facilities and	Create implementation framework as	Harbor Committee Board of Selectmen Town Manager	40 floating dock slips and dinghy docks created with MacMillan Pier reconstruction

	<i>Categories and Recommendations</i>	<i>Required Actions</i>	<i>Responsibilities (Primary in bold)</i>	<i>5th year progress report</i>
	other specific recommendations of this Plan	recommended in the Harbor Plan	Department of Public Works	primarily for the use of commercial fisheries. Jib cranes and dedicated loading zones provided for fisheries. Beach access signs have been installed on Commercial St and beach to improve identification of access points. Coordinated signs layouts with Chapter 91 license and Visitor Services signs.
6.	Establish Right-of-Way Committee	Create mission statement and establish structure	Board of Selectmen	Harbor Committee utilizing annual grant of assistance from Americorp Cape Cod volunteers
	Regulatory Framework for Chapter 91			
1.	Establish Harbor Committee and delegate Planning Board responsibility for local license review	Finalize procedural requirements	Town Meeting	Done
2.	Establish memorandum of understanding for specific implementation of the Chapter 91 recommendations if required in addition to the provisions of this Plan	Finalize specific review procedures and criteria, if required	Massachusetts Office of Coastal Zone Management, Town of Provincetown Harbor Committee	Amplification
3.	Establish and approve final fee structure for exclusion fee	Establish fees	Massachusetts Office of Coastal Zone Management	

	<i>Categories and Recommendations</i>	<i>Required Actions</i>	<i>Responsibilities (Primary in bold)</i>	<i>5th year progress report</i>
	Long Term Plans			
1.	Continue planning process regarding certain long term projects such as west end breakwater boat ramp at the rotary.	Establish this as a regular agenda item of the Harbor Committee	Town Meeting Board of Selectmen Harbor Committee	