

**CAPE COD CANAL HIGHWAY BRIDGES
BOURNE, MASSACHUSETTS**

**MAJOR REHABILITATION EVALUATION
REPORT**

**APPENDIX K
PROGRAMMATIC AGREEMENT FOR
SECTION 106 OF THE NATIONAL HISTORICAL
PRESERVATION ACT**

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PROGRAMMATIC AGREEMENT BETWEEN THE
UNITED STATES ARMY CORPS OF ENGINEERS, NEW ENGLAND DISTRICT AND
THE MASSACHUSETTS STATE HISTORIC PRESERVATION OFFICER

REGARDING

THE CAPE COD CANAL HIGHWAY BRIDGES PROJECT,
TOWNS OF BOURNE AND SANDWICH, BARNSTABLE COUNTY, MASSACHUSETTS

WHEREAS, the U.S. Army Corps of Engineers, New England District (USACE) owns, operates, and maintains the Cape Cod Canal Federal Navigation Project (CCC-FNP), including the Bourne and Sagamore Highway Bridges, under the authority of the Rivers and Harbors Acts of 1927 and 1935; and

WHEREAS, the Bourne and Sagamore Bridges, constructed in 1933-1935, have exceeded their expected lifespans and are functionally obsolete, and the Bourne Bridge has been classified as deficient under current Federal Highway Administration guidelines; and

WHEREAS, USACE has completed a Major Rehabilitation and Evaluation Report (MRER) to evaluate alternatives for the rehabilitation or replacement of the Sagamore and Bourne Bridges to determine the likely future course of action; and

WHEREAS, USACE analyzed three alternatives in the MRER including (1) continued maintenance and repair; (2) major rehabilitation of both bridges with regular maintenance and repair and another expected rehabilitation action for each bridge within the 50-year period of analysis; and (3) construction of two new bridges and approach roadways followed by demolition of the existing bridges; and

WHEREAS, the MRER determined that the replacement of both bridges would be the most prudent and cost-effective means of providing safe and reliable crossings of the Cape Cod Canal (CCC); and

WHEREAS, USACE has entered into a Memorandum of Understanding (MOU) (Attachment A) executed July 7, 2020, with the Massachusetts Department of Transportation (MassDOT) that establishes roles and responsibilities between the two agencies for the construction of the new bridges and the demolition of the existing bridges; and

WHEREAS, the MOU provides that USACE will facilitate approval for transfer of necessary Federal property interests from USACE to MassDOT for MassDOT to own, operate, and maintain the new bridges, their approaches, and necessary ancillary features; and

PROGRAMMATIC AGREEMENT AMONG THE UNITED STATES ARMY CORPS OF ENGINEERS, NEW ENGLAND DISTRICT AND THE MASSACHUSETTS STATE HISTORIC PRESERVATION OFFICER REGARDING THE CAPE COD CANAL HIGHWAY BRIDGES PROJECT

WHEREAS, USACE has determined that the proposed construction and demolition activities and the transfer of federal assets as described in the MOU are a Federal undertaking subject to consultation under Section 106 of the National Historic Preservation Act of 1966, as amended (54 U.S.C. § 306108) (Section 106), and its implementing regulations (36 CFR 800); and

WHEREAS, USACE and MassDOT are in the early stages of discussion for the Undertaking and have not determined the extent of necessary Federal property interests that will be transferred from USACE to MassDOT; the precise locations of the new canal crossings; the structural type of the proposed new bridges; methods of demolition or construction; locations of access roads, detour routes, or staging areas; the layout of the approach roadways along Route 6 and Route 28 north and south of the CCC-FNP; or any additional right of way that may be necessary for the Undertaking; and

WHEREAS, USACE has developed this Programmatic Agreement (Agreement) pursuant to 36 CFR § 800.14(b)(1)[ii], which allows Federal agencies to fulfill their Section 106 obligations through the development and implementation of such Agreements when effects on historic properties cannot be determined prior to approval of an Undertaking; and

WHEREAS, USACE has determined that the preliminary direct Area of Potential Effects (APE) on Federal property within the CCC-FNP for this Undertaking (Attachment B) includes the existing bridges and their immediate approaches, the adjacent new crossings, as well as access roads, staging areas and other elements needed for demolition and construction activities and the transfer of federal property interests; and

WHEREAS, USACE has determined that the preliminary direct APE for this Undertaking on non-federal property includes the approach roadways north and south of the CCC-FNP along U.S. Route 6 (Sagamore Bridge) and State Route 28 (Bourne Bridge) that will be realigned and reconstructed to reconnect the new bridges into the National Highway System and any necessary access roads, temporary detours, or staging areas; and

WHEREAS, USACE has determined the preliminary direct APE on both federal and non-federal property in consultation with the Massachusetts State Historic Preservation Officer (SHPO), the Tribal Historic Preservation Officers (THPOs) of the Mashpee Wampanoag Tribe and the Wampanoag Tribe of Gay Head (Aquinnah), and other consulting parties in accordance with 36 CFR 800.4(b) and SHPO and THPOs have concurred with the preliminary direct APE with the understanding that the direct APE shall be refined as design for the Undertaking progresses and that an indirect APE shall be determined; and

WHEREAS, USACE concurs with formal recommendations made by SHPO in 1991 that the Bourne and Sagamore Bridges are eligible for individual listing in the National Register of Historic Places (NRHP); and

WHEREAS, USACE has determined and the SHPO staff have agreed that the Cape Cod Canal area (MHC Inventory Form # BOU.AF/FAL.BG/SWD.Z/WRH.V) meets the criteria of eligibility for listing in the National Register of Historic Places as a historic district and that the Bourne and Sagamore Bridges meet the National Register eligibility criteria for individual listing as well as contributing elements of the Cape Cod Canal historic district; and

WHEREAS, the APE is known to be archaeologically sensitive for pre-Contact sites, unmarked human burials, and ceremonial sites and that professional archaeological assessment will be required on both Federal and non-federal land in consultation with SHPO, THPOs, and other consulting parties, as appropriate, in accordance with 36 CFR § 800.2, during the design phase of the Undertaking and, as necessary, during construction activities; and

WHEREAS, USACE, in consultation with SHPO, has determined that demolition of the Bourne and Sagamore Bridges will have adverse effects on those two NRHP-eligible structures in accordance with 36 CFR § 800.5(a); and

WHEREAS, USACE will determine effects on the NRHP-eligible CCC Historic District or other NRHP-eligible historic or archaeological properties within the preliminary direct APE or an indirect APE as yet to be determined in consultation with SHPO, THPOs, and other consulting parties as design for the Undertaking progresses; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1)(i), USACE has notified the Advisory Council on Historic Preservation (ACHP) of its intention to develop this Agreement on May 28, 2020, and the ACHP determined its involvement in consultation to resolve adverse effects was unnecessary in a letter dated June 10, 2020; and

WHEREAS, USACE has consulted with SHPO pursuant to 36 CFR § 800.3(c)(3); and

WHEREAS, in accordance with 36 CFR § 800.6(c)(2)(iii), USACE has invited MassDOT to sign this Agreement based on the responsibilities MassDOT has assumed under the MOU and MassDOT has agreed to sign as an Invited Signatory; and

WHEREAS, in accordance with 36 CFR § 800.3(c)(3), USACE has invited the Mashpee Wampanoag Tribe to sign this Agreement as a Concurring Party in a letter dated June 8, 2020 and by email on November 10, 2021, and the Mashpee Wampanoag Tribe have not yet responded; and

WHEREAS, in accordance with 36 CFR § 800.3(c)(3), USACE has invited the Wampanoag Tribe of Gay Head (Aquinnah) to sign this Agreement as a Concurring Party and the Wampanoag Tribe of Gay Head (Aquinnah) has accepted in an email dated June 10, 2020; and

WHEREAS, in accordance with 36 CFR § 800.2(c)(3), USACE has invited the Bourne Historical Commission (BHC) to sign this Agreement as a Concurring Party and the BHC, by electronic mail dated November 16, 2021, requested the preservation of certain salvageable

items from the bridges such as plaques, attachments, signs, etc. as well as historical photographs; and

WHEREAS, in accordance with 36 CFR § 800.2(c)(3), USACE has invited the Sandwich Historical Commission (SHC) to sign this Agreement as a Concurring Party and the SHC has accepted in an email dated June 26, 2020; and

WHEREAS, in accordance with 36 CFR § 800.2(c)(5), USACE has invited the Massachusetts Board of Underwater Archaeological Resources (BUAR) to sign this Agreement as a Concurring Party and the BUAR has accepted in a letter dated June 22, 2020; and

WHEREAS, in accordance with 36 CFR § 800.2(c)(5), USACE has invited the Cape Cod Commission (Commission) to sign this Agreement as a Concurring Party and the Commission has accepted in an email dated June 11, 2020; and

WHEREAS, in accordance with 36 CFR § 800.2(d), the USACE has solicited public comment on the Undertaking through a coordinated site visit with the interested agencies held on March 19, 2019, public meetings held before the publication of the draft environmental assessment (EA) on December 4, 5, 6, 11, and 12, 2018 and public meetings after publication of the draft EA held on October 16, 17, 21, 22, and 23, 2019; and

WHEREAS, the Mass DOT has held 2 separate rounds of stakeholder and public meetings on June 21, 22, 23, 29, and 30, 2021, and November 1, 3, 9, 10, 11, 16, and 18, 2021 and public comments regarding historic properties, if any, will be provided to SHPO; and

WHEREAS, for the purposes of this agreement, signatories refer to USACE, SHPO and the MassDOT; and

NOW, THEREFORE, pursuant to 54 U.S.C. § 306108 and 36 CFR Part 800, USACE and SHPO agree that the Undertaking shall be implemented in accordance with the following stipulations to satisfy USACE's Section 106 responsibilities to take into account the effects of the Cape Cod Canal Highway Bridges Project on historic properties.

STIPULATIONS

USACE shall ensure that the following measures are carried out:

I. APPLICABILITY

- A. At the time of the execution of this Agreement, USACE has not received a Congressional appropriation to fund the replacement of the Bourne and Sagamore Bridges. No transfer of federal property from USACE to MassDOT has occurred. This Agreement shall apply to USACE only if such Congressional appropriation is forthcoming.

- B. USACE will be involved in the design of the new bridges. If a Congressional appropriation for the undertaking is authorized for a federal agency other than USACE, then USACE, as the owner of the bridges and the CCC-FNP, shall consult and amend this Agreement as necessary with the signatories in accordance with XIV below and pursuant to 36 CFR 800.14(b)(3). MassDOT shall participate in that Agreement.
- C. Any alteration to, or temporary or permanent occupation or use of a USACE Federally authorized civil works project will require permission from USACE pursuant to 33 U.S.C. § 408 as well as any other applicable regulatory approvals.

II. APE, VIEWSHED, INVENTORY, AND BRIDGE DESIGN

- A. USACE and MassDOT shall continue to consult with SHPO, THPOs, concurring parties and other consulting parties, as appropriate, as design progresses to avoid, minimize, or mitigate adverse effects to properties that are listed or eligible for listing in the NRHP.
- B. USACE and MassDOT, in consultation with the SHPO, THPOs, concurring parties and other consulting parties, shall continue to refine the direct and indirect APEs for the undertaking, including viewsheds, as the design progresses. Viewsheds shall include those from within the NRHP-eligible CCC Historic District as well as those from NRHP-eligible historic districts and historic buildings located outside of the boundaries of the CCC-FNP.
- C. USACE and MassDOT shall prepare viewshed analyses for various structural types that might be proposed for the new bridges, as well as the current bridges, to determine if historic properties both within the NRHP-eligible CCC Historic District and outside the CCC-FNP have views that might be affected by the construction of the proposed new bridges.
- D. USACE and MassDOT shall evaluate the significance of any building within the viewshed that appears to be more than 40 years old by applying the NRHP Criteria for Evaluation (36 CFR 60).
- E. USACE and MassDOT shall prepare a MHC historic inventory Form A or Form B, as appropriate, for any area or building within the viewshed of the undertaking outside of the CCC-FNP that is greater than 40 years old, if a Form A or Form B for such historic district or historic building is not already included in the Inventory of Historic Assets of the Commonwealth. All inventory forms shall be prepared according to MHC's Historic Properties Survey Manual.
- F. USACE and MassDOT shall prepare a NRHP eligibility recommendation for any previously inventoried Area or building within the viewshed of the undertaking by applying the NRHP Criteria for Evaluation and in accordance with the procedures contained in 36 CFR 60 .
- G. USACE and MassDOT, in consultation with SHPO and other consulting parties, shall assess effects of the undertaking on the NRHP-eligible CCC Historic District and on those

NRHP-eligible historic districts or historic buildings identified above in Subsections C and D.

- H. USACE and MassDOT shall make a good faith effort to design, position, and construct new bridges that will avoid adverse effects to the NRHP-eligible CCC Historic District and any NRHP-eligible properties within the viewshed of the undertaking.
- I. USACE and MassDOT shall present design alternatives for the bridges to the consulting parties and the public for comment prior to choosing a preferred alternative.

III. RESOLUTION OF ADVERSE EFFECTS

- A. Mitigation for the adverse effects to the NRHP-eligible Bourne and Sagamore Bridges shall be determined in an amendment to this Agreement following the selection of a preferred alternative by USACE and MassDOT for the new bridges within the NRHP-eligible CCC Historic District. Mitigation shall be determined in consultation with SHPO, THPOs, other consulting parties, and the public, as appropriate. An example of possible at minimum, but not all inclusive, mitigation is the preservation of salvageable items from the bridges requested by the BHC above.
- B. The Amendment to this Agreement also shall address any adverse effects that the undertaking might cause to the NRHP-eligible CCC Historic District or other historic districts or historic buildings within the viewshed of the bridges that might be eligible for listing in the NRHP.
- C. No demolition or construction activities associated with the undertaking or transfer of federal assets shall occur until the Agreement is fully executed, except as specified in Stipulation IX.
- D. Adverse effects that might be caused by the undertaking to archaeological properties shall be addressed below in Stipulation IV.

IV. IDENTIFICATION AND EVALUATION OF ARCHEOLOGICAL RESOURCES

A. Archaeological Sensitivity Assessment

- 1. USACE and MassDOT shall ensure that an archaeological sensitivity assessment report (report) is prepared by a qualified professional archaeological consulting firm for the direct APE including both Federal land within the CCC-FNP and non-federal land along Route 6 and Route 28 and ancillary areas. The report shall assess the potential for the presence of pre-contact archaeological sites, unmarked human burials, and ceremonial sites, as well as any potential historic or underwater archaeological resources. The report shall make recommendations for further archaeological investigations.
- 2. USACE shall ensure that copies of the draft report are submitted to SHPO, THPOs, and BUAR for review and comment. Recipients shall provide written comments to

USACE, either by hard-copy or email, within thirty (30) days of receipt of the report. Failure to respond within thirty days shall indicate concurrence with the recommendations in the report. USACE shall ensure that any comments from SHPO, THPOs, or BUAR are addressed in a timely manner prior to proceeding with further archaeological investigations.

B. Archaeological Investigations on Federal Property

1. Based on the report, and considering written comments from SHPO, THPOs, and BUAR, the USACE Archaeologist shall determine if further archaeological investigations are required on Federal property within the CCC-FNP. Such investigations shall be conducted by a qualified professional archaeological firm, which shall submit a permit application to USACE under the Archaeological Resources Protection Act (ARPA) of 1979 (P.L. 59-209; 34 Stat. 225; 54 U.S.C. 320301-320303; 43 CFR 3).
2. USACE shall submit any ARPA permit application to the appropriate THPOs for review and comment prior to issuing the ARPA permit, pursuant to 43 CFR 7.7(a).
3. USACE shall submit any ARPA permit application to the SHPO for review and comment prior to issuing the ARPA permit.
4. USACE shall submit any ARPA permit application to the BUAR for review and comment prior to issuing the ARPA permit if the subject of the application includes underwater archaeological investigation.
5. The SHPO, THPOs, and BUAR shall respond in writing to USACE within thirty (30) days of receipt of an ARPA permit application.
6. USACE shall ensure that the THPOs are invited to participate in any archaeological investigations within the CCC-FNP.
7. USACE shall ensure that the BUAR is invited to participate in any archaeological investigations that involve potential underwater archaeological resources within the CCC-FNP.

C. Archaeological Investigations on Non-Federal Land

1. MassDOT shall be responsible for archaeological assessments and investigations on non-federal land within the direct APE but outside the boundaries of the CCC-FNP, generally along Route 6 at the northerly and southerly approaches to the Sagamore Bridge and Route 28 at the northerly and southerly approaches to the Sagamore Bridge, but also including access roads, temporary detour routes, staging areas, etc.
2. As design progresses for the realignment and reconstruction of the approach roadways, the MassDOT Archaeologist shall review the report and make recommendations to SHPO and THPOs for further archaeological investigations within areas of the direct APE on non-federal land outside of the CCC-FNP.

3. Identification efforts and the scopes of archaeological surveys on non-federal land shall be developed in consultation with SHPO. Any archaeological surveys on non-federal land outside of the CCC-FNP shall be conducted under a Massachusetts State Archaeologist's permit and be consistent with the permit regulations (950 CMR 70) and the Secretary of Interior's Standards and Guidelines for Identification (48 FR 44720-23).
4. MassDOT, or its representative, shall notify the THPOs at least fourteen (14) calendar days in advance of any upcoming archaeological surveys that will be conducted outside of the CCC-FNP. THPOs shall be invited to participate in any archaeological surveys outside of the CCC-FNP.

D. Assessment of Archaeological Properties and Resolution of Adverse Effects

1. USACE and/or MassDOT shall assess all archaeological resources identified within the direct APE, both terrestrial and underwater, to determine the resource's eligibility for listing in the NRHP in accordance with 36 CFR 800.4(b). SHPO, THPOs, and BUAR shall be given an opportunity to review and comment on such assessments.
2. For all NRHP-eligible archaeological resources within the APE for which USACE or MassDOT have determined that the Undertaking will cause an adverse effect, USACE and MassDOT will consult further with SHPO, THPOs, and BUAR to determine if there are practicable ways to avoid or minimize the adverse effects in accordance with 36 CFR § 800.6.
3. If an adverse effect to any NRHP-eligible archaeological resource cannot be practicably avoided, and USACE, MassDOT, SHPO, THPOs, and BUAR, as appropriate, agree on how the adverse effects shall be resolved, they shall develop and implement a data recovery plan.
4. Any agreed-upon data recovery will be completed before ground-disturbing activities associated with demolition, construction or land transfer activities are initiated at or near the affected archaeological site. THPOs will be invited to participate in any data recovery. The BUAR will be invited to participate in any underwater data recovery.

V. CURATION STANDARDS

- A. All original archaeological records (research notes, field records, maps, drawings, and photographic records) produced as a result of implementing the Stipulations of this Agreement on federal land and all archaeological collections recovered from federal land within the APE shall be curated in accordance with 36 CFR 79, *Curation of Federally Owned and Administered Archaeological Collections*.
- B. All original archaeological records (research notes, field records, maps, drawings, and

photographic records) produced as a result of implementing the Stipulations of this Agreement on non-federal land and all archaeological collections recovered from non-federal land within the APE shall be curated in accordance with 36 CFR 79, *Curation of Federally Owned and Administered Archaeological Collections* and the *State Archaeologist's Permit Regulations (950 CMR 70)*.

VI. PROFESSIONAL STANDARDS

A. Research Standards

All work carried out pursuant to this Agreement shall meet or exceed the *Secretary of the Interior's Standards for Archaeology and Historic Preservation* (SOI's Standards; http://www.nps.gov/history/local-law/arch_stnds_9.htm).

B. Professional Standards

All work carried out pursuant to this Agreement shall be done by or under the direct supervision of the appropriate professionals who meet or exceed the *Secretary of the Interior's Professional Qualifications Standards* (Federal Register, Vol. 62, No. 119, pp. 33708-33723) in the appropriate discipline. Consultants retained for services pursuant to this Agreement shall meet these standards.

C. Documentation Standards

All technical reports prepared pursuant to this Agreement shall be consistent with the *Secretary of the Interior's Standards and Guidelines for Archaeological Documentation* (48 FR 44734-37), the *Secretary of the Interior's Standards for Rehabilitation*, as well as *Preservation Briefs*, and *The Historic American Buildings Survey and Historic American Engineering Record* (U.S. Department of the Interior, National Park Service), and the *ACHP's Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites* (1999), or subsequent revisions, or any subsequent revisions or replacements of these documents.

VII. UNMARKED HUMAN BURIALS

- A. Pursuant to 36 CFR 800.13(a)(1), in the event human skeletal remains or unmarked human burials are encountered during implementation of the Undertaking, work shall stop in the vicinity of the properties and the process in Attachments C and D will be followed. Other federal, state, and local laws, regulations, and policies as appropriate also might apply.
- B. Historic and pre-contact human remains from federal land are subject to the Native American Graves Protection and Repatriation Act.
- C. Historic and pre-contact human remains on non-federal, non-tribal lands are subject to protection under MGL Chapter 9, Section 26A and 27C.

- D. Attachment C more fully describes the process for the treatment of human remains discovered on federal land.
- E. The MassDOT Standard Special Provision 7.23 dated August 10, 2012, regarding Discovery of Unanticipated Archaeological and Skeletal Remains (Attachment D) shall be inserted into any construction contract issued by MassDOT for the Undertaking.

VIII. POST-REVIEW DISCOVERIES

- A. Pursuant to 36 CFR 800.13(a)(1), if properties are discovered that may be eligible for listing in the NRHP or unanticipated effects on historic properties found subsequent to the completion of surveys under Stipulations II and IV, work shall stop in the vicinity of the properties and the process in Attachments C and D will be followed.

The MassDOT Standard Special Provision 7.23 dated August 10, 2012, regarding Discovery of Unanticipated Archaeological and Skeletal Remains (Attachment D) shall be inserted into any construction contract issued by MassDOT for the Undertaking.

IX. EARLY ACTION ITEMS

- A. Soil borings may be necessary on both Federal and non-federal land within the APEs to provide geotechnical information that will advance the project design. Soil borings on USACE land will require USACE approval through the ARPA permit application process.
- B. Conduits for utilities (water, electricity, natural gas, telecommunications) are attached to both the Bourne and Sagamore Bridges. Removal of the conduits from the bridges and their relocation within the CCC-FNP will be necessary to demolish the existing bridges but also will have independent utility as a means to update the conduits and provide more secure subsurface locations.
- C. Soil borings and relocation of utilities may be conducted prior to the resolution of adverse effects under this Agreement provided that all provisions in Stipulations IV-VII above are followed each time that soil borings or utilities' relocations are proposed.

X. REVISIONS TO THE SCOPE OF THE UNDERTAKING

In the event of any changes to the scope of the Undertaking that may alter any of the APEs, USACE and/or MassDOT shall consult with the SHPO, THPOs, and other Consulting Parties pursuant to 36 CFR § 800.2 through § 800.5.

XI. COMMUNICATION

- A. All formal submittals to SHPO shall be on hard copy printed paper delivered by U. S. Mail, other delivery service, or by hand. Such submittals shall include Section 106 effect

findings, this Agreement, all Memoranda of Agreement, survey reports, archaeological permit applications to the State Archaeologist, copies of ARPA permit applications from USACE, archaeological site forms, inventory forms, and any other submittals as specified by SHPO, and all revisions or amendments to same.

- B. Electronic mail (email) may serve as the official correspondence method for all other communications regarding this Agreement and its provisions unless otherwise agreed to. See Attachment E for a list of contacts and email addresses. Contact information in Attachment E may be updated as needed without an amendment to this Agreement. It is the responsibility of each party to the Agreement to provide any change in name, address, email address, or phone number of any point-of-contact. This information shall be forwarded to all signatories and Concurring Parties by email or US Mail as appropriate.

XII. DISPUTE RESOLUTION

Should any signatory to this Agreement object in writing at any time to any actions proposed under this Agreement, or the manner in which the terms of this Agreement are implemented, consultation with the objecting party shall be undertaken to resolve the objection. If objections cannot be resolved, then the following actions will be completed:

A. Documentation

Forward all documentation relevant to the dispute, including the proposed resolution, to the ACHP. The ACHP shall provide its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to USACE reaching a final decision on the dispute, a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties will be prepared. Each party will be provided a copy of this written response.

B. Resolution

If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, USACE will make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties will be prepared. All parties will be provided a copy of such written response.

C. Continuity

All other actions subject to the terms of this Agreement that are not the subject of the dispute will remain unchanged.

XIII. ANTI-DEFICIENCY ACT

The stipulations of this Agreement are subject to the provisions of the Anti-Deficiency Act. A reasonable and good faith efforts shall be made to secure the necessary funds to implement this Agreement in its entirety.

XIV. AMENDMENTS

This Agreement may be amended when such an amendment is agreed to in writing by all signatories. The amendment shall be effective on the date a copy is signed by all signatories.

XV. TERMINATION

If any signatory to this Agreement determines that its terms are not or cannot be carried out, that party shall immediately consult with the other signatories to attempt to develop an amendment per Stipulation XIV, above. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the Agreement upon written notification to the other signatories.

Once the Agreement is terminated, and prior to work continuing on the Project, either (a) another Agreement pursuant to 36 CFR § 800.14 must be executed, or (b) the comments of the ACHP under 36 CFR § 800.7 must be requested, taken into account, and responded to. The signatories will be notified as to the course of action that will be pursued.

XVI. DURATION

This Agreement shall remain in effect until such time as the legal requirements identified in this Agreement, and any future amendments, are completed or until the end of the ten (10) year period beginning on the date the Agreement is signed by all signatories, whichever is earlier. Six (6) months prior to the end of such ten (10) year period, the signatories, concurring, and consulting parties will be consulted to reconsider the terms of the Agreement and amend it in accordance with Stipulation XIV above, if necessary.

XVII. EXECUTION OF THIS AGREEMENT

This Agreement may be executed in counterparts, with a separate signature page for each party. Each party will be provided with a copy of the fully executed Agreement.

Execution of this Agreement by USACE and the SHPO and implementation of its terms evidence that USACE has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

PROGRAMMATIC AGREEMENT AMONG THE UNITED STATES ARMY CORPS OF ENGINEERS, NEW ENGLAND DISTRICT AND THE MASSACHUSETTS STATE HISTORIC PRESERVATION OFFICER REGARDING THE CAPE COD CANAL HIGHWAY BRIDGES PROJECT

SIGNATORY:

U.S. ARMY CORPS OF ENGINEERS, NEW ENGLAND DISTRICT

By:  Date: 11 March 2022

John A. Atilano II
Colonel, Corps of Engineers
District Engineer

PROGRAMMATIC AGREEMENT AMONG THE UNITED STATES ARMY CORPS OF ENGINEERS, NEW ENGLAND DISTRICT AND THE MASSACHUSETTS STATE HISTORIC PRESERVATION OFFICER REGARDING THE CAPE COD CANAL HIGHWAY BRIDGES PROJECT

SIGNATORY:

MASSACHUSETTS HISTORICAL COMMISSION

By: Brona Simon Date: 2/22/22

Brona Simon, Executive Director & State Historic Preservation Officer

PROGRAMMATIC AGREEMENT AMONG THE UNITED STATES ARMY CORPS OF ENGINEERS, NEW ENGLAND DISTRICT AND THE MASSACHUSETTS STATE HISTORIC PRESERVATION OFFICER REGARDING THE CAPE COD CANAL HIGHWAY BRIDGES PROJECT

INVITED SIGNATORY:

MASSACHUSETTS DEPARTMENT OF TRANSPORTATION

By:  Date: 1-12-2022
Jonathan Gulliver, Highway Administrator

PROGRAMMATIC AGREEMENT AMONG THE UNITED STATES ARMY CORPS OF ENGINEERS, NEW ENGLAND DISTRICT AND THE MASSACHUSETTS STATE HISTORIC PRESERVATION OFFICER REGARDING THE CAPE COD CANAL HIGHWAY BRIDGES PROJECT

CONCURRING PARTY:

MASHPEE WAMPANOAG TRIBE

By: _____ Date: _____

Brian Weeden, Chairman

PROGRAMMATIC AGREEMENT AMONG THE UNITED STATES ARMY CORPS OF ENGINEERS, NEW ENGLAND DISTRICT AND THE MASSACHUSETTS STATE HISTORIC PRESERVATION OFFICER REGARDING THE CAPE COD CANAL HIGHWAY BRIDGES PROJECT

CONCURRING PARTY:

WAMPANOAG TRIBE OF GAY HEAD (AQUINNAH)

By: _____ Date: _____

Cheryl Andrews-Maltais, Chairwoman

PROGRAMMATIC AGREEMENT AMONG THE UNITED STATES ARMY CORPS OF ENGINEERS, NEW ENGLAND DISTRICT AND THE MASSACHUSETTS STATE HISTORIC PRESERVATION OFFICER REGARDING THE CAPE COD CANAL HIGHWAY BRIDGES PROJECT

CONCURRING PARTY:

MASSACHUSETTS BOARD OF UNDERWATER ARCHAEOLOGICAL RESOURCES

By:  _____ Date: 04 MAR 2022

David S. Robinson, Director

PROGRAMMATIC AGREEMENT AMONG THE UNITED STATES ARMY CORPS OF ENGINEERS, NEW ENGLAND
DISTRICT AND THE MASSACHUSETTS STATE HISTORIC PRESERVATION OFFICER REGARDING THE CAPE COD
CANAL HIGHWAY BRIDGES PROJECT

CONCURRING PARTY:

BOURNE HISTORICAL COMMISSION

By:  Date: MARCH 17, 2022
Carl Georgeson, Chairperson

PROGRAMMATIC AGREEMENT AMONG THE UNITED STATES ARMY CORPS OF ENGINEERS, NEW ENGLAND DISTRICT AND THE MASSACHUSETTS STATE HISTORIC PRESERVATION OFFICER REGARDING THE CAPE COD CANAL HIGHWAY BRIDGES PROJECT

CONCURRING PARTY:

SANDWICH HISTORICAL COMMISSION

By:  *Lisa Hassler* Date: 03/11/2022
3/11/2022 6:33:51 PM GMT
Lisa Hassler, Chairperson

PROGRAMMATIC AGREEMENT AMONG THE UNITED STATES ARMY CORPS OF ENGINEERS, NEW ENGLAND DISTRICT AND THE MASSACHUSETTS STATE HISTORIC PRESERVATION OFFICER REGARDING THE CAPE COD CANAL HIGHWAY BRIDGES PROJECT

CONCURRING PARTY:

CAPE COD COMMISSION

By: Kristy Senatori Date: 3/4/22
Kristy Senatori, Executive Director

ATTACHMENT A

MEMORANDUM OF UNDERSTANDING BETWEEN USACE AND MASSDOT

MEMORANDUM OF UNDERSTANDING
BETWEEN
UNITED STATES ARMY CORPS OF ENGINEERS
AND
MASSACHUSETTS DEPARTMENT OF TRANSPORTATION
REGARDING
THE BOURNE BRIDGE AND THE SAGAMORE BRIDGE

THIS MEMORANDUM OF UNDERSTANDING (MOU) is made as of the date of the final signature below by and among the following parties: the United States of America, acting by and through the United States Department of the Army and the United States Army Corps of Engineers (USACE); and the Commonwealth of Massachusetts, acting by and through the Massachusetts Department of Transportation (MassDOT).

RECITALS

WHEREAS, the New England District of the USACE owns, operates and maintains the Bourne Bridge in Bourne, MA and the Sagamore Bridge in Sagamore, MA (Bridges) as a part of the Cape Cod Canal Federal Navigation Project;

WHEREAS, the MassDOT is responsible for operating and maintaining the state highway system pursuant to M.G.L. c.6C, including the highways and infrastructure approaching the Bridges (Approaches);

WHEREAS, the USACE and MassDOT (Parties) are engaged in a collaborative approach to future project development concerning the Bridges and Approaches through an executed MOU dated 28-June 2018;

WHEREAS, the Parties have a mutual interest in the conveyance of the rights, titles and interests to the Bridges from the USACE to the MassDOT.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

ARTICLE I: STATEMENT OF WORK

A. The USACE will:

1. Own, operate and maintain the existing Bridges until the new bridges are placed into service..
2. Support MassDOT efforts for approval for construction of replacement Bridges over navigable waters of the U.S.
3. Support replacement Bridges having the type, size and location to reasonably meet the structural, functional and other requirements, state or federal, as established by MassDOT and the Cape Cod Canal Federal Navigation Project.
4. Facilitate Approval for demolition of the existing Bridges once no longer needed for access.
5. Facilitate approval for transfer of necessary USACE property interests to MassDOT for the new bridges and approaches as necessary.
6. Provide technical assistance and legislative drafting services in response to Congressional requests for development of legislation to revise ownership of the highway bridge crossings, including a revision of paragraph (p) of 33 CFR § 207.20.

B. The MassDOT will:

1. Own, operate and maintain the existing Approaches before, during and after the replacement of the Bridges.
2. Complete the feasibility study and alternatives analysis to reasonably meet the structural, functional and other requirements, state or federal, as established by MassDOT.
3. Once permitting is secured and the funding is secured, construct replacement bridges for the Bourne and Sagamore Bridges.
4. Support demolition of the existing Bridges once no longer needed for access.
5. Accept an interest in property in order to allow MassDOT to own, operate, and maintain the completed Bridges and Approaches as part of the systems of state highways to be maintained by MassDOT.

ARTICLE II: NOTICES

The Parties agree to share information and documents for the purposes of developing requirements for transfer or ownership of the Bridges. In that regard, they have designated the following officials to serve as Points of Contact (POC) for requesting and receiving information pertaining to the Bridges:

For MassDOT:

Jonathan Gulliver
Highway Administrator, MassDOT

For USACE:

Scott E. Acone
Deputy District Engineer for Programs and
Project Management, USACE

Communications among staff for the purposes of this MOU will be necessary and is expected to occur. However, any request for information considered to be security sensitive, shall be made in

writing by the Party's POC to the other Party's POC, and must follow USACE protocols for Security Sensitive Information (SSI). MassDOT agrees to take reasonable measures to safeguard any and all sensitive information to prevent disclosure to individuals not authorized by USACE to receive information.

ARTICLE III: TERM

This MOU takes effect beginning on the day after the last Party signs. This MOU will expire after the new Bridges are operational and existing Bridges are demolished, unless terminated sooner by mutual agreement in accordance with Article VIII below.

ARTICLE IV: FUNDING

The parties hereto will cooperate as MassDOT leads the development of a funding and finance plan to secure any and all funding required to complete replacement of the Bridges. This MOU does not bind the USACE, or any federal entity, to provide or seek funding for whatever replacement bridges are decided upon in the future.

ARTICLE V: EXCLUSIONS

Nothing in this MOU shall be construed to extend or affect the jurisdiction or decision-making authority of either Party to this MOU beyond that which exists under current laws and regulations. Nothing in this MOU is intended or will be construed to create any rights or remedies for any third party and no third party is intended to be a beneficiary of this MOU.

ARTICLE VI: TRANSFERABILITY

This MOU is not transferable except with the written consent of the Parties.

ARTICLE VII: DISPUTES

Any disputes relating to this MOU will, subject to any applicable law, Executive order, directive, or instruction, be resolved by consultation between the Parties or in accordance with DODI 4000.19.

ARTICLE VIII: MODIFICATION AND TERMINATION

This MOU may only be modified by the written agreement of the Parties, duly signed by their authorized representatives. This MOU may be terminated in writing at will by either Party at any time before the date of expiration, with 30 days' notice to the other Party.

IN WITNESS WHEREOF, and intending to be bound by this MOU as a legally binding agreement, the Parties hereto have executed this MOU.


Date 7/17/20
Stephanie Pollack
Secretary, Department of Transportation
Commonwealth of Massachusetts


Date 7 July 2020
William M. Conde
Colonel, Corps of Engineers
District Engineer

PROGRAMMATIC AGREEMENT AMONG THE UNITED STATES ARMY CORPS OF ENGINEERS, NEW ENGLAND DISTRICT AND THE MASSACHUSETTS STATE HISTORIC PRESERVATION OFFICER REGARDING THE CAPE COD CANAL HIGHWAY BRIDGES PROJECT

ATTACHMENT B

PROJECT LOCATION AND PRELIMINARY AREA OF DIRECT POTENTIAL EFFECT

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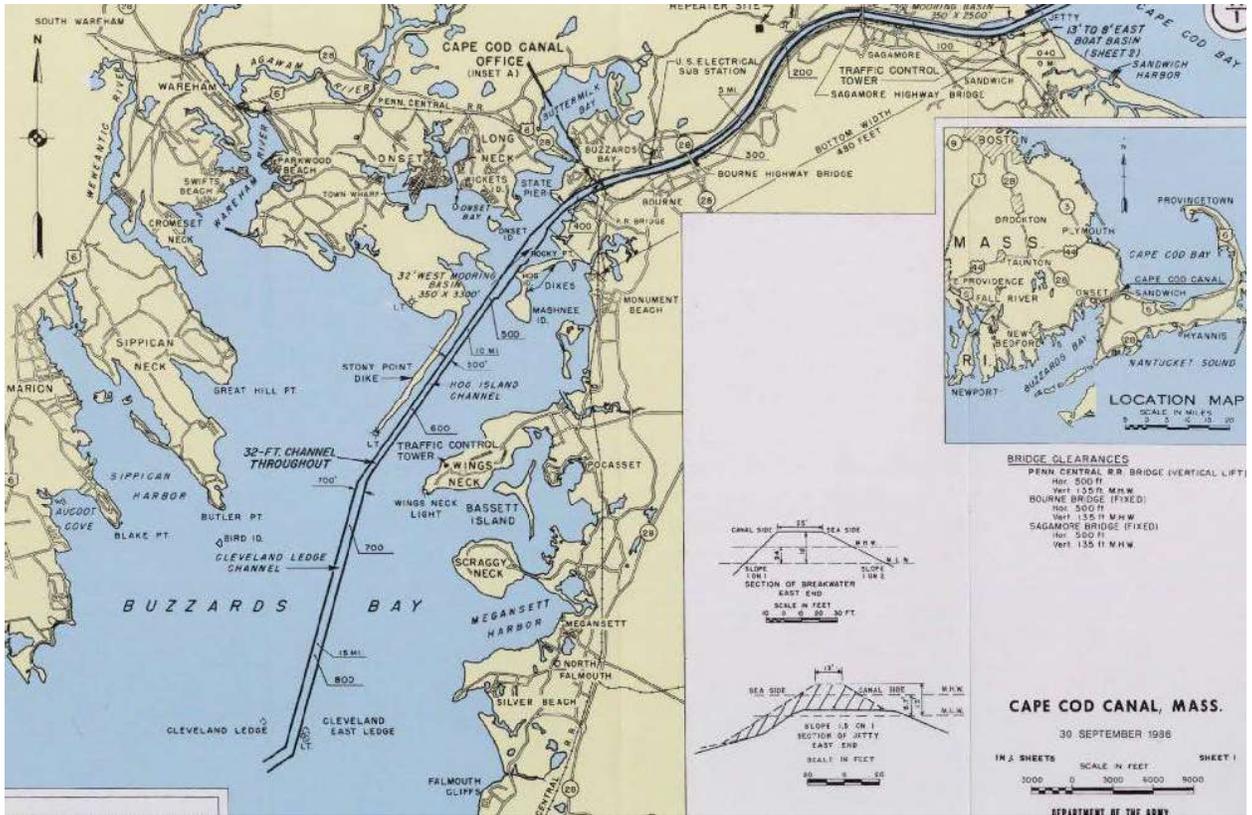


Figure 1. Cape Cod Canal Federal Navigation Project

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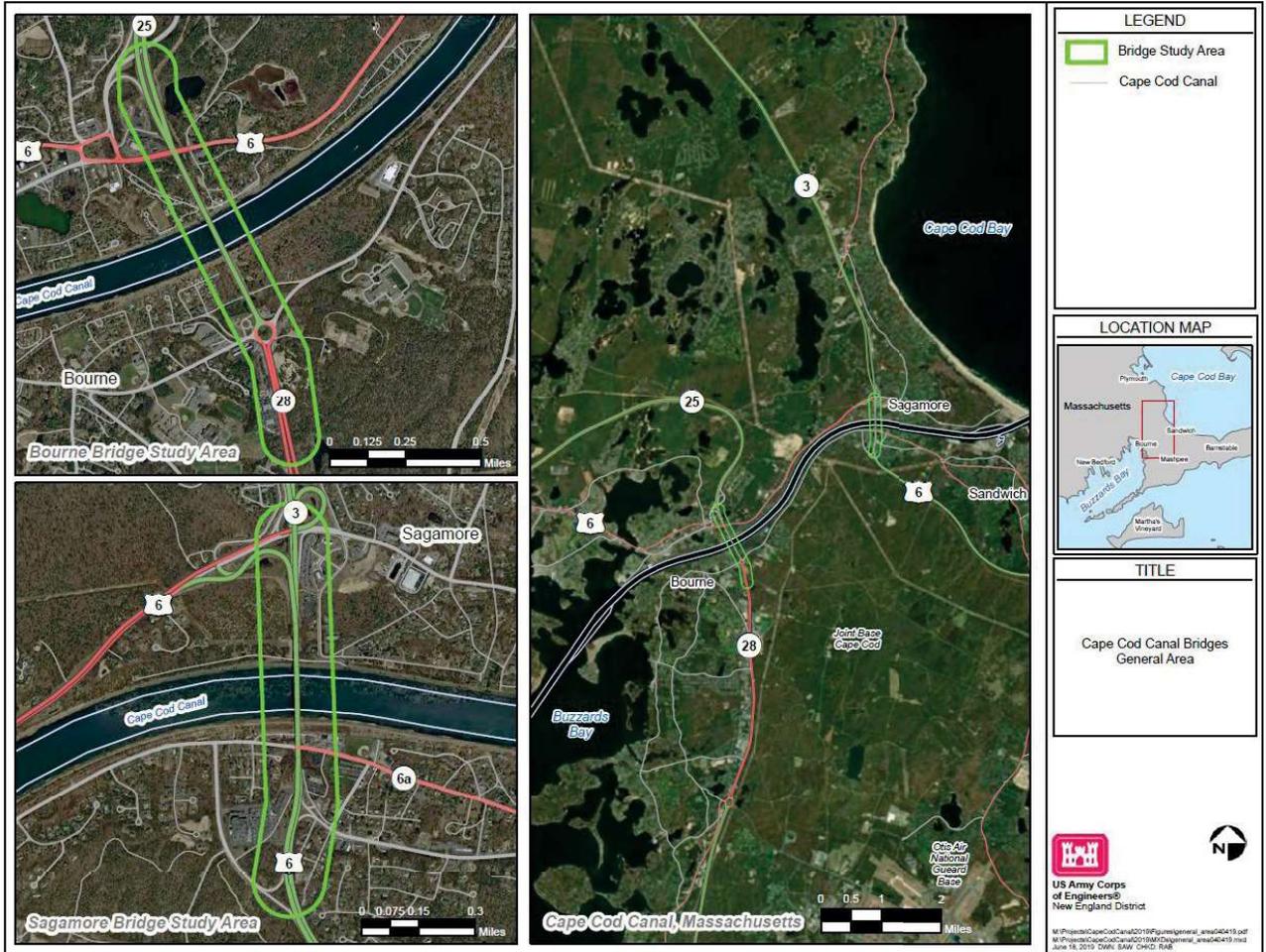


Figure 2. Preliminary Area of Direct Potential Effect

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ATTACHMENT C

PROCEDURES FOR POST REVIEW DISCOVERIES

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Post Review Discoveries

This process shall only apply to actions in which the Corps is the lead agency for construction. The USACE will ensure that construction documents contain the following provisions for the treatment of unanticipated archaeological discoveries:

“If previously unidentified historic properties or unanticipated effects to historic properties are discovered during contract activities, the contractor shall immediately halt all activity within a one hundred (100) foot radius of the discovery, notify the USACE Project Manager and the USACE Archaeologist of the discovery and implement interim measures to protect the discovery from looting and vandalism. Work in all other areas not the subject of the discovery may continue without interruption.”

Immediately upon receipt of such notification from the construction contractor, the USACE Archaeologist shall:

1. Inspect the construction site to determine the extent of the discovery and ensure that the Undertaking in that area has halted;
2. Clearly mark the area of the discovery;
3. Implement additional measures, as appropriate, to protect the discovery from looting and vandalism;
4. Determine the extent of the discovery and provide recommendations regarding its NR eligibility and treatment; and
5. Notify the USACE Project Manager, the SHPO and other the Consulting Parties of the discovery, describing the measures that have been implemented to comply with this Stipulation.

6. Notify the Mashpee Wampanoag Tribe and the Wampanoag Tribe of Gay Head (Aquinnah) within 48 hours of the discovery.

Upon receipt of the information required in subparagraphs 1-5 above, the USACE shall provide the SHPO and the other Concurring and Consulting Parties with an assessment of the NR eligibility of the discovery and the measures proposed to resolve adverse effects. In making the evaluation, the USACE, in consultation with the SHPO, may assume the discovery to be eligible for the NR for the purposes of Section 106 pursuant to 36 CFR Part 800.13(c). The SHPO and other Consulting Parties shall respond to the USACE's assessment within forty-eight (48) hours of receipt.

The USACE shall take into account the SHPO and other Concurring and Consulting Parties' recommendations on eligibility and treatment of the discovery and shall provide the SHPO and other Consulting Parties with a report on the actions when implemented. The Undertaking may proceed in the area of the discovery, once the USACE has determined that the actions undertaken to address the discovery pursuant to this Stipulation are complete.

Treatment of Human Remains

The USACE shall make all reasonable efforts to avoid disturbing gravesites, including those containing Native American human remains and associated funerary objects. If human remains and/or associated funerary objects are encountered during the course of the Undertaking, the USACE shall immediately halt the Undertaking in the area and contact the USACE Archaeologist and the appropriate city Police Department.

The USACE shall treat all human remains in a manner consistent with the ACHP's Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects (February 23, 2007; <http://www.achp.gov/docs/hrpolicy0207.pdf>).

The USACE shall make a good faith effort to ensure that the general public is excluded from viewing any Native American burial site or associated funerary objects. The Consulting Parties to this PA agree to release no photographs of any Native American burial site or associated funerary objects to the press or general public. The USACE shall notify the Mashpee Wampanoag Tribe, and the Wampanoag Tribe of Gay Head (Aquinnah) when Native American burials, human skeletal remains, or funerary objects are encountered during the Undertaking. Following consultation by the USACE, the SHPO, Mashpee Wampanoag Tribe and the Wampanoag Tribe of Gay Head of Gay Head (Aquinnah), the USACE shall ensure that proper

steps are taken regarding the remains. This could include the delivery of any Native American human skeletal remains and associated funerary objects recovered pursuant to this PA to the appropriate Tribe.

If the remains are determined to be historic and not Native American, USACE shall consult with the SHPO and other appropriate Concurring and Consulting Parties prior to any excavation by providing a treatment plan including the following information:

- The name of the property or archaeological site and specific location from which the recovery is proposed. If the recovery is from a known archaeological site, a state-issued site number must be included.
- Indication of whether a waiver of public notice is requested and why. If a waiver is not requested, a copy of the public notice to be published in a newspaper having general circulation in the Cape Cod Canal area for a minimum of four weeks prior to recovery.
- A copy of the curriculum vitae of the skeletal biologist who will perform the analysis of the remains.
- A statement that the treatment of human skeletal remains and associated artifacts will be respectful.
- An expected timetable for excavation, osteological analysis, preparation of final report, and final disposition of remains.
- A statement of the goals and objectives of the removal of human remains (to include both excavation and osteological analysis).
- If a disposition other than reburial is proposed, a statement of justification for that decision.

The USACE Archaeologist shall submit the draft treatment plan to the USACE, the SHPO and appropriate Concurring and Consulting Parties for review and comment. All comments received within thirty (30) calendar days shall be addressed in the final treatment plan. Upon receipt of final approval in writing from the USACE Archaeologist, the treatment plan shall be implemented prior to those Undertaking activities that could affect the burial(s).

The USACE Archaeologist shall notify the USACE Project Manager, the SHPO, and the other Concurring and Consulting Parties in writing once the fieldwork portion of the removal of human remains is complete. The Undertaking in the area may proceed following this

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notification while the technical report is in preparation. The USACE Archaeologist may approve implementation of undertaking-related ground disturbing activities in the area of the discovery while the technical report is in preparation.

The USACE Archaeologist shall ensure that a draft report of the results of the recovery is prepared within one (1) year of the notification that archaeological fieldwork has been completed and submitted to the USACE, the SHPO and the other Concurring and Consulting Parties for review and comment. All comments received within thirty (30) calendar days of receipt shall be addressed in the final report. When the final report has been approved by the USACE Archaeologist, two (2) copies of the document, bound and on acid-free paper and one (1) electronic copy in Adobe® Portable Document Format (.pdf) shall be provided to the SHPO; and one (1) copy in an agreed upon format to each of the other Consulting Parties.

The USACE Archaeologist shall notify the USACE Project Manager, the SHPO and other appropriate Concurring and Consulting Parties within fifteen (15) calendar days of final disposition of the human remains.

ATTACHMENT D

MASSDOT STANDARD SPECIAL PROVISION DISCOVERY OF UNANTICIPATED ARCHAEOLOGICAL AND SKELETAL REMAINS



STANDARD SPECIAL PROVISIONS

(English / Metric Units)

DATE: August 10, 2012

The 1988 *Standard Specifications for Highways and Bridges*, the 1995 *Standard Specifications for Highways and Bridges (Metric)* and the *Supplemental Specifications dated June 15, 2012 (combined English and Metric)* are amended by the following modifications, additions and deletions. These are standard special provisions and they shall prevail over those published in the Standard Specifications and the Supplemental Specifications.

The Specifications Committee has issued these Standard Special Provisions for inclusion into each proposal until such time as they are approved as Standard Specifications.

Contractors are cautioned that these Standard Special Provisions are periodically updated and may vary from project to project.

DIVISION I GENERAL REQUIREMENTS AND COVENANTS

SECTION 7.00 LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC

SUBSECTION 7.23 Archaeological and Paleontological Discoveries.

(page 38 and 38 English, page 1.47 Metric) Replace this Subsection with the following;

7.23 Discovery of Unanticipated Archaeological and Skeletal Remains.

Should any archaeological remains be encountered during any phase of construction, the Contractor shall immediately cease all construction activities in the discovery area, secure the area and notify the Engineer. The Engineer shall immediately notify the MassDOT Environmental Services Section in Boston Headquarters Office. The MassDOT Archaeologist shall inspect the remains and their context in order to evaluate the discovery.

In the event a potentially significant archaeological find is encountered, as determined by the MassDOT Archaeologist, the Contractor shall carefully protect the discovery area by placing snow fencing and/or flagging (with an approximately 30-foot buffer zone) around the find(s). The MassDOT Archaeologist shall notify the Federal Highway Administration (if the project is federally funded), the Massachusetts State Archaeologist, the Massachusetts State Historic Preservation Officer/Executive Director of the Massachusetts Historical Commission and other parties including the Massachusetts Commission on Indian Affairs, the Tribal Historic Preservation Officers, and the Board of Underwater Archaeological Resources of the discovery and serve as the liaison on all subsequent actions. Outside the protected discovery area, construction work may continue. Construction may not resume in the discovery area until the MassDOT Archaeologist has secured all necessary regulatory approvals and given the approval to continue to the Engineer.

SUBSECTION 7.23 (continued)

If skeletal remains are discovered during construction, the Contractor shall immediately cease all work in the discovery area, secure and protect the area and notify the Engineer as stipulated above. The Engineer shall immediately contact the State Medical Examiner, the police and the MassDOT Archaeologist. If the skeletal remains prove to be human and more than 100 years old, as determined by the State Medical Examiner, the MassDOT Archaeologist shall consult with the Massachusetts State Archaeologist and other relevant parties pursuant to all procedures and protocols under the Massachusetts Unmarked Burial Law (M.G.L. Chapter 38, Section 6; M.G.L. Chapter 9, Section 26A and 27C; and M.G.L. Chapter 7, Section 38A) and Section 106 of the National Historic Preservation Act as amended, and its implementing regulations for emergency situations and post-review discoveries [36 CFR 800.12(b)(2) or 36 CFR 800.13(b)].

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ATTACHMENT E

CONTACT INFORMATION

CONTACT INFORMATION

Mr. Marcos Paiva
Archaeologist
New England District
U.S. Army Corps of Engineers,
New England District
696 Virginia Road
Concord, MA 01742
Marc.A.Paiva@usace.army.mil

Ms. Bettina Washington
Tribal Historic Preservation Officer
Mashpee Wampanoag Tribe of Aquinnah
20 Black Brook Road
Aquinnah, MA 02535
thpo@wampanoagtribe-nsn.gov

Mr. David Weeden
Tribal Historic Preservation Officer
Mashpee Wampanoag Tribe
483 Great Neck Road South
Mashpee, MA 02649
David.Weeden@mwtribe-nsn.gov

Mr. David S. Robinson, Director
Board of Underwater Archaeological
Resources
251 Causeway Street, Suite 800 Boston,
MA 02114-2136
David.S.Robinson@mass.gov

Ms. Kristy Senatori, Executive Director
Cape Cod Commission
P.O. Box 226 Barnstable, MA 02360
ksenatori@capecodcommission.org

Ms. Brona Simon
State Historic Preservation Officer
Massachusetts Historical Commission
220 Morrissey Boulevard
Boston, MA 02125
(617) 727-8470

Mr. Jeffrey Shrimpton
Cultural Resources Supervisor
MassDOT – Highway Division
Environmental Services
10 Park Plaza
Boston, MA 02116
Jeffery.Shrimpton@dot.state.ma.us

Mr. Carl Georgeson, Chairperson
Bourne Historic Commission
Bourne Historical Center
30 Keene Street
Bourne, MA 02532
clgeorgeson@gmail.com

Ms. Lisa Hassler, Chairperson
Sandwich Historical Commission
P. O. Box 1905
Sandwich, MA 02563
lisa@historichomescapecod.com