

May 13, 2021
Second Memorandum of Understanding
Between
The Town of Orleans and Town of Eastham
Proposed Nauset Estuary Dredging Project

This Memorandum of Understanding (hereafter "MOU") is entered into this 17th day of May 2021, by and between the Towns of Orleans and Eastham (hereafter "the Towns"), both municipal corporations located in Barnstable County, Massachusetts, acting through their Select Boards. The purpose of this MOU is to continue a process for coordination between the Towns in pursuing the Nauset Estuary Dredging Project (hereafter "the Project").

WITNESSETH

WHEREAS, the Towns executed a Memorandum of Understanding (hereafter "the First MOU") in connection with the Project dated February 10, 2020, and the First MOU was subsequently amended to extend certain dates therein; and

WHEREAS, under the terms of the First MOU the Towns formed the Nauset Estuary Stakeholder Group (hereafter "the NESG"), which includes representatives of various stakeholders from the Towns; and

WHEREAS, the Towns and the members of the NESG have worked together successfully under the terms of the First MOU; and

WHEREAS, the NESG ultimately decided it was not necessary to seek approval of a so-called Special Review Procedure for state and federal review of the Project; and

WHEREAS, the First MOU provides for the respective Select Boards of the Towns to review the NESG's recommendations of the preferred dredge channel and next steps for the Project and that review has been completed with the Select Boards' approval of (a) the preferred dredge channel and (b) the commencement of permitting for the Project with the Town of Orleans agreeing to pay the permitting costs; and

WHEREAS, the Town of Orleans has approved a proposal from Woods Hole Group (hereafter "WHG"), dated August 12, 2020, for assistance with permitting of the Project as Tasks 13 and 14 of the Project, subject to funding being provided by the Town of Orleans; and

WHEREAS, the Town of Orleans has approved funding of WHG's work under Tasks 13 and 14 for Fiscal Year 2021; and

WHEREAS, the First MOU calls for the execution of this second Memorandum Of Understanding (hereafter the "Second MOU") to describe the agreement of the Towns with respect to the next phase of the Project;

NOW THEREFORE, in consideration of the foregoing, the Towns agree as follows:

1. The Towns agree to continue to work cooperatively with one another towards addressing the Project goals through the NESG and their respective Select Boards.
2. More specifically, the Towns agree to pursue the state Massachusetts Environmental Policy Act Expanded Environmental Notification Form that is required for dredging Nauset Estuary in the preferred dredge channel (subject to any adjustments to such channel that are approved by the Towns during the permitting process) and to work with WHG to obtain the Secretary of Environmental Affairs Certificate on the Expanded Environmental Notification Form.
3. As part of the permitting process, the Towns will resolve the width of the dredge channel, it being understood that (a) the Towns will seek approval of dredge "zones" in certain parts of the dredged area, with the exact location of the channel to be flexibly determined based on changing conditions, and (b) it is advantageous for future flexibility to seek permits for a 100 foot wide channel even if the Towns later agree the initial dredging channel should be narrower for any reason in any section of the channel and (c) the final decisions on channel width will be made during the permitting process.
 - a. Concurrently, the Town of Eastham will pursue and complete baseline data collection and studies with the Center for Coastal Studies, and other entities as it deems necessary, and with whom which it so chooses, including but not limited to: the health of the estuary, the risks of dredging to the barrier beach and salt marsh systems, and to better understand the impacts of dredging on shellfish and other wild fisheries in the estuary.
 - b. The Towns will concurrently develop and complete a comprehensive understanding of the commercial situation for those moored at the Nauset Inlet mooring field and other related commercial interests and cooperatively develop potential programs and solutions to assist those commercially affected by shoaling in the estuary.
 - c. All permit applications for dredging within the Town of Eastham boundaries shall require the applicants to include written approval from the Towns prior to submittal of said application to the subject agency(s).

4. The Towns agree that subject to funding availability, the Town of Orleans will be undertaking studies related to the dredging of the so-called Mill Pond Channel that runs from Priscilla Landing to the Mill Pond in Orleans, and that it is the intention of the Town of Orleans to integrate permitting of the dredging of this channel with the broader permitting of the Project, provided that such integration can be accomplished without causing unreasonable delays.
5. The Town of Orleans agrees to pay the costs of permitting the Project, including the dredging of the Mill Pond Channel, subject to funding being approved by Orleans residents through usual and customary processes as described in the following Section 6.
6. This Agreement and the obligations of the Towns hereunder shall be subject to the availability of funding and staffing, and nothing contained herein shall be construed as binding the Towns to expend in any one fiscal year any sum in excess of appropriations made or administratively allocated for the purpose of this Agreement for the fiscal year, or to involve the Towns in any contract or other obligation for the further expenditure of money in excess of such appropriations or allocations.
7. This Agreement shall remain in effect through the full MEPA Review and issuance of the Secretary of Environment Affairs Certificate on the Environmental Impact Report (EIR). A permitting timeline is attached to this agreement and the Towns will schedule two joint meetings when a scope for the preparation of the Environmental Impact Report (EIR) is received, and upon issuance of the Secretary's Certificate on the Environmental Impact Report (EIR).
8. The Agreement may be terminated by either party by providing a minimum of 45 days notice in writing to the other party.
9. The Town of Eastham reserves the right to withdraw its participation from any and all permitting for the Project, including its standing as a project proponent on any applications, and to prohibit and comprehensively deny any dredging activities within the Town of Eastham boundaries. The Town of Eastham also reserves the right to appeal any state, federal, and/or local permits for the Project as it deems necessary to protect the interests of the residents of the Town, and/or the environment.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their respective duly authorized representatives on the day and year indicated above.

Kevin Galligan

Kevin Galligan
Orleans Select Board, Chair

5/19/2021

Date

Jamie Demetri

Jamie Demetri
Eastham Select Board, Chair

5/18/21

Date

