



Cape Cod Bridges Program

Bourne, Massachusetts

Appendix 4.17
Draft Programmatic Agreement

SUBMITTED TO:
Secretary of Energy and Environmental Affairs
Executive Office of Energy and Environmental Affairs (EEA)
Massachusetts Environmental Policy Act (MEPA) Office
100 Cambridge Street, Suite 900
Boston, MA 02114

PROPONENT:
The Massachusetts Department of Transportation
Highway Division
10 Park Plaza
Boston, MA 02116

Submitted August 2025

massDOT
Massachusetts Department of Transportation

PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL HIGHWAY ADMINISTRATION—MASSACHUSETTS DIVISION,
THE MASSACHUSETTS STATE HISTORIC PRESERVATION OFFICER,
THE NEW ENGLAND DISTRICT OF THE UNITED STATES ARMY CORPS OF ENGINEERS,
AND THE MASSACHUSETTS DEPARTMENT OF TRANSPORTATION
PURSUANT TO 36 CFR § 800.14(b)(1)(ii)
IMPLEMENTING SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT FOR
FOR THE CAPE COD BRIDGES PROGRAM
IN THE TOWN OF BOURNE, BARNSTABLE COUNTY, MASSACHUSETTS

WHEREAS, the Federal Highway Administration – Massachusetts Division (FHWA), as the Lead Federal Agency, and the Massachusetts Department of Transportation (MassDOT), as the local sponsor and Joint Lead Agency, propose the Cape Cod Bridges Program (the Program), a federal-aid transportation project in the Town of Bourne, Barnstable County, Massachusetts; and

WHEREAS, the purpose of the Program is to improve mobility and accessibility across the Cape Cod Canal (CCC) between Cape Cod and mainland Massachusetts for all road users and to address the increasing maintenance needs and functional obsolescence of the aging CCC highway bridges; and

WHEREAS, the need for the Program is to address the deteriorating structural conditions and escalating maintenance demands of the two CCC highway bridges, the substandard design elements of the bridges, the immediate mainline approaches, and their adjacent interchanges and intersections; poor vehicular traffic operations; and lack of accessible bicycle and pedestrian accommodations and connections between existing facilities; and

WHEREAS, the New England District of the U.S. Army Corps of Engineers (USACE), under the authority of the Rivers and Harbors Acts of 1927 and 1935, owns, operates, and maintains the Cape Cod Canal Federal Navigation Project (CCC-FNP), including the existing Bourne Bridge, which carries Route 28 over the CCC, and Sagamore Bridge, which carries Route 6 over the CCC; and

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

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

WHEREAS, USACE prepared an Environmental Assessment (EA) in compliance with the National Environmental Policy Act (NEPA) to examine the potential effects of the alternatives considered within the MRER and to allow for public involvement in the environmental review process, with FHWA and MassDOT participating as Cooperating Agencies in the development of the MRER/EA; 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, USACE determined that the replacement of both bridges would be the most prudent and cost-effective means of providing safe and reliable crossings of the CCC and that the replacement of both highway bridges would not have a significant adverse impact on the environment, with issuance of a Finding of No Significant Impact (FONSI) on March 29, 2022; and

WHEREAS, USACE has entered into Memoranda of Understanding (MOUs) with MassDOT on July 7, 2020, and March 21, 2024, to establish roles and responsibilities between the two agencies for the construction of the new bridges and the demolition of the existing bridges (Appendix A); and

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

WHEREAS, the MassDOT Office of Transportation Planning's *Cape Cod Canal Transportation Study* identifies and evaluates existing and future multimodal transportation deficiencies and needs of the existing roadway network around the CCC area, including the highway alignment and interchanges at the approaches to the two bridges and accommodations for pedestrians and bicyclists; and

WHEREAS, the Program's Draft Environmental Impact Statement (DEIS) in compliance with NEPA incorporates USACE's proposed action as the preferred option to replace both CCC highway bridges with new adjacent highway bridges, each providing four through-travel lanes and two auxiliary acceleration/deceleration lanes, updated to comply with current federal and state highway design standards; and

WHEREAS, MassDOT, in coordination with FHWA and USACE, conducted extensive analyses of multiple design parameters for further development of the Program, including the highway bridge cross-section and shared use path, bridge deck configuration, bridge vertical and horizontal clearances, main span length and bridge pier location, bridge type, mainline alignment, and highway interchange approach options; and

WHEREAS, MassDOT has secured funding for the replacement of Sagamore Bridge through federal grants from the Bridge Investment Program and the National Infrastructure Project Assistance Program, as well as funding from USACE and the Commonwealth of Massachusetts; and

WHEREAS, MassDOT has not yet secured full funding for the replacement of Bourne Bridge and will continue to seek federal grants and state funding for that purpose; and

WHEREAS, MassDOT is proposing to construct the replacement of Sagamore Bridge first with secured funding as a stand-alone construction project, to be followed by the replacement of Bourne Bridge once funding is secured; and

WHEREAS, MassDOT will continue to advance design of both bridges to the Base Technical Concept phase, including applications for all necessary environmental permits and approvals, in preparation for the issuance of a Request for Qualifications (RFQ) for Design-Build contractors for the Sagamore Bridge project, followed by a draft Request for Proposals (RFP) and a final RFP; and

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WHEREAS, the Program is a federal Undertaking subject to consultation under Section 106 of the National Historic Preservation Act of 1966 (54 U.S.C. § 306108) and its implementing regulation, 36 CFR Part 800: *Protection of Historic Properties,* as amended; and

WHEREAS, FHWA 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, FHWA and MassDOT, in consultation with USACE, the State Historic Preservation Officer (SHPO), the Tribal Historic Preservation Officers (THPOs), and other consulting parties, have determined that the preliminary Area of Potential Effects (APE), as depicted in maps in Appendix B, includes: 1) on federal property within the CCC-FNP, the existing bridges and their immediate approaches, the adjacent new crossings, and other locations needed for demolition and construction activities, such as access roads and staging areas; 2) on non-federal property outside the boundaries of the CCC-FNP, the approach roadways north and south of the bridges 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 interchanges, access roads, temporary detours, staging areas, and pedestrian and bicycle facilities; and 3) the viewshed associated with the proposed new bridges as developed using GIS mapping and incorporating surface raster data (including obstructions) and existing and proposed structural elevations to determine radial lines-of-sight; and

WHEREAS, SHPO concurred with FHWA's preliminary APE with a stamped concurrence dated July 7, 2023 (Appendix C), with the understanding that the APE will be updated as design progresses; and

WHEREAS, FHWA and MassDOT convened a Section 106 consulting parties' meeting on January 22, 2024, to discuss the preliminary APE, potential historic properties within the APE, the archaeological sensitivity of the APE, and design alternatives for the new bridges, and the meeting included representatives of the Mashpee Wampanoag Tribe, the Herring Pond Wampanoag Tribe, the Sandwich Historical Commission, the Cape Cod Commission, the National Trust for Historic Preservation, and the Advisory Council on Historic Preservation (ACHP), none of whom submitted written comments to FHWA or MassDOT following the meeting; and

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

WHEREAS, USACE has determined, and FHWA has concurred, that the CCC and associated federal property, as documented in the Massachusetts Historical Commission's *Inventory of Historic and Archaeological Assets of the Commonwealth* (MHC Inventory Form # BOU.AF/FAL.BG/ SWD.Z/WRH.V) meet the criteria of eligibility for listing in the NRHP as a historic district and that Bourne Bridge and Sagamore Bridge are contributing properties in the NRHP-eligible historic district; and

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

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WHEREAS, MassDOT has committed to designing and constructing new, high-level bridges comprised of parallel, twin, steel tied-arch superstructures supported on Delta frames at each crossing, as depicted in the preliminary renderings in Appendix D, that will be compatible with the NRHP-eligible CCC Historic District with the intent of avoiding adverse effects on that historic district and on other NRHP-eligible properties within the viewshed; and

WHEREAS, FHWA and MassDOT have identified several areas and individual properties located outside the boundaries of the CCC-FNP but within the APE that are at least fifty-years old and may be directly affected by construction of the new bridges; and

WHEREAS, FHWA and MassDOT have submitted documentation for those areas and individual properties to SHPO with recommendations that none are eligible for listing in the NRHP, and SHPO has provided stamped concurrences dated November 15, 2024, and March 26, 2025 (Appendix C); and

WHEREAS, land in the vicinity of the CCC is known to be archaeologically sensitive for pre-Contact sites, unmarked human burials, and ceremonial sites; and

WHEREAS, MassDOT has engaged the services of a professional archaeological consulting firm to assess the archaeological sensitivity of the APE on both federal and non-federal land during the design phase of the Undertaking in consultation with SHPO, THPOs, the USACE Archaeologist, and other consulting parties, as appropriate, in accordance with 36 CFR § 800.2; and

WHEREAS, an archaeological consultant, on behalf of MassDOT, conducted a reconnaissance survey of the project's APE under Permit #4302 issued by the Massachusetts State Archaeologist on August 22, 2023; and

WHEREAS, the archaeological reconnaissance survey identified potentially sensitive areas within the APE, and

WHEREAS, neither FHWA nor MassDOT received comments from the consulting parties on the results of the archaeological reconnaissance survey; and

WHEREAS, an archaeological consultant on behalf of MassDOT conducted an intensive (locational) survey of the potentially sensitive areas within the project's APE under Permit #4357 issued by the Massachusetts State Archaeologist on June 25, 2024; and

WHEREAS, neither MassDOT nor FHWA received comments from the consulting parties on the results of the archaeological intensive (locational) survey; and

WHEREAS, the Massachusetts State Archaeologist/SHPO concurred on January 14, 2025, with the results of the intensive (locational) survey and MassDOT's recommendation that no significant archaeological sites were identified (Appendix C); and

WHEREAS, FHWA has consulted with SHPO pursuant to 36 CFR § 800.3(c)(3) and SHPO has concurred with the stipulations in this Agreement in a stamped concurrence signed and dated on June 2, 2025; and

WHEREAS, FHWA has invited USACE, as the owner of Bourne Bridge, Sagamore Bridge, and the CCC-FNP, to sign this Agreement and USACE has agreed to sign as an Invited Signatory; and

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

WHEREAS, in accordance with 36 CFR § 800.3(c)(3), FHWA has invited the Mashpee Wampanoag Tribe to sign this Agreement as a Concurring Party; and

WHEREAS, in accordance with 36 CFR § 800.3(c)(3), FHWA has invited the Wampanoag Tribe of Gay Head (Aquinnah) to sign this Agreement as a Concurring Party; and

WHEREAS, in accordance with 36 CFR § 800.3(c)(3), FHWA has invited the Narragansett Indian Tribe to sign this Agreement as a Concurring Party; and

WHEREAS, in accordance with 36 CFR § 800.2(c)(3), FHWA has invited the Herring Pond Wampanoag Tribe to sign this Agreement as a concurring party; and

WHEREAS, in accordance with 36 CFR § 800.2(c)(3), FHWA has invited the Massachusetts Commission on Indian Affairs to sign this Agreement as a concurring party; and

WHEREAS, in accordance with 36 CFR § 800.2(c)(3), FHWA has invited the Bourne Historical Commission (BHC) to sign this Agreement as a Concurring Party, and the BHC, by electronic mail to USACE 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), FHWA has invited the Sandwich Historical Commission to sign this Agreement as a Concurring Party; and

WHEREAS, in accordance with 36 CFR § 800.2(c)(5), FHWA has invited the Massachusetts Board of Underwater Archaeological Resources to sign this Agreement as a Concurring Party; and

WHEREAS, in accordance with 36 CFR § 800.2(c)(5), FHWA has invited the Cape Cod Commission to sign this Agreement as a Concurring Party; and

WHEREAS, in accordance with 36 CFR § 800.2(c)(5), FHWA has invited the National Trust for Historic Preservation to sign this Agreement as a Concurring Party; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1)(i), MassDOT, on behalf of FHWA, notified the ACHP on July 3, 2025, of its intention to develop this Agreement and ACHP has determined that its involvement in consultation to resolve adverse effects is unnecessary as stated in an email to FHWA dated July 17, 2025; and

WHEREAS, in accordance with 36 CFR § 800.2(d), FHWA and MassDOT have solicited public comments on the Undertaking through well-attended in-person Open Houses in Bourne in May 2023, May 2024, and November 2024, at which the public was provided with information regarding alternatives for the replacement of the NRHP-eligible Bourne Bridge and Sagamore Bridge, and the general consensus of the public at those Open Houses was favorable for the proposed network tied arch bridges and neither FHWA nor MassDOT have received any objections to that preferred bridge type; and

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

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

STIPULATIONS

FHWA shall ensure that the following measures are carried out:

I. RESOLUTION OF ADVERSE EFFECTS

A. Following the execution of this Agreement but before the Record of Decision for the EIS, MassDOT, on behalf of FHWA, shall prepare a formal adverse effect finding for submittal to SHPO pursuant to 36 CFR 800.5(a) regarding the demolition and replacement of the NRHP-eligible Bourne and Sagamore Bridges and any other NRHP-eligible properties within the APE that might be affected by the Program.

B. Final mitigation for any adverse effects shall be determined in a separate Memorandum of Agreement (MOA) (MOA) pursuant to 36 CFR 800.6(c), which shall include all proposed stipulations in this Agreement. FHWA and MassDOT shall convene consulting party meetings, as appropriate, prior to submittal of the Section 106 adverse effect finding to SHPO to discuss effects on NRHP- eligible properties and to determine any additional mitigation measures. MassDOT shall convene consulting party meetings, as appropriate, during implementation of all mitigation measures.

C. FHWA shall notify ACHP of the effect finding and MOA pursuant to 36 CFR 800.6(a)(1).

D. Copies of the effect finding shall be distributed to all Section 106 consulting parties for review and comment. All consulting parties who have been invited to sign this Agreement shall be invited to sign the MOA.

II. BRIDGE DESIGN and CONSTRUCTION

Design and construct new, high-level bridges comprised of parallel, twin, steel tied-arch superstructures supported on Delta frames at each crossing of the CCC to replace both Bourne Bridge and Sagamore Bridge. Each new bridge shall provide four through traffic lanes (two lanes in either direction), two auxiliary (acceleration/deceleration) lanes, and a single shared-use path for bicycle and pedestrian use. SHPO and other consulting parties shall be provided the opportunity to review and comment on bridge plans at the Base Technical Concept phase of design prior to the issuance of an RFQ.

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III. HISTORIC AMERICAN ENGINEERING RECORD

Prepare historic recordation documentation for submittal to the Historic American Engineering Record (HAER) maintained by the National Park Service. The documentation will include a "narrative format" report printed on archival quality paper and black and white photographs, including aerials, with archival prints made from medium format (2½" x 2½") and large format (4" x 5") negatives. The original negatives will be packaged with the photographic prints. The documentation also will include either paper prints or high-resolution scans on an appropriate storage device of original bridge plans from the USACE archives and any historic photographs that might be available. All documentation will be prepared to prescribed HAER standards. Copies of all paper and electronic historic recordation documentation shall be submitted to SHPO for transfer to the State Archives and to the Bourne Historical Commission for transfer to any local repository of their choosing.

IV. INTERPRETIVE PANELS

Prepare and fabricate at least one interpretive panel for installation at the pedestrian overlook along each bridge. The subject of each interpretive panel shall be determined in consultation with the Section 106 consulting parties.

V. BRIDGE PLAQUES

The original bridge plaques at both existing bridges shall be salvaged prior to demolition of each bridge. Plaques include 1) bridge name and date plaques at the four portals of the bridges; 2) bridge dedication plaques located at the southeast and northeast pylons on the approaches to Sagamore Bridge, and at the southwest and northwest pylons on the approaches to Bourne Bridge; 3) American Institute of Steel Construction award plaque for Bourne Bridge, located at the southeast pylon on the bridge approach. All plaques and any other salvageable items will be carefully removed and placed in secure storage for reinstallation at publicly accessible locations within the project area or for transfer to other appropriate local public entities, in consultation with the Section 106 consulting parties.

VI. DESIGN-BUILD

A. The Design-Build (D-B) Contractor shall be subject to the terms of this Agreement. The Agreement shall be included in the RFQs, the RFPs, and the construction contracts for both the Sagamore Bridge replacement project and the Bourne Bridge replacement project.

B. The D-B Contractor shall advance the design for the bridge type described in Stipulation II and depicted in preliminary renderings in Appendix D. The D-B Contractor shall provide bridge plans to MassDOT Environmental Section staff for review at the 75% and 100% phases of design and shall provide renderings at the 100% phase. MassDOT Environmental Section staff shall share the plans and renderings with SHPO and other Section 106 consulting parties as warranted. The D-B contractor shall be aware that any substantial deviation from the bridge type described in

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Stipulation II shall require reopening the Section 106 consultation process, along with associated public outreach.

C. The D-B Contractor shall ensure that all ground-disturbing or construction activities, including staging and stockpiling areas, are confined, to the greatest extent feasible, to within the boundaries of the Area of Potential Effects (APE) depicted in the maps in Appendix B of this Agreement, excluding the viewshed portion of the APE. The D-B Contractor shall notify the MassDOT Archaeologist if any ground disturbing or construction activities, including staging and stockpiling areas, are proposed outside of the boundaries of the APE and shall provide plans showing the locations of such activities to the MassDOT Archaeologist in advance of proceeding with such activities. The MassDOT Archaeologist shall assess those locations for archaeological sensitivity to determine if further archaeological investigation is necessary. If so, the MassDOT Archaeologist shall consult with the State Archaeologist/SHPO, the Tribal Historic Preservation Officers, and other consulting parties to determine a further course of action. Any additional archaeological investigations and reports shall be conducted under appropriate state or federal permits by professional archaeologists meeting the Secretary of the Interior's Professional Qualification Standards for Archaeology (36 CFR Part 61) and shall be the full responsibility of MassDOT. The D-B Contractor shall not proceed with work in the expanded APE without approval from MassDOT.

VII. CHANGES IN SCOPE

In the event of any changes to the Program's scope, FHWA, in coordination with MassDOT and in consultation with SHPO, shall assess and revise the APE as necessary to incorporate any additional areas where the Program might have the potential to affect historic properties. If this consultation concludes that the APE does not need to be revised or that there is no potential to affect historic properties from the change of scope, MassDOT shall document this determination in the Program file and continue to advance the Program without further Section 106 consultation and review. If FHWA, MassDOT, and SHPO conclude that additional study is needed based on proposed changes in the Program's scope and APE, the following measures shall be implemented:

A. Following established standards and methodologies, MassDOT, on behalf of FHWA, shall carry out additional investigations to identify historic architectural and archaeological properties that may be affected by the Program.

B. FHWA, in coordination with MassDOT, shall document an assessment of the Program's effects on any new historic properties and explore measures to avoid, minimize, or mitigate adverse effects on these properties in consultation with SHPO, THPOs, and other Section 106 Consulting Parties.

C. FHWA, in coordination with MassDOT, shall ensure the preparation of appropriate reports and documents, shall notify SHPO and Section 106 Consulting Parties as appropriate of any changes in the Program's effect on historic properties, and shall provide an opportunity for review and comment.

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D. If a change in scope results in adverse effects to previously unidentified NRHP-eligible properties, FHWA, in coordination with MassDOT, shall consult with SHPO, THPOs, and other Consulting Parties to amend the Agreement in accordance with Stipulation XIII.

VIII. Post-Review Discoveries (Archaeology)

If new archaeological resources are discovered or unanticipated effects on archaeological properties are identified during construction, the MassDOT Standard Specification, Section 7.23 – Discovery of Unanticipated Archaeological and Skeletal Remains (Appendix E) shall apply. In accordance with 36 CFR 800.13(b)(3), FHWA in coordination with MassDOT and in consultation with SHPO, THPOs, and other consulting parties, shall apply the National Register criteria (36 CFR Part 63) to evaluate any new archaeological resources and to consider measures to avoid, minimize, or mitigate adverse effects on NRHP-eligible properties and to determine if archaeological monitoring is required.

IX. Post-Review Discoveries (Human Remains)

If evidence of burials, human remains, potential human remains, or funerary objects is encountered during construction, MassDOT and the D-B Contractor shall suspend all work in the immediate vicinity, protect the remains from further disturbance, and immediately contact SHPO, THPOs, FHWA, ACHP, and other pertinent consulting parties. MassDOT and the D-B Contractor, in coordination with FHWA, shall implement the procedures in the MassDOT Standard Specification, Section 7.23 – *Discovery of Unanticipated Archaeological and Skeletal Remains* (Appendix E). MassDOT, on behalf of FHWA, shall consult with SHPO, THPOs, and other pertinent consulting parties to determine a further course of action, including potential archaeological monitoring. If requested by THPOs or other pertinent consulting parties, FHWA and MassDOT shall assist in the relocation and reinterment of human remains determined or presumed to be Native American.

X. Confidentiality

Sensitive information concerning the location, character, or ownership of archaeological resources or burials may be withheld from public disclosure in accordance with Section 304 of the National Historic Preservation Act (54 U.S.C. § 307103).

XI. Monitoring and Reporting

A. Each year following the execution of this Agreement until it expires or is terminated, MassDOT, in coordination with FHWA, shall provide all parties to this Agreement a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any issues encountered, and any disputes and objections received in FHWA's efforts to carry out the terms of this Agreement.

B. MassDOT shall submit to FHWA annually a written status of each stipulation included herein. MassDOT shall provide a written notification to FHWA for concurrence once all stipulations have been completed. Upon FHWA concurrence, the Section 106 process will be deemed completed.

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XII. Dispute Resolution

Should any signatory or concurring party to this Agreement object at any time to any actions proposed or the manner in which the terms of this Agreement are implemented, FHWA shall consult with such party to resolve the objection. If FHWA determines that such objection cannot be resolved, FHWA shall:

A. Forward all documentation relevant to the dispute, including the resolution proposed by FHWA to ACHP. ACHP shall provide FHWA with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, FHWA shall prepare a written response that takes into account any timely advice or comments regarding the dispute from ACHP, signatories and concurring parties and provide them with a copy of this written response. FHWA will then proceed according to the final decision.

B. If ACHP does not provide its advice regarding the dispute within the 30-day time period, FHWA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, FHWA shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to this Agreement and provide them and ACHP with a copy of such written response.

C. The responsibilities of FHWA to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute remain unchanged**.**

XIII. 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 signed by all signatories is filed with ACHP.

XIV. Termination

If any signatory to this Agreement determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation XIII. If an amendment cannot be reached within thirty (30) days, 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 Program, FHWA must either (a) execute an Agreement pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of ACHP under 36 CFR § 800.7. FHWA shall notify the signatories as to the course of action FHWA shall pursue.

XV. Duration

This Agreement shall be null and void if its terms are not carried out within twenty (20) years from the date of its execution. Prior to such time, FHWA may consult with the other signatories to reconsider the terms of the Agreement and amend it in accordance with Stipulation XIII.

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APPENDICES

A. Memoranda of Understanding between the United States Army Corps of Engineers—New England District and the Massachusetts Department of Transportation

B. Area of Potential Effects

C. Correspondence with the State Historic Preservation Officer/State Archaeologist

D. Preliminary Bridge Renderings

E. MassDOT Standard Special Provision, 7.23 Discovery of Unanticipated Archaeological and Skeletal Remains

F. Contacts

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Execution of this Agreement by FHWA, SHPO, USACE, and MassDOT and implementation of its terms is evidence that FHWA has taken into account the effects of the Cape Cod Bridges Program on historic properties and has afforded the ACHP an opportunity to comment.

SIGNATORY:

FEDERAL HIGHWAY ADMINISTRATION

_____ _____

Joi Singh, Division Administrator Date
Massachusetts Division

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Execution of this Agreement by FHWA, SHPO, USACE, and MassDOT and implementation of its terms is evidence that FHWA has taken into account the effects of the Cape Cod Bridges Program on historic properties and has afforded the ACHP an opportunity to comment.

SIGNATORY:

Massachusetts Historical Commission

_____ _____

Brona Simon, Executive Director Date
State Historic Preservation Officer

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Execution of this Agreement by FHWA, SHPO, USACE, and MassDOT and implementation of its terms is evidence that FHWA has taken into account the effects of the Cape Cod Bridges Program on historic properties and has afforded the ACHP an opportunity to comment.

SIGNATORY:

UNITED STATES ARMY CORPS OF ENGINEERS

_____ _____

Colonel Justin R. Pabis, Commander and District Engineer Date
New England District

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Execution of this Agreement by FHWA, SHPO, USACE, and MassDOT and implementation of its terms is evidence that FHWA has taken into account the effects of the Cape Cod Bridges Program on historic properties and has afforded the ACHP an opportunity to comment.

SIGNATORY:

MASSACHUSETTS DEPARTMENT OF TRANSPORTATION

_____ _____

Monica Tibbits-Nutt Date
CEO & Secretary of Transportation

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Execution of this Agreement by FHWA, SHPO, USACE, and MassDOT and implementation of its terms is evidence that FHWA has taken into account the effects of the Cape Cod Bridges Program on historic properties and has afforded the ACHP an opportunity to comment.

CONCURRING:

WAMPANOAG TRIBE OF GAY HEAD (AQUINNAH)

_____ _____

(NAME/TITLE) Date

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Execution of this Agreement by FHWA, SHPO, USACE, and MassDOT and implementation of its terms is evidence that FHWA has taken into account the effects of the Cape Cod Bridges Program on historic properties and has afforded the ACHP an opportunity to comment.

CONCURRING:

MASHPEE WAMPANOAG TRIBE

_____ _____

(NAME/TITLE) Date

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Execution of this Agreement by FHWA, SHPO, USACE, and MassDOT and implementation of its terms is evidence that FHWA has taken into account the effects of the Cape Cod Bridges Program on historic properties and has afforded the ACHP an opportunity to comment.

SIGNATORY:

NARRAGANSETT INDIAN TRIBE

_____ _____

(Name/Title) Date

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CONCURRING:

HERRING POND WAMPANOAG TRIBE

_____ _____

(NAME/TITLE) Date

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Execution of this Agreement by FHWA, SHPO, USACE, and MassDOT and implementation of its terms is evidence that FHWA has taken into account the effects of the Cape Cod Bridges Program on historic properties and has afforded the ACHP an opportunity to comment.

CONCURRING:

MASSACHUSETTS COMMISSION ON INDIAN AFFAIRS

_____ _____

John Peters, Jr. Date
Executive Director

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Execution of this Agreement by FHWA, SHPO, USACE, and MassDOT and implementation of its terms is evidence that FHWA has taken into account the effects of the Cape Cod Bridges Program on historic properties and has afforded the ACHP an opportunity to comment.

CONCURRING:

BOURNE HISTORICAL COMMISSION

_____ _____

(NAME/TITLE) Date

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Execution of this Agreement by FHWA, SHPO, USACE, and MassDOT and implementation of its terms is evidence that FHWA has taken into account the effects of the Cape Cod Bridges Program on historic properties and has afforded the ACHP an opportunity to comment.

CONCURRING:

SANDWICH HISTORICAL COMMISSION

_____ _____

(NAME/TITLE) Date

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Execution of this Agreement by FHWA, SHPO, USACE, and MassDOT and implementation of its terms is evidence that FHWA has taken into account the effects of the Cape Cod Bridges Program on historic properties and has afforded the ACHP an opportunity to comment.

CONCURRING:

CAPE COD COMMISSION

_____ _____

Kristy Senatori , Executive Director Date

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Execution of this Agreement by FHWA, SHPO, USACE, and MassDOT and implementation of its terms is evidence that FHWA has taken into account the effects of the Cape Cod Bridges Program on historic properties and has afforded the ACHP an opportunity to comment.

CONCURRING:

MASSACHUSETTS BOARD OF UNDERWATER ARCHAEOLOGICAL RESOURCES

_____ _____

(NAME/TITLE) Date

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Execution of this Agreement by FHWA, SHPO, USACE, and MassDOT and implementation of its terms is evidence that FHWA has taken into account the effects of the Cape Cod Bridges Program on historic properties and has afforded the ACHP an opportunity to comment.

CONCURRING:

NATIONAL TRUST FOR HISTORIC PRESERVATION

_____ _____

(NAME/TITLE) Date

DRAFT

APPENDICES

CAPE COD BRIDGES PROGRAM

SECTION 106 PROGRAMMATIC AGREEMENT

APPENDIX A

MEMORANDA OF UNDERSTANDING

BETWEEN

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

AND

MASSACHUSETTS DEPARTMENT OF TRANSPORTATION

JULY 7, 2020

March 21, 2024

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:	For USACE:
Jonathan Gulliver Highway Administrator, MassDOT	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 7/7/20

Stephanie Pollack
Secretary, Department of Transportation
Commonwealth of Massachusetts

Date 7 July 2020

William M. Conde
Colonel, Corps of Engineers
District Engineer

MEMORANDUM OF UNDERSTANDING
BETWEEN
UNITED STATES ARMY CORPS OF ENGINEERS
AND
THE COMMONWEALTH OF MASSACHUSETTS
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 Department of the Army, acting by and through the Assistant Secretary of the Army (Civil Works); and the Commonwealth of Massachusetts.

RECITALS:

WHEREAS, the New England District of the United States Army Corp of Engineers (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, Massachusetts 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 Massachusetts (Parties) are engaged in a collaborative approach to future project development concerning the Bridges and Approaches;

WHEREAS, both Parties are committed to a fully functional, cost efficient, resilient, and safe transportation corridor across the Cape Cod Canal;

WHEREAS, the Bridges are nearing the end of their useful lifespan and need to be repaired or replaced to ensure the continued passage of goods, services, and people across the Cape Cod Canal;

WHEREAS, the Parties have a mutual interest in the conveyance of the rights, titles and interests to the Bridges from the USACE to Massachusetts after their replacement;

WHEREAS, the Parties have determined, subject to the availability of adequate funding, to implement the project in phases beginning with the replacement of the Sagamore Bridge, with the replacement of the Bourne Bridge immediately thereafter;

WHEREAS, in furtherance of that mutual interest, the Parties submitted a joint application to U.S. Department of Transportation (DOT) under the Multimodal Project Discretionary Grant Program on August 21, 2023, and submitted a joint application under the Bridge Investment Program on December 4, 2023; and

WHEREAS, this MOU outlines a strategy and the commitments of the Parties to develop and implement a plan for the replacement of the Bourne and Sagamore Bridges with funding secured from USACE, Massachusetts, and available grants from other federal sources.

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. As to the two-bridge project, the USACE will:

1. Own, operate and maintain the existing Bridges until they are until demolished by Massachusetts;
2. Partner with MassDOT on the funding, design, and construction of the replacement Bridges, including being a co-applicant on all discretionary grants where the USACE is an eligible applicant;
3. Expedite design reviews, permit processing, and permission requests within the USACE's jurisdiction for construction of replacement Bridges;
4. Assist MassDOT in completing the National Environmental Policy Act (NEPA) process and obtaining necessary permits for the replacement Bridges;
5. Work with MassDOT to ensure that the replacement Bridges have the type, size and location to reasonably meet the structural, functional and other requirements, state or federal, as established by MassDOT and the USACE;
6. Under appropriate authority, transfer the USACE's property interests to Massachusetts for the replacement Bridges and Approaches as necessary; and.
7. 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 provisions that allow the USACE to transfer funds to the Commonwealth of Massachusetts and a revision of paragraph (p) of 33 CFR § 207.20.

B. As to each phase of the two-bridge project, the USACE will:

1. Partner with MassDOT on the funding, design, and construction of each replacement Bridge, including being a co-applicant on all discretionary grants where the USACE is an eligible applicant;
2. Expedite design reviews, permit reviews, and permission requests within the USACE's jurisdiction for construction of each replacement Bridge;
3. Maintain and operate the existing Sagamore and Bourne Bridges during the construction of the Sagamore replacement Bridge to minimize any diminution of traffic capacity across the Canal during construction;
4. Maintain and operate the existing Bourne Bridge and, if necessary, the existing Sagamore Bridge during the construction of the Bourne replacement Bridge to minimize any diminution of traffic capacity across the Canal during construction;
5. Work with Massachusetts to develop a construction schedule that minimizes the overall construction duration for the two-bridge project; and.
6. Upon satisfactory completion of each replacement Bridge, take all actions necessary to vest the Commonwealth of Massachusetts with ownership of the replacement Bridge.

C. As to the two-bridge project, Massachusetts 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 as established by MassDOT and the USACE;

3. Prepare all documents necessary for a review of the project under the National Environmental Policy Act (NEPA), and apply for all necessary permits for replacement Bridges; Massachusetts will prepare a single Environmental Impact Statement for the two-bridge project, the construction of which will be implemented in phases;
4. Partner with the USACE on the funding, design, and construction of the replacement Bridges, including being the lead co-applicant on discretionary grants and accepting any awarded grants;
5. Comply with all design and construction timelines, and all other requirements as applicable, for any discretionary grant awarded;
6. Once permitting and funding is secure, construct replacement Bridges for the Bourne and Sagamore Bridges, and demolish existing Bridges;
7. Own, operate, and maintain the completed Bridges and Approaches as part of the systems of state highways to be maintained by MassDOT; Mass DOT will accept and/or secure all property interests necessary to allow MassDOT to own, operate, and maintain the completed Bridges and Approaches;
8. Develop and pursue legislative, regulatory, or administrative actions, if any, that might be required to support the purposes of this MOU; and
9. Conduct proactive community engagement.

D. As to each phase of the two-bridge project, Massachusetts will:

1. Partner with the USACE on the funding, design, and construction of each replacement Bridge, including being the lead co-applicant on all discretionary grants;
2. Obtain all necessary permits for each replacement Bridge project;
3. Complete 25% designs and sketch plans sufficient to bid each replacement bridge project as a standalone design/build project; and
4. Procure a design/build entity for each bridge replacement project and oversee and manage all construction and construction-related activities.

ARTICLE Ill: TERM

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

ARTICLE IV: FUNDING

1. Subject to the availability of appropriations, the parties agree that the USACE contribution for the entire replacement Bridges project will be $600 million. The President's 2024 Budget includes an initial $350 million contribution toward this funding commitment.
2. Massachusetts will provide $700 million for the replacement Bridges and has programmed $262 million in cash flows expected to occur during state fiscal years 2024 through 2028 based on construction schedule estimates, with the balance of the Commonwealth's $700 million contribution expected to occur after fiscal year 2028. These schedule and cash flow estimates will be adjusted as needed. The Commonwealth's entire $700 million contribution is available without any further legislative authorization required.
3. The Parties acknowledge that they each bear responsibility for technical and financial capability on this project to ensure a fully functional, cost efficient, resilient, and safe transportation corridor across the Cape Cod Canal Federal Navigation Project. To that end, the project budget includes a significant contingency and the Parties commit to working together to (i) seek funding sources to address possible cost increases; and (ii) reach agreement in the future on a reasonable allocation of financial responsibility for possible cost increases.

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 3/21/2024

Monica Tibbits-Nutt
Secretary and CEO
Massachusetts Department
of Transportation

Date 21-March 2024

Michael L. Connor
Assistant Secretary of the Army
(Civil Works)
Department of the Army

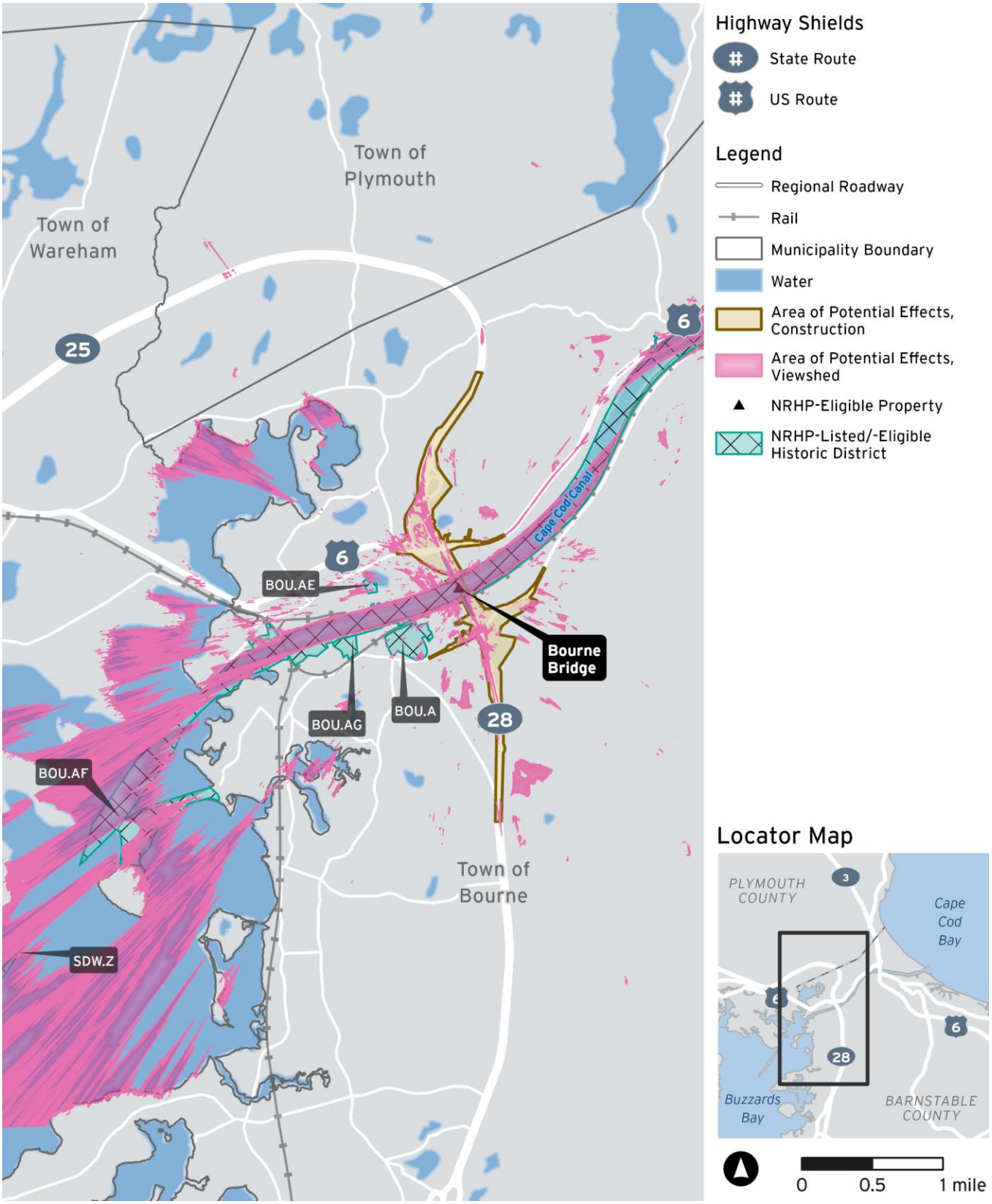
APPENDIX B

AREA OF POTENTIAL EFFECTS

IN THE VICINITY OF BOURNE BRIDGE

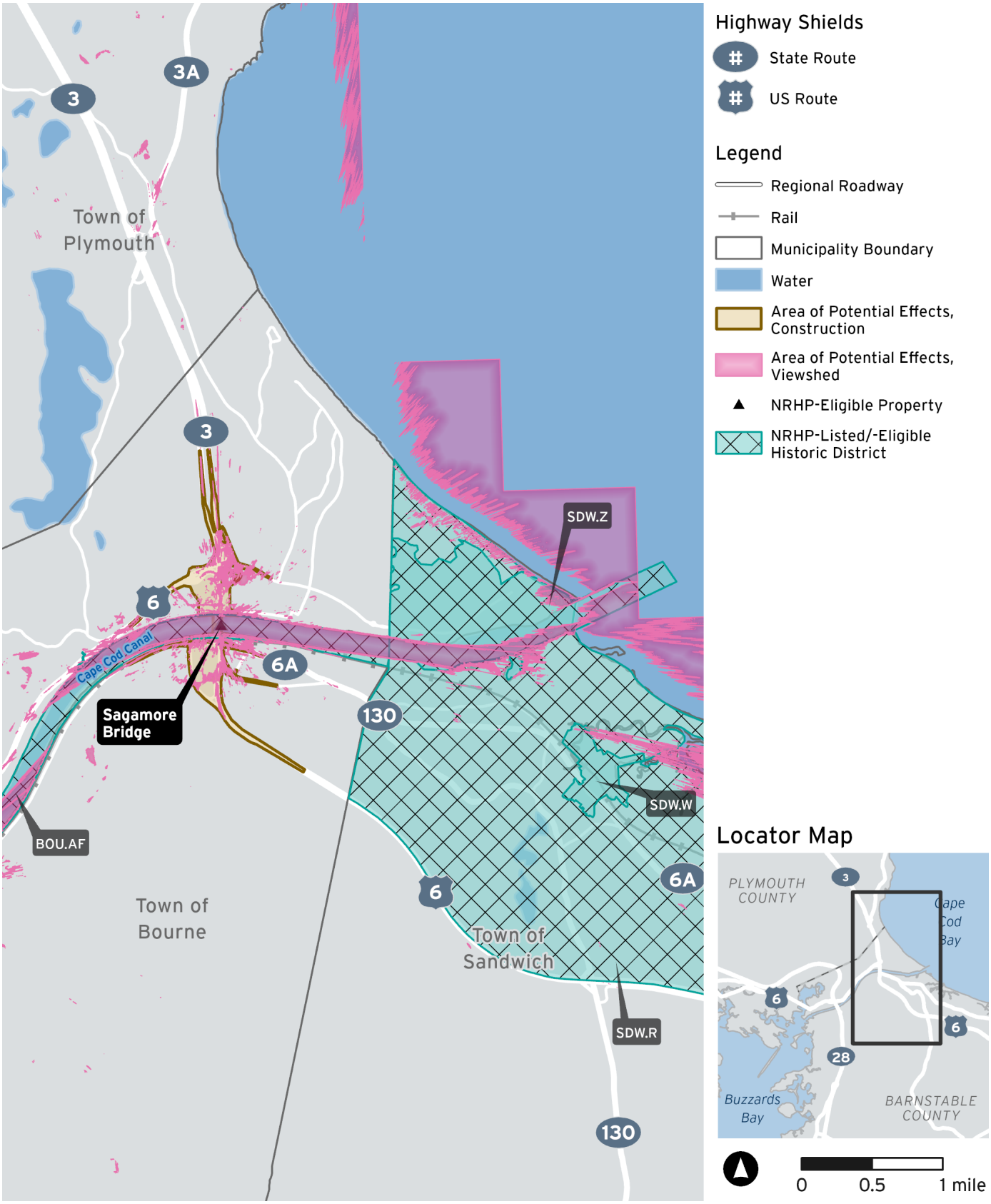
AND

IN THE VINICITY OF SAGAMORE BRIDGE



AREA OF POTENTIAL EFFECTS

IN THE VICINITY OF BOURNE BRIDGE



AREA OF POTENTIAL EFFECTS

IN THE VICINITY OF SAGAMORE BRIDGE

APPENDIX C

CORRESPONDENCE WITH

STATE HISTORIC PRESERVATION OFFICER/

STATE ARCHAEOLOGIST

June 26, 2023

November 15, 2024

January 14, 2025

March 26, 2025

June 2, 2025

U.S. Department of Transportation
Federal Highway Administration

Massachusetts Division

55 Broadway, 10th Floor
Cambridge, MA 02142
(617) 494-3657
(617) 494-3355
www.fhwa.dot.gov/madiv

June 21, 2023

CONCURRENCE: Brona Simon
7/7/23 BRONA SIMON
STATE HISTORIC
PRESERVATION OFFICER
MASSACHUSETTS
HISTORICAL COMMISSION

In Reply Refer To:
HDA-MA

RC.66038

cc: J. Shrimpton, MassDOT
M. Paiva, Army Corps

RECEIVED
JUN 26 2023
MASS. HIST. COMM

Brona Simon
Massachusetts State Historic Preservation Officer
Massachusetts Historical Commission
220 Morrissey Boulevard
Boston, MA 02125

Subject: Cape Cod Bridges Program, Request for Review and Concurrence of Section 106 Area of Potential Effect

Dear Ms. Simon:

As stated in our letter to you dated March 30, 2023, the Massachusetts Department of Transportation (MassDOT) is proposing to improve cross-canal mobility and accessibility between Cape Cod and mainland Massachusetts for all road users and to address the increasing maintenance needs and functional obsolescence of the aging Cape Cod Canal highway bridges. The Cape Cod Bridges Program (Program) will improve traffic operations and multimodal accommodations to facilitate the dependable and efficient movement of people, goods, and services across the Cape Cod Canal. The Federal Highway Administration (FHWA) is the lead federal agency for the Program and will be responsible for ensuring compliance with the National Environmental Policy Act (NEPA) and Section 106 of the National Historic Preservation Act of 1966, as amended.

For this Program, FHWA will be submitting materials to your office, requesting your review and concurrence at specific milestones and key steps in the Section 106 process, as follows:

- Determination of the Area of Potential Effects (APE),
- Identification of Historic Properties within the APE,
- Determination of Effects to Historic Properties within the APE, and
- Resolution of Adverse Effects

The purpose of this transmittal letter to you is to request your review and concurrence on the proposed APE. The APE is defined in 36 CFR 800.16 as the "geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties." In accordance with these requirements, we have developed both a direct and indirect APE for the Program. The direct APE includes properties and structures adjacent to the Bourne and Sagamore Bridges and along the proposed roadway and interchange network. The direct APE encompasses areas which may be directly affected by construction activities. An indirect APE was also developed and includes properties and structures that are within the viewshed of the location of the existing and proposed new Bridges. All properties within the

direct and indirect APE will be assessed to determine eligibility for listing in the National Register of Historic Places.

As you are aware, MassDOT has proposed to conduct an archaeological survey within the direct APE under a permit from the State Archaeologist and an ARPA permit from the U. S. Army Corps of Engineers.

We request your review and concurrence with our proposed APE for this undertaking within thirty (30) days of receipt. In the upcoming months, FHWA and MassDOT will be scheduling the first Section 106 Consulting Parties Meeting for the Program and plan to share the APE for their review at that time. If you have any questions or would like to discuss the Program or your agency's role and responsibilities, please contact me at 617-494-3113. We look forward to working with you on this important project.

Sincerely,

Cassandra Ostrander

Cassandra Ostrander
Program Development Team Leader

Enclosures
cc: Bryan Cordeiro, MassDOT
Jeffrey Shrimpton, MassDOT
Craig Martin, USACE

U.S. Department of Transportation
Federal Highway Administration

Massachusetts Division

55 Broadway, 10th Floor
Cambridge, MA 02142
(617) 494-3657
(617) 494-3355
www.fhwa.dot.gov/madiv

October 16, 2024

CONCURRENCE. Brona Simon
11/15/24 BRONA SIMON
STATE HISTORIC
PRESERVATION OFFICER
MASSACHUSETTS
HISTORICAL COMMISSION

In Reply Refer To:
HDA-MA

RECEIVED

OCT 23 2024

MASS. HIST. COMM

RC.66038

Brona Simon, Executive Director
Massachusetts Historical Commission
State Historic Preservation Officer
220 Morrissey Boulevard
Boston, MA 02125

Subject: Cape Cod Bridges Program – Inventory Forms and Eligibility Determination

Dear Ms. Simon,

As you are aware, the Federal Highway Administration (FHWA) and the Massachusetts Department of Transportation (MassDOT) are conducting the Section 106 consultation process for the Cape Cod Bridges Program (CCBP). As part of that process, FHWA and MassDOT have identified three areas and three individual properties within the CCBP's Area of Potential Effects that are more than forty years old and are not included in the Massachusetts Historical Commission's *Inventory of Historic and Archaeological Assets of the Commonwealth*. The Public Archaeology Laboratory, Inc., on MassDOT's behalf, has prepared inventory forms for those areas and properties, as listed below, so that FHWA and MassDOT could evaluate them for eligibility for listing in the National Register of Historic Places (NRHP).

Form A

- Round Hill Subdivision, west of Rt. 6 along the southerly approach to Sagamore Bridge.
- Adams Street Area, east of Rt. 6 along the southerly approach to Sagamore Bridge.
- Bourne Scenic Park, both sides of Rt. 28 along the northerly approach to Bourne Bridge.

Form B

- Vercellone House, 788 Sandwich Road, adjacent to Round Hill Subdivision.
- Canal Café, 71 Cranberry Highway, east of Adams St.
- Forsyth House, 34 Canal St., east of Rt. 6 at the northerly approach to Sagamore Bridge.

FHWA and MassDOT have reviewed the enclosed inventory forms and have determined that none of the areas or individual properties exhibit the distinguishing characteristics or historical significance necessary for listing in the NRHP. FHWA therefore has determined that the areas and properties identified in this submittal are not eligible for the NRHP. FHWA requests the State Historic Preservation Officer's concurrence or any comments about our determination.

If you have any questions or would like to discuss our determination, please feel free to contact me at (617) 494-3657 or Joi.Singh@dot.gov.

Joi Singh
Division Administrator

Enclosures: Six Inventory Forms
cc: Jeffrey Shrimpton, MassDOT

Maura Healey, Governor
Kimberley Driscoll, Lieutenant Governor
Monica Tibbits-Nutt, Secretary & CEO
Jonathan L. Gulliver, Highway Administrator

MassDOT
Massachusetts Department of Transportation
Highway Division

November 12, 2024

RECEIVED
NOV 18 2024
MASS. HIST. COMM
RC.66038

CONCURRENCE: Brona Simon
1/14/25
BRONA SIMON
STATE HISTORIC
PRESERVATION OFFICER
MASSACHUSETTS
HISTORICAL COMMISSION

Brona Simon
State Archaeologist
Massachusetts Historical Commission
220 Morrissey Boulevard
Boston, Massachusetts 02125

RE: Cape Cod Bridges Program, Bourne, Massachusetts (MassDOT Project #608020)
Intensive (Locational) Survey Report, Permit #4357

Dear Ms. Simon:

Please find enclosed two (2) copies of the archaeological report entitled, *Intensive (Locational) Archaeological Survey, Cape Cod Bridges Program (MassDOT Project #608020), Bourne, MA*. The report was prepared by The Public Archaeology Laboratory Inc. (PAL) on behalf of MassDOT as part of the Cape Cod Bridges Program (CCBP). Also enclosed is a CD containing the report's abstract. The report is submitted in accordance with the requirements of Permit #4357 issued by the MA State Archaeologist.

PAL's intensive (locational) survey (survey) focused on five sensitive locations within the CCBP area of potential effect (APE) identified during the 2023 reconnaissance survey:

Area 1 - Bourne Bridge North Interchange, north of Nightingale Pond
Area 2 - Bourne Bridge North Interchange, east of Nightingale Pond
Area 3 - Bourne Bridge South Interchange, low ridge off Sandwich Road east of the interchange
Area 4 - Bourne Bridge South Interchange, along proposed Route 28 northbound
Area 5 - Sagamore Bridge South Interchange, wooded terrace west of the Market Basket parking lot

Area 1 and Area 2

Area 1 and Area 2 included locations within the CCBP APE not tested as part of a nearby natural gas line project. The survey within Area 1 noted redeposited soils and modern refuse. No other cultural material was identified. The survey within Area 2 confirmed that the previously recorded Nightingale/Gas House Site (19-BN-244/BOU.HA.1) is within the CCBP area of potential effect (APE) to the east of the proposed northbound on-ramp from Route 6 to Route 25, on the north side of the Bourne Bridge. **MassDOT concurs with PAL's recommendation that the Nightingale/Gas House Site is not eligible for listing in the National Register as the integrity of both its pre-contact and post-contact components are severely compromised and are unlikely to yield significant new information. No additional archaeological investigation is recommended for the site.**

Area 3

The survey focused on the flat terraces and gentle slopes within Area 3. The survey documented redeposited soils and modern refuse. No other cultural material was identified.

Area 4

The survey within Area 4 identified three new pre-contact find spots to the east of the proposed CCBP roadway alignment for Route 28 on the south side of the Bourne Bridge. **MassDOT concurs with PAL's recommendation that the Solar Driveway Find Spot, Great Pond Find Spot, and MacArthur Boulevard Find Spot are not eligible for listing in the National Register as they consist of isolated or highly-localized, low-density pre-contact lithic material. No additional archaeological investigation is recommended for the find spots.**

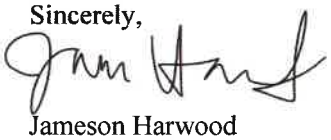
Area 5

The survey within Area 5 documented modern refuse recovered from the sandy podzal soil layer. No other cultural material was identified.

On behalf of the Federal Highway Administration (FHWA), MassDOT submitted the survey report by email to the project's consulting parties on October 17, 2024. No comments on the report have been received by FHWA or MassDOT. The report addresses all comments issued by MassDOT Cultural Resources Unit staff.

MassDOT respectfully requests your concurrence on the results of the survey. As the Cape Cod Bridges Program is a design-build project, MassDOT will continue to consult with your office and the consulting parties as project plans develop. Please feel free to contact me at jameson.harwood@dot.state.ma.us if there are any questions pertaining to these materials.

Sincerely,



Jameson Harwood
Environmental Services
Cultural Resources Supervisor

encl:
PAL intensive (locational) survey report (2 copies and CD)

xcs:
FHWA, w/encl.
USACOE, w/encl.
BUAR, w/encl.
ATHPO, w/encl.
MTHPO w/encl.
NTHPO w/encl.
Herring Pond Wampanoag w/encl.
MCIA w/encl.
Cape Cod Commission w/encl.
Sandwich Historical Commission w/encl.
PAL, w/out encl.

Maura Healey, Governor
Kimberley Driscoll, Lieutenant Governor
Monica Tibbits-Nutt, Secretary & CEO
Jonathan L. Gulliver, Highway Administrator

massDOT
Massachusetts Department of Transportation
Highway Division

February 28, 2025

CONCURRENCE Brona Simon
3/26/25
BRONA SIMON
STATE HISTORIC
PRESERVATION OFFICER
MASSACHUSETTS
HISTORICAL COMMISSION

RECEIVED
FEB 28 2025
MASS. HIST. COMM

RC.66038

Ms. Brona Simon, Executive Director
Massachusetts Historical Commission
State Historic Preservation Officer
220 Morrissey Boulevard
Boston, MA 02125

RE: Bourne, Cape Cod Bridges Program (MassDOT #608020 / MHC RC.66038)
National Register Eligibility Recommendation: Ellis-Blackwell House (BOU.50), Not Eligible

Dear Ms. Simon:

The Massachusetts Department of Transportation (MassDOT) has identified one property within the direct Area of Potential Effects (APE) for the Cape Cod Bridges Program in Bourne that is included in the Inventory of Historic Assets of the Commonwealth:

- Deacon Gershom Ellis-Henry S. Blackwell House (BOU.50), 201 Sandwich Road

The Ellis-Blackwell House is located approximately 0.25 mile from the southeast corner of the existing Bourne Bridge. The Ellis-Blackwell House has been recommended by others to be eligible for individual listing in the National Register of Historic Places. MassDOT disagrees with that recommendation.

The Ellis-Blackwell House, constructed c. 1835, is described in the Form B as a Federal-style residential building with later Colonial Revival additions. The Form B was prepared in 1999. At that time, the first story of the house was clad in wood clapboards and the second story in wood shingles. The entire exterior of the house is currently clad in synthetic siding, as verified during a field visit conducted by MassDOT Cultural Resources Unit staff in February 2025 (see attached photo) and according to the Bourne Assessor's database (see attached Property Card). In addition, the front door and its side lights, as well as the house's window frames and sash, have been replaced since 1999.

The preparer of the Form B recommended National Register eligibility for the Ellis-Blackwell House under Criterion B for the property's association with the Ellis family in Bourne and Criterion C as an exceptional local example of Federal-style residential architecture. It is MassDOT's opinion, however, that the Ellis-Blackwell House does not exhibit the distinguishing characteristics necessary for individual listing in the National Register, especially with the installation of synthetic siding on the house and the loss of other character-defining elements after 1999.

Please be aware that the Ellis-Blackwell House will not be disturbed by any construction activities associated with the Cape Cod Bridges Program. The parcel on which the house is situated will be the subject of a narrow temporary easement needed for grading at the back of pavement along Sandwich Road to meet the elevated grade of the reconstructed roadway and for reconstruction of a driveway apron.

MassDOT respectfully solicits your concurrence with our recommendation of Not Eligible for individual listing in the National Register of Historic Places for the Ellis-Blackwell House (BOU.50) at 201 Sandwich Road, Bourne. Please feel free to call me at (978) 325-2094 if you should have any questions about this submittal.

Sincerely,

Jeffrey Shrimpton

Jeffrey Shrimpton
Program Engineer for Design
Environmental Services

Enc: Photo
Assessor's Card

CC: Carrie Lavallee, MassDOT Deputy Administrator and Chief Engineer
Luisa Paiewonsky, Executive Director, Megaprojects Delivery Office

Maura Healey, Governor
Kimberley Driscoll, Lieutenant Governor
Monica Tibbits-Nutt, Secretary & CEO
Jonathan L. Gulliver, Highway Administrator

MassDOT
Massachusetts Department of Transportation
Highway Division

RC.66038

April 11, 2025

RECEIVED
APR 11 2025
MASS. HIST. COMM

Ms. Brona Simon, Executive Director
Massachusetts Historical Commission
State Historic Preservation Officer
220 Morrissey Boulevard
Boston, MA 02125

RE: Bourne, Cape Cod Bridges Program (MassDOT #608020 / MHC RC.66038)
Draft Section 106 Programmatic Agreement and DEIS Ch. 4.17, Cultural Resources

Dear Ms. Simon:

On behalf of the Federal Highway Administration (FHWA), the Massachusetts Department of Transportation (MassDOT) is pleased to submit a draft Section 106 Programmatic Agreement (PA) for the Cape Cod Bridges Program to the State Historic Preservation Officer. MassDOT respectfully requests your review and comments on the draft PA. MassDOT will incorporate any revisions that you might request into the draft PA prior to submitting the draft to the other Section 106 consulting parties for their review. Once all comments are addressed, MassDOT will include the draft PA in the Draft Environmental Impact Statement (DEIS) that will be published in the Federal Register in July 2025.

Also enclosed is Ch. 4.17 of the DEIS regarding historic and archaeological properties within the Area of Potential Effects for the Cape Cod Bridges Program. MassDOT also requests your review and comments on Ch. 4.17.

Please feel free to call me at (978) 325-1094 if you should have any questions.

Sincerely,

Jeffrey Shrimpton

Jeffrey Shrimpton
Program Engineer for Design
Environmental Services

CONCURRENCE. Brona Simon
6/2/25
BRONA SIMON
STATE HISTORIC
PRESERVATION OFFICER
MASSACHUSETTS
HISTORICAL COMMISSION

CC: David Clarke, FHWA

Enc: Draft Section 106 PA and Appendices
DEIS Ch. 4.17, Cultural Resources

APPENDIX D

PRELIMINARY BRIDGE RENDERINGS

PRELIMINARY BRIDGE RENDERINGS





APPENDIX E

MASSDOT STANDARD SPECIAL PROVISION

7.23 DISCOVERY OF UNANTICIPATED ARCHAEOLOGICAL

AND SKELETAL REMAINS

STANDARD SPECIAL PROVISIONS

(English / Metric Units)

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 I.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)].

APPENDIX F

Contact List

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