



Wellfleet Selectboard

Note: Start Time of 7pm

The Wellfleet Selectboard will hold a public meeting on **Tuesday, June 20, 2023, at 7:00 p.m.** The Chapter 2 of the Acts of 2023, this meeting will be conducted in person and as a courtesy via remote means, per 940 MCR 29.10 and the Town's Remote Participation Policy. While an option for remote attendance and/or participation is provided as a courtesy to the public, the meeting/hearing may not be suspended or terminated if technological problems interrupt the virtual broadcast unless otherwise required by law.

Joining the Meeting:

In-person at the Wellfleet ACC, 715 Old King's Highway, Wellfleet, MA, 02667

Join the meeting hosted in Zoom by using the following link:

<https://us02web.zoom.us/j/85689604806?pwd=blplVFFBZzViQ0xNWkZKMm9iMVdrdz09>

By Phone: **phone to +1 929 205 6099** and enter **Meeting ID: 856 8960 4806** | **Passcode: 611877** Landline callers can participate by dialing *9 to raise their hand.

To Participate during public comment:

- Zoom: Raise hand to be called on to speak.
- Phone: dial *9 to raise your hand.

It is at the Chair's discretion to call on members of the public. All speakers must be recognized to speak. If attending a meeting in person, please find the closest available microphone and confine any personal conversations to the outside of the meeting room. Anyone may record the session but must notify the Chair and may not interfere with the meeting to record it.

Additionally, the meeting will be broadcast live, in real time, via live broadcast on Comcast cable (Wellfleet Government TV Channel 18), also available via livestream or Video on Demand (VOD) recordings at wellfleet-ma.gov

I. *Announcements, Open Session and Public Comments*

Note: *Public comments are limited to no more than two minutes per speaker. The Board will not deliberate or vote on any matter raised solely during Announcements & Public Comments.*

II. *Consent Agenda*

- A. Appointment of Ryan Curley to Cape Cod and Islands Water Protection Fund
- B. Contract agreement for M.A. Frazier for Portable Toilets for the 2023 Season
- C. Bill Iacussa & Jenette Kerr, Mass Audubon ~ 2023 State of Wellfleet Harbor Conference ~ November 3, 2023 (for set up); November 4, 2023, 7a:30am-1pm.
- D. Ratify Collective Bargaining Agreements
 - Police
 - Communications
 - Teamsters
 - Fire

WEA

- III. ***Open Meeting Law Complaint ~ (moved up per the chair)***
 - A. Discuss and deliberate response to Open Meeting Law complaint from Jude Ahern dated June 2, 2023.
- IV. ***Police Appointment***
 - A. Nichole Martinelli ~ Full time Police Officer ~ Deputy Chief Kevin LaRocco
- V. ***Structure Discussions and Public Comments***
 - A. Board to discuss and deliberate on discussions on agenda topics and time limits on comments.
- VI. ***Special Town Meeting***
 - A. Discussion and Confirmation of Fall Special Town Meeting Date ~ Dan Silverman
- VII. ***Community Updates***
 - A. Affirmative Vote to continue to make Maguire's/LaCount's Landing a resident/taxpayer only beach. ~ Suzanne Grout-Thomas
 - B. Maggie Downey ~ Update on our energy efficiency programs and planning for the next three-year plan, ~ Cape Light Compact
- VIII. ***Public Hearings***
 - A. Verizon and NSTAR dba Eversource Energy to place temporarily six new jointly owned poles and to remove three jointly owned poles near #1000 Chequesset Neck Rd. Wellfleet.
 - B. Verizon New England to place approximately eight-hundred feet (800') of new conduit provided by Mass DOT, at 1065 Chequessett Neck Rd. Wellfleet MA.
 - C. Application Received May 26, 2023, for Change of Manager, MJT Enterprises, Inc. dba Blackfish Variety
 - D. Application for Special Event Liquor License ~ Craig Whilby ~ July 29, 2023; Newcomb Hollow Beach, 3:00pm – 10:00pm. ~ See Selectboard Packet for full application.
- IX. ***Use of Town Property***
 - A. Neal Nichols Jr. ~ Baker's Field Pavilion and other shaded places around the area for children's art classes.
- X. ***Board/Committee Appointments and Updates***
 - A. Renewal of Board/Committee Members ~ Please see list in Selectboard Packet.
- XI. ***Business***
 - A. Transfer Station Fees Amendments ~ Michael Cicale will present the changes to the fees for the selectboard to support.
 - B. Authorization to accept a \$14,690,000 grant from the National Oceanic and Atmospheric Administration for the Herring River Restoration Project ~ Carole Ridley
 - C. Mitigation Plan Approval ~ The board will approve the mitigation plan.
 - D. Awarding of the dredging contract ~ Burnham (no public comments to be accepted for this agenda item)
 - E. Joe Pellegrino ~ **100th Birthday Recognition**
 - F. Staffing Update

- XII. *Selectboard Reports*
- XIII. *Town Administrator's Report*
- XIV. *Topics for Future Discussion*
- XV. *Minutes*
 - A. June 6, 2023
- XVI. *Adjournment*

**JOIN US ON TUESDAY, JULY 4TH, @ 10AM
FOR THE ANNUAL 4TH OF JULY PARADE!**

THE ANTIQUE CAR PARADE STARTS AT 9:30AM



**TO REGISTER
YOUR FLOAT SCAN HERE:**





SELECTBOARD

AGENDA ACTION REQUEST
Meeting Date: June 20, 2023

I

ANNOUNCEMENTS, OPEN SESSION, AND PUBLIC COMMENTS

REQUESTED BY:	Wellfleet Selectboard
DESIRED ACTION:	Announcements to the board and public
PROPOSED MOTION: SUMMARY:	<i>NOTE: Public comments are limited to no more than two minutes per speaker.</i> The Board will not deliberate or vote on any matter raised solely during Announcements & Public Comments.
ACTION TAKEN:	Moved By: _____ Seconded By: _____ Condition(s):
VOTED:	Yea _____ Nay _____ Abstain _____



SELECTBOARD

AGENDA ACTION REQUEST

Meeting Date: June 20, 2023

II

CONSENT AGENDA

REQUESTED BY:	Various Parties
DESIRED ACTION:	To approve the following without objection
SUMMARY:	I move to approve the following items with no objection: <ul style="list-style-type: none">• Appointment of Ryan Curley to Cape Cod and Islands Water Protection Fund• Contract agreement for M.A. Frazier ~ Portable Toilets• Mass Audubon use of the community center November 3rd and 4th for Wellfleet Harbor Conference.• Ratify Collective Bargaining agreements ~ Police, Fire, Communications, Teamsters, WEA

Massachusetts General Law Chapter 29C §20 - Cape Cod and Islands Water Protection Fund Management Board, states *"There shall be a Cape Cod and Islands Water Protection Fund Management Board that shall consist of 1 person to be appointed by each board of selectmen or town council in each municipality that is a member of the Cape Cod and Islands Water Protection Fund; provided, however, that an appointee of a board of selectmen or town council shall be a member of the respective appointing authority, a town manager, town administrator or other municipally employed professional staff."*

Additionally, "Each member of the management board shall serve for a term of 3 years and until a successor is appointed and qualified and each member of the management board shall be eligible for reappointment. Each member of the management board appointed to fill a vacancy on the management board shall be appointed for the unexpired term of the vacant position."

According to our records, Ryan Curley's term expires on 6/30/2023. I am reaching out to ask that the Town reappoint Mr. Curley, or appoint a new representative, to represent your town on the Cape Cod and Islands Water Protection Fund Management Board and forward documentation of such action at your convenience.



TOWN OF WELLFLEET

300 MAIN STREET WELLFLEET MASSACHUSETTS 02667
Tel (508) 349-0300 www.wellfleet-ma.gov

To: Wellfleet Select Board

From: Rebecca Roughley, ATA

Date: June 14, 2023

Re: Recommendation of Award Leasing and Maintenance of Portable Toilets in Wellfleet

Dear Honorable Select Board Members:

In the past the portable toilets were bid out by the Barnstable County Purchasing Program. Last year, a vendor won the bid for the county that was new to the area. The service was not responsible or responsive. The Town decided to terminate the contract in September of 2022 and solicit three quotes for the rest of the fiscal year. M.A. Frazier has been providing the services since October 2022. Their current contract expires June 30, 2023. After meeting with the Community Services Director, we decided to put out a formal Invitation for Bid for fiscal year 2024 to get qualified vendors and put the contract on a fiscal year basis, (Barnstable County was April – March). On May 17, 2023, the Town received one bid, M.A. Frazier. Under the terms of the contract, the Town of Wellfleet has the option, at its discretion to renew the contract for up to two additional years, without going back out to bid. If the Board agrees it is in the Town's best interest to enter into a first-year contract from July 1, 2023 – June 30, 2024, then I am requesting the Board take a vote to authorize the Town Administrator to execute the Portable Toilet Lease and Maintenance contract.

Thank you,

Rebecca Roughley, MCPPO

Rebecca Roughley, MCPPO



TOWN OF WELLFLEET

300 MAIN STREET WELLFLEET MASSACHUSETTS 02667
Tel (508) 349-0300 www.wellfleet-ma.gov

June 14, 2023

M.A. Frazier
C/O Matt Frazier
10 Kear Circle
Wellfleet, MA 02667

Re: Leasing and Maintenance of Portable Toilets in Wellfleet

Dear Mr. Frazier,

Congratulations! I am writing to inform you that the Town of Wellfleet is awarding you the contract for fiscal year 2024 for the leasing and maintenance of portable toilets in Wellfleet. The term of the contract will be July 1, 2023 – June 30, 2024. The Town has the discretion to renew your contract for two additional years if it deems to be in the best interest of the Town.

Attached is a copy of the agreement and bid specifications for your reference. The new total contract amount for fiscal year 2024 is \$142,262.49. Please sign the agreement and return electronically to me at your earliest convenience. A copy of the fully executed contract will be returned to you for your records.

The Town also requires evidence of coverage for general liability (limit \$1,000,000). Please forward a copy of your certificate of insurance with the Town listed as an additional insured and an updated W-9.

If you need additional information or if I can be of further assistance, please feel free to contact me.

Respectfully,

Rebecca Roughley, MCPPO

Rebecca Roughley
Assistant Town Administrator

CC: Town Accountant
Town Administrator

AGREEMENT FOR PORTABLE TOILETS
TOWN OF WELFLEET AND M.A. FRAZIER

The following provisions shall constitute an Agreement between the Town of Wellfleet, acting by and through its Owner, hereinafter referred to as "Town," and M.A. Frazier with an address of 10 Kear Circle, Wellfleet, MA 02667, hereinafter referred to as "Contractor", effective as of the 20th day of June 2023. In consideration of the mutual covenants contained herein, the parties agree as follows:

ARTICLE 1: SCOPE OF WORK:

The Contractor shall perform all work and furnish all services necessary to provide the Town with the leasing and maintenance of portable toilets including the scope of services set forth in Attachment A and Locations in Attachment B.

ARTICLE 2: TIME OF PERFORMANCE:

The Contractor shall complete all work and services required hereunder commencing July 1, 2023, through June 30, 2024. The contract may be renewed for up to two (2) additional years at the discretion of the Town of Wellfleet.

ARTICLE 3: COMPENSATION:

The Town shall pay the Contractor for the performance of the work outlined in Article 1 above the contract sum of \$142,262.49. The Contractor shall submit monthly invoices to the Town for services rendered, which will be due 30 days following receipt by the Town.

ARTICLE 4: CONTRACT DOCUMENTS:

The following documents form the Contract and all are as fully a part of the Contract as if attached to this Agreement or repeated herein:

1. This Agreement.
2. Amendments, or other changes mutually agreed upon between the parties.
3. All attachments to the Agreement.

In the event of conflicting provisions, those provisions most favorable to the Town shall govern.

ARTICLE 5: CONTRACT TERMINATION:

The Town may suspend or terminate this Agreement by providing the Contractor with ten (10) days written notice for the reasons outlined as follows:

1. Failure of the Contractor, for any reason, to fulfill in a timely and proper manner its obligations under this Agreement.
2. Violation of any of the provisions of this Agreement by the Contractor.
3. A determination by the Town that the Contractor has engaged in fraud, waste, mismanagement, misuse of funds, or criminal activity with any funds provided by this Agreement.

Either party may terminate this Agreement at any time for convenience by providing the other party written notice specifying therein the termination date which shall be no sooner than thirty (30) days from the issuance of said notice. Upon receipt of a notice of termination from the Town, the Contractor shall cease to incur additional expenses in connection with the Agreement. Upon such termination, the Contractor shall be entitled to compensation for all satisfactory work completed prior to the termination date as determined by the Town. Such payment shall not exceed the fair value of the services provided hereunder.

ARTICLE 6: INDEMNIFICATION:

The Contractor shall defend, indemnify and hold harmless the Town and its officers, agents, and all employees from and against claims arising directly or indirectly from the contract. Contractor shall be solely responsible for all local taxes or contributions imposed or required under the Social Security, Workers' Compensation, and income tax laws. Further, the Contractor shall defend, indemnify and hold harmless the Town with respect to any damages, expenses, or claims arising from or in connection with any of the work performed or to be performed under this Agreement. This shall not be construed as a limitation of the Contractor's liability under the Agreement or as otherwise provided by law.

ARTICLE 7: AVAILABILITY OF FUNDS:

The compensation provided by this Agreement is subject to the availability and appropriation of funds.

ARTICLE 8: APPLICABLE LAW:

The Contractor agrees to comply with all applicable local, state and federal laws, regulations and orders relating to the completion of this Agreement. This Agreement shall be governed by and construed in accordance with the law of the Commonwealth of Massachusetts.

ARTICLE 9: ASSIGNMENT:

The Contractor shall not make any assignment of this Agreement without the prior written approval of the Town.

ARTICLE 10: AMENDMENTS:

All amendments or any changes to the provisions specified in this Contract can only occur when mutually agreed upon by the Town and Contractor. Further, such amendments or changes shall be in writing and signed by officials with authority to bind the Town. No amendment or change to the contract provisions shall be made until after the written execution of the amendment or change to the Contract by both parties.

ARTICLE 11: INDEPENDENT CONTRACTOR:

The Contractor acknowledges and agrees that it is acting as an independent contractor for all work and services rendered pursuant to this Agreement and shall not be considered an employee or agent of the Town for any purpose.

ARTICLE 12: INSURANCE:

The Contractor shall be responsible to the Town or any third party for any property damage or bodily injury caused by it, any of its subcontractors, employees or agents in the performance of, or as a result of, the work under this Agreement. The Contractor and any subcontractors used hereby certify that they are insured for workers' compensation, property damage, personal and product liability. The Contractor and any subcontractor it uses shall

purchase, furnish copies of, and maintain in full force and effect insurance policies in the amounts here indicated.

General Liability

Bodily Injury Liability:	\$1,000,000 per occurrence
Property Damage Liability	\$ 500,000 per occurrence
(or combined single limit)	\$1,000,000 per occurrence

Automobile Liability

Bodily Injury Liability:	\$1,000,000 per occurrence
Property Damage Liability	\$ 500,000 per occurrence
(or combined single limit)	\$1,000,000 per occurrence

Workers' Compensation Insurance

Coverage for all employees in accordance with Massachusetts General Laws

Professional Liability Insurance

Minimum Coverage	\$1,000,000 per occurrence
------------------	----------------------------

Prior to commencement of any work under this Agreement, the Contractor shall provide the Town with Certificates of Insurance which include the Town as an additional named insured and which include a thirty day notice of cancellation to the Town.

ARTICLE 13: SEVERABILITY:

If any term or condition of this Agreement or any application thereof shall to any extent be held invalid, illegal or unenforceable by the court of competent jurisdiction, the validity, legality, and enforceability of the remaining terms and conditions of this Agreement shall not be deemed affected thereby unless one or both parties would be substantially or materially prejudiced.

ARTICLE 14: ENTIRE AGREEMENT:

This Agreement, including all documents incorporated herein by reference, constitutes the entire integrated agreement between the parties with respect to the matters described. This Agreement supersedes all prior agreements, negotiations and representations, either written or

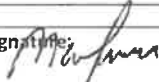
oral, and it shall not be modified or amended except by a written document executed by the parties hereto.

ARTICLE 15: COUNTERPARTS:

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be a counterpart original.

FY24 BID FORM

Wellfleet		FY24								
Location	ADA	Regular	Pumping/Cleaning	Dates	ADA Units per unit/per Service Day	Regular Units per unit/per Service Day	Overall Price - Entire Contract period	Additional Emergency Pumping	Special Event per Service Day	Additional Emergency Units per Service Day
Great Pond	1	1	daily	July 1 to September 9	56	56		175	175	175
Great Pond	1	1	daily	June 15 to June 30, 2024	56	56	9744	175	175	175
Indian Neck	1	1	daily	July 1 to September 9	56	56		175	175	175
Indian Neck	1	1	daily	June 15 to June 30, 2024	56	56	9744	175	175	175
Powers Landing	1	1	daily	July 1 to September 9	56	56		175	175	175
Powers Landing	1	1	daily	June 15 to June 30, 2024	56	56		175	175	175
Powers Landing	1		3 x week	September 10 to June 14, 2024	56	56	16408	175	175	175
Duck Harbor	1	1	daily	July 1 to September 9	56	56		175	175	175
Duck Harbor	1	1	daily	June 15 to June 30, 2024	56	56	14616	175	175	175
Duck Pond	1	0	daily	July 1 to September 9	56	56		175	175	175
Duck Pond	1	0	daily	June 15 to June 30, 2024	56	56	4872	175	175	175
Beach Office	1	2	daily	July 1 to September 9	56	56		175	175	175
Beach Office	1	2	daily	May 15 to June 30, 2024	56	56	19824	175	175	175
Mayo Beach	1	1	daily	July 1 to September 9	56	56		175	175	175
Mayo Beach	1	1	daily	June 15 to June 30, 2024	56	56	9744	175	175	175
Elementary School - playing field	1	0	3 x week	April 1-November 15	56	56	5488	175	175	175
Square Dance - Recreation	1		1 x week	July 1 to August 31, 2023	56	56	504	175	175	175
Lond Pond	2	1	daily	July 1 to September 9	56	56		175	175	175
Lond Pond	2	1	daily	June 15 to June 30, 2024	56	56	14616	175	175	175
Baker's Field (one w/int light)	2	1	daily	June 15 to October 31	56	56		175	175	175
Baker's Field	2	1	3x week	Nov 1 to Dec 1	56	56		175	175	175
Baker's Field	2	1	3x week	Apr 1-June 14	56	56		175	175	175
Baker's Field	1		Weekly	Dec 2-March 31	56	56		175	175	175
Baker's Field		Handwashing station	daily	June 30-August 31	HWS 80.35	HWS 80.35	36702.49	175	175	175

Vendor Signature: 
 5/17/2023

142262.49

FY25 BID FORM

Wellfleet					FY25						
Location	ADA	Regular	Pumping/Cleaning	Dates	ADA Units per unit/Per Service Day	Regular Units per unit/Per Service Day	Overall Price - Entire Contract period	Additional Emergency Pumping	Special Event per Service Day	Additional Emergency Units per Service Day	
Great Pond	1	1	daily	July 1 to September 10	56	56		175	175	175	
Great Pond	1	1	daily	June 15 to June 30, 2025	56	56	9856	175	175	175	
Indian Neck	1	1	daily	July 1 to September 10	56	56		175	175	175	
Indian Neck	1	1	daily	June 15 to June 30, 2025	56	56	9856	175	175	175	
Powers Landing	1	1	daily	July 1 to September 10	56	56		175	175	175	
Powers Landing	1	1	daily	June 15 to June 30, 2024	56	56		175	175	175	
Powers Landing	1		3 x week	September 10 to June 14, 2025	56	56	16520	175	175	175	
Duck Harbor	1	1	daily	July 1 to September 10	56	56		175	175	175	
Duck Harbor	1	1	daily	June 15 to June 30, 2025	56	56	14784	175	175	175	
Duck Pond	1	0	daily	July 1 to September 10	56	56		175	175	175	
Duck Pond	1	0	daily	June 15 to June 30, 2025	56	56	4928	175	175	175	
Beach Office	1	2	daily	July 1 to September 10	56	56		175	175	175	
Beach Office	1	2	daily	June 15 to June 30, 2025	56	56	21555	175	175	175	
Mayo Beach	1	1	daily	July 1 to September 10	56	56		175	175	175	
Mayo Beach	1	1	daily	June 15 to June 30, 2025	56	56	9856	175	175	175	
Elementary School - playing field	1	0	3 x week	April 1-November 15	56	56	5488	175	175	175	
Square Dance - Recreation	1		1 x week	July 1 to August 31, 2023	56	56	448	175	175	175	
Lond Pond	2	1	daily	July 1 to September 10	56	56		175	175	175	
Lond Pond	2	1	daily	June 15 to June 30, 2025	56	56	14784	175	175	175	
Baker's Field (one w/int light)	2	1	daily	June 15 to October 31	56	56		175	175	175	
Baker's Field	2	1	3x week	Nov 1 to Dec 1	56	56		175	175	175	
Baker's Field	2	1	3x week	Apr 1-June 14	56	56		175	175	175	
Baker's Field	1		Weekly	Dec 2-March 31	56	56		175	175	175	
Baker's Field		Handwashing station	daily	June 30-August 31	HWS 80.35	HWS 80.35	42044.54	175	175	175	

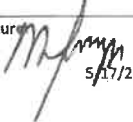
Vendor Signature:

M. [Signature]
5/17/2023

150119.54

FY26 BID FORM

Wellfleet		FY26				ADA Units per unit/per Service Day	Regular Units per unit/per Service Day	Overall Price - Entire Contract period	Additional Emergency Pumping	Special Event per Service Day	Additional Emergency Units per Service Day
Location	ADA	Regular	Pumping/Cleaning	Dates							
Great Pond	1	1	daily	July 1 to September 9	56	56		175	175	175	
Great Pond	1	1	daily	June 15 to June 30, 2026	56	56	9,744	175	175	175	
Indian Neck	1	1	daily	July 1 to September 9	56	56		175	175	175	
Indian Neck	1	1	daily	June 15 to June 30, 2026	56	56	9,744	175	175	175	
Powers Landing	1	1	daily	July 1 to September 9	56	56		175	175	175	
Powers Landing	1	1	daily	June 15 to June 30, 2026	56	56		175	175	175	
Powers Landing	1		3 x week	September 10 to June 14, 2026	56	56	16,408	175	175	175	
Duck Harbor	1	1	daily	July 1 to September 9	56	56		175	175	175	
Duck Harbor	1	1	daily	June 15 to June 30, 2026	56	56	13,606	175	175	175	
Duck Pond	1	0	daily	July 1 to September 9	56	56		175	175	175	
Duck Pond	1	0	daily	June 15 to June 30, 2026	56	56	4,648	175	175	175	
Beach Office	1	2	daily	July 1 to September 9	56	56		175	175	175	
Beach Office	1	2	daily	May 15 to June 30, 2026	56	56	23,470	175	175	175	
Mayo Beach	1	1	daily	July 1 to September 9	56	56		175	175	175	
Mayo Beach	1	1	daily	June 15 to June 30, 2026	56	56	9,744	175	175	175	
Elementary School - playing field	1	0	3 x week	April 1-November 15	56	56	5,432	175	175	175	
Square Dance - Recreation	1	0	1 x week	July 1 to August 31, 2023	56	56	448	175	175	175	
Long Pond	2	1	daily	July 1 to September 9	56	56		175	175	175	
Long Pond	2	1	daily	June 15 to June 30, 2026	56	56	17,606	175	175	175	
Baker's Field (one w/int light)	2	1	daily	June 15 to October 31	56	56		175	175	175	
Baker's Field	2	1	3x week	Nov 1 to Dec 1	56	56		175	175	175	
Baker's Field	2	1	3x week	Apr 1-June 14	56	56		175	175	175	
Baker's Field	1		Weekly	Dec 2-March 31	56	56		175	175	175	
Baker's Field			Handwashing station	daily	HWS 80.35	HWS 80.35	37,094.49	175	175	175	
Vendor Signature								147,944.49			


5/17/2023

Attachment B

CERTIFICATE of NON-COLLUSION AND TAX COMPLIANCE

Pursuant to Massachusetts General Law, Chapter 7, Section 22 (20), I certify under penalties of perjury that this bid/proposal is in all respects bona fide, fair, and made without collusion or fraud with any person. As used in this certification the word "person" means any natural person, joint venture, partnership, corporation or other business or legal entity.

Pursuant to MGL Chapter 62C, Section 49A, I certify under the penalties of perjury that I, to the best of my knowledge and belief, have complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

Company: M.A. FRAZER, INC

Address: 10 KEM COUVE

Wellfleet, MA 02667

Signature of Individual Signing
Bid, or Corporate Officer: M/M

Telephone Number: 508 349-7968

Social Security Number
Or Federal Identification Number: 04 308 54 25

Date: 5/17/23

**Any person or corporation which fails to execute this document
will be considered a non-responsive Proposer
and will be rejected pursuant to MGL Chapter 30B.**

ATTACHMENT C
REFERENCE FORM

Proposer: M.A. Frazee

Reference: TOWN OF TRUM Contact: JASON COSTA
Address: TOWN HALL RD Phone: 302 342-7961
TRM Email: N/A

Description and date(s) of supplies or services provided: _____

Reference: CC NAT. PARK SUP. Contact: JIM DUFFO
Address: 100 MARINE RD Phone: 508 957-0707
WELLFLEET, MA Email: _____

Description and date(s) of supplies or services provided: _____

Reference: TOWN OF HAVENH Contact: SEM GMSALUS
Address: 183 OAK ST Phone: 508-367-0153
HAVENH Email: _____

Description and date(s) of supplies or services provided: _____

attach additional sheets if necessary

CERTIFICATION AS TO PAYMENT OF STATE TAXES

Pursuant to Chapter 62C of the Massachusetts General Laws, Section 49A(b), I,

MAT KRAZEW, authorized signatory for the Contractor do hereby certify under the pains and penalties of perjury that said Contractor has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

043085423
Social Security Number or
Federal Identification Number

M/K
Signature of Individual or
Corporate Name

By: M/K
Corporate Officer
(if applicable)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

CONTRACTOR

TOWN OF WELLFLEET

By

by its Town Administrator

MATHEW D. KRAZEW, owner
Printed Name and Title

Printed Name and Title

Approved as to Availability of Funds:

Town Accountant
530276/999999/0003

(\$ _____)
Contract Sum

**TOWN OF WELLFLEET
APPLICATION FOR PERMIT TO USE TOWN OWNED PROPERTY**

Applicant

2023 State of Wellfleet Harbor Conference/ Bill Iacuesssa / Jenette Kerr, Mass Audubon Wellfleet Bay

Affiliation or Group

Wellfleet-based volunteer community group with following co-sponsors: Mass Audubon's Wellfleet Bay Wildlife Sanctuary; Friends of Herring River; Wellfleet Conservation Trust; Wellfleet Natural Resources Advisory Board; Center for Coastal Studies.

Conference organizing committee members:

Abigail Franklin Archer, Conference Coordinator
Barbara Brennessel
John Duane
Mark Faherty
Bob and Kathy Hubby
Bill Iacuesssa
Jenette Kerr
Melissa Lowe
John Portnoy
Dale Rheault
Patti Elliott
Philip Tabas
Christa Drew

Telephone Number

508 349-9185 landline 508 364-7248 cell (Bill Iacuesssa)

Mailing Address:

Jenette Kerr/ P.O. Box 236 / Mass Audubon Wellfleet Bay Wildlife Sanctuary; Wellfleet, MA 02667

Email address

bill.iacuesssa@gmail.com

Town Property to be used (include specific area)

Main meeting room of the Adult Community Center. We will also be serving coffee and muffins (brought from outside)

Date(s) and hours of use:

11/3/2023, PM for one hour to set up and test equipment; 11/4/2023 7:30am-1pm (event is 9am-12noon).

Describe activity including purpose, number of persons involved, equipment to be used, parking arrangements, food/beverage service, etc. Also please indicate if fees will be charged by applicant.

The State of Wellfleet Harbor Conference, which is marking its 21st year, is free. This event features local and regional researchers and scientists presenting on topics relevant to Wellfleet Harbor and its environmental and economic vitality. Last year we held the conference at the Adult Community Center which was very successful. By preregistering, we were able to keep attendance below the room capacity. We were also able to offer a hybrid alternative using the room's technical equipment and a technician designated by the ACC. The hybrid attendees number at least as many who were there in person. Again, this year we are requesting a technician to oversee the webinar part of the meeting. We are able to use our own PC laptop and projector but this isn't crucial as long as we have technical help with any on-site equipment.

Describe any Town services requested (police details, DPW assistance, etc.)

Technician to execute the technical aspects of the meeting.

NOTE TO APPLICANTS: All applications must be accompanied by a non refundable \$50.00 processing fee. Applications must be received at least 30 days prior to the first event date to insure that all reviews can be completed prior to the event. This application is only for permission to use Town property. Any additional licenses, such as food service permit, etc., may be required and it is the applicant's responsibility to secure the same.

Action by the Board of Selectmen:

_____ Approved as submitted

_____ Approved with the following condition(s): _____

_____ Disapproved for following reason(s): _____

Date: _____

Processing Fee: _____ \$50.00

Fee: _____

(over)

APPLICANT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND INSPECTIONS

Health/Conservation Agent: N/A Comments/Conditions: Permits/Inspections needed:	Inspector of Buildings: N/A Comments/Conditions: Permits/Inspections needed:
---	--

Police Department: ok - Deputy Chief Comments/Conditions: Kevin LaRocco	Fire Department: ok - Chief Pauley Comments/Conditions:
---	--

DPW: ok - Jay Norton Comments/Conditions	Community Services Director: ok - Suzanne Comments/Conditions:
---	---

Harbormaster: N/A Comments/Conditions	Shellfish: N/A Comments/Conditions
--	---

Recreation: N/A Comments/Conditions	Town Administrator: Comments/Conditions
--	---

TOWN OF WELLFLEET

WELLFLEET POLICE

OFFICERS UNION

MASS COP LOCAL 326A

JULY 1, 2023 THROUGH JUNE 30, 2026

TABLE OF CONTENTS

<u>ARTICLE</u>	<u>PAGE</u>
ARTICLE 1: RECOGNITION	3
ARTICLE 2: NONDISCRMNATION	3
ARTICLE 3: MANAGEMENT RIGHTS	3
ARTICLE 4: PAYROLL OF DUES	4
ARTICLE 5: DEDUCTION OF AGENCY SERVICE FEE	5
ARTICLE 6: JOB SECURITY	5
ARTICLE 7: NO STRIKES	6
ARTICLE 8: GRIEVANCE and ARBITRATION PROCEDURE	6
ARTICLE 9: HOURS of WORK-OVERTIME - COMPENSATORY TIME	8
ARTICLE 10: SENIORITY	10
ARTICLE 11 : UNIFORM ALLOWANCE	11
ARTICLE 12: IN-SERVICE TRAINING	12
ARTICLE 13: VACATIONS	14
ARTICLE 14: HOLIDAYS	15
ARTICLE 15: LEAVES OF ABSENCE	16
ARTICLE 16: INSURANCE	18
ARTICLE 17: SAFETY COMMITTEE	18
ARTICLE 18: UNION REPRESENTATIVES	18
ARTICLE 19: LABOR MANAGEMENT MEETINGS	19
ARTICLE 20: DURATION	19
ARTICLE 21 : TIME OFF FOR BARGAINING	20
ARTICLE 22: UTILIZATION OF PRIVATE MOTOR VEHICLE	20
ARTICLE 23: PRIVATE DUTY	20
ARTICLE 24: PAY SCALE	21
ARTICLE 25: POLICE PAY INCENTIVE PROGRAM QUINN BILL	22
ARTICLE 26: LONGEVITY	22
ARTICLE 27: REDUCTION IN FORCE	23

ARTICLE 28: MISCELLANEOUS	24
ARTICLE 29: LIGHT DUTY	25
ARTICLE 30: DRUG TESTING PROGRAM	27
ARTICLE 31 : WELLNESS PROGRAM	29
ARTICLE 32: *EMT STPEND REMOVED*	29
ARETICLE 33: *ACO REMOVED*	29
ARTICLE 34 BODY WORN CAMERA	29
ATTACHEMENT A	30
NOTE A	30

ARTICLE 1: RECOGNITION

Section 1. The Town hereby recognizes the Wellfleet Police Officers Union, consisting of all regular full-time sergeants, patrolmen, detective, and prosecutor, but excluding seasonal employees, part-time employees, special officers, civilians, the Chief of Police, Deputy Chief, Lieutenant, and all other employees of the Town of Wellfleet.

Section 2. Regular full-time employees mean all employees who average a minimum of thirty-five (35) hours per week over a 12-month period during the contract term.

ARTICLE 2: NONDISCRIMINATION

Neither the Union nor the Town shall discriminate against any employee on the basis of race, creed, color, religion, sex, national origin, age, sexual orientation, membership or non-membership in the Union.

ARTICLE 3: MANAGEMENT RIGHTS

Section 1. Subject to the express provisions of this Agreement and applicable Federal or State Statutes, the Town and its Selectmen and Police Chief reserve and retain all of the lawful powers and customary rights and authority of municipal management to manage and control the Police Department, to determine the methods and means by which the operations of said Department will be accomplished in any manner deemed in the best interest of the inhabitants of the Town, including but not limited to:

The right to appoint, promote, assign, transfer, to issue reasonable rules and regulations and to discipline and discharge employees.

Section 2. Nothing in this Agreement shall be construed to abridge or to relieve the Chief of any powers granted under Chapter 41 , Section 97A of the General Laws.

Section 3. This Agreement contains the complete expression of the parties on wages, hours and terms and conditions of employment. Notwithstanding any contrary provisions of this Agreement, the Union on its own behalf and on behalf of the employees it represents, agrees that collective bargaining shall be the exclusive procedure concerning mandatory subjects of bargaining under General Laws Chapter 150E.

Section 4. Nothing in this agreement shall limit the Town in the exercise of its function of management and in the direction and supervision of the Town's business, except were such rights are specifically modified or abridged by the terms of this agreement. This includes, but is not limited to the right to:

Add or eliminate departments, require or assign overtime, increase or decrease the number of jobs, change process, assign work and work to be performed, schedule shifts and hours to work and lunch or break periods, hire, suspend, demote, discipline or discharge, transfer or promote, layoff because of lack of work or other legitimate reasons, establish rules, regulations, job descriptions, policies and procedures, conduct orderly operations, establish new jobs, abolish and change existing jobs, determine where, when, how and by whom work will be done.

ARTICLE 4: PAYROLL DEDUCTION OF UNION DUES

Section 1. Under the authority of General Laws, Chapter 180, Section 17A, as amended by Chapter 1078 of the Acts of 1973, the Town agrees that Union dues determined in accordance with the Constitution and By-Laws of the Union shall be deducted monthly from the salary of any employee in the bargaining unit who signs and remits to the Town a form authorizing such deduction. Such authorization shall remain in full force and effect until the employee ceases to be employed in the bargaining unit, or, if the employee remains in such employment, until sixty (60) days after notice in writing by the employee to the Town withdrawing the authorization, with a copy there of filed with the Treasurer of the Union.

Section 2. The Union agrees to indemnify the Town for any expenses, damages, or other financial loss, which the Town may be required to pay or suffer by an arbitrator, administrative agency, or court of competent jurisdiction as a result of the Town's compliance with this Article.

ARTICLE 5: DEDUCTION OF AGENCY SERVICE FEE

Section 1. In accordance with the provisions of General Laws, Chapter 180, Section 17G, as amended by Chapter 1078 of the Act of 1973, the Town agrees that effective thirty (30) days after the execution date of this agreement or thirty (30) days following the commencement of employment, whichever is later, each employee who elects not to join or maintain membership in the Union shall be required to pay as a condition of employment, a service fee to the union in the amount that is proportionately commensurate with the cost of collective bargaining and contract administration, but not to exceed the amount of periodic dues paid by employees who are members of the Union.

Section 2. As in the case of check off of Union dues, the employee may consent in writing to the authorization of the deduction of agency service fee from his/her wages and to the designation of the Union as the recipient thereof. Such consent shall be on a form, acceptable to the Town, signed by the employee. An employee may withdraw said authorization by giving at least a sixty (60) day notice to the Town.

Section 3. The union agrees to indemnify the town for damages or costs in complying with this article.

ARTICLE 6: JOB SECURITY

Section 1. The twelve (12) months of employment following the date of initial appointment shall be considered a probationary period. A regular full-time employee covered by this Agreement with more than twelve (12) months of continuous active service in the department shall not be disciplined or discharged except for just cause. Probationary employees may be terminated without any requirement on the part of the Town to document just cause reason for termination. In the event an employee does not serve twelve (12) consecutive months for any reason, the Town may extend such employee's probationary period the amount of time equivalent to such time the employee was absent resulting therefore in a probationary period equivalent to twelve (12) months of time actually worked.

ARTICLE 7: NO STRIKE CLAUSE

Section 1. It shall be unlawful for any employees to engage in, induce or encourage any strike, work stoppage, slowdown or withholding of services by such employees. Any employees violating said provisions shall be subject to disciplinary action including discharge.

Section 2. The Union will not instigate nor condone any such illegal action as specified in Section 1 and will take all necessary steps to stop such action and make every move to return the employees to work.

ARTICLE 8: GRIEVANCE AND ARBITRATION PROCEDURE

Section 1. Any grievance or dispute which may arise between the parties concerning the application, meaning or interpretation or any express term of this agreement, shall be settled in the following manner:

Step 1. The Union steward, with or without the aggrieved employee, shall submit the grievance in writing to the Chief or his / her designee within fourteen (14) calendar days, excluding holidays and weekends, after the employee knew or should have known of the occurrence or failure of occurrence of the incident upon which the grievance is based. The Chief or his/her designee shall have fourteen (14) calendar days to respond to said grievance.

Step 2. If the grievance has not been resolved after its submission to the Chief or his/her designee, it shall be submitted to the Town Administrator or his / her designee in writing within fourteen (14) calendar days after the response of the Chief or his / her designee, or the date on which the answer is due, whichever date is earlier. The Town Administrator or his/her designee shall have fourteen (14) calendar days to respond to said grievance.

Step 3. If the grievance has not been resolved after its submission to the Town Administrator or his / her designee, it shall be submitted to the Board of Selectmen in writing within fourteen (14) calendar days after the response of the Town Administrator or his / her designee, or the date on which the answer is due, whichever date is earlier. Within thirty (30) calendar days of receipt of the

grievance, the Board of Selectmen, or their designee, shall hold a hearing, and shall render a decision within twenty-one (21) calendar days after the hearing. If the grievance has not been resolved by the Board of Selectmen, the Union may submit the grievance to arbitration within fifteen (15) calendar days following the Board of Selectmen's answer or the date on which said answer is due, whichever date is earlier, with a copy of the submission letter to the Board of Selectmen.

Section 2. Time Limits. If at the end of fourteen (14) calendar days following the occurrence of any grievance or the date when any employee affected by the grievance should have knowledge of its occurrence, whichever is later, the grievance shall not have been presented at Step 1 of the procedures set forth herein, the grievance shall be deemed to have been waived. Furthermore, any grievance in process under such procedure shall also be deemed to have been waived if the action required to process the said grievance to the next step in the procedure by the Union shall not have been taken within the time specified thereof above. Any time limits herein set forth may be waived and/or extended by mutual agreement of the parties.

Section 3. The Arbitration shall be conducted by the American Arbitration Association under its existing rules of procedure. The decision of the arbitrator shall be final and binding upon the parties except that the arbitrator shall make no decision, which alters, amends, adds to or retracts from this Agreement or which modifies or abridges the management rights and prerogatives of the Town. The Town and the Union shall share costs of the arbitration proceedings, except for transcripts requested by a party, equally.

Section 4. Notwithstanding any contrary provisions of this Agreement, matters concerning the discipline or discharge of a probationary employee shall not be subject to the grievance and arbitration provisions of this Article.

Section 5. All tenured employees shall have their choice of arbitration or Civil Service procedure. The Board of Selectmen agrees to abide by the employee's choice.

Section 6. All full-time officers, with over twelve months full-time service but less than five years full-time service, who are terminated, discharged, or removed, shall be entitled to the following: The in-place grievance process as outlined by the Town of Wellfleet and Union collective bargaining agreement, which includes a hearing before an arbitrator as outlined in Article 8 (Grievance and Arbitration Procedure) of the contract.

ARTICLE 9: HOURS OF WORK - OVERTIME - COMPENSATORY TIME

Section 1. Work Week. The Wellfleet Police Officers & Sergeants shall work a so-called 4 + 2 work schedule consisting of four days of work and two days off. The schedule, which shall be prepared four (4) weeks in advance, shall take a twelve (12) week cycle to complete an average 40-hour week. Each day's work will consist of eight hours and fifteen minutes. The Detective/Prosecutor shall work a 5 - 2, 5 - 2, - - 3 schedule unless altered by mutual agreement between the Chief and the detective, detective/prosecutor, or prosecutor. The assigned Animal Control Officer (Patrolman) shall work a so called 4 + 2 schedule consisting of either days or evening by mutual agreement with the Chief.

Section 2. Overtime. Any work performed in excess of a normal work day or normal work week will be paid at one and one-half (1 1/2) the hourly rate, except the rate will be at double-time on Holidays, at the base hourly rate of pay (therefore, overtime rate) calculated on a salary which shall be divided by the actual number of hours worked per year, unless a leap year, which shall be calculated appropriately, and, except that swapped shifts shall not increase the cost to the Town and shall be subject to the approval of the Chief or his designee. Overtime requests submitted shall be rounded out to the nearest quarter (1/4) hour. In addition, employees will obey the Chiefs order relative to completing reports and associated paperwork at the end of an assigned shift. Officers who violate such order may be called back to complete appropriate reports at no cost to the Town. Overtime shall be assigned equitably and distributed impartially among all full-time employees of the bargaining unit. A list shall be established by the Chief and posted within the Police Station showing overtime distributed. The Union shall have the right to examine the list at its option. Overtime refused shall not be considered overtime worked for the purpose of the above-described distribution. If no full-time employees in the bargaining unit customarily assigned the same duties take the vacant shift, it may be offered to employees outside the bargaining unit, including on-duty police personnel. Whenever deemed necessary by the Chief or his designee, employees may be required to perform overtime services. Overtime rates will not be pyramided. When more than one overtime rate applies, only the highest single rate will be paid.

Section 3. Call-Back Call In. If any employee is called into work or called back into work except as specified in Section 2 above, he/she shall receive time and one-half (1 1/2) hourly rate for a minimum of four (4) hours. Callback does not include any scheduled event or scheduled training. Any other unscheduled work will be considered a callback.

Section 4. Court Time. Appearance in any court for the government within the Commonwealth as a result of employment with the Town and outside the Commonwealth with the approval of the Chief, at other than normal working hours shall be compensated for one and one-half (1 1/2) times the hourly rate of pay, but in no event shall an employee receive less than four (4) hours pay for such appearance.

Section 5. Compensatory Time. Compensatory time off in lieu of overtime payments may be granted at the same rate of time and one-half (1 1/2) with the approval of the Chief. Compensatory time taken under the provisions of this contract, although calculated at time and one half for each hour of overtime worked, is actually paid at the regular base salary appropriation. Upon the death of any employee who is covered by this Article, and has accumulated compensatory time, the amount of compensatory time shall be paid at the prevailing rate in the manner provided by General Laws, Chapter 41, Section 111I.

Section 6. Compensatory time allowed for department members shall be limited to sixty four (64) hours per member at any one time.

Section 7. Public Safety Overtime rate: Any Officer who, due to public safety concerns is forced to work more than 16 patrol hours in a row shall receive double-time for all time over the 16th patrol hour until a break in duty.

ARTICLE 10: SENIORITY

- Section 1. Seniority shall mean an employee's length of continuous service with the Town as full-time patrolman or sergeant, or the detective/prosecutor appointed by the Chief.
- Section 2. Seniority within the position shall be used to determine vacation assignment and bidding of working schedules. Patrolmen cannot work a shift for more than four consecutive bids (the bid starting on 12/01/2004 will be counted as the first bid). If a patrolman has to change a shift, he/she will be entitled to the next available shift according to seniority. Sergeants will receive shift bid by seniority with the following adhered to. If four (4) officers hold the rank of Sergeant, then between *only* the two (2) most junior Sergeants, the most junior Sergeant *may* "bump" the second most junior sergeant for one (1) shift bid (3 months) after having been on a particular shift for three (3) consecutive bids (9 months) in a row. If the rank of Sergeants is reduced from the current number of four (4) positions, then the above language will be renegotiated.
- Section 3. A seniority list shall be established and posted in a conspicuous place within the police station. This list shall be furnished annually on July 1st by the Chief of Police and updated by the Chief of Police.
- Section 4. Seniority shall not be affected by vacation, sick leave, military leave, injury time sustained in the line of duty, or any other temporary leave of absence agreed upon between the Chief of Police and the employee.
- Section 5. Badge numbers shall be assigned with the lowest number to the most senior officer.
- Section 6. Time off resulting from a suspension will be deducted from the employee's seniority. A suspension that is overturned will not affect an employee's seniority. A member of the bargaining unit whose suspension is overturned shall be compensated for all lost wages, earnings, and benefits.

ARTICLE 11: UNIFORM ALLOWANCE

Section 1. There shall be a uniform allowance of twelve hundred dollars (\$1,200) in each year of the contract. Said amount shall be either paid in a check on the second payday in July to the employee or the employee may elect to provide the department with receipt for purchases for uniforms, uniform gear, police related equipment and clothing that shall not exceed the allotted amount. Each employee shall notify the department in writing as to the method chosen regarding their uniform allowance by July 1st. Non-notification by an employee shall constitute a request for payment. Said allowance will be used for the purchase of uniforms, maintenance (see list of uniform article) and cleaning such uniforms. Any change of style, type or color of the uniform be at the expense of the Town, unless the uniform change is mutually agreed upon by the department members and the Chief.

Section 2. The Chief retains the right to order officers to replace worn or faded items of clothing. The Chief will have the right to choose vendor, inspect all purchases, and otherwise assure uniformity and control of the expenditures. The Chief shall have the authority to approve all purchases,

Section 3. Each new full-time employee entering the service of the Wellfleet Police Department shall receive the allotted uniform allowance for that year, for the purpose of purchasing uniforms. In addition, when a new full-time police officer is hired, the Town of Wellfleet, shall supply him or her at the Town's expense, all equipment needed to attend an MPTC police academy, and all equipment needed to work as a Wellfleet Police Officer. Uniforms and equipment provided will be at the discretion of the Chief of Police.

Uniforms and equipment shall be returned to the Town upon termination of employment or whenever so ordered by the Police Chief.

Section 4. Any third-party reimbursement for uniform items damaged or stained in the line of duty shall be payable directly to the employee without deduction from the uniform allowance, provided said employee produces a receipt indicating he has applied said proceeds towards cleaning or repairing or replacing the damaged uniform article.

ARTICLE 12: IN-SERVICE TRAINING

Section 1. Basic Police Academy. Employees attending the "Basic Police Academy" (Referred to as the "Academy") shall be paid in accordance with Massachusetts General Laws, Chapter 41) Section 96B. The employee shall in no event be entitled to compensation exceeding their regular daily or weekly salary regardless of whether such Academy attendance involves travel, overnight residence, or time spent studying or in preparation for course work. However, the employee will be entitled to reasonable expenses as determined by the Chief of Police or his designee on a case-by-case basis. The hours of work at the Academy will be determined by the Academy. The Town will be responsible for Academy fees.

Section 2. In-Service. In-Service Training is defined as that annual training mandated by Massachusetts General Laws for municipal police officers, under Chapter 41, Section 96B:

- Travel to and from the In-Service Training site is not compensable with overtime unless the location of the training venue is off-Cape.
- The Chief may authorize the use of a department vehicle for travel to and from the In-Service Training site. Use of such a vehicle is for the convenience of the officer(s) and is not required.
- Should circumstances warrant, the employee may be entitled to reasonable expenses with the approval of the Chief of Police or his designee.
- Members are eligible for reimbursement for lunch, subject to the same meals payment policy in effect for other Town of Wellfleet employees.

Section 3. Recurrent State Mandated Training. This shall include but not be limited to Breathalyzer, CPR, EMT, or other re-certifications as required by the State or Chief of Police and shall be attended at the direction of the Chief of Police or his designee.

- Travel to and from the training site is not compensable with overtime.
- The Chief may authorize the use of a department vehicle for travel to and from the training site. Use of such a vehicle is for the convenience of the officer(s) and is not required.

- Department members shall be subject to the same meals payment policy in effect for other Wellfleet Town Employees.
- Should circumstances warrant, the employee may be entitled to reasonable expenses with the approval of the Chief of Police or his designee.

Section 4. Other Training. Other Training sessions, which are authorized by the Chief of Police, and which involve travel, overnight residence, or time spent studying or in preparation for course work. The Town agrees to maintain its past practice for out-of-town training sessions whereby officers will have their expenses of food, travel, and hotel paid for by the Town if authorized to attend such training courses by the Chief.

- Travel to and from the training site is not compensable with overtime.
- Officers, although assigned to a 4-2 work shift, when attending out of town training courses which last for five (5) days, will be compensated for the 5th day. The compensation will either be an administrative day off (straight time not calculated at 1 1/2) or overtime, which will be at the discretion of the chief.
- The Chief may authorize the use of a department vehicle for travel to and from the training site. Use of such a vehicle is for the convenience of the officer(s) and is not required.
- Department members shall be subject to the same meals payment policy in effect for other Wellfleet Town employees.
- The Town shall be responsible for arranging and paying for hotel/motel accommodations for the department members and employees.
- Should circumstances warrant, the employee may be entitled to reasonable expenses with the approval of the Chief of Police or his designee.

In the event that there is an amendment to Massachusetts General Laws, Chapter 41 , Section 96B, or in the event that any finding required by this Article is not approved by the Town Meeting from time to time, the parties agree at the request of either party to promptly commence re-negotiation of this Article.

ARTICLE 13: VACATIONS

Section 1. Vacation days to be accrued on the following basis for all regular full-time employees:

Hire to 5 years of service	1 day per month	to a maximum of 20 working days
6 to 10 years of service	1 1/4 days per month	to a maximum of 20 working days
11 to 15 years of service	1 1/2 days per month	to a maximum of 20 working days
16 to 20 years of service	1 3/4 days per month	to a maximum of 20 working days
21 or more years of service	2 days per month	to a maximum of 20 working days

On July 1st, no more than 20 working days can be carried over into the new fiscal year, less depending on the number of years of service outlined in section 1.

Vacation days begin to accrue from the first month of service.

Vacation days will not be granted to temporary employees. Employees may take their vacation on a weekly basis upon the approval of the Chief in the following manner:

1. Requests for a vacation within a re-established period of time. The time frames will be tied in with the 12-week bid cycle. For the upcoming bid, employees may submit vacation request for a two-week period between the 14th and week before the bid's commencement. The Chief or his/her designee will approve these requests on a seniority basis prior to the week of the bid's commencement.

For example:

14 weeks prior to the bid's commencement;	Vacation request open
12 weeks prior to the bid's commencement	Vacation request close
10 weeks prior to the bid's commencement	Approval / Denial due

2. Vacation request after the pre-established request periods: The Chief or his/her designee will approve the vacation requests submitted after the above-mentioned time frame on a first come first served basis, that is not subject to the seniority rules defined above. Approval or denial of said request shall be given to the employee within ten (10) working days of submittal.
3. Vacation request prior to the pre-established request periods: The Chief will approve vacation requests submitted prior to the above-mentioned time frames for special circumstances (i.e. wedding, travel, etc.) on a case-by-case basis. Employees may take a maximum of four (4) days of vacation during the summer months with the approval of the Chief. Notwithstanding the foregoing, the Police Chief reserves the right to

limit the number of officers on vacation at any one time and to deny vacation requests at such time as in his opinion may conflict with the needs of the Town.

Section 2. An employee who is laid off, retired or honorably resigns from the services of the Town for any reason other than for cause shall be compensated of accrued unused vacation.

Section 3. Upon the death of an employee who is eligible for vacation under this article payment shall be made in an amount equal to the vacation time at the prevailing rate in the manner provided by General Laws, Chapter 41 , Section 111I

ARTICLE 14: HOLIDAYS

All regular full-time employees shall be entitled to thirteen (13) paid Holidays. Holidays will be observed on the day that the Holiday occurs. The Holidays referred to in this Article are listed below:

New Year's Day	Labor Day
Martin Luther King Day	Columbus Day
Washington ' s Birthday	Veteran's Day
Patriot's Day	Thanksgiving Day
Memorial Day	Christmas Day
Independence Day	Juneteenth
	The Day after Thanksgiving

and any other Holiday granted by the Board of Selectmen to all other Town employees or holidays passed by the State Legislature.

When a Holiday occurs, the employee has the option of:

- 1) Requesting and, if granted, receiving the Holiday off, or;
- 2) Receiving the Holiday day's pay, or;
- 3) Receiving a day-off in lieu of the Holiday, to be taken off with the approval of the Chief of Police or his designee.
- 4) Holidays saved shall be taken off prior to the end of the fiscal year in which the Holiday occurred or the employee shall be paid for the Holiday with no right for a grievance.

If an employee is absent due to sick leave on the workday immediately preceding or following a holiday, or on the actual holiday itself, the employee may be required to submit a physician's certification prior to receiving any holiday pay.

ARTICLE 15: LEAVES OF ABSENCE

Section A. Sick Leave. Every full-time employee shall accrue sick leave at the rate of one and one-quarter (1 1/4) days for each month of actual service. Sick leave may be used where said leave is caused by sickness or injury not incurred in the course of his employment. Sick leave may be used for illness or disability arising out of or caused by childbirth. Employees who are absent from duty on account of sick leave status for more than six (6) continuous months will not receive additional uniform allowance or holiday pay while on leave and will not continue to accrue vacation while on leave. Employees who are absent from duty on account of injured on-duty status shall receive their regular weekly pay but will not receive additional uniform allowance or holiday pay while on leave and will not continue to accrue vacation while on leave.

1. Sick leave not used in the year in which it accrues, together with any accumulated sick leave standing to the employee's credit on the effective date of this Agreement and not used in the current year, may be accumulated for use in a subsequent year. Upon an employee's honorable discharge from the Wellfleet Police Department, i.e., medical retirement, honorable resignation, with less than 10 years of service with the town will compensate the employee at a rate of ten percent (10%) of the accumulated sick leave at the prevailing rate. But not more than \$5,000 dollars. Members honorably discharged from the Wellfleet Police Department, i.e., retirement, medical retirement, honorable resignation, with ten or more years of service with the Town will be compensated at twenty-five (25%) of the prevailing rate, but not more than \$10,000 dollars.

2. When absence for sick leave is for a period of three (3) days, an employee shall, if requested by the Chief, file a Physician's Certificate of Disability signed by a regularly licensed and practicing physician before the employee shall be entitled to sick leave benefits. The employee will fully cooperate with the Town in being examined by a physician or clinic designated by the Police Chief as a condition of receiving sick leave benefits, said examination to be paid for by the Town.

3. An employee who is receiving Disability Compensation may take so much of the sick leave allowance to which he or she is entitled as, when added to the amount of any disability compensation, will result in the payment of full salary for any particular work week.

4. The Chief may, in his sole discretion, authorize the use of sick leave by an employee in the event of a serious illness of a member of the employee's immediate family. In the event that the sick leave authorized hereunder exceeds three (3) days, the employee, if requested by the

Chief, shall file a physician's certificate of disability as that relates to a member of the family who is seriously ill. Such certificate shall state that the employee is needed for assistance.

5. The immediate family shall mean spouse, father, mother, brother, sister, child, stepchild, mother-in law, father-in-law, son-in-law, daughter-in-law, spouse's sister, spouse's brother, grandmother, grandfather, grandchildren, stepfather, stepmother, half- brother, and half-sister.

6. Upon the death of an employee who is covered by this article and who has accumulated sick leave, payment shall be made in an amount equal to ten percent of the accumulated sick leave at the prevailing rate in the manner provided by General Laws, Chapter 41, Section 111I.

Section B. Death Leave

Death Leave. In the event of the death of a member of the immediate family of an employee, the employee will be granted leave without loss of pay. The immediate family shall mean spouse, father, mother, brother, sister, child, stepchild, mother-in-law, father-in-law, son-in-law, daughter-in-law, spouse's sister, spouse's brother, grandmother, grandfather, grandchild, stepfather, stepmother, half-brother, half-sister. Leave under this section shall not exceed four (4) consecutive days.

Section C. Injury

Injury while in the line of duty shall be paid by the Town under Chapter 41, Section 100, et al., of the Massachusetts General Laws.

Section D. Other Leaves of Absence.

Leaves of absence without pay for limited periods not to exceed one (1) year, may be granted by the Chief with the approval of the Board of Selectmen and such leave may be granted or renewed with the approval of the Board of Selectmen.

Section E. Personal Days

Section F.

Section G. Every employee covered by this agreement shall be permitted a total of (3) personal days each fiscal year with the approval of the Chief. Personal days requested with more than 8 hours before an employee's next scheduled shift shall be a guaranteed day off.

ARTICLE 16: INSURANCE

All full-time employees of the bargaining unit shall be eligible to participate in the Town of Wellfleet's health insurance program. Effective July 01, 2008, Master - Medical Plan is not an available medical plan. The insurance shall be paid out sixty five percent (65%) by the Town and thirty five percent (35%) by the employee.

In the event that a member wishes to decline group health insurance, the town will pay the employee 25% of the Town's share of the least expensive plan to which the employee is entitled. Payment to eligible employees who decline participation in the Town's group health insurance plan will be made semi-annually on the last payroll in December and the last payroll in June for the previous six months. Employees who have not been on the payroll for the full prior six (6) month period will receive such payments on a pro-rated basis. Any employee who declines participation in the Town's group health insurance plan must provide proof of independent insurance coverage.

The Town of Wellfleet shall provide, at no cost to the employee, a seventy-five thousand (\$75,000) dollar "In the Line of Duty" life insurance policy for all officers, for death in the course of or resulting from employment as a police officer.

ARTICLE 17: SAFETY COMMITTEE

Section 1. The Union may establish a Safety Committee of not more than two (2) members, which may meet with the Chief of Police for a mutual exchange of opinions, ideas and discussion concerning the safety and health conditions of the Department. Such meetings may take place periodically but at least one (1) every three (3) months upon the specific request of the Union or the Town. An agenda shall be required for each meeting.

ARTICLE 18: UNION REPRESENTATIVES

The name of the Union Steward shall be furnished to the Town immediately after their designation and the Union shall notify the Town of any changes forthwith. A Steward may be granted reasonable time off during working hours to investigate and settle grievances at the discretion of the Chief.

ARTICLE 19: LABOR MANAGEMENT MEETINGS

The Selectmen or their designee, shall meet with the members of the Union bargaining committee periodically for the mutual exchange of opinions, ideas, and discussions with respect to policies and practices affecting the implementation of the Agreement, status of current and new projects, and other matters of mutual interest. All pending grievances may be discussed at said meetings. A written agenda shall be required for each meeting.

ARTICLE 20: DURATION

Section 1. This contract shall be effective from July 1, 2023, through June 30, 2026. Retroactive payments shall be made on the following: wages (Attachment A), Quinn, OIC, longevity, holiday pay, and department overtime (does not include overtime paid under a grant, i.e. community policing, highway safety, etc.).

All funding and other provisions requiring Town Meeting approval as contained herein are subject to vote of Town Meeting.

The parties are bound by the terms specifically contained herein and by any law or laws, State or Federal, which supersede this contract.

Section 2. This Agreement contains the complete agreement between the parties and no additions, waivers, deletions, changes, or amendments shall be made during the life of the Agreement, except as provided by law, or as expressly set forth in the management rights clause of this contract, or except by mutual consent in writing of the parties hereto. The Union acknowledges that during the negotiations which resulted in the Agreement, it had the unlimited right and opportunity to make demands and proposals with respect to all proper subjects of collective bargaining, that all subjects have been discussed and negotiated and that the agreements contained in this Agreement were arrived at after free exercise of such rights and opportunities. The Union, therefore, voluntarily and without qualification, waives any rights it may have had in this respect.

Section 3. Either party desiring to renegotiate this Agreement for a new contract after June 30, 2026, must notify the other in writing on or before February 1, 2025. This notice for a new contract, if given, must contain in writing the changes desired and until a satisfactory condition is reached in the matter of such changes, the original provisions of this contract shall remain in full force and effect.

ARTICLE 21: TIME OFF FOR BARGAINING

Members of the Union Negotiation Committee, not to exceed two (2), will be allowed time off without loss of pay to attend negotiation meetings, for a maximum of three (3) hours. This does not extend to mediation, fact finding or arbitration sessions.

ARTICLE 22: UTILIZATION OF PRIVATE MOTOR VEHICLE

The Town agrees to reimburse the employee for the use of his/her private automobile for any and all department business when the department employee is authorized to use his vehicle by the Chief or his designee, and at the rate allowed by the Internal Revenue Service, less mileage reimbursement by court. Said use shall be for official use only and shall require prior approval of the Chief or his designee.

ARTICLE 23: PRIVATE DUTY

- Section 1. Private duty shall be offered to regular full-time police officers within the bargaining unit and prior to being offered to full-time officers outside the bargaining unit, special officers, or seasonal officers in accordance with the procedures of Section 2. Nothing contained in this section shall be construed to preclude the use of special police officers for municipal details.
- Section 2. (a) The rotation list will be ranked on the basis of seniority and distributed equally and impartially among the members.
(b) Once each employee on the rotation list has been offered the opportunity to work the Chief can call upon special or seasonal officers to work private duty.
- Section 3. Notwithstanding the other provision of this Article, the Chief may assign a particular duty to a particular employee (regular or special officer) where special circumstances warrant and by notifying the Union Steward of the assignment and reason, therefore. Such special circumstances include, by way of example and not limitation, an employee volunteering his services to a non-profit organization, or an assignment requiring special skills, or poor performance in a previous similar assignment.
- Section 4. The Chief reserves the right to determine whether particular work should be assigned as private duty or by way of regular assignment.
- Section 5. Effective on the day following the execution of this contract, a minimum of four (4) hours pay shall be required for private duty. All private duty details which are in excess of four (4) hours shall be paid for eight (8) hours. All private duty details which are in excess of eight (8) hours shall be paid in successive two (2) hour increments.

All hours in excess of eight (8) hours shall be paid at a rate of 1.5 times the then applicable private detail rate.

Section 6. If a detail available within the Town of Wellfleet is traditionally available to other law enforcement agencies, the highest rate of detail pay for any applicable agency shall be the rate of pay for all Wellfleet employees working the detail.

Section 7. All detail payments will be channeled through the Chief or his designee to assure proper accounting and the collection of administrative fees.

Section 8. Failure of a private employer to notify the police station of the cancellation of the need of a police officer at least one (1) hour prior to the commencement of a scheduled paid detail will result in said private employer being liable for a minimum of four (4) hours pay at the applicable detail rate. An employer who notifies the station more than one hour but less than two hours before the scheduled starting time of a private detail shall incur a two (2) hour minimum payment obligation at applicable detail rates. Notice of cancellation of need for a police officer more than two (2) hours before the scheduled starting time of a detail shall exempt a private employer from any payment liability.

Section 9. Employees will be paid for any detail in the manner in which overtime is currently processed and paid.

Section 10. Private detail rate upon Execution of this Agreement, July 1, 2023, will be \$60.00 per hour. Each year of this contract the private detail rate shall increase. July 1, 2024, it will be \$62.50 per hour. July 1, 2025, it will be \$65.00 per hour.

Section 11. Any private detail requiring 5 or more Officers shall also hire a detail supervisor. Detail supervisor will be the highest-ranking Wellfleet Police Officer assigned to a detail.

ARTICLE 24: PAY SCALE

Section 1. Full-time permanent police officers shall be paid bi-weekly, based upon the schedules set forth in Attachment A to this contract, which is incorporated herein by reference.

Section 2. The Town may waive the probationary pay period and place an employee at a rate of pay at Step 1, Step 2, or Step 3 if, in the discretion of the Town, the employee has prior working experience as a police officer or Telecommunicator and [or prior

police academy training in accordance with the Massachusetts Criminal Justice Training Council requirements.

Section 3. If the Chief designates an officer Animal Control Officer the officer in said position shall receive one thousand five hundred (\$1,500) dollars, assuming he/she works eight (8) or more months in that position in the prior twelve (12) month period.

Section 4. If the Chief designates an officer (or officers) as Field Training Officer (s) FTO, each officer in said position, who has been certified and completed a Field Training Officer & Evaluation Program Course, will receive one (1) hour compensatory time for every 8.25-hour shift that he/she completes in the training of a full-time officer.

ARTICLE 25: POLICE PAY INCENTIVE PROGRAM / QUNN BILL
EDUCATIONAL INCENTIVE

Section 1. Qualified Employees hired prior to 2010 covered under this Agreement will receive educational incentives in the following amount.

Qualifying employees with a Masters degree: 16.99% above their top step.
Qualifying employees without education who agreed to this article in 2010: 1.99% above their top step.

Section 2. Any police officer hired after July 1 , 2011 who does not receive any other educational incentive from the Town will be eligible for the following bi-weekly educational incentive:

Associate Degree	\$153.85	(\$4,000 yearly)
Bachelor's Degree	\$230.76	(\$6,000 yearly)
Master's Degree	\$307.69	(\$8,000 yearly)

The above incentives are non-cumulative, and the degrees must be in criminal justice, or an equivalent subject matter approved by the Police Chief and Town Administrator. New officers would become eligible for this benefit upon their one-year anniversary date of hire. This incentive would begin to be paid on the first payroll following thirty (30) days after an officer's degree is conferred or their one-year anniversary date of hire, whichever is later.

ARTICLE 26: LONGEVITY

Section 1. Upon an employee's completion of five (5) years of continuous full-time service the sum of four hundred dollars (\$400.00) shall be paid on the

anniversary date of the employee and an additional forty dollars (\$40.00) for each year of continuous full-time service completed thereafter shall be paid annually on the employee's anniversary date within one (1) month of such employee's anniversary date. For example: After five (5) years of continuous service, four hundred dollars (\$400.00); after six (6) years continuous service, four hundred and forty (\$440.00) dollars, etc. Upon an employee's fifteenth year (15th anniversary date, he/she shall be paid longevity in accordance with section 2. Below

Section 2 For all employees hired after July 1, 2010, longevity will be capped at \$3,000 dollars. Upon an employee's fifteenth (15th) anniversary date, he/she shall be paid longevity in accordance with the following non-cumulative schedule:

15 — 19 years	\$1,500.00
20 — 24 years	\$2,000.00
25 — 29 years	\$2,500.00
30 years plus	\$3,000.00

ARTICLE 27: REDUCTION IN FORCE

Section 1. The Town retains exclusive rights to determine the number of police officers and other employees, which are needed in the department and also retains the exclusive right to determine the number and type of employees to be laid off.

Section 2. Employees will be laid off in order of seniority within the department as provided in Article X, and the least senior employee in the classification, who is the subject of the layoff shall be the first employee laid off.

Section 3. An employee who is the subject of a layoff shall have the right to require the layoff of an employee with less seniority in a lower rank and upon the layoff of the employee of lower rank the employee originally subject to layoff shall assume the rank of the employee so laid off and shall thereafter be compensated as provided by this

agreement as an employee of the position assumed. For purposes of establishing the relative ranking of positions within the department for this article, the positions in order of descending rank are Sergeant, Patrolman, Clerk -Telecommunicator, Telecommunicator.

Section 4. Laid off employees shall be recalled in inverse order of their layoff within their rank as positions become open. Employees shall remain on a recall list for a period of three (3) years from the date of their layoff. An employee who is recalled by the Department within three years shall have restored to him all benefits accumulated at the time of his layoff. When a vacancy occurs the Union shall be notified by certified mail at its last address of record or by delivering in hand to the steward and who shall in turn be responsible for notifying the employee within five (5) business days by certified mail. As many as three employees on the recall list may be notified simultaneously. Failure to accept certified mail shall not be deemed sufficient reason for failing to meet the response date. Failure to the individual employee to respond to the Town or its designee with a letter of acceptance within fifteen business days after notice shall be considered a rejection of such offer and the employee shall be dropped from the recall list. It shall be the responsibility of the employee on the recall list to inform the Department and the Union of their current mailing address or any changes thereof.

ARTICLE 28: MISCELLANEOUS

Section 1. Space shall be provided in the squad room for a Union Bulletin Board of reasonable size for the posting of announcements relating to Union business. All such notices shall be approved for posting by the Chief.

Section 2. Copies of General Orders, Special Orders and Personal Orders shall be supplied to the Union Officer upon request and copies of such orders issued subsequent to the effective date of this Agreement shall be supplied to him at time of issuance.

Section 3. All parties to this Agreement shall cooperate in the enforcement of safety rules and regulations. Complaints with respect to unsafe or unhealthy working conditions shall be brought to the attention of an employee's superior officer or the Chief of Police.

Section 4. The Town shall provide a complete set of the General Laws and a current Wellfleet Street listing at the Police Station. Each permanent officer shall be provided with a copy of the rules and regulations for the government of the Police Department, general By-Laws of the Town, and any Traffic Rules and Orders, as needed. Within the scope of the available appropriations, it shall be the responsibility of the Chief to keep the aforementioned current.

Section 5. The substance of all complaints against employees shall be furnished in writing to the employee prior to any disciplinary action being taken by the Department against the employee.

Section 6. With the permission of the Chief of Police, a space in the Police Station may be used by the Union for meeting and discussions of Labor-Management issues of interest to this Agreement.

Section 7. Reporting Injuries in the Line of Duty. An employee injured in any way while in the service of the Town, shall report said injury or cause said injury to be reported to the Chief forthwith and in no event later that twenty-four (24) hours after said employee has knowledge of the injury. The employee shall also file or cause to be filed as soon as reasonably possible thereafter, a written report, specifying the following information to the extent the same is available at the time said report is prepared:

1. Time and place of injury
2. Duty when injured
3. Cause of injury
4. Detailed description of how the injury occurred
5. Names of witnesses
6. Name of injury
7. Names of any doctor and nature of medical or surgical treatments received.

ARTICLE 29: LIGHT DUTY

Whenever a police officer is incapacitated for duty because of injury sustained in the performance of duty without fault of his own, he shall be granted leave without loss of pay for the period for such incapacity, provided, however, that no such leave shall be granted for any period after a physician designated by the appointing authority determines that such incapacity no longer exists, and provided further that such compensation shall be paid only to the extent required by Massachusetts General Laws, Chapter 41, Section 111F, as amended from time to time.

Further, no such leave shall be continued beyond a total of thirty (30) calendar days in the event the physician designated by the appointing authority determines that the police officer is capable of performing limited police duties on either a full time or less than full time basis subject only to the provisions contained herein. The Chief shall determine whether a position is available which the police officer is capable of performing and may or may not assign him to fill the position. Assignments to limited duty tasks may be changed or terminated at the discretion of the Chief subject only to the provisions contained herein. Officers will not be involuntarily assigned to light duty prior to the expiration of thirty calendar days. The thirty calendar day periods referred to in this paragraph include all time due to an injury or any recurrence of the same injury, whether or not continuous.

LIGHT OR LIMITED DUTY TASKS SHALL INCLUDE:

- Dispatching
- Training
- General clerical work
- Crime Prevention (e.g., citizen 's assistance and operation ID)
- Assist in property and evidence room
- Suicide Prevention Watch
- Computer Operation
- Supervision (applicable to supervisors only)
- Other limited or light duty tasks agreed upon by the Chief and the Union.

Most limited or light duty tasks will normally be in-house duties. The Chief will make reasonable efforts whenever possible to make assignments of light duty to the same shift as the officer is currently assigned. Limited duty assignments, however, will not normally be made to the midnight shift except for officers currently assigned to the shift.

If a police officer is determined by the physician designated by the appointing authority to be capable of returning to limited or light duty and he is to same and he does not report for the same and has not filed a timely appeal hereunder, his pay shall be discontinued and he shall be subject to disciplinary action.

APPEAL PROCESS

In the event the individual officer's personal physician disagrees with the decision made by the physician designated by the appointing authority and believes that the officer is not capable of returning to limited duty, the officer shall cause his physician to confer with the physician designated by the appointing authority within ten (10) calendar days of the decision by the physician designated by the appointing authority. An officer assigned to light duty notwithstanding the continuing disagreement of his personal physician after said conferral with the physician designated by the appointing authority shall have the right, within fourteen (14) calendar days after said conference, to appeal to a third physician designated by the two conferring doctors. During the period of this appeal, the officer shall comply with the reasonable rules of the Chief. The third physician shall render his/her decision within seven (7) calendar days or as soon as practical thereafter. The decision of the third physician shall be final and binding as to whether the officer is medically capable of being assigned limited or light duty at that time.

If the officer is determined by the third physician to be capable of returning to limited or light duty and he is to the same and he does not report for same, his pay shall be discontinued, and he shall be subject to disciplinary action. Nothing herein, however, shall prevent the Chief from having the officer subsequently reexamined at reasonable intervals, normally not less than fourteen calendar days, to see if the officer has sufficiently recovered to commence light duty. The cost of the appeal procedure, namely payment of the third physician, shall be paid for by the Town.

Nothing herein shall preclude any injured member from seeking retirement nor shall anything herein preclude the Town of Wellfleet from involuntarily retiring members. Further, nothing herein shall preclude an injured officer from seeking and obtaining treatment for said injury from the physician of his choice. Nothing herein shall require or preclude the Chief from, or limit his discretion regarding, the granting or denying of a request from an officer out on sick leave to work on limited or light duty; however, such assignments shall not be made involuntarily.

It is understood that to light duty are temporary in nature and shall not extend beyond the period of disability.

ARTICLE 30: DRUG TESTING PROGRAM

Subject to the provisions of this Article, an employee shall be subject to Urinalysis drug testing (which shall be drug(s) specific), if reasonable suspicion of non-prescriptive drug use exists, as determined by the Chief of Police. Determination of "reasonable suspicion" by the Chief of Police shall comport with constitutional/legal guidelines. The employee shall be advised by the Chief of the facts and circumstances constituting his determination of "reasonable suspicion" in each instance. An employee subject to Urinalysis drug testing hereunder shall have two (2) options:

- (a) The employee may refuse to be drug-tested, which may set in motion appropriate disciplinary proceedings as determined by the Chief of Police. An employee has the right to elect to arbitrate any disciplinary action taken against him as per set forth in the contract; or
- (b) The employee may agree to be drug-tested. In such case, such testing shall be administered by the independent qualified testing laboratory of the Town's choice, with Union input as to such choice. Urine samples will first be taken under supervision of a qualified physician, or a medical technician or clinician employed by an independent medical facility, licensed in Massachusetts. If the initial test of each urine sample/specimen is positive, a second method of testing shall be immediately administered. The second test shall employ a methodology different from the first.

In the event that both urine sample/specimen testing are positive and independent testing of the same sample, if employed by the employee, is not negative, the employee will be relieved of duty with vacation, sick pay and/or other combinable leave, to the extent available, or on leave without pay if not, pending completion of a Town approved drug rehabilitation program (which may be in-patient, including, but only limited to counseling). During this process, the employee shall be suspended for thirty (30) days, which suspension shall be stayed pending his successful completion of the drug rehabilitation program, and the matter shall be expunged from his record and from Town/Department files upon his successful completion of said program, or two (2) years from the date of initial testing, whichever earlier occurs, there is no further positive testing. After successful completion of said program, the employee shall return to duty and shall be subject to follow-up "random" drug testing for a period of two (2) years from date of initial testing. After successful completion of said program, the employee shall return to duty and shall be subject to follow-up "random" drug testing for a period of two (2) years from date of initial testing. If he or she is again found to have used any of the specified nonprescription drugs, the employee shall be subject to immediate disciplinary proceeding, including discharge, and shall be availed of all his rights under this contract.

The use of prescription drugs, prescribed by an employee's physician, shall preclude any Town disciplinary action against the employee or any requirement that the employee participate in the drug rehabilitation program. The parties shall meet to develop policies and procedures for taking urine samples/specimen and testing employees as aforesaid, forthwith after execution of the Agreement. The implementation of Urinalysis drug testing hereunder shall occur upon agreement as to such policies and procedures. Such policies and procedures shall include, without limitation, the following:

1. Procedures for certification, decertification, and recertification of laboratories for urine analysis for drugs;
2. Nature of origin and confirmation tests, and type tests, together with security of urine samples/specimens;
3. Maintenance of chain-of-custody of urine samples/specimens;
4. Preservation of urine samples/specimens and all records of testing;
5. Maintenance of fairness, objectivity, accuracy, and confidentiality in testing program.

All testing by the Town of urine samples/specimens shall be at the Town's sole expense.

ARTICLE 31: WELLNESS PROGRAM

Section 1. Employees will participate in a Wellness Program at the Town's expense aimed at encouraging positive health habits, assessing, on a regular basis, general fitness status, and providing information for sound health decision-making. On an annual basis employees will be administered tests for blood pressure screening, blood cholesterol measurement, body composition measurement and vital signs screening. In conjunction with the screening procedures, employees will also be provided with health counseling. Results of the tests will be confidential and shall not be used against the employee.

Section 2. The Union agrees that physical fitness should be a goal of all bargaining unit members and to that end it will cooperate with the Town and establish a physical fitness program.

ARTICLE 32: EMT STIPEND - Removed

Article 33: ACO – REMOVED (# 13)

Article 34:

If the Town of Wellfleet approves Body Worn Cameras (BWC's) the Union would agree to implementing a BWC program with the following stipulations:

- 1) The union would be allowed to provide input into a BWC policy created by the Chief.
- 2) The town would recognize that any deviation from a created policy would be subject to impact bargaining once it is agreed upon by the union.
- 3) The town recognizes that they would be responsible for all upkeep of the system, parts, and equipment, and anything else associated with a BWC used by an officer.
- 4) (One) 1 additional Personal day per fiscal year for all employees for agreement to utilize BWC's. (TOTAL OF 3 PERSONAL DAYS PER YEAR REFER TO REVISED ARTICLE 15).

ATTACHMENT A: PAY SCALE:

	7/1/2023		7/1/2024	7/1/2025
Step 1	\$66,702.00	Year 1	\$69,036.00	\$71,452.00
Step 2	\$68,909.00	Year 2	\$71,320.00	\$73,816.00
Step 3	\$71,115.00	Year 3	\$73,604.00	\$76,180.00
Step 4	\$73,322.00	Year 4	\$75,888.00	\$78,544.00
Step 5	\$75,155.00	Year 5	\$77,785.00	\$80,507.00
Step 6	\$77,034.00	Year 6	\$79,730.00	\$82,520.00
Step 7	\$79,344.00	Year 7	\$82,121.00	\$84,995.00
Det/Pros	\$83,311.00		\$86,226.00	\$89,243.00
SGT 1	\$88,865.00	Year 1	\$91,975.00	\$95,194.00
SGT 2	\$91,530.00	Year 2	\$94,733.00	\$98,048.00
SGT 3	\$94,275.00	Year 3	\$97,574.00	\$100,989.00

NOTE A:

The cost of training for a new Police Officer shall be paid by the Town of Wellfleet. An officer who voluntarily leaves employment of the Town of Wellfleet or is terminated for cause shall reimburse the Town for said training cost as follows:

Less than 18 months of employment \$3,600 Reimbursement

More than 18 full months, but less than
30 full months of employment \$2,400 Reimbursement

More than 30 full months, but less than
42 full months of employment \$1,200 Reimbursement

Said reimbursement may be deducted from the officer's payroll check.

Section 2. Night differential (paid only to officers regularly assigned to midnight, late evening shift and regular evening shifts) amount of fifty dollars (\$50.00) per week.

Section 3. Union personnel shall receive salary paid approximately equal amounts bi-weekly, provided, however, that no employee shall be paid in advance of time worked.

Section 4. All regular full-time officers shall receive salary, "Quinn Bill incentive pay," night differential and EMT pay added together to achieve the hourly, overtime and holiday rates (Article 9/Section 2). This total salary shall be paid in approximately equal amounts biweekly provided however, that no employee should be paid in advance of time worked.

Section 5. An officer who services in the capacity of Officer in Charge (OIC) for over 4 hours of a shift shall receive one hour of overtime for that shift. If two officers work equal 4hour blocks as OIC, they will each receive one half hour of their rate.

SIGNED THIS _____ DAY OF _____ 2023

BY:

Town of Wellfleet

Wellfleet Police Officers Union

TOWN OF WELLFLEET

AND

WELLFLEET COMMUNICATIONS

UNION

MASS COP LOCAL 326B

JULY 1, 2023 THROUGH JUNE 30, 2026

TABLE OF CONTENTS

<u>ARTICLE</u>	<u>PAGE</u>
ARTICLE 1: RECOGNITION	2
ARTICLE 2: NONDISCRIMINATION	2
ARTICLE 3: MANAGEMENT RIGHTS	3
ARTICLE 4: PAYROLL DEDUCTION OF UNION DUES	4
ARTICLE 5: DEDUCTION OF AGENCY SERVICE FEE	5
ARTICLE 6: JOB SECURITY	6
ARTICLE 7: NO STRIKES	6
ARTICLE 8: GRIEVANCE & ARBITRATION	7
ARTICLE 9: HOURS OF WORK – OVERTIME – COMPENSATORY TIME	8
ARTICLE 10: SENIORITY	12
ARTICLE 11: UNIFORM ALLOWANCE	12
ARTICLE 12: IN-SERVICE TRAINING	14
ARTICLE 13: VACATIONS	16
ARTICLE 14: HOLIDAYS	18
ARTICLE 15: LEAVES OF ABSENCE	19
ARTICLE 16: INSURANCE	22
ARTICLE 17: SAFETY COMMITTEE	22
ARTICLE 18: UNION REPRESENTATIVES	23
ARTICLE 19: LABOR MANAGEMENT MEETINGS	23
ARTICLE 20: DURATION	23
ARTICLE 21: TIME OFF FOR BARGAINING	24
ARTICLE 22: UTILIZATION OF PRIVATE MOTOR VEHICLE	25
ARTICLE 23: PAY SCALE	25
ARTICLE 24: EDUCATION INCENTIVE PROGRAM	25
ARTICLE 25: LONGEVITY	26
ARTICLE 26: REDUCTION IN FORCE	27
ARTICLE 27: MISCELLANEOUS	28
ARTICLE 28: LIGHT DUTY	29
ARTICLE 29: DRUG TESTING PROGRAM	31
ARTICLE 30: WELLNESS PROGRAM	34
ARTICLE 31: EMT / EMD STIPEND	34
ATTACHMENT A: PAY SCALE - FULL-TIME TELECOMMUNICATORS	37

ARTICLE 1: RECOGNITION

Section 1. The Town hereby recognizes the Wellfleet Communications Union, consisting of all regular full-time telecommunicators and clerk telecommunicator, but excluding seasonal employees, part-time employees, special telecommunicators, civilians, the Chief, Lieutenant, and all other employees of the Town of Wellfleet.

Section 2. Regular full-time employees means all employees who average a minimum of thirty-five (35) hours per week over a 12-month period during the contract term.

ARTICLE 2: NONDISCRIMINATION

Neither the Union nor the Town shall discriminate against any employee on the basis of race, creed, color, religion, sex, national origin, age, sexual orientation, membership or non-membership in the Union.

ARTICLE 3: MANAGEMENT RIGHTS

Section 1. Subject to the express provisions of this Agreement and applicable Federal or State Statutes, the Town and its Selectmen and Police Chief reserve and retain all of the lawful powers and customary rights and authority of municipal management to manage and control the Police Department, to determine the methods and means by which the operations of said Department will be accomplished in any manner deemed in the best interest of the inhabitants of the Town, including but not limited to:

The right to appoint,	promote,	assign,
Transfer,	to issue reasonable rules and regulations,	to discipline and discharge employees.

Section 2. Nothing in this Agreement shall be construed to abridge or to relieve the Chief of any of the powers granted under Chapter 41, Section 97A of the General Laws.

Section 3. This Agreement contains the complete expression of the parties on wages, hours and terms and conditions of employment. Notwithstanding any contrary provisions of this Agreement, the Union on its own behalf and on behalf of the employees it represents, agrees that collective bargaining shall be the exclusive procedure concerning mandatory subjects of bargaining under General Laws Chapter 150E subject to each parties rights under Chapter 150E.

Section 4. Nothing in this Agreement shall limit the Town in the exercise of its function of management and in the direction and supervision of the Town's business, except where such rights are specifically modified or abridged by the terms of this Agreement. This includes, but is not limited to the right to:

- | | | |
|--|---|---|
| Add or eliminate departments, | require or assign overtime, | increase or decrease the number of jobs, |
| change process, | assign work and work to be performed, | schedule shifts and hours to work and lunch or break periods, |
| hire, | suspend, | demote, |
| Discipline or discharge, | transfer or promote, | layoff because of lack of work or other legitimate reasons, |
| establish rules, regulations, job descriptions, policies and procedures, | conduct orderly operations, | establish new jobs, |
| abolish and change existing jobs, | determine where, when, how and by whom work will be done. | |

ARTICLE 4: PAYROLL DEDUCTION OF UNION DUES

Section 1. Under the authority of General Laws, Chapter 180, Section 17A, as amended by Chapter 1078 of the Acts of 1973, the Town agrees that Union dues determined in accordance with the Constitution and By-Laws of the Union shall be deducted monthly from the salary of any employee in the bargaining unit who signs and remits to the Town a form authorizing such deduction. Such authorization shall remain in full force and effect until the employee ceases to be employed in the bargaining unit, or, if the employee remains in such employment, until sixty (60) days after notice in writing by the employee to the Town withdrawing the authorization, with a copy thereof filed with the Treasurer of the Union.

Section 2. The Union agrees to indemnify the Town for any expenses, damages or other financial loss, which the Town may be required to pay or suffer by an arbitrator, administrative agency or court of competent jurisdiction as a result of the Town's compliance with this Article.

ARTICLE 5: DEDUCTION OF AGENCY SERVICE FEE

Section 1. In accordance with the provisions of General Laws, Chapter 180, Section 17G, as amended by Chapter 1078 of the Act of 1973, the Town agrees that effective thirty (30) days after the execution date of this agreement or thirty (30) days following the commencement of employment, whichever is later, each employee who elects not to join or maintain membership in the Union shall be required to pay as a condition of employment, a service fee to the union in the amount that is proportionately commensurate with the cost of collective bargaining and contract administration, but not to exceed the amount of periodic dues paid by employees who are members of the Union.

Section 2. As in the case of check off of Union dues, the employee may consent in writing to the authorization of the deduction of agency service fee from his/her wages and to the designation of the Union as the recipient thereof. Such consent shall be on a form, acceptable to the Town, signed by the employee. An employee may withdraw said authorization by giving at least sixty (60) days notice to the Town.

ARTICLE 6: JOB SECURITY

Section 1. The twelve (12) months of employment following the date of initial appointment shall be considered a probationary period. A regular full-time employee covered by this Agreement with more than twelve (12) months of continuous active service in the department shall not be disciplined or discharged except for just cause. Probationary employees may be terminated without any requirement on the part of the Town to document just cause reason for termination. In the event an employee does not serve twelve (12) consecutive months for any reason, the Town may extend such employee's probationary period the amount of time equivalent to such time the employee was absent resulting therefore in a probationary period equivalent to twelve (12) months of time actually worked.

ARTICLE 7: NO STRIKES

Section 1. It shall be unlawful for any employees to engage in, induce or encourage any strike, work stoppage, slowdown or withholding of services by such employees. Any employees violating said provisions shall be subject to disciplinary action including discharge.

Section 2. The Union will not investigate nor condone any such illegal action as specified in Section 1 and will take all necessary steps to stop such action and make every move to return the employees to work.

ARTICLE 8: GRIEVANCE AND ARBITRATION PROCEDURE

Section 1. Any grievance or dispute which may arise between the parties concerning the application, meaning or interpretation or any express term of this agreement, shall be settled in the following manner:

Step 1. The Union steward, with or without the aggrieved employee, shall submit the grievance in writing to the Chief or his / her designee within seven (7) working days, excluding holidays and weekends, after the employee knew or should have known of the occurrence or failure of occurrence of the incident upon which the grievance is based.

Step 2. If the grievance has not been resolved within ten (10) working days after its submission to the Chief or his / her designee, it shall be submitted to the Town Administrator or his / her designee in writing within seven (7) working days after the response of the Chief or his / her designee, or the date on which the answer is due.

Step 3. If the grievance has not been resolved within ten (10) working days after its submission to the Town Administrator or his / her designee, it shall be submitted to the Board of Selectmen in writing within seven (7) working days after the response of the Town Administrator or his / her designee, or the date on which the answer is due.

Step 4. Within ten (10) working days of receipt of the grievance, the Board of Selectmen, or their designee, shall hold a hearing, and shall render a decision within ten (10) working days after the hearing. If the grievance has not been resolved by the Board of Selectmen, the Union may submit the grievance to arbitration within fifteen (15) working days following the Board of Selectmen's answer or the date on which said answer is due, with a copy of the submission letter to the Board of Selectmen.

Section 2. Time Limits. If at the end of seven (7) working days next following the occurrence of any grievance or the date when any employee affected by the grievance should have knowledge of its occurrence, whichever is later, the grievance shall not have been presented at Step 1 of the procedures set forth herein, the grievance shall be deemed to have been waived. Furthermore, any grievance in process under such procedure shall also be deemed to have been

waived if the action required to process the said grievance to the next step in the procedure by the Union shall not have been taken within the time specified thereof above. Any time limits herein set forth may be waived and/or extended by mutual agreement of the parties.

Section 3. The Arbitration shall be conducted by the American Arbitration Association under its existing rules of procedure. The decision of the arbitrator shall be final and binding upon the parties except that the arbitrator shall make no decision, which alters, amends, adds to or retracts from this Agreement or which modifies or abridges the management rights and prerogatives of the Town. The Town and the Union shall share costs of the arbitration proceedings, except for transcripts requested by a party, equally.

Section 4. Notwithstanding any contrary provisions of this Agreement, matters concerning the discipline or discharge of a probationary employee shall not be subject to the grievance and arbitration provisions of this Article.

Section 5. All non probationary employees shall have the right of arbitration.

ARTICLE 9: HOURS OF WORK – OVERTIME – COMPENSATORY TIME

Section 1. Work Week. The work week for telecommunicators covered by this Agreement shall consist of a schedule of five (5) consecutive eight (8) hour work days immediately followed by two (2) consecutive days off. Other working hours may be arranged by mutual agreement between the Chief and the employee. One day shall represent twenty (20) percent of an employee's workweek.

Section 2. Overtime. Any work performed in excess of a normal work day or normal work week will be paid at one and one-half (1 ½) the hourly rate, except the rate will be at double-time on Holidays, at the base hourly rate of pay (therefore, overtime rate) calculated on

a salary which shall be divided by the actual number of hours worked per year, two thousand and eighty eight (2088), unless a leap year, which shall be calculated appropriately, and, except that swapped shifts shall not increase the cost to the Town and shall be subject to the approval of the Chief or his designee. Overtime requests submitted shall be rounded out to the nearest quarter (1/4) hour. In addition, employees will obey the Chief's order relative to completing reports and associated paperwork at the end of an assigned shift. Employees who violate such order may be called back to complete appropriate reports at no cost to the Town.

Overtime shall be assigned equitably and distributed impartially among all full-time employees of the bargaining unit. A list shall be established by the Chief and posted within the Police Station showing overtime distributed. The Union shall have the right to examine the list at its option. Overtime refused shall not be considered overtime worked for the purpose of the above-described distribution. The first three (3) calendar days an employee is absent from duty, if the shift is to be covered, shall be offered to full-time employees within the bargaining unit within their normal and customary assigned duty as telecommunicator. If no full-time employees in the bargaining unit customarily assigned the same duties take the vacant shift, it may be offered to employees outside the bargaining unit, including on-duty police personnel. Whenever deemed necessary by the Chief or his designee, employees may be required to perform overtime services. If an employee is forced to work a Partial or Full Shift, numbers will not be changed in the distribution of Overtime. Overtime rates will not be pyramided. When more than one overtime rate applies, only the highest single rate will be paid.

Section 3. Call-Back/Call-In. If, after completing a scheduled tour of duty, any employee is called back to work, except as specified in Section 2 above, he/she shall receive time

and one-half (1 ½) his hourly rate for work performed, but in no event shall be paid for less than three (4) hours.

Section 4. Court Time. Appearance in any court for the government within the Commonwealth as a result of employment with the Town and outside the Commonwealth with the approval of the Chief, at other than normal working hours shall be compensated for one and one-half (1 ½) times the hourly rate of pay, but in no event shall an employee receive less than four (4) hours pay for such appearance.

Section 5. Compensatory Time. Compensatory time off in lieu of overtime payments may be granted at the same rate of time and one-half (1 ½) with the approval of the Chief. Compensatory time taken under the provisions of this contract, although calculated at time and one half for each hour of overtime worked, is actually paid at the regular base salary appropriation. Upon the death of any employee who is covered by this Article, and has accumulated compensatory time, the amount of compensatory time shall be paid at the prevailing rate in the manner provided by General Laws, Chapter 41, Section 111I.

Section 6. Compensatory time allowed department members shall be limited to eighty (60) hours per member at any one time.

Section 7. Employees shall receive a ½ hour meal break during each shift, on premise and subject to any other conditions mutually agreed upon between the Chief and the Union. If the employee opts not to take their ½ hour meal break during his/her shift there will be no cost to the Town of Wellfleet in compensatory time. If there is an emergency situation occurring and the employee wasn't able to take his/her ½ hour meal break there will be no cost to the Town of Wellfleet in compensatory time.

ARTICLE 10: SENIORITY

Section 1. Seniority shall mean an employee's length of continuous service with the Town as full-time telecommunicator, or clerk-telecommunicator.

Section 2. Seniority within the position shall be used to determine vacation assignment and bidding of working schedules.

Section 3. A seniority list shall be established and posted in a conspicuous place within the police station. This list shall be furnished annually on July 1st by the Chief of Police and updated by the Chief of Police.

Section 4. Seniority shall not be affected by vacation, sick leave, military leave, injury time sustained in the line of duty, or any other temporary leave of absence agreed upon between the Chief of Police and the employee.

Section 5. Time off resulting from a suspension will be deducted from the employee's seniority. A suspension that is overturned will not affect an employee's seniority. A member of the bargaining unit whose suspension is overturned shall be compensated for all lost wages, earnings and benefits.

ARTICLE 11: UNIFORM ALLOWANCE

Section 1. There shall be a uniform allowance of Nine Hundred dollars (\$900.00) in each year of the contract. Said amount shall be either paid in a check on the second payday in July to the employee or the employee may elect to provide the department with receipt for purchases for uniforms, uniform gear, police related equipment and clothing that shall not exceed

the allotted amount. Each employee shall notify the department in writing as to the method chosen regarding their uniform allowance by July 1st. Non-notification by an employee shall constitute a request for payment. Said allowance will be used for the purchase of uniforms, maintenance (see list of uniform article), and cleaning such uniforms. Any change of style, type or color of the uniform will be at the expense of the Town, unless the uniform change is mutually agreed upon by the bargaining unit members and the Chief.

Section 2. The Chief retains the right to order union members to replace worn or faded items of clothing. The Chief will have the right to choose vendor, inspect all purchases, and otherwise assure uniformity and control of the expenditures. The Chief shall have the authority to approve all purchases.

Section 3. Each new full-time employee entering the service of the Wellfleet Police Department shall receive the allotted uniform allowance for that year, for the purpose of purchasing uniforms. In addition, when a new full-time telecommunicator, or clerk-telecommunicator is hired, the Town of Wellfleet, shall supply him or her at the Town's expense, the following uniform articles:

1 Pair of boots/shoes

1 Shirt

1 Belt

1 Pair of pants

Uniforms and equipment shall be returned to the Town upon termination of employment or whenever so ordered by the Police Chief. Uniforms shall consist of, but not be limited to, the items listed below.

UNIFORMS (Telecommunicators)

Short Sleeve Polo Grey w/logo	Black Sweater w/logo
Long Sleeve Polo Grey w/logo	Black Blazer
Blank Pants	White Turtleneck w/WPD Letters
Black Shorts	Black Belt
Black Skirts	Black Shoes

Section 4. Any third party reimbursement for uniform items damaged or stained in the line of duty shall be payable directly to the employee without deduction from the uniform allowance, provided said employee produces a receipt indicating he has applied said proceeds towards cleaning or repairing or replacing the damaged uniform article.

ARTICLE 12: IN-SERVICE TRAINING

Section 1. Recurrent State Mandated Training. This shall include but not be limited to EMD, CPR, EMT, or other re-certifications as required by the State or Chief of Police and shall be attended at the direction of the Chief of Police or his designee.

- Travel to and from the training site is not compensable with overtime.
- The Chief may authorize the use of a Department vehicle for travel to and from the training site. Use of such a vehicle is for the convenience of the employees and is not required.
- Department members shall be subject to the same meals payment policy in effect for other Wellfleet Town Employees.
- Should circumstances warrant, the employee may be entitled to reasonable expenses with the approval of the Chief of Police or his designee.

Section 2. Other Training. Other Training sessions, which are authorized by the Chief of Police and which involve travel, overnight residence, or time spent studying or in preparation for course work. The Town agrees to maintain its past practice for out of town training sessions whereby employees will have their expenses of food, travel, and hotel paid for by the Town if authorized to attend such training courses by the Chief.

- Travel to and from the training site is not compensable with overtime.
- The Chief may authorize the use of a department vehicle for travel to and from the training site. Use of such a vehicle is for the convenience of the employee(s) and is not required.
- Department members shall be subject to the same meals payment policy in effect for other Wellfleet Town employees.
- The Town shall be responsible for arranging and paying for hotel/motel accommodations for the department members and employees.
- Should circumstances warrant, the employee may be entitled to reasonable expenses with the approval of the Chief of Police or his designee.

ARTICLE 13: VACATIONS

Section 1. Vacation days to be accrued on the following basis for all regular full-time employees:

Hire to 5 years of service	1 day per month	up to a max. 20 working days
5 to 10 years of service	1¼ days per month	up to a max. 20 working days
10 to 15 years of service	1½ days per month	up to a max. 20 working days
15 to 20 years of service	1¾ days per month	up to a max. 20 working days
20 or more years of service	2 days per month	up to a max. 20 working days

On July 1st, no more than 20 working days can be carried over into the new fiscal year, Transitional period extended to 6/30/2024.

Vacation days begin to accrue from first month of service. Vacation days will not be granted to temporary employees.

Employees may take their vacation on a weekly basis upon the approval of the Chief in the following manner:

1. Requests for a vacation within a pre-established period of time. The time frames will be tied in with the 12-week bid cycle. For the upcoming bid, employees may submit vacation request for a two-week period between the 14th and 12th week before the bid's commencement. The Chief or his/her designee will approve these requests on a seniority basis prior to the 10th week of the bid's commencement.

For example:

14 weeks prior to the bid's commencement;	Vacation request open
12 weeks prior to the bid's commencement	Vacation request close
10 weeks prior to the bid's commencement	Approval / Denial due

2. Vacation request after the pre-established request periods: The Chief or his/her designee will approve the vacation requests submitted after the above mentioned time frame on a first come first served basis, that is not subject to the seniority rules defined above. Approval or denial of said request shall be given to the employee within ten (10) working

days of submittal.

3. Vacation request prior to the pre-established request periods: The Chief will approve vacation requests submitted prior to the above-mentioned time frames for special circumstances (i.e. wedding, travel, etc.) on a case-by-case basis.

Employees may take a maximum of five (5) days vacation during the summer months with the approval of the Chief. Notwithstanding the foregoing, the Police Chief reserves the right to limit the number of telecommunicators on vacation at any one time and to deny vacation requests at such time as in his opinion may conflict with the needs of the Town.

Section 2. An employee who is laid off, retired or honorably resigns from the services of the Town for any reason other than for cause shall be compensated for accrued unused vacation.

Section 3. Upon the death of an employee who is eligible for vacation under this article, payment shall be made in an amount equal to the vacation time at the prevailing rate in the manner provided by General Laws, Chapter 41, Section 111L.

ARTICLE 14: HOLIDAYS

All regular full-time employees shall be entitled to Thirteen (13) paid Holidays. Holidays will be observed on the day that the Holiday occurs. The Holidays referred to in this Article are listed below:

New Year's Day	Labor Day
Martin Luther King Day	Columbus Day
Washington's Birthday	Veterans' Day
Patriot's Day	Thanksgiving Day
Day Following Thanksgiving.	Memorial Day
Juneteenth	Christmas Day
Independence Day	

and any other Holiday granted by the Board of Selectmen to all other Town employees or holidays passed by the State Legislature.

When a Holiday occurs, the employee has the option of:

- 1) Requesting and, if granted, receiving the Holiday off, or;
- 2) Receiving the Holiday day's pay, or;
- 3) Receiving a day-off in lieu of the Holiday, to be taken off with the approval of the Chief of Police or his designee.
- 4) Holidays saved shall be taken off prior to the end of the fiscal year that the Holiday occurred, or the employee shall be paid for the Holiday with no right for a grievance.

ARTICLE 15: LEAVES OF ABSENCE

Section A. Sick Leave. Every full-time employee shall accrue sick leave at the rate of one and one-quarter (1 1/4) days for each month of actual service. Sick leave may be used where said leave is caused by sickness or injury not incurred in the course of his/her employment. Sick leave may be used for illness or disability arising out of or caused by childbirth. Employees who are absent from duty on account of sick leave status for an entire fiscal year shall not be entitled to receive uniform allowance, vacation pay, or holiday pay for such fiscal year. Employees who are absent from duty on account of injured-on-duty status shall not receive a uniform allowance but shall receive 52 weeks of pay, holiday pay, and may accrue sick leave and vacation pay. Employees returning from injured-on-duty (IOD) status shall be entitled to the current year's uniform allowance.

1. Sick leave not used in the year in which it accrues, together with any accumulated sick leave standing to the employee's credit on the effective date of this Agreement and not used in the current year, may be accumulated for use in a subsequent year. Upon an employee's honorable discharge from the Wellfleet Police Department, i.e., retirement, medical retirement, honorable resignation, with less than 10 years of service with the Town, the Town will compensate the employee at a rate of ten percent (10%) of the accumulated sick leave at the prevailing rate, But no more than \$5,000.00. Members honorably discharged from the Wellfleet Police Department, i.e., retirement, medical retirement, honorable resignation, with ten or more years of service with the Town will be compensated at twenty five (25%) of the prevailing rate but, no more than \$10,000.00.

2. When absence for sick leave is for a period of more than three (3) days, an employee shall, if requested by the Chief, file a Physician's Certificate of Disability signed by a regularly licensed and practicing physician before the employee shall be entitled to sick leave benefits.

The employee will fully cooperate with the Town in being examined by a physician or clinic designated by the Police Chief as a condition of receiving sick leave benefits, said examination to be paid for by the Town.

3. An employee who is receiving Disability Compensation may take so much of the sick leave allowance to which he or she is entitled as, when added to the amount of any disability compensation, will result in the payment of full salary for any particular work week.

4. The Chief may, in his sole discretion, authorize the use of sick leave by an employee in the event of a serious illness of a member of the employee's immediate family. In the event that the sick leave authorized hereunder exceeds three (3) days, the employee, if requested by the Chief, shall file a physician's certificate of disability as that relates to a member of the family who is seriously ill. Such certificate shall state that the employee is needed for assistance. The immediate family shall mean spouse, father, mother, brother, sister, child, stepchild, mother-in-law, father-in-law, son-in-law, daughter-in-law, spouse's sister, spouse's brother, grandmother, grandfather, grandchildren, stepfather, stepmother, half brother and half sister.

5. Upon the death of an employee who is covered by this article and who has accumulated sick leave, payment shall be made in an amount equal to ten percent of the accumulated sick leave at the prevailing rate in the manner provided by General Laws, Chapter 41, Section 111I.

6. Those employees who use less than two (2) sick days per fiscal year will receive two (2) added vacation days for the next fiscal year.

Section B. Death Leave. In the event of the death of a member of the immediate family of an employee, the employee will be granted leave without loss of pay. The immediate family shall mean spouse, father, mother, brother, sister, child, stepchild, mother-in-law, father-in-law, son-in-law, daughter-in-law, spouse's sister, spouse's brother, grandmother, grandfather, grandchild, stepfather, stepmother, half brother, half sister. Leave under this section shall not exceed four (4) consecutive days.

Section C. Injury. Injury while in the line of duty shall be paid by the Town under The Massachusetts Workmen's Compensation Laws.

Section D. Other Leaves of Absence. Leaves of absence without pay for limited periods not to exceed one (1) year, may be granted by the Chief with the approval of the Board of Selectmen, and such leave may be granted or renewed with the approval of the Board of Selectmen.

Section E. Every employee covered by this agreement shall be permitted Two (2) personal days each fiscal year, with the approval of the Chief. If a permanent full-time employee does not utilize sick leave during any consecutive six-month period, the employee shall be granted one additional personal day which may be taken in the following six-month period with the approval of the Chief of Police. Only one (1) personal day per year can be earned for not using sick leave and must be used before the end of the fiscal year and cannot be carried over.

Section F. Subject to prior approval of the Chief of Police, an employee shall be awarded one hour of compensatory time off for each scheduled training session, for a new dispatcher, of at least four (4) hours duration conducted by an employee during the employee's regularly scheduled work shift.

ARTICLE 16: INSURANCE

All full-time employees of the bargaining unit shall be eligible to participate in the Town of Wellfleet's health insurance program. Effective July 01, 2008, Master – Medical Plan is not an available medical plan. The insurance shall be paid out sixty five percent (65%) by the Town and thirty five percent (35%) by the employee.

Employees not taking part in the Town's health insurance program shall be reimbursed twenty five percent (25%) of the town's portion of the least expensive plan for which the employee is entitled. Payment shall be made prior to the end of the calendar year.

Employees, or their dependents, shall receive compensation for death in the course of or resulting from employment provided by Chapter 152, Worker's Compensation Section 33 Burial Expenses and Chapter 152, Section 31 Death Compensation for dependents.

ARTICLE 17: SAFETY COMMITTEE

Section 1. The Union may establish a Safety Committee of not more than two (2) members, which may meet with the Chief of Police for a mutual exchange of opinions, ideas and discussion concerning the safety and health conditions of the Department. Such meetings may take place periodically but at least one (1) every three (3) months upon the specific request of the Union or the Town. A written agenda shall be required for each meeting.

ARTICLE 18: UNION REPRESENTATIVES

The name of the Union Steward shall be furnished to the Town immediately after their designation, and the Union shall notify the Town of any changes forthwith.

A Steward may be granted reasonable time off during working hours to investigate and settle grievances at the discretion of the Chief.

ARTICLE 19: LABOR MANAGEMENT MEETINGS

The Selectmen or their designee, shall meet with the members of the Union bargaining committee periodically for the mutual exchange of opinions, ideas, and discussions with respect to policies and practices affecting the implementation of the Agreement, status of current and new projects, and other matters of mutual interest.

All pending grievances may be discussed at said meetings. A written agenda shall be required for each meeting.

ARTICLE 20: DURATION

Section 1. This contract shall be effective from July 1, 2023 through June 30, 2026.

Retroactive payments shall be made only on items indicated in Attachment A of this Agreement, which is incorporated herein by reference.

All funding and other provisions requiring Town Meeting approval as contained herein are subject to vote of Town Meeting.

The parties are bound by the terms specifically contained herein and by any law or laws, State or Federal, which supersede this contract.

Section 2. This Agreement contains the complete agreement between the parties and no additions, waivers, deletions, changes or amendments shall be made during the life of the Agreement, except as provided by law, or as expressly set forth in the management rights clause of this contract, or except by mutual consent in writing of the parties hereto. The Union acknowledges that during the negotiations which resulted in the Agreement, it had the unlimited right and opportunity to make demands and proposals with respect to all proper subjects of

collective bargaining, that all subjects have been discussed and negotiated and that the agreements contained in this Agreement were arrived at after free exercise of such rights and opportunities. The Union therefore, voluntarily and without qualification, waives any rights it may have had in this respect.

Section 3. Either party desiring to renegotiate this Agreement for a new contract after June 30, 2011, must notify the other in writing on or before February 1, 2011. This notice for a new contract, if given, must contain in writing the changes desired and until a satisfactory condition is reached in the matter of such changes, the original provisions of this contract shall remain in full force and effect.

ARTICLE 21: TIME OFF FOR BARGAINING

Members of the Union Negotiation Committee, not to exceed two (2), will be allowed time off without loss of pay to attend negotiation meetings, for a maximum of three (3) hours. This does not extend to mediation, fact finding or arbitration sessions.

ARTICLE 22: UTILIZATION OF PRIVATE MOTOR VEHICLE

The Town agrees to reimburse the employee for the use of his private automobile for any and all department business when the department employee is authorized to use his vehicle by the Chief or his designee, and at the rate allowed by the Internal Revenue Service, less mileage reimbursement by court. Said use shall be for official use only and shall require prior approval of the Chief or his designee.

ARTICLE 23: PAY SCALE

Section 1. Full-time telecommunicators shall be paid bi-weekly, based upon the schedules set forth in Attachment A to this contract, which is incorporated herein by reference.

Section 2. The Town may waive the probationary pay period and place an employee at a rate of pay at Step 1, Step 2 or Step 3 if, in the discretion of the Town, the employee has prior working experience as a telecommunicator and clerk-telecommunicator.

Section 3. Employees hired on or before December 31st shall receive their first step increase on July 1st of the following year and every July 1st thereafter. Employees hired on or after January 1st shall receive their first step increase on the first July 1st following one full year of employment and every July 1st thereafter.

ARTICLE 24: EDUCATION INCENTIVE PROGRAM

Permanent full-time telecommunicator or clerk-telecommunicator shall be eligible for the following incentive program:

\$500.00 dollars for up to and including each (2) day course.

\$600.00 dollars for each course over (2) days but not to include a full semester.

\$800.00 dollars for each full semester course at an educational facility or online.

Incentive is payable only upon satisfactory completion of course(s). A certificate of completion or copy of grades must be submitted for proof of completion. All courses shall be directly related to employment and must have prior approval of the Chief of Police to qualify for Incentive Pay. A one-time payment shall be made on the next pay period after the 1st of December, and shall be for service during the current fiscal year, July 1st through June 30th. Those individuals leaving the department prior to June 30th are entitled to the full amount on their termination date.

ARTICLE 25: LONGEVITY

All regular full-time employees shall receive a longevity bonus, based on anniversary date, according to the following schedule:

\$375 after (5) Years of continuous service with an additional \$50 per year for each subsequent year.

\$700 after (10) years of continuous service with an additional \$100 per year for each subsequent year.

The Longevity bonus shall be paid on the first payroll following the anniversary date to those who qualify by length of continuous service.

After ten (10) years of continuous employment, any employee who terminates employment with the town and is eligible for longevity bonus shall receive longevity payment for any time earned up to said date of termination of employment. Earned bonus will be paid at time of termination and shall be prorated if termination date does not coincide with anniversary date.

Upon the death of an employee who is eligible for a longevity bonus under this article, payment shall be made to his/her estate.

ARTICLE 26: REDUCTION IN FORCE

Section 1. The Town retains exclusive rights to determine the number of police telecommunicators and other employees, which are needed in the department and also retains the exclusive right to determine the number and type of employees to be laid off.

Section 2. Employees will be laid off in order of seniority within the department as provided in Article X, and the least senior employee in the classification, who is the subject of the layoff shall be the first employee laid off.

Section 3. An employee who is the subject of a layoff shall have the right to require the layoff of an employee with less seniority in a lower rank and upon the layoff of the employee

of lower rank the employee originally subject to layoff shall assume the rank of the employee so laid off and shall thereafter be compensated as provided by this Agreement as an employee of the position assumed. For purposes of establishing the relative ranking of positions within the department for this Article, the positions in order of descending rank are: Sergeant, Clerk-Telecommunicator, Patrolman, Telecommunicator.

Section 4. Laid off employees shall be recalled in inverse order of their layoff within their rank as positions become open. Employees shall remain on a recall list for a period of three (3) years from the date of their layoff. An employee who is recalled by the Department within three years shall have restored to him/her all benefits accumulated at the time of his layoff. When a vacancy occurs the Union shall be notified by certified mail at its last address of record or by delivering in hand to the steward and who shall in turn be responsible for notifying the employee within five (5) business days by certified mail. As many as three employees on the recall list may be notified simultaneously. Failure to accept certified mail shall not be deemed sufficient reason for failing to meet the response date. Failure to the individual employee to respond to the Town or its designee with a letter of acceptance within fifteen business days after notice shall be considered a rejection of such offer and the employee shall be dropped from the recall list. It shall be the responsibility of the employee on the recall list to inform the Department and the Union of their current mailing address or any changes thereof.

ARTICLE 27: MISCELLANEOUS

Section 1. Space shall be provided in the squad room for a Union Bulletin Board of reasonable size for the posting of announcements relating to Union business. All such notices shall be approved for posting by the Chief.

Section 2. Copies of General Orders, Special Orders and Personal Orders shall be supplied to the Union Telecommunicator upon request and copies of such orders issued subsequent to the effective date of this Agreement shall be supplied to him at time of issuance.

Section 3. All parties to this Agreement shall cooperate in the enforcement of safety rules and regulations. Complaints with respect to unsafe or unhealthy working conditions shall be brought to the attention of an employee's superior officer or the Chief of Police.

Section 4. The Town shall provide a complete set of the General Laws and a current Wellfleet street listing at the Police Station. Each permanent employee shall be provided with a copy of the rules and regulations for the government of the Police Department, general By-Laws of the Town, and any Traffic Rules and Orders, as needed. Within the scope of the available appropriations, it shall be the responsibility of the Chief to keep the aforementioned current.

Section 5. The substance of all complaints against employees shall be furnished in writing to the employee prior to any disciplinary action being taken by the Department against the employee.

Section 6. With the permission of the Chief of Police, a space in the Police Station may be used by the Union for meeting and discussions of Labor-Management issues of interest to this Agreement.

Section 7. Reporting Injuries in the Line of Duty. An employee injured in any way while in the service of the Town, shall report said injury or cause said injury to be reported to the Chief forthwith and in no event later than twenty-four (24) hours after said employee has knowledge of the injury. The employee shall also file or cause to be filed as soon as reasonably

possible thereafter, a written report, specifying the following information to the extent the same is available at the time said report is prepared:

1. Time and place of injury
2. Duty when injured
3. Cause of injury
4. Detailed description of how the injury occurred
5. Names of witnesses
6. Name of injury
7. Names of any doctor and nature of medical or surgical treatments received.

Section 8 The failure of the Employer or the Union to insist, in any one or more incidents, upon performance of any of the terms, or conditions of this Agreement shall not be considered as a waiver or relinquishment of the rights of the Employer or of the Union to future performance of any such term or condition, and the obligations of the Union and the Employer to such future performance shall continue in full force and effect.

ARTICLE 28: LIGHT DUTY

Whenever a telecommunicator is incapacitated for duty because of injury sustained in the performance of duty without fault of his/her own, he/she shall be granted leave without loss of pay for the period for such incapacity, provided, however, that no such leave shall be granted for any period after a physician designated by the appointing authority determines that such incapacity no longer exists, and provided further that such compensation shall be paid only to the extent required by Massachusetts Workers Compensation as amended from time to time.

Further, no such leave shall be continued beyond a total of thirty (30) calendar days in the event the physician designated by the appointing authority determines that the telecommunicator is capable of performing limited duties on either a full time or less than full time basis subject only to the provisions contained herein. The Chief shall determine whether a position is available which the telecommunicator is capable of performing and may or may not assign him/her to fill the position. Assignments to limited duty tasks may be changed or terminated at the discretion of the Chief subject only to the provisions contained herein. Telecommunicators will not be involuntarily assigned to light duty prior to the expiration of thirty calendar days. The thirty

calendar day period referred to in this paragraph includes all time due to an injury or any recurrence of the same injury, whether or not continuous

LIGHT OR LIMITED DUTY TASKS SHALL INCLUDE:

1. Dispatching
2. Training
3. General clerical work
4. Crime Prevention (e.g., citizen's assistance and operation ID)
5. Assist in property and evidence room
6. Suicide Prevention Watch
7. Computer Operation
8. Supervision (applicable to supervisors only)
9. Other limited or light duty tasks agreed upon by the Chief and the Union

Most limited or light duty tasks will normally be in-house duties. The Chief will make reasonable efforts whenever possible to make assignments of light duty to the same shift as the telecommunicator is currently assigned. Limited duty assignments, however will not normally be made to the midnight shift except for telecommunicators currently assigned to the shift.

If the telecommunicator is determined by the physician designated by the appointing authority to be capable of returning to limited or light duty and he/she is assigned to same and he/she does not report for the same and has not filed a timely appeal hereunder, his/her pay shall be discontinued and he/she shall be subject to disciplinary action.

APPEAL PROCESS

In the event the individual telecommunicator's personal physician disagrees with the decision made by the physician designated by the appointing authority and believes that the telecommunicator is not capable of returning to limited duty, the telecommunicator shall cause his/her physician to confer with the physician designated by the appointing authority within ten (10) calendar days of the decision by the physician designated by the appointing authority. A

telecommunicator assigned to light duty notwithstanding the continuing disagreement of his personal physician after said conferral with the physician designated by the appointing authority shall have the right, within fourteen (14) calendar days after said conference, to appeal to a third physician designated by the two conferring doctors. During the pendency of this appeal, the telecommunicator shall comply with the reasonable rules of the Chief. The third physician shall render his/her decision within seven (7) calendar days or as soon as practical thereafter. The decision of the third physician shall be final and binding as to whether the telecommunicator is medically capable of being assigned limited of light duty at that time.

If the telecommunicator is determined by the third physician to be capable of returning to limited or light duty and he is assigned to the same and he does not report for same, his pay shall be discontinued and he shall be subject to disciplinary action. Nothing herein, however, shall prevent the Chief from having the telecommunicator subsequently reexamined at reasonable intervals, normally not less than fourteen calendar days, to see if the telecommunicator has sufficiently recovered to commence light duty. The cost of the appeal procedure, namely payment of the third physician, shall be paid for the Town.

Nothing herein shall preclude any injured member from seeking retirement nor shall anything herein preclude the Town of Wellfleet from involuntarily retiring members. Further, nothing herein shall preclude an injured telecommunicator from seeking and obtaining treatment for said injury from the physician of his choice. Nothing herein shall require or preclude the Chief from, or limit his discretion regarding, the granting or denying of a request from an telecommunicator out on sick leave to work on limited or light duty; however, such assignments shall not be made involuntarily.

It is understood that assignments to light duty are temporary in nature and shall not extend beyond the period of disability.

ARTICLE 29: DRUG TESTING PROGRAM

Subject to the provisions of this Article, an employee shall be subject to Urinalysis drug testing (which shall be drug(s) specific), if reasonable suspicion of non-prescriptive drug use exists, as determined by the Chief of Police. Determination of “reasonable suspicion” by the Chief of Police shall comport with constitutional/legal guidelines. The employee shall be advised by the Chief of the facts and circumstances constituting his determination of “reasonable suspicion” in each instance. An employee subject to Urinalysis drug testing hereunder shall have two (2) options:

(a) The employee may refuse to be drug-tested, which may set in motion appropriate disciplinary proceedings as determined by the Chief of Police. An employee has the right to elect to arbitrate any disciplinary action taken against him as per set forth in the contract; or

(b) The employee may agree to be drug-tested. In such case, such testing shall be administered by the independent qualified testing laboratory of the Town’s choice, with Union input as to such choice. Urine samples will first be taken under supervision of a qualified physician or a medical technician or clinician employed by an independent medical facility, licensed in Massachusetts. If the initial test of each urine sample/specimen is positive, a second method of testing shall be immediately administered. The second test shall employ a methodology different from the first.

In the event that both urine sample/specimen testings are positive and independent testing of the same sample, if employed by the employee, is not negative, the employee will be relieved of duty with vacation, sick pay and/or other combinable leave, to the extent available, or on leave without pay if not, pending completion of a Town approved drug rehabilitation program (which may be in-patient or out-patient, including, but only limited to counseling). During this process, the employee shall be suspended for thirty (30) days, which suspension shall be stayed pending his successful completion of the drug rehabilitation program, and the matter shall be expunged from his record and from Town/Department files upon his successful completion of said program, or two (2) years from the date of initial testing, whichever earlier occurs, there is no further positive testing. After successful completion of said program, the employee shall return

to duty and shall be subject to follow-up “random” drug testing for a period of two (2) years from date of initial testing. If he or she is again found to have used any of the specified nonprescription drugs, the employee shall be subject to immediate disciplinary proceeding, including discharge, and shall be availed of all his rights under this contract.

The use of prescription drugs, prescribed by an employee’s physician, shall preclude any Town disciplinary action against the employee or any requirement that the employee participate in the drug rehabilitation program. The parties shall meet to develop policies and procedures for taking urine samples/specimen and testing employees as aforesaid, forthwith after execution of the Agreement. The implementation of Urinalysis drug testing hereunder shall occur upon agreement as to such policies and procedures. Such policies and procedures shall include, without limitation, the following:

1. Procedures for certification, decertification, and recertification of laboratories for urine analysis for drugs;
 2. Nature of origin and confirmation tests, and type tests, together with security of urine samples/specimens;
 3. Maintenance of chain-of-custody of urine samples/specimens;
 4. Preservation of urine samples/specimens and all records of testing;
 5. Maintenance of fairness, objectivity, accuracy, and confidentiality in testing program.
- All testing by the Town of urine samples/specimens shall be at the Town’s sole expense.

ARTICLE 30: WELLNESS PROGRAM

Section 1. Employees will participate in a Wellness Program at the Town’s expense aimed at encouraging positive health habits, assessing, on a regular basis, general fitness status, and providing information for sound health decision-making.

On an annual basis employees will be administered tests for blood pressure screening, blood cholesterol measurement, body composition measurement and vital signs screening. In

conjunction with the screening procedures, employees will also be provided with health counseling. Results of the tests will be confidential and shall not be used against the employee.

Section 2. The Union agrees that physical fitness should be a goal of all bargaining unit members and to that end it will cooperate with the Town and establish a physical fitness program.

ARTICLE 31: EMT / EMD STIPEND

Section 1. Union members shall be entitled to Emergency Medical Dispatch (EMD) stipend upon certification as an EMD. The stipend shall be \$600.00 dollars annually as long as certification is maintained.

SIGNED THIS _____ DAY OF _____ 2023

BY:

Town of Wellfleet

Wellfleet Communications Union

ATTACHMENT A: PAY SCALE - FULL-TIME TELECOMMUNICATORS

Dispatchers Effective 7/01/2023 FY 2024

Step 1	\$57,699.18
Step 2	\$58,852.17
Step 3	\$60,030.00
Step 4	\$61,229.57
Step 5	\$62,455.01
Step 6	\$63,704.25
Step 7	\$64,978.34
Step 8	\$66,277.26
Step 9	\$67,602.81

Clerk 1/Dispatcher

Step 1	\$72,417.92
Step 2	\$73,865.88
Step 3	\$75,342.83
Step 4	\$76,849.79
Step 5	\$78,387.80
Step 6	\$79,954.79
Step 7	\$81,553.88

Dispatch Supervisor Effective 7/01/23 FY 2024

\$69,292.82

Dispatchers Effective 7/01/2024 FY 2025

Step 1	\$59,718.65
Step 2	\$60,912.00
Step 3	\$62,131.05
Step 4	\$63,372.60
Step 5	\$64,640.94
Step 6	\$65,933.09
Step 7	\$67,252.58
Step 8	\$68,597.30
Step 9	\$69,968.91

Clerk 1/Dispatcher

Step 1	\$74952.55
Step 2	\$76451.19
Step 3	\$77979.83

Step 4	\$79,539.53
Step 5	\$81,131.37
Step 6	\$82,753.21
Step 7	\$84,408.27

Dispatch Supervisor Effective 7/1/2024 FY 2025

\$71,718.00

Dispatchers Effective 7/01/2025 FY 2026

Step 1	\$61,808.80
Step 2	\$63,043.92
Step 3	\$64,305.64
Step 4	\$65,591.05
Step 5	\$66,903.43
Step 6	\$68,241.69
Step 7	\$69,606.85
Step 8	\$70,997.90
Step 9	\$72,417.91

Clerk 1/Dispatcher

Step 1	\$77,576.00
Step 2	\$79,127.00
Step 3	\$80,709.00
Step 4	\$82,323.00
Step 5	\$83,971.00
Step 6	\$85,650.00
Step 7	\$87,363.00

Dispatch Supervisor Effective 7/1/2025 FY 2026

\$74,228.00

Section 2. Night differential (paid only to telecommunicators regularly assigned midnight, late evening shift and regular evening shifts) amounts to Forth-Five (\$45.00) per week.

Section 3. All regular full-time telecommunicators shall receive salary, night differential and EMD or EMT pay (whichever is higher) added together to achieve the hourly, overtime and holiday rates (Article 9/Section 2). This total salary shall be paid in approximately equal amounts bi-weekly provided, however, that no employee should be paid in advance for time worked.

Section 4. Dispatch Supervisor

Pay Scale – 2.5% over top Dispatcher Step.

Attachement A: Pay Scale

Annual Adjustments to existing Scale:

FY 24 – 3.5% increase

FY 25 – 3.5% increase

FY 26 – 3.5% increase

TOWN of WELLFLEET

July 1, 2023 – June 30, 2026

AGREEMENT

BETWEEN

TOWN OF WELLFLEET

WELLFLEET, MASSACHUSETTS

AND

TEAMSTERS UNION LOCAL NO. 59

affiliated with the

I. B. of T.

27 South Sixth Street
New Bedford, Massachusetts 02740

TOWN OF WELLFLEET

INDEX

Article 1	Union Recognition	Page 6
Article 2	Management Rights	Page 6
Article 3	Seniority and Promotion	Page 6
Article 4	Job Bidding and Posting	Page 7
Article 5	Military Clause	Page 8
Article 6	Grievance Procedure and Arbitration	Page 8
Article 7	Discharge or Suspension	Page 9
Article 8	Union Dues	Page 10
Article 9	Steward	Page 11
Article 10	Vacations	Page 11
Article 11	Holidays	Page 13
Article 12	Sick Leave	Page 13
Article 13	Personal Days	Page 18
Article 14	Leave of Absence	Page 18
Article 15	Bereavement	Page 19
Article 16	Additional Absence from Work	Page 19
Article 17	Hours of Work and Overtime	Page 19
Article 18	Miscellaneous	Page 21
Article 19	No Strike Clause	Page 24
Article 20	Labor/Management Meetings	Page 24
Article 21	Physical Examinations	Page 24
Article 22	Drug Testing Program	Page 25
Article 23	Light Duty	Page 27
Article 24	Education Reimbursement	Page 28
Article 25	Wellness Program	Page 29
Article 26	Scope of Agreement	Page 29
Article 27	Illegality	Page 29
Article 28	Wages	Page 29
Article 29	Insurance	Page 30
Article 30	Special Provisions	Page 31
Article 31	Longevity	Page 31
Article 32	Duration	Page 32

AGREEMENT

Agreement made and entered into between the Town of Wellfleet, Massachusetts hereinafter "EMPLOYER", and Local 59 of the Teamsters, Chauffeurs Warehousemen and Helpers, hereinafter "UNION " , on behalf of itself and two bargaining units determined by the Massachusetts Labor Relations Commission, members of said bargaining units being hereinafter referred to as "Employees".

The purpose of this Agreement is to promote good relations between the Employer, the Union and Employees, and to make clear the basic provisions upon which such relations depend. It is the intent of both the Employer and the Union to work together to provide and maintain mutually satisfactory terms and conditions of employment and to prevent as well as to resolve misunderstandings or grievances relating to employment.

ARTICLE 1 - UNION RECOGNITION

Unit:

The Employer recognizes the Union as the sole and exclusive bargaining representative, pursuant to MCR-3406, dated January 2, 1985, for the purpose of establishing wages, hours and other conditions of employment for all regular full-time and regular part-time non-supervisory employees in the Town of Wellfleet in the following positions : Department of Public Works Laborer, Department of Public Works Driver/Laborer, Custodian, Harbormaster, Assistant Harbormaster, Administrative Assistant and Clerks, but excluding all supervisory, managerial, confidential, casual and all other employees.

Provisional and temporary employees shall not be covered by the terms and conditions of this Agreement.

ARTICLE 2 - MANAGEMENT RIGHTS

Subsequent to the execution of this contract, the Town will continue to retain, whether exercised or not, all rights, power and authority it currently exercises under the General Laws of the Commonwealth of Massachusetts and the Wellfleet Charter to solely manage the affairs of the Town and direct its workforce, except to the extent that such rights, power and authority have been abridged, limited, or relinquished by the terms and provisions of this Agreement .

Between Memorial Day and Labor Day, the Town would have the right to contract out cleaning bathrooms in municipal buildings as determined by the department head or his designee, provided, that such contracting out does not result in the layoff of current bargaining unit members.

ARTICLE 3 - SENIORITY and PROMOTIONS

Section 1: All new employees except those specified hereinafter shall be hired on a twelve (12) month provisional period during which period they may be dismissed without recourse. For the purpose of this article this will consist of twelve (12) calendar months of actual work time. For example,

sick leave, vacation time, leave of absence, injured on duty status and other non-work time shall not be credited toward the completion of a probationary period.

Section 2: Seniority shall mean an employee's length of continuous service with the Town as a full-time employee. Seniority shall be used to determine vacation assignment and reduction in force within each department. Seniority shall be used to determine bidding of posted jobs when applicants are equally qualified for the same position. Vacation, sick leave, military leave, injury time sustained in the line of work or any other temporary leave of absence agreed upon between the Department Head and the employee shall not affect seniority accrued to date of such leave. Time off resulting from suspension will be deducted from the employee's seniority. Suspensions, which are overturned, will not affect an employee's seniority.

ARTICLE 4 - JOB BIDDING and POSTING

Job openings for positions covered by this Agreement shall be posted for a period of ten (10) calendar days. Job openings can be advertised both internally and externally simultaneously. All employees shall have an opportunity to apply for any vacancy. Qualified Union employees will have preference. The Town has exclusive control over determining and editing job descriptions as necessary without requiring union sign off, entry level qualifications, and the determination of the ability of applicants.

If an employee within the unit is selected for any such vacancy, he/she will be placed in probationary status for a twelve (12) month period. If for any reason the employee's performance or conduct is deemed unsatisfactory, the employee will be returned to their former position. The employee may grieve the decision of the Town. The employee reserves the right to return to his former position, for any reason, within 30 calendar days of assuming the new position. The decision of the employer to terminate new hire employees during the probationary is not subject to the grievance procedure.

ARTICLE 5 - MILITARY CAUSE

Employees enlisting or entering the military or naval service of the United States shall be granted all rights and privileges provided by the Laws of Massachusetts and the United States.

ARTICLE 6 - GRIEVANCE PROCEDURE AND ARBITRATION

Section 1: A grievance shall be defined as a dispute or controversy between management and the Union, which cannot be resolved through discussion between the parties. The purpose of the grievance procedure is to settle all alleged grievances as quickly as possible.

Any grievance which may arise from the terms of this Agreement shall be settled in the following manner:

Step 1: The employee involved shall first submit to the Steward, in writing, the nature of the grievance or complaint, not later than fourteen (14) calendar days from when the employee became aware of the problem. The Union Steward, with or without the aggrieved employee shall submit the grievance in writing to the Department Head within fourteen (14) calendar days, excluding holidays and weekends, after the employee knew or should have known of the occurrence or failure of occurrence of the incident upon which the grievance is based.

Step 2: If the grievance has not been resolved within fourteen (14) calendar days after its submission to the Department Head, it shall be submitted to the Town Administrator, in writing within fourteen (14) calendar days after the response or the Department Head or the date on which the answer is due.

Step 3: If the grievance has not been resolved within fourteen (14) calendar days after its submission to the Town Administrator, it shall be submitted in writing to the Selectboard within fourteen (14) calendar days after the response of the Town Administrator or the date on which the answer is due. The requirement for a hearing may be waived upon mutual agreement of the Selectboard and the Union.

Step 4: Within twenty-eight (28) calendar days after receipt of the grievance, the Selectboard shall hold a hearing, and shall render a decision within fourteen (14) calendar days after the hearing. If the grievance has not been resolved by the Selectboard, the Union may submit the grievance to arbitration within fourteen (14) calendar days following the

Selectboard's answer or the date on which said answer is due, with a copy of the submission letter to the Board of Selectmen.

Section 2 Time Limits: The time limits specified in the preceding paragraphs may be extended by oral or written agreement of both parties. In the absence of such an agreement, however, failure to comply with the above time limits for instituting and pursuing grievances shall be conclusively deemed to be a waiver by the Union of all rights under this Article, and failure to answer in a timely fashion will be deemed a denial by the Town, authorizing the Union to proceed to the next step.

Section 3: The Arbitration shall be conducted by the American Arbitration Association under its existing rules of procedure. The decision of the arbitrator shall be final and binding upon the parties except that the arbitrator shall make no decision which alters, amends, adds to or detracts from this Agreement or which modifies or abridges the management rights prerogatives of the Town. Costs of the arbitration proceedings except for transcripts requested by a party, shall be shared equally by the Town and the Union.

Section 4: Matters concerning the discipline or discharge of a probationary employee shall not be subject to the grievance and arbitration provisions of this Article.

Section 5: An employee who has been ordered to perform a certain task which he/she believes violates a provision of this Agreement shall not refuse to perform the task (unless the task is reasonably believed to be unsafe), but shall perform the same and then submit his/her protest as a grievance.

ARTICLE 7 - DISCHARGE OR SUSPENSION

Employees may during the period of employment be disciplined for just cause, including but not limited to: unsatisfactory job performance or attendance including emergency overtime, e.g. snow and ice removal, and/or violation of Town policies or regulations. The following steps shall be taken in the event that disciplinary action is deemed necessary.

1. Oral Reprimand - A department head or supervisor may issue an oral warning to an employee for just cause. An oral reprimand shall be noted in the employee's personnel file.

2. Written Reprimand - A department head may issue a written warning for just cause. A copy of the written

warning shall be placed in the employee's personnel file and carry a specified period in which the behavior shall improve.

3. Suspension - short term - An employee may be suspended for up to five days without pay for just cause. Suspension may be in lieu of oral reprimand and written reprimand and may be effective immediately. Within 48 hours of the effective date of suspension, the employee will be provided with a written notice stating the reason for it, the length of suspension and the date the employee will return to work.

4. Suspension - long term - An employee may be suspended for up to ten days without pay for just cause. Suspension may be in lieu of oral reprimand and written reprimand and may be effective immediately. Within 48 hours of the effective date of suspension, the employee will be provided with a written notice stating the reason for it, the length of suspension and the date the employee will return to work.

5. Discharge - An employee may be discharged for just cause. The Town Administrator shall provide the employee with a written notice of discharge stating the reason for it and the effective date of the discharge. For serious infractions, discharge may be in lieu of an oral reprimand, written reprimand, or suspension.

This Discipline Policy does not apply to the drug and alcohol testing program, which is outlined in Article 22 of this contract.

Employee Rights:

1. Employees have the right to challenge disciplinary action as it arises and to request a plan for remediation, if warranted. All disciplinary action is subject to grievance and arbitration procedures as set forth in this agreement.
2. Oral and written reprimands shall be removed from employee files after a period of eighteen (18) months if no additional infractions have occurred.

ARTICLE 8 - UNION DUES

The Union shall be responsible for collection of monthly union dues. The Town shall deduct monthly dues and fees from the earned wages of bargaining unit employees in an amount determined by

the Union, provided an employee signs the appropriate authorization form. The Town shall forward to the Union such dues or fees deducted within forty-five (45) days of receipt of the same.

ARTICLE 9 - STEWARD

The duly authorized Steward whose name has been submitted to the Town shall have the following responsibilities and the use of reasonable time during working hours without loss of pay to perform such duties:

1. The investigation and presentation of grievances in accordance with the provisions of this Agreement.
2. The transmissions of such messages and information which shall originate with, and are authorized by the Local Union or its officers, provided such messages and information:
 - a. have been reduced to writing, and
 - b. are of routine nature.
3. The Steward has no authority to take strike action, or any other action interrupting the Employer's business. If the Town decides the Steward is abusing any privileges granted under this Article, it will notify the Business Agent. If the situation does not improve, the Town may restrict the Steward to conducting Union business on non-working hours.

During contract negotiations, the Steward or alternate will attend all sessions without loss of pay. If during negotiations it becomes necessary to employ someone to perform job tasks normally assigned to the Steward or Alternate, the Union and the Town will split the wage costs for the replacement.

ARTICLE 10 - VACATIONS

Section 1: Vacation days shall be computed from the first day of employment in accordance with the schedule below:

0 to 6 months	none
6 months to 1 year	1 week (5 days)
1 year to 4 years	3 weeks (15 days)
5 years to 9 years	4 weeks (20 days)

10 years to 19 years	5 weeks (25 days)
20 years and over	6 weeks* (30 days)

The ability to cash out
up to two (2) weeks
after 5 years.

*As negotiated, with exception to Peter Williams, he will earn his 6 weeks on his 18th anniversary because he is the only one close to achieving that in the Teamsters union.

Vacations must be taken in the anniversary year earned; exception to this rule must be approved in writing by the Department Head and Town Administrator. Vacation periods will be approved by the Department Head on a seniority basis. Notwithstanding the foregoing, the employer reserves the right to limit the number of employees on vacation at any one time and to deny a vacation request at such time as in the Town's opinion may conflict with the need of the Town. When an employee puts in a request in for vacation, the Department Head shall let them know no later than 2 weeks thereafter if it has been approved.

Section 2: An employee who is laid off, retired or separated from the service of the Town shall be compensated for accrued unused vacation.

Section 3: Upon the death of an employee who is eligible for vacations under this Article, payment shall be made in an amount equal to the accrued vacation time to his/her estate at the prevailing rate.

Section 4: Vacation may be taken immediately before and/or after holidays, if such vacations conform to the conditions set forth in Section 1. above. If a holiday occurs within a scheduled vacation week, the employees shall be entitled to another day off, which shall be scheduled as mutually agreed by the employee and the Department Head.

Section 5: Vacation Buyback -
Any employee eligible for more than two weeks' vacation time may elect in lieu of time off to be paid for up to two weeks of vacation time or such lesser amount of vacation time as will leave the employee with not less than two weeks of remaining vacation time. Requests must be submitted prior to March 1st.

ARTICLE 11 - HOLIDAYS

All employees covered by the terms of this Agreement shall be eligible to receive holiday pay if he/she is regularly scheduled to work any day on which the following holidays fall:

NEW YEARS DAY	LABOR DAY
Martine Luther King Day	COLUMBUS DAY
PRESIDENT'S DAY	VETERAN'S DAY
PATRIOT'S DAY	THANKSGIVING DAY
MEMORIAL DAY	Day after Thanksgiving
JUNETEENTH	INDEPENDENCE DAY
	Christmas Day

Subject to the approval of the Board of Health, the Transfer Station will be closed on July 4th.

An employee who is entitled to holidays with pay as provided for in this section and who is required to work on a given holiday shall be compensated for such work at double time for each hour plus holiday pay.

Employees may have the option of accruing holidays, if possible, to be used in conjunction with vacation days with the approval of their immediate Supervisor.

All work performed on Sunday or the 7th day of any scheduled work week, shall be paid at twice the regular rate of pay.

An employee shall receive holiday pay automatically only if he/she actually works or takes vacation leave the regularly scheduled day before and the regularly scheduled day after the scheduled holiday. If an employee is sick the day before or the day after a scheduled holiday, he/she may receive holiday pay upon approval of the Town Administrator.

Holidays falling on Saturday will be observed on the Friday before. Holidays falling on Sunday will be observed on the following Monday.

ARTICLE 12 - SICK LEAVE

Section 1 - Employees Entitled to Sick Leave:

All Employees covered by the terms of this Agreement may be allowed sick leave as a privilege but not as a right. In the application of sick leave privileges, the following rules shall apply:

(a) Sick leave shall be granted on the basis on one and one quarter (1 1/4) days earned for each month of continuous employment and may be accumulated up to a maximum of 125 days. Any employee who terminates employment through retirement, resignation after five (5) years of continuous employment, disability, or death shall be entitled to cash payment at his/her current rate of pay for 25% of his/her unused accumulated sick leave. In the case of death, the payment due hereunder shall be made to a surviving spouse, or to a designated beneficiary of the estate.

(b) The Town, with the approval of the Department Head, Town Administrator and Selectboard, may extend sick leave as a leave without pay when the situation warrants such action.

(c) Every employee who is ill and desires sick leave credit shall call or cause his Department Head to be called and to be notified of such illness prior to the start of his work day if possible, and in no event later than one hour after he is scheduled to report to work.

(d) Sick Leave May Be Denied: The Town reserves the right to deny sick leave to a person injured in hazardous sports or other dangerous activities not connected with Town employment and will deny sick leave to a person injured while employed at any occupation outside his employment by the Town, so long as the Town has notified the Union or employee of its determination that a sport or activity is considered dangerous.

(e) Penalty for Abuse of Privileges: In the event of apparent abuse of sick leave privileges, the Town, through its Selectboard or Town Administrator or through a Department Head with the approval of the Selectboard, may disallow sick leave and may discipline an employee for said sick leave abuse.

Section 2: Sick Leave Bank Program

Introduction:

The Sick Leave Bank ("SLB") is a voluntary program for Town employees (full and part time). The basic purpose of the Sick Leave Bank is to provide additional sick days to a contributing employee for a serious, prolonged, extended illness situation. The Sick Leave Bank is available only for the employee's aforementioned illness. However, if an employee does not participate in the SLB by contributing sick leave hours, he/she CANNOT benefit from it.

Program Details:

Solicitation for participation in the SLB program shall occur after 30 days of hire for new employees. Solicitation for

existing employees shall occur in June for the next fiscal year. Unless an employee's participation in a SLB is covered by his/her individual employment agreement or a collective bargaining agreement, a participating employee shall contribute one-quarter (1/4) day of earned sick leave each month. The participating employee's contribution shall continue until the SLB contains deposits of three hundred (300) sick leave days. At that point, all contributions of sick leave shall be suspended. If the SLB's deposited sick leave days then fall to one hundred fifty (150) or below, contributions shall resume as they existed before the suspension. The Committee charged with operating the SLB may request that participating employees make additional contributions of sick leave days if an unusual event occurs. New hires or current employee joining or re-joining the SLB shall be exempt from any freeze for one year from the time of their entrance into the program.

If a Town employee participates in the SLB during one Town fiscal year, but elects NOT to participate in the next, NO sick leave days shall be returned to the employee. Once an employee's sick leave days enter the SLB, those sick leave hours can ONLY be used in the SLB program.

SLB Committee:

The SLB program shall be administered by a SLB Committee. The Committee shall have five (5) members. The members shall consist of: two (2) non-Union contract employees appointed by the Town Administrator and three Union employees, one from the Wellfleet Employees Association (WEA) one from the Wellfleet Permanent Firefighters Union, and the third from the Teamsters' Union. A member of the SLB Committee may be removed from his/her position for non-attendance at four (4) consecutive SLB Committee meetings, removal or retirement from Town employment, or incapacity to serve. In the event that a member of the SLB committee is an applicant requesting days from the SLB an alternate voting member will be chosen from that individual's representative group to serve as a voting member for their application.

Requests to use Sick Leave Hours from the SLB:

Any participating employee may make a confidential written request to receive sick leave hours from the SLB. Such a request shall state the employee's full name, Town employment position and that the employee participates in the SLB. The request shall also provide an explanation with sufficient detail concerning why the request is being made at this time. Sufficient detail, in this context, means attaching appropriate medical documentation to support the claim in the request. The

complete request shall be submitted in an envelope marked CONFIDENTIAL SLB REQUEST and submitted to the OFFICE OF THE TOWN ADMINISTRATOR. The Town Administrator shall as quickly as possible convey the writing to the SLB Committee in a manner that preserves the employee's confidentiality. Any retained copies of the employee's request shall be kept at Town Hall in a locked file cabinet.

The SLB Committee shall meet as quickly as possible to consider the employee's request. In deciding whether to grant the employee's request, the SLB Committee shall consider the following:

- (1) The doctors written determination addressing the request;
- (2) The employee's prior circumstances with available sick leave, the expected duration of this health event, any documented abuse of sick leave, and any additional compelling circumstances.

The SLB Committee shall deny an application for sick leave hours when:

- (1) The applicant is not a presently participating SLB employee;
- (2) The applicant has not already exhausted all accumulated sick leave time and any other available Paid leave (except for Vacation and Personal time);
- (3) The applicant's specific health event does not render him/her incapable of performing his/her job;

The SLB Committee may in its sole discretion DENY an application when it finds any one of the following to be true:

- (1) The applicant has abused sick leave in the past;
- (2) The applicant has not yet exhausted accumulated sick leave time and other available Paid leave (except for Vacation and Personal time);
- (3) The applicant has made previous granted applications to the SLB and this application is deemed excessive; or
- (4) Other just cause for denying the application exists.
- (5) The applicant's request is not supported by appropriate information.

Any initial grant of sick leave days by the SLB Committee to an applicant shall not exceed thirty (30) days. An employee may make requests for additional sick leave days from the SLB in accordance with the application process set out above. Any additional grants by the SLB Committee of sick leave days may be made in increments of up to thirty (30) days. There is no

entitlement to such an additional grant and any such additional grant shall be solely within the discretion of the SLB Committee. If an employee does not need to use the entire number of days granted, he/she shall inform the Town Administrator in writing in an envelope marked as detailed above. The Town Administrator shall retain such writing and have it placed in the employee's Personnel File and treat it as a confidential medical record. Any unused sick bank time shall be returned to the bank.

All decisions of the SLB Committee shall be confidential and disclosed only to the limited extent needed to effectuate a granting of sick leave bank days to the employee. Denials shall be made only to the employee, members of the SLB Committee and the Town Administrator. Records of grants and denials shall be provided to the Town Administrator who will have such records maintained as confidential portions of the employee's Personnel File.

ANY DECISION TO GRANT OR DENY AN APPLICANT'S REQUEST FOR SICK LEAVE HOURS RESTS SOLELY WITHIN THE DISCRETION OF A MAJORITY VOTE OF THE SLB COMMITTEE. THE DECISION IS FINAL AND CANNOT BE APPEALED OR CONTESTED IN ANY MANNER.

EMPLOYEE ACKNOWLEDGEMENT

I have received the Sick Leave Bank Program Information of the Town of Wellfleet and understand that it is my responsibility to read the material and comply with all laws, policies and procedures set forth therein. I understand that these documents are not an employment contract and I understand that they can be changed or amended by the Town at any time with notice, subject to any collective bargaining obligations. I give my permission to allow the SLB Committee to view my medical information which I may need to provide in order to adequately have my application evaluated and have a decision rendered.

I understand that if I have any questions or concerns about the information provided in the Sick Leave Bank Program information, it is my responsibility to request further information or clarification.

The information herein is current as of this printing. The Town reserves the right to change, modify, or amend all or part of any policy. Selectmen's policies are identified specifically and should be checked for updates before reliance upon any version.

Employee Name (Please print full name)

Signature of Employee

Date Signed

Section 3 - Reporting Injuries in Line of Duty

An employee of the Town, including emergency employees, injured in any way while in the service of the Town shall report said injury or cause said injury to be reported to his/her Department Head forthwith, and in no event later than twenty-four (24) hours after the occurrence of said injury. Said report shall be in writing or on forms provided for the purpose, and shall contain the following information: Time and place of injury; occupation when injured; machine, tool, equipment or thing causing injury; detailed description of how accident occurred; names and witnesses; nature of injury; name of any doctor and nature of any medical or surgical treatment.

ARTICLE 13 - PERSONAL DAYS

Every employee covered by this Agreement shall be permitted four (4) personal business days per year, with the approval of the Department Head.

ARTICLE 14 - LEAVE OF ABSENCE

Leaves of absence without pay for limited periods not to exceed six (6) months may be granted at the discretion of the Select Board. Such leave may be extended or renewed at the discretion of the Selectboard. Employees shall not be eligible for leaves of absence until they have worked for the Town one (1) year. While on such unpaid leave of absence of two weeks or more, the employee will not gain any time in service to be used toward seniority for any purpose. In addition, an employee on such an unpaid leave of absence will not be eligible for, nor accrue any benefits, including, without limitation, sick leave, holiday, personal days and vacation time. The Town shall not be liable for the maintenance of the employee's medical insurance during such leave.

A leave of absence may not be used to try new employment. Employees who violate this provision may be terminated.

ARTICLE 15 - BEREAVEMENT

Death in an employee's immediate family shall be considered just reason for leave with pay. Such leave shall not exceed 4 days without permission of the Department Head and the Town Administrator. The immediate family shall be considered to mean spouse, children, parents, grandparents, grandchildren, siblings, parents-in-law, significant other or any relative living in the employee's domicile.

ARTICLE 16 - ADDITIONAL ABSENCE FROM WORK

Section 1: Leave for serious illness in an employee's immediate family or leave for giving birth or paternity shall be taken in accordance with the Family and Medical Leave Act FMLA subject to the approval of the Department Head and Town Administrator. Such approval shall not be unreasonably denied.

Section 2: An employee called to jury duty shall be granted leave for the duration of his/her jury service. Such employee shall receive from the Town an amount equal to the difference between his/her normal compensation and the amount (excluding travel allowance) received from the court. The employee must present certification to the Town Accountant of the amount paid by the court.

ARTICLE 17 - HOURS OF WORK and OVERTIME

Employees required to work in excess of eight (8) hours per day or forty (40) hours in any one week shall be compensated for such excess of hours at the rate of time and one half (1 1/2) their regular hourly rate of pay. All work performed on Sunday shall be paid at twice the regular rate of pay, except when Sunday is part of the regularly scheduled work week, in which case the seventh day of any scheduled work week shall be paid at twice the regular rate of pay.

Unless specific approval for overtime is authorized by the Department Head, an employee will not be eligible for work at time and one half (1 1/2) rate of pay within twenty-four (24) hours of being absent from work on sick leave.

Employees called back to work after their regular work schedule shall be compensated at the rate of time and one half (1 1/2) for all hours worked in addition to their regular work schedule, but no less than four (4) hours.

Compensatory time off in lieu of overtime payments may be granted at the same rate of pay whether straight time, time and

one half (1 1/2) or double time with approval of supervisor. Such compensatory time off must be used within 90 days. This is not applicable to snow removal.

If for any reason Town Hall is closed, and the employee is working that day, the employee shall receive compensatory time equal to the amount of time Town Hall is closed for and that compensatory time must be used in equivalent hours within 60 days.

Overtime shall be assigned and distributed impartially among all regular, full-time employees of the bargaining unit who are qualified, as determined by the Department Head, to perform particular overtime assignments.

If after sixteen (16) hours of work, the employee receives a four (4) hour break and is then called back to work immediately after the break, the employee shall be compensated for the four (3) hour break at applicable overtime rates.

Overtime Roster

- A list of DPW personnel will be provided by the Department Head or his/her designee and will be in categorized in order of seniority and divided into sections as follows:

- Driver / Laborers
- Laborers
- Equipment Operators
- Seasonal personnel

- Overtime shall be assigned and distributed impartially among all regular, full-time employees of the bargaining unit who are qualified for specific assignments.
- Department Head or his/her designee will determine who is qualified for overtime assignments.
- The Union Steward will maintain the overtime list in conjunction with management.
- Refusal of overtime will be counted on the rotation as overtime refused, and the employee will be bypassed.
- Seasonal Employees will be excluded from the overtime list unless the list is exhausted.
- In the event of an emergency, i.e. hurricanes, windstorms, tree removal, snow & ice, etc., all DPW employees as determined by the Department Head or his/her designee will be required to report for duty and work overtime as needed.

Any employee who believes he/she was unfairly passed over for an overtime assignment shall take the matter up with the

Department head or his/her designee. If the Department Head determines that the employee was bypassed, said employee will be given a priority for the next overtime assignment that he/she is qualified for.

Summer Hours: Summer hours will begin on or about May 1st and end on or about October 1st of each year. Summer hours are as follows: 6:30 a.m. 2:30 p.m. Winter hours are 7:00 a.m. to 3:00 p.m.

ARTICLE 18 - MISCELLANEOUS

A. Access to Premises: The Union Business Agent shall, following notification to the Town Administrator, if available, have access to Town Departments during working hours including the right to investigate working conditions and handle grievances.

B. Personnel Records: All employees shall have the right to review their personnel records upon proper notification. Any employee may request either the Shop Steward or a Union Representative be present when such review takes place.

C. Employees performing work in another higher classification within the bargaining unit or following designation by the Selectboard as "Acting Department Head" will be paid at the higher rate after two weeks for additional hours worked in the higher classification.

D. Use of Town Buildings: With the permission of the Selectboard, a space in Town buildings may be used by the Union for meetings and discussions of Labor Management issues of interest to both parties to this Agreement.

E. License: The Town agrees to pay for the cost of the renewal of Commercial Driver's Licenses (CDL), Hoisting Licenses, Construction Supervisor's Licenses, DOT required physicals for employees required to have such a license or physical and, with the prior approval of the DPW Director, other Continuing Education Units (CEO's).

The Town will pay annually \$500 for CDL Class A and \$250 for Class B.

The Town will pay annually \$100 for Hoisting Licenses.

The Town will pay annually \$300 for Captain's License.

** See Attached Hoisting and License Stipend List.

The agreed upon list shall be inclusive to the licenses covered under the license stipends. In the event an employee obtains additional licenses it shall be first approved by the DPW Director and or the Town Administrator, this shall also be mutually agreed upon by the Union. SEE APPENDIX A.

F. DPW Uniform Allowance: An annual allowance of \$700 shall be given to each employee for the purpose of purchasing and maintaining uniforms such as denim pants/jeans or suitable material approved by the DPW Director. Such allowance will be paid annually in two equal installments, the first pay date of October and the first pay date of April each fiscal year. The boot allowance is \$250 per fiscal year. Employees shall purchase boots that have appropriate slip traction and toe protection, or otherwise approved by the DPW Director.

All full-time employees shall be required to wear a proper uniform, protective clothing, and/or any type of protective equipment as a condition of their employment.

The following will be provided by the Town per fiscal year to be worn by employees while working for the municipality only. The clothing shall be maintained and laundered by the employee in a manner acceptable to the Town.

- 3 t shirts (preference to employee for long sleeve or short sleeve)
- 1 Town logo sweatshirt per year
- 1 Rain coat/pants
- 1 Cap
- 1 yellow HI VIZ work vest
- 1 yellow HI VIZ winter coat
- Protective eye wear, ear protection, gloves, hard hats and any other PPE that may be required for the job

The outer most layer of all clothing shall signify employment by the Town of Wellfleet (i.e. reflect the Town of Wellfleet seal, identify the department such as Wellfleet DPW or other similar identification). All full-time field employees will be required to wear HI-VIZ clothing when working within the roadway or around moving machinery. Clothing items and PPE will be replaced when the item has been properly accounted for as either damaged/used, lost or stolen. All full-time field employees will be prohibited from wearing loose fitting jewelry that could get caught in machinery, ear buds or headphones that prohibit or obstruct hearing. Ear buds or headphones are acceptable for noise protection while using loud machinery/tools/equipment. Shorts will be acceptable as long

as the employee is using proper judgement and not working in hazardous conditions (i.e., not wearing shorts weedwacking, while using a chainsaw, etc.).

All uniforms provided to employees shall remain the property of the Town of Wellfleet and will be returned upon separation of service. Any clothing damaged during work, shall at the discretion of the DPW Director be repaired or replaced by the Town. Any employee who fails to follow the uniform policy will be subject to disciplinary action.

Hazardous Weather:

Consistent with the needs of the Town, Department Managers will assign inside work when the temperature falls below ten (10) degrees including wind chill factor or exceeds ninety (90) degrees above zero (0). This will not apply to emergencies.

1. Protective clothing considered necessary in the performance of specific function shall continue to be provided by the Town under the same arrangements that are now in effect.
2. Such clothing and equipment shall remain the property of the Town.
3. Employees will not misappropriate or misuse such property.
4. This clause is not meant to impede essential services, which the Town must perform. However, it is a guideline in which to exercise good judgment in extreme weather conditions,
5. Clothing and safety gear provided by the Town shall be worn during working hours for the purpose of protection and identification.

G. When the Transfer Station schedule changes in the spring and fall from five days per week to seven days per week and vice versa, regular full-time personnel assigned to the Transfer Station will be paid their regular 40 hours per week. They will not lose any pay due to the Town's changing Transfer Station schedule.

H. Weekend Differential of \$75.00 per weekend is to be paid to all regular full-time employees of the Transfer Station or any other member of this bargaining unit who is regularly scheduled to work every weekend. (Saturday and Sunday).

I. Standby pay at the rate of \$20.00 per day and/or night will be paid to any member of the bargaining unit who is required by his/her Department Head to be on standby at home in anticipation of a storm.

J. All employees required to use their private vehicle for Town purpose shall be compensated at the Town's prevailing rate per mile.

K. A take home vehicle to be provided to the Harbor Master by the Town.

ARTICLE 19 - NO STRIKE CLAUSE

Section 1: It shall be unlawful for any employee to engage in, induce, or encourage any strike, work stoppage, slowdown, or withholding of services. Any employee violating said provision shall be subject to disciplinary action including discharge subject to the provisions of the Agreement.

Section 2: The Union will not instigate nor condone any such illegal action as specified in Section 1 and will take all necessary steps to stop such action and make every move to return employees to work.

ARTICLE 20 - LABOR/MANAGEMENT MEETINGS

The Town Administrator and his/her designee, shall meet with the members of the Union Bargaining Committee periodically for the mutual exchange of opinions, ideas, and discussions with respect to policies and practices affecting the implementation of the Agreement, status of current and new projected, and other matters of mutual interest. All pending grievances may be discussed at said meeting. A written agenda shall be required for each meeting,

ARTICLE 21 - PHYSICAL EXAMINATIONS

Section 1: A successful applicant for regular full-time or regular part-time employment shall be required to take a physical examination to determine if he/she is fit to perform the duties of the position which he/she will fill. The examining physician will be approved by the Town and the cost of the examination will be paid by the Town upon presentation of a bill from the physician to the Town Accountant.

Section 2: If circumstances warrant, the Town Administrator may require any Town employee to undergo a physical examination to determine his/her physical fitness to perform assigned duties. The examining physician will be approved by the Town and the cost of the examination will be paid by the Town upon presentation of a bill from the physician to the Town Accountant.

ARTICLE 22 - DRUG TESTING PROGRAM

Subject to the provisions of this Article, an employee shall be subject to Urinalysis drug testing, if reasonable suspicion of non-prescriptive drug use exists, as determined by the Department Head. Determination of "reasonable suspicion" by the Department Head shall comport with constitutional/legal guidelines. The employee shall be advised by the Department Head the facts and circumstances constituting his/her determination of "reasonable suspicion" in each instance. An employee subject to Urinalysis drug testing hereunder shall have 2 options:

(a) The employee may refuse to be drug tested, which may set in motion appropriate disciplinary proceedings as determined by the Department Head. An employee has the right to elect to arbitrate any disciplinary action taken against him as per set forth in the contract; or

(b) The employee may agree to be drug tested. In such case, such testing shall be administered by independent qualified testing laboratory of the Town's choice, with Union input as to such choice. Urine samples will first be taken under supervision of a qualified physician or a medical facility, licenses in Massachusetts. If the initial test of each urine sample/specimen is positive, a second method of testing shall immediately be administered. The second test shall employ a methodology different from the first.

In the event that both urine sample/ specimen testing are positive and independent testing of the same sample, if employed by the employee, is not negative, the employee will be relieved of duty with vacation, sick pay and/or other combinable leave, to the extent available, or on leave without pay if not, pending completion of a Town approved drug rehabilitation program (which may be in-patient or out-patient, including, but not limited to counseling). During the process, the employee shall be suspended for thirty (30) days, which suspension shall be stayed pending his/her record and from City/ Department files upon his/her successful completion of said program or two (2) years from date of initial testing, whichever earlier occurs, provided, however, during said program or said two (2) year period, whichever earlier occurs, there is no further positive testing. After successful completion of said program, the employee shall return to duty and shall be subject to follow-up "random" drug testing for a period of two (2) years from date of initial testing. If employee is again found to have used any of the specified non-prescription drugs, the employee shall be subject to immediate disciplinary proceedings, including discharge, shall be availed of all his rights under the contract and Town Personnel By-Laws.

The fact of prescriptive use of specific drugs or any of them, shall preclude any Town disciplinary action against the employee or any requirement that the employee participate in a drug rehabilitation program. The parties shall meet to develop policies and procedures for taking urine samples/specimens and testing employees as aforesaid, forthwith after execution of the Agreement. The implementation of Urinalysis drug testing hereunder shall occur upon agreement as to such policies and procedures.

Such policies and procedures shall include, without limitation, the following:

- (i) Procedures for certification, decertification and recertification of laboratories for urine analysis for drugs;
- (ii) Nature of origin and confirmation tests, and type of tests, together with security or urine samples / specimens;
- (iii) Maintenance of chain-of-custody of urine samples/ specimens;
- (iv) Preservation of urine samples/ specimens and all records of testing;
- (v) Maintenance of fairness, objectivity, accuracy and confidentiality in testing program.

All testing by the Town of urine samples/ specimens shall be at the Town's sole expense.

All employees covered under this Agreement who have a CDL (Commercial Driver's License) as part of their job requirement, must submit to random drug and alcohol testing in accordance with the D.O.T. and the Federal Highway Administration rules and regulations enacted February 15, 1994.

Drivers who violate the alcohol and drug misuse rules will be referred to a substance abuse professional for evaluation. The Town of Wellfleet is not required under these rules to provide rehabilitation or pay for treatment. Before an employee can return to safety-sensitive duties, they must ensure that the driver:

1. has been evaluated by a substance abuse professional.
2. has complied with any recommended treatment.
3. has taken a return-to-duty drug and alcohol test (with a negative result) and is subject to unannounced follow-up alcohol and drug tests.

Any further violations following the initial positive test shall result in further disciplinary actions up to and including termination according to the Town's drug and alcohol policy.

This protocol shall be followed whether the employee has tested positive because of suspected drug and alcohol use or whether the employee has tested positive through random drug and alcohol testing. If treatment is recommended, the employee must provide an estimated time frame for completion of such treatment program.

The Town must approve such schedule before a return to duty will be considered.

ARTICLE 23 - LIGHT DUTY

An employee who is injured on duty leave may, in the discretion of the Town Administrator or Department Head, be required to perform limited duty on either a full-time or part-time basis, provided that Town Administrator or Department Head, in his/her discretion, determines that there is limited duty available to be performed by such employee. Notwithstanding any provision in this Agreement to the contrary, including, but not limited to, those provisions relating to shift bidding and seniority, if any, the Town Administrator or Department Head shall have full authority to assign and reassign such employee to any shift or limited duty necessary for the efficient implementation of this Article. The employee's physician must provide a letter stating that the employee shall be placed on light duty.

Light duty assignments shall include any duty to which an employee might otherwise be assigned, consistent with such physical limitations.

If the employee's personal physician feels that the employee is not capable of returning to the limited or light duty, the Town may designate a physician, whose services will be paid by the Town to examine the employee and confer with the personal physician. In the event that the employee's personal physician and physician designated by the Town cannot agree on the capability of the employee to return to limited or light duty a third physician may be designated by the two conferring physicians and the expense of this physician will be equally shared by the Town and the employee. The decision of the third physician shall be final and binding as to whether the employee is medically capable of being assigned limited or light duty at the time.

ARTICLE 24 - EDUCATION REIMBURSEMENT

Section 1: Partial Reimbursement. Employees seeking to improve their ability to serve the Town by taking educational and/or training courses must submit their request to their Department Head. Such request then must be approved by the Department Head and the Town Administrator.

Section 2: The employee must take courses at times not interfering with his/her regular work schedule e.g. if the employee normally works a five day 8:30 A.M. to 4:00 P.M. shift, approval will be granted only for courses scheduled at times other than those listed herein.

Section 3: The Town will pay 60% of the cost of the entrance fee, textbooks and other required materials, one-half of the Town's share to be paid at outset with remaining half upon successful completion of the course. A minimum grade of "C" or 70% is necessary to qualify for successful completion.

Section 4: The facility at which the education course is given must be an accredited institution approved by the Town Administrator.

Section 5: To qualify for partial reimbursement, the educational course must be directly related to the work being performed by the employee and must be such that the Town Administrator has determined in writing that the Town will benefit from the additional knowledge and/or training acquired by the employee.

Section 6: So that the Town can fully benefit from the expenditure of funds for employee education, the employee must agree in writing, prior to taking the course, to remain in the employ of the Town for a minimum of eighteen (18) months. The eighteen (18) month period will commence following successful completion of the course. If the employee drops out of the course prior to its completion for reasons other than Health or other compelling factors approved by the Town Administrator, the employee must fully reimburse the Town for the funds expended. Also, if the employee voluntarily leaves the employ of the Town of Wellfleet prior to completion of the eighteen (18) month period, the entire cost must be refunded.

Section 7: All educational reimbursement provided for in this Agreement is subject to funding by the Town,

Section 8: With prior approval and after completion of at least one (1) year with the Town, an employee will be eligible to receive \$100.00 bonus for a full semester course taken, at an accredited college or institution pertaining to his or her job classification.

ARTICLE 25 - WELLNESS PROGRAM

Employees will participate in a Wellness Program aimed at encouraging positive health habits, assessing, on a regular basis, general fitness status, and providing information for sound health decision-making.

On an annual basis employee will be administered tests for blood pressure screening, blood cholesterol measurement, body composition measurement and vital signs screening. In conjunction with the screening procedures, employees will also be provided with health counseling.

ARTICLE 26 - SCOPE OF AGREEMENT

It is hereby agreed that this Agreement contains the complete agreement between the parties and no additions, waivers, deletions, changes or amendments shall be made during the life of this Agreement, except by mutual consent in writing of the parties thereto or as specifically provided in the Management Rights Article.

ARTICLE 27 - ILLEGALITY

If any of the provisions of the Agreement are illegal or violate any of the laws or regulations or rules of the Commonwealth of Massachusetts, the remainder of the Agreement shall not be affected thereby, and the parties shall enter into negotiations to legalize and validate any of the illegal or invalid provisions.

ARTICLE 28 - WAGES

The previous wage scale will be replaced with the salary chart listed below. Additionally, newly hired employees and employees who receive promotions within the bargaining unit will be initially paid within 10% higher or lower of the lowest paid position within the specific job title that he or she is being hired into.

Teamsters Hourly Rate and Salary for FY2024 - 5.5%, FY2025 – 6%, FY2026 – 6%			
Position	FY2024 Hourly Rate - FY2025 Hourly Rate – FY2026 Hourly Rate		
Custodian	\$29.1736	\$30.9240	\$32.7795
Heavy Truck Driver/Mechanical Asst.	\$32.7735	\$34.7399	\$36.8243
DriverLabor/LoaderOperator	\$31.8526	\$33.7637	\$35.7895
Facilities Foreman	\$38.1562	\$40.4456	\$42.8723
Administrative Assistant	\$37.9373	\$40.2135	\$42.6263
Highway Foreman	\$36.7822	\$38.9891	\$41.3284
Transfer Station Foreman	\$36.8730	\$39.0854	\$41.4305
Transfer Station Gate Attendant / Laborer	\$28.8648	\$30.5967	\$32.4325
Mechanic	\$35.7260	\$37.8696	\$40.1417
Equipment Operator/Truck Driver	\$32.7735	\$34.7399	\$36.8243
Buildings & Grounds Custodian	\$28.6045	\$30.3208	\$32.1401
Equipment Operator/Truck Driver/ Transfer Station	\$30.4114	\$32.2361	\$34.1703
Laborer	\$25.9782	\$27.5369	\$29.1891
Harbor Master	\$51.5825 0	\$54.6775	\$57.9581
Assistant Harbor Master	\$31.0702	\$32.9344	\$34.9104
Approved new custodial position	\$27.0000	\$28.6200	\$30.3372

ARTICLE 29 - INSURANCE

Bargaining unit employees shall be eligible to participate in the Town of Wellfleet health insurance program. The Town's share for health insurance premium contributions shall be 65% in FY 2024, FY 2025 and FY 2026. In the event that a member wishes to decline group health insurance, the Town will pay the employee 25% of the Town's share of the least expensive plan to which the employee is entitled. Payment to eligible employees who decline participation in the Town's group health insurance

plan will be made semi-annually on the last payroll in December and the last payroll in June for the previous six months. Employees who have not been on the payroll for the full prior six (6) month period will receive such payments on a pro-rated basis. Any employee who declines participation in the Town's group health insurance plan must provide sufficient proof of independent insurance coverage.

Life:

Employees may elect to participate in the Town's Group Life Insurance Plan. Employees who elect to have this coverage must contribute one half (1/2) of the premium cost.

Accidental Death and Disability:

The Town will provide at no cost to the bargaining unit employees a \$50,000 accidental death and disability insurance policy.

ARTICLE 30 - Special Provisions

The Town agrees to protect the jobs of current employees who perform custodial work either on a full time or part-time basis unless just cause exists for termination and the Union agrees that the Town can use contractors to perform cleaning and custodial duties at future new or renovated buildings in Town. Nothing in this paragraph would prevent the Town from transferring any custodian in accordance with the terms of the parties' collective bargaining agreement.

ARTICLE 31 - LONGEVITY

All regular full-time employees shall receive a longevity bonus, based on anniversary date, according to the following schedule: \$500 after five (5) years of continuous service with an additional \$100 annually added thereafter. The longevity bonus shall be paid on the first payroll following the anniversary date to those who qualify by length of continuous service.

Regular part-time employees and Part-time less than 20-hour employees shall be entitled to one half the longevity bonus paid to full-time employees.

After ten (10) years of continuous employment, any employee who terminates employment with the town and is eligible for longevity bonus shall receive longevity payment for any time earned up to said date of termination of employment. Earned bonus will be paid at time of termination and shall be prorated if termination date does not coincide with anniversary date.

ARTICLE 32 - DURATION


This Agreement shall become effective on execution and remain in effect up to, and including, June 30, 2026. During the course of negotiations for amendment or renewal of this Agreement, the terms and conditions herein set forth shall continue in effect and any changes finally agreed upon with respect to wages and/or money allowances shall be retroactive to the date of expiration and effective as of that date.

Agreed upon _____ day of _____, 2023.

Richard Waldo
Wellfleet Town Administrator



Jeffrey Sharp
President and Business Representative



George F. Belanger
Secretary-Treasurer & Executive Officer

WELLFLEET SELECTBOARD

Ryan Curley

Kathleen Bacon

Barbara Carboni

John Wolf

Michael DeVasto

Hoisting and License Stipends Starting FY2024

Name	Hoisting Licences	Cost at \$100 each specialty of Hoisting	Class A License	Class A License at \$500	Class B License	Class B License at \$250.00	Captin's License	Captain's License at \$300
Kevin Berry	HE-2B Front End Loader/Backhoe, HE-4G Specialty Lawn Mower, HE-4E Catch Basin Cleaner Total of 3	\$ 300.00	Yes	\$ 500.00				
Michael Cicale	HE-4E Catch Basin Cleaner, HE-2A Excavators, HE-1C Telescoping booms w/o cables, HE-4G Specialty Lawn Mower Total of 4	\$ 400.00	Yes	\$ 500.00				
Lee Russell	HE-4E Catch Basin Cleaner, HE-2A Excavators, HE-1C Telescoping booms w/o cables, HE-4G Specialty Lawn Mower Total of 4	\$ 400.00	Yes	\$ 500.00				
Kyle Jackett	HE-2B Front End Loader/Backhoes Total of 1	\$ 100.00						
Peter Williams	HE-2A Excavators, HE-1C Telescoping booms w/o cables, HE-4G Specialty Lawn Mower Total of 3	\$ 300.00			Yes	\$ 250.00		
Ryan Williams	HE-2A Front Loader - Backhoe Total of 1	\$ 100.00			Yes	\$ 250.00		
Jeff Holway	HE-4E Catch Basin Cleaner, HE-2A Excavators, HE-1C Telescoping booms w/o cables, HE-4G Specialty Lawn Mower Total of 4	\$ 400.00	Yes	\$ 500.00				
Matt Peterson	HE-4E Catch Basin Cleaner, HE-2A Excavators, HE-1C Telescoping booms w/o cables, HE-4G Specialty Lawn Mower Total of 4	\$ 400.00	Yes	\$ 500.00				
Justin Pechonis	HE-2A Excavators, HE-4G Specialty Lawn Mower Total of 2	\$ 200.00	Yes	\$ 500.00				
William Sullivan	HE-2A Excavators Total of 1	\$ 100.00					Yes	\$ 300.00
		<u>\$ 2,700.00</u>		<u>\$ 3,000.00</u>		<u>\$ 500.00</u>		<u>\$ 300.00</u>

Total Cost for All Licenses:
\$ 6,500.00

An Increase of \$6100.00. for the DPW Teamsters

An Increase of \$400.00 for the Marina Teamsters

AGREEMENT
BETWEEN THE
TOWN OF WELFLEET
AND THE
WELFLEET PERMANENT FIREFIGHTERS ASSOCIATION
I.A.F.F. LOCAL 4342

For the Period Covering:
July 1, 2023 - June 30, 2026



TABLE OF CONTENTS

	Preamble	3
Article 1	Recognition	3
Article 2	Management Rights	3
Article 3	Employee Rights and Representation	4
Article 4	Non-Discrimination	5
Article 5	Employment	5
Article 6	Seniority	8
Article 7	Union Security Clause	9
Article 8	Agency Service Fee	9
Article 9	Wages	9
Article 10	Employee Grievance Procedures	10
Article 11	Hours Of Work	12
Article 12	Overtime	14
Article 13	Holidays	17
Article 14	Vacation	17
Article 15	Sick Leave	18
Article 16	Injury Leave	19
Article 17	Maternity Leave	20
Article 18	Jury Duty Leave	20
Article 19	Military Reserve Leave	20
Article 20	Bereavement Leave	20
Article 21	Personal Days	21
Article 22	Leave Of Absence	21
Article 23	Insurance	21
Article 24	Safety Committee	22
Article 25	Clothing	22
Article 26	Exchange Of Duty	23
Article 27	Mileage	23
Article 28	Tuition Reimbursement/Educational Incentive	24
Article 29	No Strikes	24
Article 30	Stability Of Agreement	25
Article 31	Training	25
Article 32	Promotional Process	25
Article 33	Light Duty	26
Article 34	Wellness Program	28
Article 35	Miscellaneous	28
Article 36	Duration Of Agreement	33
Article 37	Personal Effects	33
Article 38	Drug And Alcohol Policy	33
Article 39	Annual Cori Checks	38
Appendix A	Wages	39
Appendix B	Authorization For Payroll Deduction	43
Appendix C	Grievance Form	44
Appendix D	Position Descriptions	46

PREAMBLE

The purpose of this Agreement is to promote good relations between the Town of Wellfleet, the Union, (Wellfleet Permanent Fire Fighters Association, I.A.F.F., Local 4342) and the employees, and to make clear the basic provisions upon which such relations depend. It is the intent of both the employer and the union to work together to provide and maintain mutually satisfactory terms and conditions of employment, and to prevent as well as to resolve misunderstandings or grievances relating to employment.

ARTICLE 1 RECOGNITION

The Town of Wellfleet hereby recognizes the Union as the sole and exclusive bargaining agent for the purpose of collective bargaining with respect to wages, hours, and other conditions of employment for all full-time and regular part-time uniformed employees of the Wellfleet Fire Department. This does not include the Chief, all managerial, confidential, casual, (including call firefighters) and other employees as set forth in Massachusetts Labor Relations Certificate Case # MCR 4012.

ARTICLE 2 MANAGEMENT RIGHTS

Nothing in this Agreement shall limit the Town in the direction and supervision of the Town's business to do any of the following, except where any such rights are specifically modified or abridged by terms of this Agreement, and in accordance with Chapter 150E:

- add or eliminate departments
- require and assign overtime
- increase or decrease the number of jobs
- change processes
- assign work and work to be performed
- suspend, demote, discipline or discharge for just cause
- transfer or promote
- layoff because of lack of work or other legitimate reasons
- establish rules, regulations, job descriptions, policies and procedures
- conduct orderly operations
- establish new jobs
- determine where, when, how and by whom work will be done
- determine standards of proficiency in fire fighting skills and psychological and physical fitness.

Unless an express specific provision of this Agreement clearly provides otherwise the Town, acting through its Selectboard, Town Administrator, Fire Chief, or other appropriate officials as may be authorized to act on their behalf, retain all the rights and prerogatives it had prior to the signing of this Agreement either by law, custom, practice, usage, or precedent, to manage and control the Fire Department. The failure to exercise any right shall not be deemed a waiver of that right.

By way of example, but not limitation, management retains the following rights:

- to determine the mission, budget, and policy of the Department
- to determine the organization of the Department, the number of employees, the work functions, and the technology of performing them
- to determine the numbers, types, and grades, of positions or employees assigned to an organizational unit, work project, or to any location, task, vehicle, building, station, or facility
- to determine the methods, means, and personnel by which the Department's operations are carried out
- to manage and direct employees of the Department
- to maintain and improve orderly procedures and the efficiency of operations
- to layoff employees in the event of lack of work, funds, or under conditions where management believes that continuation of such work would be less efficient, less productive, or less economical
- to assign employees to staff functions from time to time as the Chief determines appropriate
- to take whatever actions may be necessary to carry out its responsibilities in situations of emergency
- to enforce existing rules and regulations for the governance of the Department, and to add to or modify such regulations as it deems appropriate

ARTICLE 3 EMPLOYEE RIGHTS AND REPRESENTATION

Section 1. Right to Unionize

The Town agrees not to discharge, discriminate, interfere with, restrain, or coerce any employee because of his/her lawful exercise of the rights set forth in Section 2, Chapter 150E of the General Laws.

Section 2. Right to Union Participation

The Town agrees that it will not discriminate against, interfere with or coerce any employee because such employee gives testimony, takes part in grievance procedures, hearings, negotiations, or conferences for or on behalf of the Union or any employee.

Section 3. Union Membership

Employees are free to become or refrain from becoming members of the Union. Notwithstanding membership in the Union, the Union agrees to represent fully all members of the bargaining unit.

Section 4. Fire Department Rules and Regulations

All members of the Fire Department covered by this Agreement shall be governed by the rules and regulations of the Wellfleet Fire Department as may be amended in so far as they are not

superseded by sections of this Collective Bargaining Agreement. In the event of a conflict between any provisions of this agreement and any Personnel Ordinance, Bylaw, Rule, or Regulation of the Town or the Chief of the Fire Department the terms of the collective bargaining agreement shall prevail.

Section 5. Notice to Union

The Town shall make every effort to submit written notice to the Union with the name, job title, and the effective date of actions affecting employees as follows:

- Appointment of new employee
- Outside Agreement for the Recruit Academy Reimbursement per Article 5, Section 3
- Promotion
- Suspension
- Termination by type (retirement, disability, involuntary with cause)
- Authorized leave of absence
- Medical leave of absence for more than one (1) month

Section 6. Personnel Reduction

In the case of personnel reduction the employee with the least seniority shall be laid off first. Employees shall be recalled in order of seniority. No new employee shall be hired until all laid off employees have been given 14 calendar days to return to work.

ARTICLE 4 NON-DISCRIMINATION

The Town and the Union agree that they will not discriminate against any person in the bargaining unit because of race, creed, color, national origin, sex, sexual preference, age, religion, or marital status.

ARTICLE 5 EMPLOYMENT

Section 1. Probationary Period

The probationary period shall consist of the first twelve (12) months of employment. During this probationary period an employee may be terminated either with or without cause. The period may be extended upon agreement between the Union and the Town.

The first two (2) weeks of the probationary period will be considered the Orientation Period. During this time, the employee will work a 42-hour week as follows four (4) days from 08:00 to 16:30 and one (1) day from 08:00 to 16:00. New employees shall start work on a Thursday, if the pay period changes then the day of the week can be modified. At the commencement of this time the employee will be assigned to one of the full-time coverage groups and his/her training will be

the responsibility of the group officer. The orientation period may be extended upon agreement between the Union and the Town.

Section 2. EMS Provider Certification

All employees are required to carry and maintain an EMS Provider certification applicable to the laws of Massachusetts as a condition of employment; the level of such certification shall be determined by their job position.

The Town shall pay or reimburse members for the state and national recertification of EMTs and Paramedics including all expenses relating to recertification such as but not limited to any national, State, and local required classes, testing and certification fees.

The Town at its discretion may hire new fire fighters who have attained an EMT certification rather than a Paramedic certification so long as there are at least eight (8) members of the bargaining unit that are paramedics.

Section 3. Recruit Training

All new permanent firefighters, except those who have attended a comparable academy prior to hire, are required to attend and pass the Massachusetts Fire Academy Recruit Training Program. All books and other training materials for all Town-mandated training shall become the property of the employee upon completion of any course or training. The Town will endeavor to provide lodging to all recruits at an area motel/hotel agreed upon by the Union and the Town. Within reason, members may be required to share a room to offset costs. In the event that a motel/hotel is unavailable or a member requests to stay at a Fire Station the Town may place that member in a Fire Station that is agreed upon by the Chief and Union. The Town shall pay the cost of lodging directly to the location without requiring the recruit to pay and be reimbursed.

Employees will be paid their straight time wages only for time spent at Recruit Training.

Members attending the Fire Academy Recruit Training Program shall submit receipts for meals and mileage for reimbursement. Meal costs will be limited to the Towns approved daily limit. Mileage will be paid at the Towns prevailing milage rate. Meals or items for meals may be purchased at one time or spread throughout the day not to exceed the Towns daily limit for meals.

The Union acknowledges the right of the Town to enter into a separate agreement between the Town and an individual employee, outside of the scope of this contract, for the purpose of recouping expenses the Town has incurred for lodging and other expenses up to \$10,000.00 related to sending a new employee to the Fire Academy Recruit Training Program as set forth below:

If an employee ends their employment with the Town or the Town terminates an employee with cause. The stipend will be paid back to the Town as follows:

Reimbursement schedule for all meals, mileage and lodging while attending the State Academy:
Within the first year after completion of the State Academy, 100%
Within the second year after completion of the State Academy, 75%
Within the third year after completion of the State Academy decrease by 1/12 of 50% (4.166%)
monthly:

-Within 1st month	50%
-Within 2nd month	45.83%
-Within 3rd month	41.66%
-Within 4th month	37.50%
-Within 5th month	33.33%
-Within 6th month	29.17%
-Within 7th month	25.00%
-Within 8th month	20.83%
-Within 9th month	16.67%
-Within 10th month	12.50%
-Within 11th month	8.33%
-Within 12th month	4.17%

Three or more years after completion of the State Academy: no reimbursement.

Section 4. Officer Training

All newly appointed officers, except those who have attended a comparable training program, will be required to attend and pass the Massachusetts Fire Academy Fire Officer I and Fire Officer II program. Attendees of said course will be allowed Town approved meal rates and receive the Town's prevailing rate per mile for travel. All books and other training materials shall become the property of the employee upon completion of the training. Request to attend this training will not be unreasonably refused.

Employees will be paid their straight time wages only for time spent at training that falls within their normal 42 hours per week schedule.

Section 5. Paramedic Training

If an EMT is hired as a paramedic or granted the paramedic line item from the Town, the Town will endeavour to make arrangements for the employee to attend required classes without the need to use time off. The expectation is that hospital time will be scheduled during their time off. Alternative work schedules can be made upon agreement between the Union and the Fire Chief.

If the Town, at its discretion, makes funds available to assist with the cost of paramedic training/certification the senior most EMT shall be eligible for the full amount. Other arrangements may be made upon agreement between the Union and the Fire Chief.

The Union acknowledges the right of the Town to enter into a separate agreement between the Town and an individual employee, outside of the scope of this contract, for the purpose of recouping expenses the Town has incurred for expenses up to \$10,000.00 related to sending an employee to become certified as a paramedic as set forth below:

Within the first year after obtaining Massachusetts Paramedic Certification, 100%
Within the second year after obtaining Massachusetts Paramedic Certification, 75%
Within the third year after obtaining Massachusetts Paramedic Certification decrease by 1/12 of 50% (4.166%) monthly:

-Within 1st month	50%
-Within 2nd month	45.83%
-Within 3rd month	41.66%
-Within 4th month	37.50%
-Within 5th month	33.33%
-Within 6th month	29.17%
-Within 7th month	25.00%
-Within 8th month	20.83%
-Within 9th month	16.67%
-Within 10th month	12.50%
-Within 11th month	8.33%
-Within 12th month	4.17%

Three or more years after obtaining Massachusetts Paramedic Certification: no reimbursement.

Section 6. Position Descriptions

Management will create position descriptions with the assistance and agreement of the Union membership. The positions to be included are Firefighter EMT, Firefighter/Paramedic, Lieutenant, and Captain. When completed the position descriptions will be included in this contract as "Appendix D".

ARTICLE 6 SENIORITY

Section 1. Seniority: Vacation Picks

Seniority shall be defined as the length of service of an employee covered by this agreement on a continuous basis with the Fire Department from the date of his/her initial full-time employment. Seniority in this section will regulate and govern employees in the distribution of vacation picks.

Section 2. Seniority: Vacation Length and Longevity

Seniority shall be defined as the length of service of an employee covered by this Agreement on a continuous basis with the Fire Department from the date of his/her initial full-time employment in addition to all other full-time employment with the Town. Seniority, in this section, will regulate length of vacation and longevity. The Town will prepare a contract seniority list and post it on or before July 1st of each year.

Section 3. Probationary Period

All new employees will serve a twelve (12) month probationary period. The date of seniority will relate back at the end of such probationary period to the date of their initial employment as

defined above. During this probation period the probationary employee may be terminated with or without cause.

Section 4. Suspension

Any suspension shall be deducted from the employees seniority. The deductions to seniority shall be restored after one (1) year of the first day of suspension.

ARTICLE 7 UNION SECURITY CLAUSE

Pursuant to the provisions of Massachusetts General Laws, Chapter 180, Section 17A, Union dues shall be deducted by the Town bi-weekly from the salary of each employee who voluntarily executes and remits to the Town a form of Authorization for Payroll Deduction of Union Dues, as found in "Appendix B".

Such authorization may be withdrawn by the employee giving at least thirty (30) days notice in writing to the Town and by filing a copy thereof with the Treasurer of the Union.

Transmittal of said dues deducted shall be made to the Union Treasurer within seven (7) calendar days after the month in which the dues are deducted provided that the Town Treasurer is satisfied by such evidence as s/he may require, that the Union Treasurer has given to the Union a bond in a form approved by the Commission of the Department of Revenue for the faithful performance of his/her duties in a sum, and with surety, as are satisfactory to the Town Treasurer.

The Union agrees to indemnify the Town for damages and costs in complying with this article.

ARTICLE 8 AGENCY SERVICE FEE

In accordance with the provisions of Massachusetts General Laws, Chapter 150E, Section 12 as amended, and the Rules and Regulations of the Massachusetts Labor Relations Commission, the Town agrees that with the effective date of this Agreement, or thirty (30) days following the commencement of employment, whichever is later, each employee who elects not to join or maintain membership in the Union shall be required to pay as a condition of employment a fee to the Union in the amount that is authorized by Section 12, Chapter 150E.

The Union agrees to indemnify the Town for damages and costs in complying with this article.

ARTICLE 9 WAGES

Wages shall be paid in accordance with "Appendix A" attached hereto and made part hereof.

ARTICLE 10 EMPLOYEE GRIEVANCE PROCEDURES

The parties recognize that it is in the best interest of effective and harmonious performance of the duties and responsibilities of the Fire Department for prompt and equitable disposition of any grievance at the lowest organizational level possible under procedures of maximum informality and flexibility. All grievances, as defined below, shall be processed in accordance with the following procedure:

(A) **Grievance Defined**

A grievance shall be defined as a dispute or controversy between the Union or an employee and the Town over a specific provision of this Agreement.

(B) **Grievance Steps**

Step 1 - The Union may take up a grievance with the Fire Chief within fifteen (15) calendar days of the occurrence of the event giving rise to the grievance in an attempt to resolve the grievance. This step shall be informal and confidential at all times.

Step 2 - If no agreement is reached in Step 1, the grievance may be presented in writing to the Fire Chief within ten (10) calendar days after the presentation in Step 1. The grievance shall contain:

- Name and classification of the employee
- Nature of the grievance and contract provision involved
- Steps taken to resolve the grievance informally
- Requested remedy
- Signature of the employee or employees involved

The Fire Chief shall have ten (10) calendar days to act on the grievance and his/her answer shall be in writing. During this ten (10) calendar day period the Fire Chief, or his/her designated representative, may meet again with the Union President or his/her representative to discuss and try to resolve the grievance.

Step 3 - If the employee or Union are not satisfied with the answer given in Step 2 the grievance may be submitted to the Town Administrator within ten (10) calendar days, unless waived, after an answer in Step 2. The Town Administrator shall have ten (10) calendar days to act on the grievance and his/her answer shall be in writing. During this ten (10) calendar day period the Town Administrator may meet with the parties involved to discuss and try to resolve the grievance.

Step 4 - If the employee or Union are not satisfied with the answer given in Step 3 the grievance may be submitted to the Selectboard, unless waived, within ten (10) calendar days after an answer in Step 3. The Selectboard shall consider it as soon as possible and shall give its reply in writing within thirty (30) calendar days, unless waived, after receipt of grievance.

(C) Suspension, Termination, Discharge

In the event of a suspension of four (4) shifts or greater, termination or discharge (following the probationary period) an employee may submit a grievance at step four within ten (10) working days of the written notice of the termination or discharge.

(D) Arbitration

If the grievance is not resolved by the answer of the Selectboard, as provided above, the Union may within fifteen (15) calendar days after such answer, upon written notice given to the Selectboard, submit the grievance to arbitration in accordance with the rules of the American Arbitration Association. No dispute or controversy shall be subject for arbitration unless it involves a dispute or controversy between the parties over a specific provision of this Agreement. The arbitrator shall arrive at his/her decision solely upon the facts, evidence, and contentions as presented by the parties during the arbitration proceedings and shall be governed by the following:

Any disciplinary action or measure imposed upon an employee, other than probationary may be processed as a grievance by the employee.

- The decision of the arbitrator shall be final and binding upon the parties hereto except for review and confirmation as provided by Chapter 150C of the Massachusetts General Laws.
- The expense of the arbitrator's services and the proceedings shall be borne equally by the parties.
- The Arbitrator shall be without power or authority to make any decision or award that violates the common or statutory law of the Commonwealth, or any rules and regulations promulgated pursuant thereto.
- The Arbitrator shall be without power to add to or subtract from the terms of the Agreement.
- The Arbitrator shall be without power or authority to render an award or decision concerning any matter which is excluded from the Grievance and Arbitration Procedure of this agreement.

(E) Time Limits

If the Union fails to comply with any of the filing deadlines set forth in this article, its grievance shall be waived with prejudice. If the Town fails to comply with any of the response deadlines, it shall be considered a denial of the grievance and the Union may proceed to the next step of the grievance procedure. The filing deadlines may be extended by mutual agreement of the parties.

(See Appendix C for grievance forms)

ARTICLE 11 HOURS OF WORK

Section 1. Hours of Work

The regular work schedule for employees shall be an average of forty-two (42) hours per week in an eight (8) week cycle. There are five work schedules for employees:

One shall consist of one (1) twenty-four (24) hour day from 08:00 to 08:00, followed by two twenty-four-hour days off (48 hours), and followed by one twenty-four hour day from 08:00 to 08:00, followed by four consecutive twenty-four hour days off (96 hours). For the purposes of vacation, personal, sick, and other leaves, time off shall consist of twelve (12) hour shifts: (08:00 to 20:00 and 20:00 to 08:00)

The second shall consist of four (4) ten and a half (10.5) hour shifts from 07:30 to 18:00, followed by three (3) twenty-four hour days off (72 hours) For the purposes of vacation, personal, sick, and other leaves, time off shall consist of ten and a half (10.5) hour shifts.

The third shall consist of four (4) twelve (12) hour days from 08:00 to 20:00, followed by four consecutive twenty-four hour days off (96 hours). For the purposes of vacation, personal, sick, and other leaves, time off shall consist of twelve (12) hour shifts: (08:00 to 20:00)

The fourth shall consist of four (4) nine (9) hour days from 07:00 to 16:00 Monday through Thursday, followed by one six (6) hour shift from 07:00 to 13:00 on Friday. Followed by two (2) consecutive days off. For the purposes of vacation, personal, sick, and other leaves, time off shall be deducted equal to actual hours taken off.

The fifth shall consist of four (4) eight and a half (8.5) hour days from 08:00 to 16:30 Monday through Thursday and one (1) eight (8) hour day 08:00 to 14:00 on Friday. Followed by two (2) consecutive days off. For the purposes of vacation, personal, sick, and other leaves, time off shall be deducted equal to actual hours taken off.

All accrual of vacation, personal, sick, and other leaves shall be in accordance with the other articles in the contract regardless of the shift the employee is assigned to. Time off will be allowed to be taken in two (2) hour increments. Alternative schedules may be implemented upon agreement of a majority of the employees and the Chief.

For determining the eight week cycle used to calculate the hours worked to achieve a 42 hour weekly payroll average, the following shall apply:

When an agreed upon group change occurs, the eight week cycle shall start at the beginning of the pay period (Thursday to Wednesday) that the changes take place in.

When an agreed upon shift change occurs from a 10.5 hour day shift to a 24 hour shift or a 24 hour shift to a 10.5 hour day shift the cycle shall start at the beginning of the pay period (Thursday to Wednesday) that the changes take place in.

When a member is terminated or resigns the eight week cycle shall not apply and the member shall be paid for their actual scheduled hours completed over the two week payroll period with overtime paid for hours worked in excess of 84 hours during the pay period.

If because of a group transfer an employee is scheduled to work forty-eight (48) consecutive hours or, more than five (5) consecutive days, the department shall provide leave without loss of pay or other benefits, of a minimum of one shift off equal to twenty-four (24) hours or ten and a half (10.5) hours depending on the shift the members is assigned to at the commencement of the transfer period to prevent the occurrence of the above-stated situations.

For a member entering the Massachusetts Fire Academy:

The Thursday before a member is to enter the Massachusetts Fire Academy, he/she shall be designated to be on a special assignment and be taken off their regular shift. During the member's time in the Academy they shall be paid 42 hours weekly. Upon completion of the Academy he/she shall be assigned back to a regular shift, starting after the close of the pay week following their graduation. No hours shall be owed upon completion of the Academy. Members shall not be eligible for overtime while on special assignment without the Fire Chief's approval.

The Town shall provide a written statement on a monthly basis to each member of the bargaining unit listing their available vacation time, sick time and personal time.

If the Town adjusts an employee's submitted time sheet the Town shall notify the employee in writing informing them of the changes and noting the reasons for the changes.

Section 2. Mandatory Time Off

If a Union member is scheduled to work their regular night shift prior to any department required event including but not limited to PAT, paramedic exam, jury duty or academy orientation that member shall be granted the night shift off with pay.

Section 3. Minimum Staffing

The Town shall attempt to maintain a minimum of four (4) floor staff personnel between October 1st and May 15th. The Town shall attempt to maintain a minimum of five (5) floor staff personnel between May 15th and September 30th. The staffing certification between the four or five members shall consist of at least two (2) paramedics and at least two (2) firefighters.

ARTICLE 12 OVERTIME

Section 1. Pay Rate

Whenever any employee is requested or is ordered by the Chief or his/her designee to work in excess of his/her regularly assigned work week or work schedule, the employee shall be paid at the rate of one and one-half (1.5) times his/her hourly rate of pay, (the overtime rate) for work in excess of his/her regularly assigned tour of duty. Hourly rate of pay for overtime purposes will be calculated as follows: (base pay (as set forth in appendix A section 5) + longevity + educational incentive payments)/2190 hours. (2190 hours is the amount of hours that a fire fighter is regularly scheduled to work in a year (365 days/8 day work cycle = 45.63 work weeks x 2 days x 24 hours = 2190 hours).

Section 2. Compensatory Time

Compensatory time off in lieu of overtime payments may be granted at a rate of one and one half (1.5) times the hours worked. Time off taken under this provision shall be subject to the approval of the Chief/or his/her designee or the Town Administrator. Non-approval shall be in writing at the time of denial. This time off shall not exceed ninety-six (96) hours in any fiscal year. Compensatory time can not be taken if it will cost the Town double time to fill the shift. Employees must notify the Chief on or before May 1 of each fiscal year whether or not they shall be using their compensatory time off or requesting that such accumulated time be paid at the rate of time and one half for hours worked. Thus, all compensatory time off will be taken as either time off or pay, at time and a half rates, prior to June 15 of each fiscal year.

Section 3. Filling Shifts

When the Town, in its discretion, decides to fill a vacant shift, the first four overtime opportunities related to that vacancy shall be offered to eligible members of the bargaining unit. From the fifth overtime opportunity until a total period of three weeks has elapsed, eligible members of the bargaining unit shall be offered every other shift opportunity. For the purpose of complying with this section reasonable effort shall be made to reach members of the bargaining unit prior to going outside the bargaining unit. In cases of illnesses or injuries that exceed three weeks, the Town may hire a qualified Firefighter/Paramedic or Firefighter/EMT to fill this vacancy for the period of the illness or injury so long as the vacant shift is filled with a fire fighter of equal or greater EMS certification.

Section 4. Shift Continuation

In the event that an employee is required to work overtime at the conclusion of a shift for any reason including but not limited to remaining on duty to maintain minimum staffing levels, and that overtime does not exceed fifteen minutes, the employee will not be compensated for that overtime. If the employee works in excess of fifteen minutes, but, no more than thirty minutes, the employee will be compensated for thirty (30) minutes of over-time. At the thirty (30) minute mark the employee shall be compensated for one (1) hour of overtime. For all hours after the first hour, he/she will be compensated for the full hour.

Section 5. Pages

When a request is made for additional personnel for any type of non-group call or station coverage, any available Union members may respond on the first request until the requested amount of personnel is met. Staffing of ambulance runs will be determined by the Officer in Charge of the shift or in their absence the senior paramedic on location.

Section 6. Off Duty Response

Whenever an employee is required or requested to return to work, that employee shall receive a minimum of four (4) hours pay at the rate of time and one half. Once the four (4) hour minimum has been reached, for all additional hours after the minimum for which the employee works, the employee will receive a full hour's pay at the rate of time and one half. This shall repeat until the employee is released by the O.I.C.

In the event that an employee is called back to work after being released from a call by the O.I.C., and prior to the expiration of the four-hour minimum the employee shall not receive a second four-hour minimum but rather shall be paid a one-hour minimum. Once that one-hour minimum has been reached the employee will receive another one-hour minimum. This procedure shall repeat until the employee is again released from the call by the OIC.

In the event that an employee is called back to work one hour or less before the start of a regularly scheduled shift the employee would receive one (1) hour at the time and one-half rate.

Section 7. On Call

If a member of the bargaining unit agrees to be available on pager for any reason, and for anytime over and above the normal work schedule, the firefighter and or officer shall be paid \$10.00 per hour. If no member of the bargaining unit agrees to be on pager then the Town may offer an on-call opportunity to a qualified firefighter paramedic and or officer who is a member of the call department.

Section 8. Drills

Employees shall be compensated at the rate of time and one-half for attending drills that have been scheduled and required by the Chief outside of the employee's regularly scheduled work. This includes drills, paramedic recertification classes, Pediatric Advanced Life Support and Pre-Hospital Trauma Life Support classes, and the teaching of CPR and First Response courses. Employees taking classes that are outside of the Town of Wellfleet will be allowed Town approved meal rates, receive the prevailing rate per mile for travel and be compensated for travel time to and from the training class. All books and other training materials shall become the property of the employee upon completion of any course or training.

Section 9. Court Time

An employee who is required to attend Court on his/her off duty time in connection with work as a firefighter in Wellfleet shall be paid for such time at the rate of time and one-half, with pay for a minimum of three hours, from the time the employee is required to report to the Court House to

the time he/she is dismissed. Employees shall receive the prevailing rate per mile for travel. Pay for Court time shall be offset by any witness fees received.

Section 10. Staff Meetings

Employees who are not on duty will be paid at the time and one-half rate for required attendance at staff meetings. Staff meetings will be held with the Chiefs approval.

Section 11. EMS Officer

Any member assigned the position of EMS Officer with the prior approval of the Fire Chief may be granted up to six (6) hours per pay period at their overtime rate to complete necessary duties of the position including, but not limited to, attending regional and state coordinator meetings, maintaining the quality assurance program, developing training programs for individuals and the full department, maintaining records for department and individuals for certification and licensing and continuing educational training for the EMS Officer.

Section 12. Fire Inspector

Any member assigned the position of Fire Inspector with the prior approval of the Fire Chief may be granted up to six (6) hours per pay period at their overtime rate to complete necessary duties of the position including, but not limited to, commercial inspections, plan reviews, department training classes, attending regional and state training meetings, licensing and continuing educational training for the Fire Inspector.

Section 13. Minimums

A one (1) hour minimum will apply to all details, meetings, and drills once that one hour minimum has been met and that time does not exceed fifteen minutes, the employee will not be compensated for that overtime. If the employee works in excess of fifteen minutes, but, no more than thirty minutes, the employee will be compensated for thirty (30) minutes of over-time. At the thirty (30) minute mark the employee shall be compensated for one (1) hour of overtime. For all hours after the second hour, he/she will be compensated for the full hour.

ARTICLE 13 HOLIDAYS

All employees shall receive an additional shift pay for each of the following holidays and any other holiday granted by the Selectboard to all other Town employees or any holidays passed by the Massachusetts State Legislature in addition to their basic compensation:

New Year's Day	Independence Day
Martin Luther King Day	Labor Day
President's Day	Columbus Day
Patriot's Day	Veteran's Day
Memorial Day	Thanksgiving Day
Juneteenth	Christmas Day

This compensation shall be equal to twelve (12) hours straight pay or with the Chief's approval, the employee may take a shift, twelve (12) hours, as compensation time off. Bargaining unit members who are scheduled to work an overtime shift on a holiday shall be paid their double time rate instead of their regular overtime rate. Employees who are called back for emergencies on a holiday will receive double time.

ARTICLE 14 VACATION

Employees shall be granted vacation with pay in accordance with the following provisions:

Employee vacation time will be front loaded on July 1st of each year. An employee may carry over no more than ninety-six (96) hours (two weeks) of vacation time into the next fiscal year. For the purpose of employee separation and buyback, the employee will accrue the vacation time monthly through the fiscal year. If an employee uses vacation time before it is accrued, and then voluntarily terminates their employment excluding retirement, that employee must reimburse the Town for unaccrued vacation time. In lieu of carrying over unused vacation time into the next fiscal year an employee may elect to be paid straight time for accrued vacation time by submitting a request in writing between May 15th and June 15th.

Employees will be able to carry over more than 96 hours the first fiscal year (07/01/2023 to 06/30/2024) of the contract, during the transition to the new program.

For employees hired before March 1, 2011, vacation time will be as follows:

- Employee vacation time will be front loaded on July 1st of each year.
- Employees who have been employees by the Town less than the full preceding fiscal year but greater than six months shall be granted forty-eight (48) hours of vacation with pay.
- Employees who have been employed by the Town for the entire preceding fiscal year shall be granted ninety-six (96) hours of vacation with pay.
- Upon completion of continuous employment by the Town of five (5) fiscal years, employees shall be granted one-hundred and forty-four (144) hours of vacation pay.

- Upon completion of continuous employment by the Town of ten (10) fiscal years, employees shall be granted one-hundred and ninety-two (192) hours of vacation pay.
- Upon completion of continuous employment by the Town of fifteen (15) fiscal years, employees shall be granted two hundred and forty (240) hours of vacation pay.
- For employees hired after 1995 and upon completion of continuous employment by the Town of twenty-five (25) fiscal years, employees shall be granted two hundred and eighty-eight (288) hours of vacation pay. Employees hired prior to 1995 will be granted two hundred and eighty-eight (288) hours of vacation pay upon completion of continuous employment by the Town of twenty (20) fiscal years.

For employees hired on or after March 1, 2011, vacation time will be as follows:

- Employee vacation time will be front loaded on July 1st of each year.
- On their hire date new employees shall receive vacation time equal to the prorated amount from their date of hire to June 30th of the current fiscal year not to exceed forty-eight (48) hours.
- Employees who have been employed by the Town for less than five (5) fiscal years shall be granted ninety-six (96) hours of vacation with pay.
- Upon completion of continuous employment by the Town of five (5) fiscal years, employees shall be granted one-hundred and forty-four (144) hours of vacation pay.
- Upon completion of continuous employment by the Town of ten (10) fiscal years, employees shall be granted one-hundred and ninety-two (192) hours of vacation pay.
- Upon completion of continuous employment by the Town of twenty (20) fiscal years, employees shall be granted two hundred and forty (240) hours of vacation pay.

Single day vacation shifts must be approved by the Chief who shall have the right to approve or reject this request within forty-eight (48) hours from the request. If the time requested is for more than one (1) shift the Chief will have two weeks to approve or deny the request.

No vacation time off request shall be allowed to exceed forty-eight (48) hours per month from May 15th to September 30th.

ARTICLE 15 SICK LEAVE

All employees shall be entitled to one and one quarter (1.25) days, fifteen (15) hours, of sick leave per month to be earned from the date of their employment. The Department must be notified at least one (1) hour prior to the start of any shift for which an employee wants to take sick leave. Such sick leave shall be granted to any employee who is suffering from injury, sickness, disability or appointment with a healthcare provider related thereto for which s/he does not otherwise receive compensation from the Town. "Healthcare provider" is defined as : (1) a licensed doctor of medicine or osteopathy; (2) a licensed podiatrist, dentist, clinical psychologist, a licensed social worker, optometrist, nurse practitioner, nurse midwife or Christian Scientist practitioner; or (3) a licensed chiropractor that is limited to the treatment of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist. Such payment shall not exceed the accumulated sick leave of the employee. If such sick leave allowance is not used in

any particular year it may be accumulated up to a maximum of 120 days (1 day equals a 12 hour shift). A doctor's certificate, at the expense of the Town, may be required by the Chief if an employee is absent from work for three consecutive scheduled shifts or more at one time, or if the Chief suspects the employee may be abusing his/her sick leave. The Chief or the Chief's designee may in their sole discretion, authorize the use of sick leave by an employee to care for an immediate family member suffering from an illness or injury.

Sick leave may be utilized to take time off for qualifying FMLA events.

The Chief shall have the ability to place members on paid administrative leave based on extenuating circumstances upon agreement between the Chief and the Union.

An employee who terminates employment by the Town through retirement, disability, or death, shall be entitled to cash payment at his/her current rate of pay for 25% of his/her unused accumulated sick leave credit after proper adjustments are made for the current calendar year. Payment for members with years of service between one (1) and fifteen (15) years shall be capped at \$10,000.00, for members with sixteen (16) years of service and up, payment is capped at \$15,000.00. In the case of death the payment due hereunder shall be made to a surviving spouse, designated beneficiary, or to the estate.

ARTICLE 16 INJURY LEAVE

Section 1. Right to Injury Leave

Whenever a firefighter is incapacitated for duty because of an injury sustained in the performance of duty, without fault of his/her own, s/he shall be granted leave without loss of pay for the period of such incapacity. Provided, however, that such leave shall be paid only to the extent required by Massachusetts General Laws, Chapter 41, Section 111F, as amended from time to time. All on the job injuries must be reported immediately, and in no case more than 24 hours after the incident.

Section 2. Disability Insurance

Employees shall be protected as to the rights granted to them by the provisions of Massachusetts General Laws, Chapter 41, Section 100.

Section 3. Presumptions

The Employer shall recognize and apply the presumptions applicable to fire fighters as contained in Chapter 32, Sections 94, 94A and 94B as interpreted and applied by PERAC, CRAB and the courts in determining whether an employee's incapacity for duty shall be classified as line of duty pursuant to Chapter 41, Section 111F.

ARTICLE 17 MATERNITY LEAVE

Whenever an employee becomes pregnant after her probationary period she shall furnish a certificate from her physician stating the expected date of her delivery. While an employee may take maternity leave without pay at any time after a diagnosis of her pregnancy is confirmed by her physician in writing the Town may require written certification from her physician as to how long before the employee should continue her regular work. All requests for maternity leaves of absence shall be made in writing by the employee, to the Chief, at least three (3) weeks prior to the desired date of leave. For maternity leave which does not exceed twelve (12) weeks, and up to sixteen (16) weeks, and if the employee gives the Chief notice before the end of the twelve (12) week maternity leave that she will return by the end of sixteen (16) weeks, and a physician certifies that the employee needs the extra four (4) weeks for rehabilitation, the Town shall reinstate the employee in her previous position with the same status, pay, and length of service credit as of the date of her leave. For longer periods of leave, the Town shall reinstate the employee in the first available opening for which she is qualified.

ARTICLE 18 JURY DUTY LEAVE

An employee required to serve on a jury, and thus having to be absent from his/her regular duties, shall be paid the difference between his/her normal work shift wages and the money received for his/her jury duty upon presentation to the Chief of a certified record of jury duty pay.

ARTICLE 19 MILITARY RESERVE LEAVE

Any regular or regular part-time employee who is a member of the National Guard or other military reserve and who is required to fulfill his/her military duty obligation by a tour of active duty shall upon application be paid the difference between the compensation received from the military pay, including allowances for meals and quarters, and the employee's pay for normal hours. This is limited to a period not to exceed (3) weeks per fiscal year.

If the employee's National Guard or Reserve Unit is activated into federal service the employee will be granted a leave of absence without pay. However, upon deactivation from such federal service the employee will be entitled to reinstatement to his/her former position with the Town without loss of seniority for time spent on active duty.

ARTICLE 20 BEREAVEMENT LEAVE

In the event of a death occurring in the immediate family of an employee he/she shall be granted bereavement leave without loss of pay up to a maximum of (48) forty-eight hours. For the purpose of this section, "immediate family" shall consist of a spouse, child or a stepchild, parents, step-parents, parents-in law, grandparents, grandchildren, brother, sister, step-brother,

and step-sister. At the discretion of the Chief or his/her designee and the Town Administrator, an employee may be granted additional bereavement leave without loss of pay.

ARTICLE 21 PERSONAL DAYS

One day's absence, twenty four (24) hours, with pay shall be granted to any employee, immediately upon completion of probation, and each year on July 1st for the purpose of transacting business of a personal nature which is difficult to transact during normal working hours. Such leave must be requested in writing at least 48 hours prior to the dates selected, except in cases of emergencies. The request must be submitted to the supervisor and/or department head for approval. Requests for personal leave shall not be unreasonably refused, withheld, or denied.

If a permanent full-time or permanent part-time employee does not utilize sick leave during any consecutive six-month period the employee shall be granted (1) Earned Personal Day, twenty four (24) hours, which may be taken according to the guidelines noted above. The six month period shall start again once the Earned Personal Day is utilized. Immediately upon completion of probation, if an employee has not utilized sick leave during the prior consecutive six-month period the employee shall be granted (1) Earned Personal Day. It shall be the responsibility of the employee to request and confirm the Earned Personal Day with his/her supervisor and/or department head.

Personal days and earned personal days are not cumulative. One personal day and one earned personal day are allowed to be on the books at the same time.

ARTICLE 22 LEAVE OF ABSENCE

Employees, after twelve (12) months of employment, may for good and sufficient reason and with approval by the Chief and the Town Administrator be granted a leave of absence without pay for up to three (3) months. During such leave, such employee shall not be permitted to take other employment. Group insurance may be continued as provided for in the contract but the employee will not be eligible for holiday pay. One hundred percent (100%) of premium expenses shall be paid by the employee.

ARTICLE 23 INSURANCE

All full-time employees shall be eligible to participate in the Town of Wellfleet health insurance program. The Town will pay 65% of the health insurance premium for those program options offered by the Town. In the event that a member wishes to decline group health insurance, the Town will pay the employee 25% of the Town's share of the least expensive plan which the employee is entitled. Payment to eligible employees who decline participation in the Town's group health insurance plan will be made semi-annually on the last payroll in December and the last payroll in June for the previous six months. Employees who have not been on the payroll for the full prior six (months) will receive such payment on a pro-rated basis. Any employee who

declines participation in the Town's group health insurance plan must provide sufficient proof of independent insurance coverage. If an employee's employment with the Town ends during a given fiscal year, he or she will receive their 25% payment on a pro-rated basis based upon his or her period of employment for the Town during said fiscal year. The Town of Wellfleet shall provide, at no cost to the employee, a \$75,000.00 "In the Line of Duty" life insurance policy for all members of the bargaining unit.

The Union agrees that the Town may eliminate the current Blue Cross/Blue Shield Master Medical Plan during the open enrollment period for FY 2008 and will not be required to offer it to employees again.

ARTICLE 24 SAFETY COMMITTEE

The Union and Town shall establish a Safety Committee of not more than two (2) members which may meet with the Chief for a mutual exchange of opinions, ideas, and discussions, concerning the safety and health conditions of the Department. Such meetings shall take place periodically but at least one (1) every three (3) months upon the specific request of the Union or the Town. A written agenda shall be required for each meeting. All recommendations shall be forwarded to the Town Administrator.

ARTICLE 25 CLOTHING

Section 1. New Employees

The Town agrees to supply each new member of the Fire Department the following:

<u>Item/Description</u>	<u>Units Needed</u>
5.11 Trousers or mutually approved equivalent (2 cargo pocket maximum.)	4
5.11 Polo Shirts, or mutually approved equivalent, w/dept logo 4 blue, 2 red.	6
T-shirts w/department logo. 4 blue, 2 red.	6
Reuben 1 red, 1 blue	2
DOT approved winter coat with detachable liner	1
Boots, leather	1
Belt	1
Badge (remove 07/01/2025)	2
Name Plates (remove 07/01/2025)	2
Hat (remove 07/01/2025)	1
Hat Badge (remove 07/01/2025)	1
Class A Uniform (add 7/1/2025)	1

Member's must be off probation and have completed the MFA or an equivalent fire academy approved by the Chief and the Union prior to receiving a Class A uniform.

Class A Uniform to be added July 1st, 2025.

Section 2. Protective Gear

The Town shall replace the following protective gear, which has been issued to the employee, upon the approval of the Chief that such gear is no longer fit for service.

<u>Item/Description</u>	<u>Units Needed</u>
Fire turnout coat	1
Pair of fire turnout trousers	1
Helmet	1
Pair work gloves made of fire resistant materials	1
Hood	1
Pair of leather turnout boots	1
Set of brush fire gear	1
Handheld portable radio w/charger and remote microphone	1
Safety escape line w/carrying bag and carabineer	1
Survivor hand light and charger	1
Scott air mask w/speaker and storage bag	1
Pair of Extrication Gloves	1

The Town shall comply with the standards of N.F.P.A. 1500.

Section 3. Fire Retardant Clothing

Fire retardant clothing shall be allowed. Fire retardant clothing shall be visually similar to existing uniforms to maintain uniformity.

Section 4. Uniform Allowance

The Town shall make available for each employee, after successful completion of his/her probationary period and one year of duty, a maximum of \$400.00 for the purpose of replacing and/or maintaining such items of clothing (as outlined in Section 1.) All unused money, at the end of the fiscal year shall revert back to the Town. A uniform article destroyed or substantially damaged in the line of duty, other than from normal wear and tear, shall be replaced by the Town at no cost to the employee. The uniform allowance shall increase by \$100.00 July 1st of 2023, 2024, and 2025 to a total of \$700.00.

ARTICLE 26 EXCHANGE OF DUTY

Upon approval of the Chief or his/her designee, all bargaining unit members may exchange hours, tours, or days off, provided that it does not affect the cost or operation of the department.

ARTICLE 27 MILEAGE

Employees required to use their private vehicle for Fire Department purposes shall be compensated at the Town's prevailing per mile rate.

ARTICLE 28
TUITION REIMBURSEMENT/EDUCATIONAL INCENTIVE

Section 1. Tuition Reimbursement

The Town shall reimburse an employee for the cost of books, fees, and tuition, for any course or training approved by the Chief. All books and supplies for all Town required or approved education courses or training are the property of the employee.

Section 2. Educational Incentive

The Town shall compensate members working to obtain a higher level of education in the fields of Firefighting or Emergency Medicine including but not limited to Nursing, Paramedicine, Emergency Management, Health Science, Fire Science, Fire Technology, or Fire Administration. The Chief and Union upon agreement shall be able to approve other educational courses of study that relate to the fields of Firefighting or EMS. Any credit hours earned at an accredited school that would be required to complete a degree shall be calculated at the hourly credit rate that the school uses. Photocopies or online printed records of transcripts will be accepted.

The Town shall add to the members yearly base pay the educational incentive amount corresponding to the table below. The educational incentive shall be added upon verification at initial hire. Whenever there is any increase to credits or degrees the educational incentive will be recalculated and added to the members base pay upon submission of proof of completion. Members submitting valid degrees from accredited schools shall not be required to prove a minimum number of credit hours. The incentive levels are not cumulative. All incentive payments shall be included in the base rate for overtime calculations.

With the Chief's approval training hours may be used for college courses.

All incentive payments shall continue to be included in the base rate for overtime calculations.

	Incentive Pay
30 Degree credit hours	\$1,000.00
Associates Degree	\$2,000.00
Bachelor's Degree	\$3,000.00
Master's Degree	\$4,000.00

Each level of Incentive Pay shall increase by \$400.00 on July 1st, 2024 and by \$800.00 on July 1st, 2025

ARTICLE 29
NO STRIKES

It is understood and agreed that the services performed by the Town employees included in this Agreement are essential to the public health, safety, and welfare. Therefore, the Union agrees on behalf of itself and its members that it will not authorize, instigate, aid, condone, or engage in any strike, work stoppage, or other action at any time, including upon termination of this

Agreement, which will interrupt or interfere with the said service performed by the Town. No employee shall cause or take part in any strike, work stoppage, or slowdown.

ARTICLE 30 STABILITY OF AGREEMENT

No amendment, alteration, or variation of the terms and provisions of this Agreement shall bind the parties hereto unless made and executed in writing by parties hereto.

ARTICLE 31 TRAINING

The Town will offer sixty (60) hours each fiscal year to be used for the purpose of attending training opportunities beyond department sponsored classes. The hours may also be utilized for hospital time during Paramedic Training. Members will attend training during off-duty hours and will be paid at their current daily straight time rate. Attendance will be on a voluntary basis. Travel time for classes will be capped at two (2) hours per day and deducted from the 60 hours. This article is exclusive of Article 12, Section 8. No mileage, tuition, meals or incidental expenses shall be paid for voluntary training hours. These hours are not cumulative.

ARTICLE 32 PROMOTIONAL PROCESS

The Fire Chief shall start the process to create a promotional eligibility list within six months of an anticipated promotional opening unless the current promotional list for the position is less than two years old.

When a non-shift officer "EMS Officer" position is created, in order to fill future vacancies of that position it shall be added to the promotional process below.

Qualifications for the positions of EMS Officer, Fire Inspector, Lieutenant, and Captain, shall be agreed upon by the Union and the Chief before the start of the promotional process. Agreements modifying the time on the department requirement shall require a separate agreement.

A promotional list for each of the positions of EMS Officer, Fire Inspector, Lieutenant, and Captain will be established based on the grading of the elements of the promotional exam process for the respective position.

If the grading process ranks two (2) or more employees as equal, then seniority shall be the determining factor in their standing on the promotional list.

For the position of EMS Officer or Fire Inspector it is agreed that the Fire Chief may waive the written exam portion of the interview process if less than four (4) employees apply for the vacancy.

Candidates for Fire Officer positions shall have a minimum of five (5) years of FF I/II certification with at least three (3) of the years FF I/II Pro Board Certified or a recognized Pro Board equivalent.

Any current full-time member of the Department who has completed five (5) years of service within the Wellfleet Fire Department with minimum of three (3) as a full-time member or five (5) years full-time fire service with another fire department in Barnstable County and at least three (3) years full-time service in the Wellfleet Fire Department may be eligible to take the promotional test. If the above criteria would adversely limit the list of eligible candidates, the criteria can be modified upon agreement by the Union and the Chief.

A notice of promotional testing shall be posted on the Department bulletin board for a minimum of ten days. The posting shall specify the qualifications required for the position, application instructions, Chief's interview, and a description of the testing process and grading procedure and materials or editions needed for testing. A minimum of thirty days will be allowed for the resume submission.

The Promotional process will consist of a Written Exam, an Oral Board review consisting of no less than two Union Officers and a Chief's interview.

The written promotional test shall be administered by an independent recognized testing agency agreed upon by the Union and the Fire Chief. The Town of Wellfleet shall provide all testing materials free of charge to eligible candidates at least three months prior to the test date of the written portion of the exam.

The interview process shall begin within two weeks of obtaining the written results. The interview portions shall be completed within thirty days.

The written portion of the exam will constitute 40% of the final grade. The Oral Board Review will constitute 50% of the final grade with the Chief's interview making up the final 10%.

Candidates who pass all three portions of the test with a minimum cumulative grade of 70% shall be considered as successfully passing the complete promotional process. All candidates may schedule time with the Fire Chief or his designee to review their grades on each portion of the test.

The Chief shall post the top four candidates with their scores on an eligibility list.

The Fire Chief shall review the promotion list and choose without prejudice the candidate the he/she feels will best serve the department in that capacity from the top four candidates.

ARTICLE 33 LIGHT DUTY

Whenever a firefighter is incapacitated for duty because of an injury sustained in the performance of duty, without fault of his/her own, s/he shall be granted leave without loss of pay for the period of any such incapacity. Provided however, that such leave shall be paid only to the

extent required by Massachusetts General Laws, Chapter 41, Section 111F, as amended from time to time.

No such leave shall be continued beyond a total of thirty calendar (30) days in the event a physician designated by the appointing authority determines that the firefighter is capable of performing limited duties on either a full-time or less than full time basis subject only to the provisions contained herein. The Chief may determine whether a position is available which the employee is capable of performing, and the Chief in his/her sole discretion may or may not assign him to fill the position. Assignments to limited duty tasks may be changed or terminated at the discretion of the Chief subject only to the provisions contained here in. Firefighters will not be involuntarily assigned to light duty prior to the expiration of thirty calendar days.

Light or limited duty tasks shall include:

Training

Fire Prevention

Inspections

Permitting

Investigative Assistance

Purchasing

Public Relations

General Clerical Work

Computer Operation

Supervision (applicable to supervisors only)

Other limited or light duty tasks agreed upon by the Chief and the Union

If the employee is determined by the physician designated by the appointing authority to be capable of returning to limited or light duty and is assigned to same, and does not report, and has not filed a timely appeal hereunder, his/her pay shall be discontinued and s/he shall be subject to disciplinary action.

Appeals Process

In the event the individual firefighter's personal physician disagrees with the decision made by the physician designated by the appointing authority, and believes that the firefighter is not capable of returning to limited duty, the firefighter shall cause his/her physician to confer with the physician designated by the appointing authority within ten (10) calendar days of the decision by the physician designated by the appointing authority. A firefighter assigned to light duty, notwithstanding the continuing disagreement of his/her personal physician after said conferral with the physician designated by the appointing authority, shall have the right within fourteen (14) calendar days after said conference to appeal to a third physician designated by the two conferring doctors. During the pendency of any appeal the firefighter shall comply with the direction of the Chief. The third physician shall render his/her decision within seven (7) calendar days or as soon as practical thereafter. The decision of the third physician shall be final and binding as to whether the firefighter is medically capable of being assigned limited or light duty at that time.

If the firefighter is determined by the third physician to be capable of returning to limited or light duty, and is assigned to same, and does not report for same, his/her pay shall be discontinued and

s/he shall be subject to disciplinary action. Nothing herein however shall prevent the Chief from having the firefighter subsequently reexamined at reasonable intervals, normally not less than fourteen calendar days, to see if the firefighter has sufficiently recovered to commence light duty. The cost of the appeals procedure, namely payment of the third physician, shall be paid by the Town.

Nothing herein shall preclude any injured member from seeking retirement. Nor shall anything herein preclude the Town of Wellfleet from involuntarily retiring members. Further, nothing herein shall preclude an injured firefighter from seeking and obtaining treatment for said injury from a physician of his/her choice. Nothing herein shall require, preclude, or limit the Chief's discretion regarding the granting or denying of a request from a firefighter out on sick leave to work on limited or light duty; however, such assignments shall not be made involuntarily.

It is understood that assignments to light duty are temporary in nature and shall not extend beyond the period of disability.

ARTICLE 34 WELLNESS PROGRAM

Employees will participate in a Wellness Program aimed at encouraging positive health habits, assessing on a regular basis general fitness status, and providing information for sound health decision-making.

On an annual basis employees will be administered tests for blood pressure screening, blood cholesterol measurement, body composition measurement, and vital signs screening. In conjunction with the screening procedures employees will also be provided with health counseling. An employee's test results will be considered confidential and submitted only to the employee.

The Town will make available at no cost to the employee annual testing for Hep A, Hep B, Hep C, HIV, Lyme's disease, and AIDS.

ARTICLE 35 MISCELLANEOUS

Section 1. Retention of Contractual Rights

The failure of the Town or the Union to insist, in any one or more incidents, upon performance of any of the terms or conditions of this Agreement shall not be considered as a waiver or relinquishment of the right of the Town or of the Union to future performance of any such term or conditions. The obligations of the Union and the Town to such future performance shall continue in full force and effect.

Section 2. Severability

If any provision of this Agreement, or any application of the Agreement to any employee covered by the terms of this Agreement, shall be found contrary to law by a Court of competent

and final jurisdiction, such provision or application shall have effect only to the extent permitted by law. All other provisions or applications of this Contract shall continue in full force and effect.

Should any provisions of this Agreement be deemed to be in conflict with any such laws, it may become the subject matter of discussion by the parties hereto for the purpose of attempting to negotiate a substitute provision in compliance with the requirement of such laws.

Section 3. Union Officers

The Union shall inform the Town and the Fire Chief in writing of any changes in the roster of elected officers of the Union or Bargaining Committee.

Section 4. Personnel Files

Any employee shall have access at reasonable times to his/her own personnel file and shall have the right to question and refute derogatory and/or damaging statements therein, and to file rebuttal for inclusion in said personnel file.

Section 5. Use of Fire Station

The Town will allow the Union to use the Fire Station for Union business meetings provided that the Union has obtained the permission for the meeting from the Fire Chief and that the Fire Departments operations are not adversely effected by such meetings.

Section 6. Vaccination

The Town will make available to each employee proper vaccination against Hepatitis A, Hepatitis B, and Lyme Disease.

The Town shall request that Cape Cod Hospital report to the Fire Department within one (1) hour after discovery anytime that a patient brought in by ambulance has an infectious disease.

Section 7. Sick Leave Bank

Introduction:

The Sick Leave Bank ("SLB") is a voluntary program for Town employees (full and part time). The basic purpose of the Sick Leave Bank is to provide additional sick days to a contributing employee for a serious, prolonged, extended illness situation. The Sick Leave Bank is available only for the employee's aforementioned illness. However, if an employee does not participate in the SLB by contributing sick leave hours, he/she CANNOT benefit from it.

Program Details:

Solicitation for participation in the SLB program shall occur in June for the next fiscal year. Unless an employee's participation in a SLB is covered by his/her individual employment agreement or a collective bargaining agreement, a participating employee shall contribute one-

quarter (1/4) day of earned sick leave each month. The participating employee's contribution shall continue until the SLB contains deposits of three hundred (300) sick leave days. At that point, all contributions of sick leave shall be suspended. If the SLB's deposited sick leave days then fall to one hundred fifty (150) or below, contributions shall resume as they existed before the suspension. The Committee charged with operating the SLB may request that participating employees make additional contributions of sick leave days if an unusual event occurs. New hires or current employee joining or re-joining the SLB shall be exempt from any freeze for one year from the time of their entrance into the program.

If a Town employee participates in the SLB during one Town fiscal year, but elects NOT to participate in the next, NO sick leave days shall be returned to the employee. Once an employee's sick leave days enter the SLB, those sick leave hours can ONLY be used in the SLB program.

SLB Committee:

The SLB program shall be administered by a SLB Committee. The Committee shall have five (5) members. The members shall consist of: two (2) non-Union contract employees appointed by the Town Administrator and three Union employees, one from the Wellfleet Employees Association (WEA), one from the Wellfleet Permanent Firefighters Union, and the third from the Teamsters' Union. A member of the SLB Committee may be removed from his/her position for non-attendance at four (4) consecutive SLB Committee meetings, removal or retirement from Town employment, or incapacity to serve. In the event that a member of the SLB committee is an applicant requesting days from the SLB an alternate voting member will be chosen from that individual's representative group to serve as a voting member for their application.

Requests to use Sick Leave Hours from the SLB:

Any participating employee may make a confidential written request to receive sick leave hours from the SLB. Such a request shall state the employee's full name, Town employment position and that the employee participates in the SLB. The request shall also provide an explanation with sufficient detail concerning why the request is being made at this time. Sufficient detail, in this context, means attaching appropriate medical documentation to support the claim in the request. The complete request shall be submitted in an envelope marked CONFIDENTIAL SLB REQUEST and submitted to the OFFICE OF THE TOWN ADMINISTRATOR. The Town Administrator shall as quickly as possible convey the writing to the SLB Committee in a manner that preserves the employee's confidentiality. Any retained copies of the employee's request shall be kept at Town Hall in a locked file cabinet.

The SLB Committee shall meet as quickly as possible to consider the employee's request. In deciding whether to grant the employee's request, the SLB Committee shall consider the following:

- (1) The doctors written determination addressing the request;
- (2) The employee's prior circumstances with available sick leave, the expected duration of this health event, any documented abuse of sick leave, and any additional compelling circumstances.

The SLB Committee shall deny an application for sick leave hours when:

- (1) The applicant is not a presently participating SLB employee;
- (2) The applicant has not already exhausted all accumulated sick leave time and any other available Paid leave (except for Vacation and Personal time);
- (3) The applicant's specific health event does not render him/her incapable of performing his/her job;

The SLB Committee may in its sole discretion DENY an application when it finds any one of the following to be true:

- (1) The applicant has abused sick leave in the past;
- (2) The applicant has not yet exhausted accumulated sick leave time and other available Paid leave (except for Vacation and Personal time);
- (3) The applicant has made previous granted applications to the SLB and this application is deemed excessive; or
- (4) Other just cause for denying the application exists.
- (5) The applicant's request is not supported by appropriate information.

Any initial grant of sick leave days by the SLB Committee to an applicant shall not exceed thirty (30) days. An employee may make requests for additional sick leave days from the SLB in accordance with the application process set out above. Any additional grants by the SLB Committee of sick leave days may be made in increments of up to thirty (30) days. There is no entitlement to such an additional grant and any such additional grant shall be solely within the discretion of the SLB Committee. If an employee does not need to use the entire number of days granted, he/she shall inform the Town Administrator in writing in an envelope marked as detailed above. The Town Administrator shall retain such writing and have it placed in the employee's Personnel File and treat it as a confidential medical record. Any unused sick bank time shall be returned to the bank.

All decisions of the SLB Committee shall be confidential and disclosed only to the limited extent needed to effectuate a granting of sick leave bank days to the employee. Denials shall be made only to the employee, members of the SLB Committee and the Town Administrator. Records of grants and denials shall be provided to the Town Administrator who will have such records maintained as confidential portions of the employee's Personnel File.

ANY DECISION TO GRANT OR DENY AN APPLICANT'S REQUEST FOR SICK LEAVE HOURS RESTS SOLELY WITHIN THE DISCRETION OF A MAJORITY VOTE OF THE SLB COMMITTEE. THE DECISION IS FINAL AND CANNOT BE APPEALED OR CONTESTED IN ANY MANNER.

EMPLOYEE ACKNOWLEDGMENT

I have received the Sick Leave Bank Program Information of the Town of Wellfleet and understand that it is my responsibility to read the material and comply with all laws, policies and procedures set forth therein. I understand that these documents are not an employment contract and **I understand that they can be changed or amended by the Town at any time with notice, subject to any collective bargaining obligations.** I give my permission to allow the SLB Committee to view my medical information which I may need to provide in order to adequately have my application evaluated and have a decision rendered.

I understand that if I have any questions or concerns about the information provided in the Sick Leave Bank Program Information, it is my responsibility to request further information or clarification.

The information herein are current as of this printing. The Town reserves the right to change, modify, or amend all or part of any policy. Selectmen’s policies are identified specifically and should be checked for updates before reliance upon any version.

Employee Name (Please print full name)

Signature of Employee

Date Signed

**ARTICLE 36
DURATION OF AGREEMENT**

This agreement shall become effective upon its execution and remain in effect up to and including June 30, 2026.

**ARTICLE 37
PERSONAL EFFECTS**

The Town agrees to a maximum payout of up to \$250.00 for all reasonable requests to replace clothing and protective gear, eyeglasses, watches, and cell phones of a member of the bargaining unit which may be damaged or destroyed in the line of said employee's duty while on duty or while said employee may be responding to, or returning from, a call to duty.

**ARTICLE 38
DRUG AND ALCOHOL POLICY**

To ensure a safe, healthful, and productive environment and to protect the general public and comply with the Federal Drug Free Workplace Act the Town of Wellfleet adopts this policy. The use or possession of alcohol while on duty shall be prohibited. The use, possession, solicitation for or sale of narcotics or other illegal drugs or prescription medication without a prescription on Town property is prohibited.

The Town has in place an Employee Assistance Program (EAP) and advises employees that they may consult with the EAP regarding any possible substance issues. The EAP program is confidential and the providers who work under that program are prepared to assist employees and will not provide confidential treatment/ medical information to the Town. It is the goal of this policy to prevent and rehabilitate rather, than terminate the employment of workers who are abusing drugs or alcohol.

PROHIBITED CONDUCTED

THE FOLLOWING CONDUCT BY MEMBERS OF THE BARGAINING UNIT IS PROHIBITED:

1. Unauthorized use, possession, manufacture, distribution, dispensation or sale of a controlled substance without a valid prescription, illegally used drug, drug paraphernalia or alcohol on Town property on Department business or Department vehicles or during working hours.
2. Being under the influence of an unauthorized controlled substance without a valid prescription, illegally used drug or alcohol on Department property, Department business on Department vehicles during working hours.
3. An employee shall not report for duty or remain on duty within four (4) hours of having consumed alcohol. An employee shall not report for duty or remain on duty with an alcohol concentration of 0.02 or greater.

4. Refusing consent to testing or refusing to submit a breath test or urine sample for testing.
5. Failure to notify the Department of any conviction under any drug statute.

REFUSAL TO SUBMIT TO A TEST

An employee shall be considered to have refused to submit to a test under the policy when he or she:

Fails to provide adequate breath for testing without a valid medical explanation after receiving notice of the requirement to submit to a test;

Fails to provide a urine specimen for a controlled substance test without a valid medical explanation after receiving notice of the requirement to test;

Fails to proceed to the testing/collection site immediately after being informed of the requirement to be tested or leaves the site before the test is complete; or

Fails to follow the instructions of the collector/tester or complete the documents necessary to complete the test.

DRUG TESTING

1. Whenever the Fire Chief, or, in his/her absence, the Deputy Fire Chief, has reasonable cause to believe that, based on objective facts and/or direct observations, a firefighter may have violated the Town's prohibitions concerning the use of controlled substances, the Fire Chief or the Deputy Fire Chief, after reporting to the Fire Station, may require the firefighter to submit to a drug screening test for the presence of controlled substances.

The authority to order a firefighter to submit to a drug screening test shall not be delegated to any other officer in the Fire Department.

Review

a. Notice of the order shall be given immediately to the firefighter, in writing, along with the basis for the order.

b. The firefighter may initiate a review of the order by advising the Fire Chief or Deputy Chief, in writing within 8 hours.

If a review is requested by the firefighter, the order shall be reviewed by a review committee. This committee will be comprised of the Fire Chief or his designee, a firefighter duly designated by the Union, and the Town Administrator or his designee. The order shall be reviewed by this committee not more than thirty two (32) hours after the order to submit to a drug screening test has been properly issued. The firefighter shall not be subjected to any drug screening tests during this review period.

d. If the review committee concludes that the testing is warranted, then the firefighter shall immediately, upon notification of the decision of the review committee, submit to such drug

screening tests as described in further sections of this policy. The firefighter shall be given the right to be accompanied by a Union representative.

e. If the review committee concludes that the testing is not warranted, then all records of the order of the Fire Chief shall be destroyed and the firefighter shall not submit to such drug screening tests. The decision of the review committee shall be binding and will not be subject to the grievance and arbitration provisions of the collective bargaining agreement.

Reasonable suspicion includes but is not limited to:

Specific observations concerning the appearance, behavior, speech, or body odors of the employee; observable phenomena such as direct observation of on-duty drug use or possession; a pattern of abnormal conduct, erratic behavior, or deteriorating work performance (including but not limited to: frequent absenteeism, excessive tardiness or frequent accidents not attributable to other factors and which appear to be related to drug abuse.)

Conviction for drug related offenses.

2. The testing procedure shall be conducted by a facility/agency authorized by the Department of Health and Human Services (DHHS) to conduct controlled substances testing under the Department of Transportation Regulations. All tests shall be conducted in accordance with the DOT Regulations (49 CFR Part 40) including but not limited to the right to have a split sample tested .

3. A firefighter will be found to have positive drug screening results if metabolites are found that are in excess of the metabolite levels found in 49 CFR 40.87 Volume 73, dated June 25, 2008 (Encl (1)).

4. On the first occasion of a positive finding of both the screening and confirmatory tests, or a refusal to test the firefighter shall be relieved of duty and placed on accrued sick, compensation, personal, and/or vacation leave. When a firefighter has exhausted his/her accrued sick, compensation, personal, and/or vacation time, he/she will be placed in a non-pay status. The firefighter shall remain on sick, compensation, personal, and/or vacation leave, or in a non-pay status until he/she is evaluated by a certified substance abuse counselor and completes an accredited substance abuse rehabilitation program or any other treatment as determined by the counselor. The cost of such a program shall be covered by the firefighter's health insurance program or the firefighter.

5. Discipline up to and including termination may result if the firefighter refuses to participate in such a rehabilitation program.

6. Before a firefighter may return to duty, he/she will have to submit to a "return-to-duty drug screening analysis". If the return-to-duty screening produces negative results, the firefighter may return to full duty.

7. A second offense under the provisions of this policy MAY subject the firefighter to termination from the Fire Department. Any disciplinary action taken under a second offense will be subject to the grievance procedure.

8. All records promulgated under this agreement shall be kept by the Fire Chief in a confidential file separate from his/her personnel file. Only the Fire Chief, the Fire Department Administrative Assistant (for clerical purposes only), the firefighter, or the firefighter's representative shall have access to that file.

9. If any screening test or confirmatory test results in a negative finding, all of the records for the test shall be destroyed and no further action taken against the firefighter concerning the test.

ALCOHOL TESTING

Whenever the Fire Chief, or, in his/her absence, the Deputy Fire Chief, has reasonable cause to believe that, based on objective facts and/or direct observations, a firefighter may have violated the Town's prohibitions concerning the use of alcohol, the Fire Chief or the Deputy Fire Chief, after the reporting to the Fire Station may require the firefighter to submit to a screening test for the presence of alcohol.

The authority to order a firefighter to submit to an alcohol screening test shall not be delegated to any other officer in the Fire Department.

Reasonable suspicion includes but is not limited to:

Specific observations concerning the appearance, behavior, speech, or body odors of the employee; observable phenomena such as direct observation of on-duty alcohol use or possession, a pattern of abnormal conduct, erratic behavior, or deteriorating work performance.

A firefighter is prohibited from reporting for duty or remaining on duty within four (4) hours of having consumed alcohol. A firefighter is also prohibited from reporting for duty or remaining on duty with an alcohol concentration of 0.02 or greater.

Alcohol testing is authorized under reasonable suspicion testing only when the observations are made during, or just preceding, or just after the period of the work day that the firefighter is required to be in compliance with the alcohol prohibitions.

1. The testing procedures shall be conducted by a facility/agency authorized to conduct breathe tests under the DOT Regulations (49 CFR Part 40). All tests shall be conducted in accordance with the DOT Regulations.

2. If the confirmatory test is positive, or there is a refusal to test, the firefighter shall be evaluated by a certified alcohol abuse counselor and any recommended treatment must be adhered to as per Section 4 and 5 of the Drug Testing Policy.

3. A second offense under the provisions of this policy may subject the firefighter to termination from the Fire Department. Any disciplinary action taken under a second offense will be subject to the grievance procedure.

End: (1) 49 CFR 40.87—Maximum Allowable Metabolite Limits

Subpart F - Drug Testing Laboratories

§ 40.87 What are the cutoff concentrations for initial and confirmation tests?

(a) As a laboratory, you must use the cutoff concentrations displayed in the following table for initial and confirmation drug tests. All cutoff concentrations are expressed in nanograms per milliliter (ng/mL). The table follows:

Initial test analyte	Initial test cutoff ¹	Confirmatory test analyte	Confirmatory test cutoff concentration
Marijuana metabolites (THCA) ²	50 ng/mL ³	THCA	15 ng/mL.
Cocaine metabolite (Benzoylecgonine)	150 ng/mL ³	Benzoylecgonine	100 ng/mL.
Codeine/ Morphine	2000 ng/mL	Codeine Morphine	2000 ng/mL. 2000 ng/mL.
Hydrocodone/ Hydromorphone	300 ng/mL	Hydrocodone Hydromorphone	100 ng/mL. 100 ng/mL.
Oxycodone/ Oxymorphone	100 ng/mL	Oxycodone Oxymorphone	100 ng/mL. 100 ng/mL.
6-Acetylmorphine	10 ng/mL	6-Acetylmorphine	10 ng/mL.
Phencyclidine	25 ng/mL	Phencyclidine	25 ng/mL.
Amphetamine/ Methamphetamine	500 ng/mL	Amphetamine Methamphetamine	250 ng/mL. 250 ng/mL.
MDMA ⁴ /MDA ⁵	500 ng/mL	MDMA MDA	250 ng/mL. 250 ng/mL.

¹For grouped analytes (i.e., two or more analytes that are in the same drug class and have the same initial test cutoff):

Immunoassay: The test must be calibrated with one analyte from the group identified as the target analyte. The cross-reactivity of the immunoassay to the other analyte(s) within the group must be 80 percent or greater; if not, separate immunoassays must be used for the analytes within the group.

Alternate technology: Either one analyte or all analytes from the group must be used for calibration, depending on the technology. At least one analyte within the group must have a concentration equal to or greater than the initial test cutoff or, alternatively, the sum of

the analytes present (i.e., equal to or greater than the laboratory's validated limit of quantification) must be equal to or greater than the initial test cutoff.

²An immunoassay must be calibrated with the target analyte, Δ -9-tetrahydrocannabinol-9-carboxylic acid (THCA).

³Alternate technology (THCA and Benzoylecgonine): When using an alternate technology initial test for the specific target analytes of THCA and Benzoylecgonine, the laboratory must use the same cutoff for the initial and confirmatory tests (i.e., 15 ng/mL for THCA and 100ng/mL for Benzoylecgonine).

⁴Methylenedioxymethamphetamine (MDMA).

⁵Methylenedioxyamphetamine (MDA).

(b) On an initial drug test, you must report a result below the cutoff concentration as negative. If the result is at or above the cutoff concentration, you must conduct a confirmation test.

(c) On a confirmation drug test, you must report a result below the cutoff concentration as negative and a result at or above the cutoff concentration as confirmed positive.

(d) You must report quantitative values for morphine or codeine at 15,000 ng/mL, or above.

ARTICLE 39 ANNUAL CORI CHECKS

The Town of Wellfleet will notify the Union if any member has failed or refused to complete the CORI request/authorization and provide a reasonable period of time (at least five days, extended if the member is on an approved leave) for the Union to speak with the member.

The Town of Wellfleet will adhere to all legal requirements with respect to obtaining, reviewing and storing CORI records. The Town of Wellfleet will provide the Union with the names and titles of any individuals who have access to this information.

If a CORI report contains information that may impact a member's employment, the Town of Wellfleet will meet with the member to provide a copy of the CORI report and information on how to correct any mistaken information contained therein. Prior to this meeting, the member will be advised of his or her right to Union or legal representation at the meeting. After the meeting, the member will have a reasonable period of time (at least two weeks) to notify the Town of Wellfleet if he or she is taking steps to correct any inaccurate information and to provide any mitigating information to the employer. The Town of Wellfleet agrees to take no action on any allegedly inaccurate information within the CORI report until the member has exhausted his or her efforts to correct it.

Any information in a CORI report that the Town of Wellfleet already knew or should have known prior to receipt of the CORI report (e.g. pre-employment background check, the member previously notified the Chief or Town, common knowledge at the department, etc.) may not be the basis of discipline upon receipt of the CORI report.

Any discipline based upon information contained in a CORI report must be consistent with the parties' CBA (including just cause and subject to grievance/arbitration).

Employees shall have access to their CORI reports upon request.

APPENDIX A WAGES

Section 1. Longevity

Union Members after five years of employment shall be eligible for longevity payments. The longevity payment shall be added into a member's base salary for overtime calculations on July 1st of each year corresponding to their length of service in that fiscal year. Longevity shall be paid on the first payroll following the anniversary date to those who qualify.

Payments starting at \$400.00 on year five (5) and an additional payment added per year for each subsequent year based on the following:

Additional payments of \$75.00 for years 6-10
Additional payments of \$100.00 for years 11-15
Additional payments of \$125.00 for years 16-20
Additional payments of \$175.00 for years 21+

Yearly payout includes the sum of prior years' brackets.

For example:

Year 5 \$400.00

Year 8 \$675.00 = \$400.00 + \$225.00

Year 12 \$975.00 = \$400.00 + \$375.00 + \$200.00

Section 2. Private Details

Employees assigned to outside detail work by the Chief shall be paid at \$60.00 per hour for all such detail work. Detail work shall be offered on a rotational basis. Details shall be paid for four (4) hours minimum. If members working on a private detail are required to stay past the agreed upon end time of the detail, then they shall continue to receive the private detail rate in accordance with the shift continuation policy in the contract.

The private detail rate will increase by \$10.00 on July 1st, 2024 and on July 1st, 2025.

This section would not apply to Town funded details.

Section 3. Out of Grade Pay

If a firefighter is assigned by the Chief in writing to perform the duties of a Lieutenant then, after four consecutive shifts of such service, he/she shall be compensated at a Lieutenants rate of pay retroactive to the first hour of such service. If assigned from Lieutenant to Captain then after four consecutive shifts of service, he/she shall be compensated at Captains rate of pay retroactive to the first hour of service. If assigned from Captain to Deputy Chief/Chief Officer then, after

four consecutive shifts of such service he/she shall be compensated at Chief Officer's rate of pay retroactive to the first hour of such service. If a firefighter is required to perform the duties of a fire officer while working a scheduled shift for a period of two (2) hours or more they shall receive one (1) extra hour of pay at their overtime rate for the first twelve hours and an additional extra hour at their overtime rate for each additional twelve hour period.

Time served in an acting capacity shall count towards the appropriate pay step and be calculated into the seniority of the officer position once they are officially appointed. While in an acting capacity the member shall receive the appropriate pay step equal to time served in the position.

Section 4. Firefighter Safety Inspector

When a firefighter below the rank of Lieutenant is assigned as the Town's Fire Safety Inspector he/she shall be entitled to a \$500.00 stipend, pro-rated, based on the duration of the assignment in any given fiscal year.

Section 5. Wage Schedule

	FY 2024	FY 2025	FY 2026
COLA	3.50%	3.50%	3.00%
Step 1	\$59,068.63	\$61,136.03	Step 1 \$62,970.12
Step 2	\$61,431.38	\$63,581.48	Step 2 \$65,488.92
Step 3	\$63,888.63	\$66,124.73	Step 3 \$68,108.48
Step 4	\$66,444.18	\$68,769.72	Step 4 \$70,832.82
Step 5	\$69,101.94	\$71,520.51	Step 5 \$73,666.13
Step 6	\$71,866.02	\$74,381.33	Step 6 \$76,612.77
Step 7	\$74,740.66	\$77,356.59	Step 7 \$79,677.28
Lieutenant			Step 8 \$82,864.38
Step 1	\$77,730.29	\$80,450.85	Step 9 \$85,350.31
Step 2	\$80,062.20	\$82,864.38	Step 10 \$87,910.82
Step 3	\$82,464.06	\$85,350.31	
Captain			
Step 1	\$86,548.49	\$89,577.68	\$92,265.01
Step 2	\$89,144.94	\$92,265.01	\$95,032.96
Step 3	\$91,819.29	\$95,032.96	\$97,883.95
Stipends			
Firefighter	\$1,500.00	\$1,500.00	\$ 1,750.00
EMT	\$4,000.00	\$4,250.00	\$ 4,500.00
A-EMT	\$5,250.00	\$5,500.00	\$ 6,000.00
Paramedic	\$8,000.00	\$9,000.00	\$10,000.00

Captains will not be eligible for the Firefighter Stipend.

For members to be eligible to receive the Firefighter Stipend they shall be certified to Firefighter I & II or certified to the current nationally accepted standard for Firefighting by an accredited agency such as the Pro Board.

Certification level stipends will be added to the appropriate step to determine an employee's base wage. Step advancement shall take place on an employee's date of hire anniversary or date of promotion anniversary, an employee's base wage shall be adjusted at that time. Members shall have their wage adjusted to the appropriate pay scale on July 1st correlating to their step.

Lt. Clark, Lt. Gelatt, and Lt. Gray will have their titles changed to Captain with a corresponding change to Captain Step One on the pay scale on July 1st, 2024 (FY 25 the second year of the contract). Lt. Kinshaw will have his title changed to Captain with a corresponding change to Captain Step One on July 1st, 2025 (FY26 the third year of the contract). These are one-time title changes all other promotional changes shall be conducted through the promotion process laid out in the contract. Effective July 1st 2025 the Lt. Steps will be reclassified as Step 8, 9, and 10. The Captians will all advance a Captians Step on July 1st each year instead of their promotion date.

INTENTIONALLY LEFT BLANK

APPENDIX B
AUTHORIZATION FOR PAYROLL DEDUCTION

By: _____
Last Name First Name Middle

To: _____
Employer Department

Effective: _____

I hereby request and authorize you to deduct from my earnings once each month an amount to be established by the Union as dues. The amount deducted shall be paid to the Treasurer of the Union.

The authorization shall continue for a period of one (1) year from the date hereof or until the termination of the Agreement, whichever occurs first, and shall be automatically renewed for successive periods of one (1) year unless written notice of revocation is given by me, to you, in writing. Upon receipt thereof this authorization shall expire sixty (60) days thereafter.

Signed: _____

Date: _____

**APPENDIX C
GRIEVANCE FORM**

GRIEVANCE PROCEDURE - STEP # 2

Name / Rank of Employee: _____

Incident Time and Date: _____

Contract Provision, Rule, Policy, Agreement, Etc. Involved:

Brief Description of Grievance:

Steps Taken to Resolve Informally:

Settlement Desired:

Submitted By (Employee): _____ Date: _____

Submitted By (Union Rep.): _____ Date: _____

Received By (Fire Chief): _____ Date: _____

Action of Management Satisfactory? Yes ____ No ____

GRIEVANCE PROCEDURE - STEP # 3

Received By (Town Administrator): _____ Date: _____

Submitted By (Union Rep.): _____ Date: _____

Copy of Town Administrators Written Reply Received and Attached: _____ Date: _____

Action of the Town Administrator Satisfactory? Yes ___ No ___

GRIEVANCE PROCEDURE - STEP # 4

Received By (Board of Selectmen, Chair): _____ Date: _____

Submitted By (Union Rep.): _____ Date: _____

Copy of Board of Selectmen's Written Reply Received and Attached: _____ Date: _____

Action of the Board of Selectmen Satisfactory? Yes ___ No ___

APPENDIX D
POSITION DESCRIPTIONS

SIGNATURES APPEAR ON THE FOLLOWING PAGE

TOWN OF WELFLEET
SELECTBOARD

WELFLEET PERMANENT FIREFIGHTERS
ASSOCIATION, IAFF LOCAL 4342

Andy Cole

Kristen Hylger

Jo

Daryn Scott

DATE: _____

DATE: 6/14/2023

AGREEMENT
BETWEEN THE TOWN OF WELLFLEET
AND
THE WELLFLEET EMPLOYEES' ASSOCIATION
UNIT A
July 1, 2023 through June 30, 2026

TABLE OF CONTENTS

Article 1	Recognition	3
Article 2	Definitions	3
Article 3	Management Rights	3
Article 4	Employee Rights and Representation	4
Article 5	Non-Discrimination	5
Article 6	Hiring Practices and Promotions	5
Article 7	Discipline Policy	6
Article 8	Grievance and Arbitration Procedures	6
Article 9	Personnel Records	8
Article 10	Regular Work Week	8
Article 11	Flex Time	8
Article 12	Holidays	9
Article 13	Vacation	9
Article 14	Sick Leave	11
Article 15	Bereavement Leave	14
Article 16	Jury Duty	14
Article 17	Military Reserve	14
Article 18	Leave of Absence	14
Article 19	Medical Leave	14
Article 20	Personal Days	14
Article 21	Longevity	15
Article 22	Insurance	15
Article 23	On-the-Job Injuries	15
Article 24	Working Out of Classification	16
Article 25	Employee Assistance Program	16
Article 26	Reimbursement of Job Related Education	16
Article 27	Use of Town Buildings	17
Article 28	Vehicle Use	17
Article 29	Wages	17
Article 30	Miscellaneous	18
Article 31	Agency Service Fee	18
Article 32	Union Security Clause	18
Article 33	Union Business Leave	18
Article 34	Stability of Agreement	18
Article 35	No Strikes	18
Article 36	Duration of Agreement	19
Schedule A	Unit A Positions	20
Schedule B	Wage Charts	22
Schedule C	Agency Service Fee Schedule	21

ARTICLE 1: RECOGNITION

The Town of Wellfleet hereby recognizes the Union as the sole and exclusive bargaining agent for the purpose of collective bargaining with respect to wages, hours and other conditions of employment for all Supervisory Personnel with the job titles set forth on Schedule A.

ARTICLE 2: DEFINITIONS

Employee: Any person who works for wages or salary in the service of the Town

Department Head: A town employee having direct supervision and control of a department.

Department: Any division or branch of the Town's municipal service, whether it be under the direction and control of an appointed or elected officer, or under a board, commission, committee, or other similar agency.

Disciplinary Action: Any personnel action resulting in a written warning, suspension, demotion, or termination.

Regular Full-Time Employee: A person in the service of the Town who fills a position for not less than the regularly scheduled hours of work each week and who is engaged for a period of indefinite duration, or for a stipulated period of one year or more, or for a stipulated portion of the year of more than 35 weeks.

Regular Part-Time Employee: A person in the service of the Town who works less than the regular schedule of hours of work each week, whether working fewer hours per day or fewer days per week, but working a minimum average of 20 hours per week; and further, who is engaged for a period of indefinite duration or for a stipulated term of one year or more, and who works more than 35 weeks per year.

Regular Part-Time Fewer Than 20 hours Employee: A person in the service of the Town who works less than 20 hours per week, but who is engaged for a period of indefinite duration or for a stipulated term of one year or more, and who works more than 35 weeks per year. Employees performing in positions falling into this category shall not be eligible for benefits provided for Regular Full-Time and Regular Part-Time Employees, except as specifically stated in this contract.

Continuous Employment: Uninterrupted employment except for authorized leaves of absence. If an employee returns to employment with the town within five years of the date of termination of employment, that employee will be entitled to reinstatement of benefits with credit for previous time worked.

ARTICLE 3: MANAGEMENT RIGHTS

Subsequent to the execution of this contract, the Town will continue to retain, whether exercised or not, all the rights, power and authority it currently exercises under the General Laws of the Commonwealth of Massachusetts and the Wellfleet Charter to solely manage the affairs of the Town and direct its workforce, except to the extent that such rights, power and authority have been abridged, limited, or relinquished by the terms and provisions of this Agreement. By way of example, but not limitation, management retains the following rights consistent with G.L. c. 150E:

- to determine the mission, budget, and policy of the Town and its departments;

- to determine the organization of the Town and its departments, the number of employees, the work functions, and the technology of performing them;
- to determine the numbers, types, and grades, of positions or employees assigned to an organizational unit, work project, or to any location, task, vehicle, building, station, or facility;
- to determine the methods, means, and personnel by which the Town's operations are carried out;
- to manage and direct employees of the Town and to discipline employees;
- to maintain and improve orderly procedures and the efficiency of operations;
- to layoff employees in the event of lack of work, funds, or under conditions where management believes that continuation of such work would be less efficient, less productive, or less economical;
- to assign employees to staff functions from time to time as the Town determines appropriate
- to take whatever actions may be necessary to carry out its responsibilities in situations of emergency
- to enforce existing rules and regulations for the governance of the Town and its departments, and to add to or modify such regulations as it deems appropriate.
- To conduct performance evaluations. Management will periodically review format and criteria with input from WEA.
- To assign office work space as appropriate for maximum efficiency. The WEA will receive a thirty (30) day notice of any proposed move of a WEA employee and be offered the opportunity to discuss the move with Management.
- The Town Administrator may offer a matching employment offer that is within twelve percent (12%) of the employee's current compensation, to an existing employee who has received an employment offer from another potential employer.
-

ARTICLE 4: EMPLOYEE RIGHTS AND REPRESENTATION

Section 1.

The Town agrees not to discharge, discriminate, interfere with, restrain or coerce any employee because of his/her lawful exercise of the rights set forth in Section 2 of Chapter 150E of the General Laws.

Section 2.

The Town agrees that it will not discriminate against, interfere with or coerce against any employee because such employee gives testimony, takes part in grievance procedures or hearings, negotiations or conferences for or on behalf of the Union or any employee.

Section 3.

Employees are free to become or refrain from becoming members of the Union. Notwithstanding membership in the Union, the Union agrees to represent fully all members of the bargaining unit.

Section 4.

In the event of a conflict between any provisions of this agreement and any Personnel Ordinance, Bylaw, Rule or Regulation of the Town, the terms of the collective bargaining agreement shall prevail.

Section 5. Notice to Union

The Town shall make every effort to submit written notice to the Union with the name, job title and the effective date of actions affecting employees as follows:

1. Appointment of new employee
2. Promotion
3. Suspension
4. Termination by type (retirement, disability, involuntary with cause)
5. Authorized leave of absence
6. Authorized leaves of absence of more than one (1) month

ARTICLE 5: NON-DISCRIMINATION

The Town and the Union agree that they will not discriminate against any employee on the basis of race, creed, color, national or ethnic origin, gender, sexual preference, age, religion or marital status, political affiliation or activity, and membership or non-membership in the Union.

ARTICLE 6: HIRING PRACTICES AND PROMOTIONS

Section 1. Postings, Hiring Practices and Probation

When a new position is created or a vacancy exists that the Town determines to fill, a notice will be posted in all Town offices, wherever employees covered by this Agreement are employed, for a period of seven (7) calendar days prior to the application deadline. Internal posting of the notice shall be the responsibility of the Union. The job posting shall include the job title, salary range, a description of duties, the hours and days of work and the location, the requisite qualifications for the position, the last date for filing applications and other relevant and pertinent information.

All candidates meeting the minimum eligibility requirements for the position as determined by the Town, will be considered based on their qualifications, ability, work history and relevant experience which the Town may determine in its sole discretion.

When a new employee is hired for a position within the Union, his/her salary will be within the salary range posted for the position. Should a recommended candidate's qualifications require compensation outside of the salary range due to experience and current job market conditions, Management and the WEA shall negotiate the starting salary. Such approvals shall not be unduly withheld by the union.

All new employees must submit to and pass a pre-employment fitness for duty physical examination. The Town will arrange and pay for the examination.

When a new employee is hired for a position within the Union, he/she will be employed on a probationary basis for one year following his/her initial date of hire. A terminated probationary employee is not entitled to file a grievance; termination with notice is all that is required.

Section 2. Promotion and Seniority Defined

- a) A promotion shall mean advancement to a different job title with higher pay.
- b) Seniority shall mean the length of continuous employment with the Town.

Section 3. Selection

The Town of Wellfleet is committed to a policy of hiring and promoting from within whenever possible. While selection for appointments and promotions shall be based on qualifications, seniority shall also be considered as a factor. In selecting among qualified applicants for appointments and promotions, employees with the greatest seniority shall be given preference over equally qualified applicants with lesser seniority.

Section 4. Reclassification

Any bargaining unit member whose duties change substantially and materially change during the life of this agreement may file a request for reclassification with the Town Administrator. The Town Administrator or his/her designee shall review the reclassification request and issue a written decision within 90 days of the request. If the reclassification request is denied, the Union may submit the matter to the Board of Selectmen in accordance with Step 3 of the Grievance Procedure, and the decision of the Board shall be final and not subject to Arbitration.

ARTICLE 7: DISCIPLINE POLICY

Employees may during the period of employment be disciplined for cause, including but not limited to: unsatisfactory job performance or attendance; and, violation of Town policies or regulations. The following steps shall be taken in the event that disciplinary action is deemed necessary.

- 1) **Oral Reprimand.** The Town Administrator, a Department Head or a supervisor may issue an oral warning to an employee. An oral reprimand shall be noted in the employee's personnel file.
- 2) **Written Reprimand.** The Town Administrator or a Department Head may issue a written warning. A copy of the written warning shall be placed in the employee's personnel file and carry a specified period in which the behavior shall be improved.
- 3) **Suspension – short term.** An employee may be suspended for up to five days without pay with just cause. Suspension may be in lieu of oral reprimand and written reprimand and may be effective immediately. Within 48 hours of the effective date of suspension, the employee will be provided with a written notice stating the reason for it, the length of the suspension, and the date the employee will return to work.
- 4) **Suspension – long term.** An employee may be suspended for up to ten days without pay with just cause. Suspension may be in lieu of oral reprimand and written reprimand and may be effective immediately. Within 48 hours of the effective date of suspension, the employee will be provided with a written notice stating the reason for it, the length of the suspension, and the date the employee will return to work.
- 5) **Discharge.** An employee may be discharged for just cause. The Town Administrator shall provide the employee with a written notice of discharge stating the reason for it and the effective date of the discharge.

The Town and Union acknowledge that application of the progressive discipline steps outlined above may not be appropriate in all instances. Based on the seriousness of the employee's misconduct, it is understood that the Town may take disciplinary action, up to and including termination, without proceeding through these disciplinary steps. It is also understood that it may be appropriate under some circumstances to impose a lesser form of discipline than is called for under the disciplinary steps.

Employee rights

- 1) Employees have the right to challenge disciplinary action as it arises and to request a plan for remediation, if warranted. All disciplinary action is subject to grievance and arbitration procedures as set forth in this agreement.
- 2) Oral and written reprimands shall be removed from employee files after a period of two years if no additional infractions have occurred.

ARTICLE 8: GRIEVANCE AND ARBITRATION PROCEDURES

The parties recognize that it is in the best interest of effective and harmonious performance of duties and responsibilities for prompt and equitable disposition of any grievance at the lowest organizational level possible under procedures of maximum informality and flexibility. All grievances, as defined below, shall be processed in accordance with the following procedure.

Grievance defined: A grievance shall be defined as a dispute over the interpretation or application of the express terms of this agreement.

Step 1. An employee or the Union may take up a grievance with the employee's Department Head, if applicable, within 14 calendar days of the occurrence of the event giving rise to the grievance in an attempt to resolve the grievance.

Step 2. If issues are not resolved in Step 1, the employee or the Union may present a grievance in writing to the Town Administrator or designee within 14 calendar days after the occurrence of the event giving rise to the grievance. The grievance shall contain:

1. Name and classification of the employee
2. Nature of the grievance
3. Steps taken to resolve the grievance informally
4. Requested remedy
5. Signature of the employee or employees involved.

The Town Administrator or designee shall have 14 calendar days to act on the grievance and his/her answer shall be in writing. During this 14 calendar day period, the Town Administrator or designee may meet with the parties involved to discuss and try to resolve the grievance. If the grievant is a Department Head and the immediate supervisor is the Town Administrator, the employee shall skip Step 2 and immediately follow procedures set forth in Step 3 below.

Step 3. If the employee is not satisfied with the answer given in Step 3, the grievance may be submitted to the Board of Selectmen within 14 calendar days after the answer in Step 2. The Board of Selectmen shall consider it as soon as possible and shall give its reply in writing within 30 calendar days after receipt of the grievance.

Termination or Discharge. In the event of a termination or discharge (following the probationary period) an employee may submit a grievance at Step 3 within 14 calendar days of the written notice of the termination or discharge.

Arbitration. If the grievance is not resolved by the answer of the Board of Selectmen, as provided above, the Union may within 21 calendar days after such answer, upon written notice given to the Board of Selectmen, submit the grievance to arbitration in accordance with the rules of the American Arbitration Association. The arbitrator

shall render a decision based solely upon the facts, evidence and contentions as presented by the parties during the arbitration proceedings and shall be governed by the following:

1. The decision of the arbitrator shall be final and binding upon the parties hereto except for review and confirmation as provided by Chapter 150C of the General Laws.
2. The expense of the arbitrator's services and the proceedings shall be borne equally by the parties involved.
3. The arbitrator shall be without power or authority to make any decision or award that violates the common law or statutory law of the Commonwealth or any rules and regulations promulgated pursuant thereto.
4. The arbitrator shall be without power to add or to subtract from the terms of the Agreement.
5. The arbitrator shall be without power or authority to render an award or decision concerning any matter that is excluded from the Grievance and Arbitration Procedure of this Agreement.

Time Limits. If the Town does not issue a written response to a grievance within the time provided in the agreement, it shall be considered a denial of the grievance and the Union or the employee may proceed to the next step of the grievance procedure. If the Union fails to timely file a grievance at step 1, or fails to timely process a grievance at any step of the grievance procedure after a written decision has been issued, the grievance shall be waived with prejudice. The filing deadlines may be extended by mutual written agreement of the parties.

Settlement Authority. Although the parties agree that it may be mutually beneficial to attempt to resolve their disputes at the earliest stages of the grievance process, the resolution of any grievance prior to Step 3 is subject to the Town Administrator's approval and absent such approval, the disposition shall not be binding on the Town.

ARTICLE 9: PERSONNEL RECORDS

An employee may review his or her personnel record during regular business hours within five business days of his or her request and may obtain a copy of his or her personnel file within five business days of the submission of a written request to the office of the Town Administrator. Personnel records shall be defined in accordance with G.L. c. 149, §52C. No information from an employee's personnel record, other than a simple verification of employment, shall be released without the written consent of the employee to the extent allowed by law.

An employee shall have the right to place a written reply in his/her file to all complaints, reprimands or any other material derogatory or disciplinary in nature, and have it attached to said material. The employee will be shown such material to review and initial prior to its being placed in the file. The purpose of the initials is not to imply acceptance of said material but only to indicate that the employee has reviewed the information.

Where there is disagreement with any information contained in a personnel record, removal or correction of such information may be mutually agreed upon by the Town and the employee. If an agreement is not reached, the employee may submit a written statement explaining his/her position, which shall thereupon be contained therein and shall become a part of the employee's personnel record. The statement shall be included whenever information is sent to a third party, as long as the original material responded to be retained.

ARTICLE 10: REGULAR WORK WEEK

Work schedule shall consist of 5 days of in-person work schedule according to hours set by the Town Administrator or through his/her designee. Special consideration for work schedule shall be at the discretion of the Town Administrator and shall be reviewed and approved for a term no longer than one year.

ARTICLE 11: FLEX TIME

Department Heads and other members of Unit A who are required to work outside of their normal work hours shall be permitted to adjust their work schedules as set forth below, although it is understood that Unit A members may be required from time to time to exceed their regular working hours so as to sufficiently complete their duties and responsibilities.

Employees will be allowed to use flex time subject to the following conditions:

- (a) Flex time: hour for hour adjustment in an employee’s schedule. For example, coming in two hours late in the morning after a two-hour night meeting. Flex time can be taken at the discretion of the Department Head. Use of flex time requires approval by the Department Head.
- (b) Flex time must be used within 14 days of when it is accumulated or it will be lost.
- (c) Flex time can be used between 8:00 a.m. and 4:00 p.m. only if there is sufficient office coverage.
- (d) Employees will notify the office of the Town Administrator by email or by telephone prior to being away from their office during regular business hours.

ARTICLE 12: HOLIDAYS

All regular full-time and regular part-time employees normally scheduled to work on one of the following holidays shall be given the day off with pay.

- New Year’s Day
- Martin Luther King Day
- President’s Day
- Patriots Day
- Memorial Day
- Juneteenth
- Independence Day
- Labor Day
- Columbus Day
- Veterans Day
- Thanksgiving Day
- Friday after Thanksgiving
- Christmas Day

Whenever a holiday falls on a Saturday, it will be observed on the Friday immediately prior to that Saturday and when a holiday falls on a Sunday, it will be observed on the Monday immediately following that Sunday. Any employee who is required to work on a given holiday will be compensated at the rate of double time. This includes employees who work on a call-out basis, such as the dog officer and inspectors.

Vacation days may be taken immediately before and/or after holidays, with approval from the employee’s supervisor.

A paid holiday falling within a vacation period will not be charged to vacation leave.

If an employee uses sick time the day before or day following a scheduled holiday, the Town may require the employee to produce a medical certificate verifying illness prior to the payment of holiday pay. The Town will pay the cost of the certificate.

Regular part time employees shall receive holiday pay based on the average number of hours worked in a day according to their schedule.

ARTICLE 13: VACATION

In accordance with the following rules and regulations, all regular full-time and regular part-time employees are entitled to annual vacations.

Vacation days shall accrue monthly and be credited annually on the employee’s annual date of hire according to the following schedule:

Years of Service	<u>Vacation Time Allowed</u>
0 up to six months	None
Six months to ten years	15 days
Ten years up to fifteen years	20 days
Fifteen years and over	25 days

Employees who have earned 30 days of vacation by June 30, 2023, will be entitled to the 30 days per year until they resign or retire.

Vacations must be taken in the anniversary year earned. Exceptions to this rule must be approved in writing by the Department Head. No more than two weeks of earned vacation may be carried over on an employee’s anniversary date. When a conflict in requests for vacation time arises, seniority shall prevail for no more than two weeks per year. The Town Administrator or his designee will approve and schedule vacations. Requests for vacation time shall not be unreasonably refused, withheld or denied.

Vacation Buyback: Any employee eligible for more than three weeks vacation time may elect in lieu of time off to be paid for up to four weeks of vacation time or such lesser amount of vacation time as will leave the employee with not less than two weeks of remaining vacation time. Requests must be submitted prior to March 1st or if unforeseen circumstances arise employees may request vacation buyback with approval from the Town Administrator outside of the March 1 deadline.

Any employee leaving the service of the Town shall be compensated at his/her current rate of pay for vacation time earned but not taken.

Upon the death of an employee who is eligible for vacations under this article, payment shall be made to his/her estate.

ARTICLE 14: SICK LEAVE

Section 1. Sick leave shall be defined as any absence due to the employee's injury, illness, or appointment with a doctor or other medical professional.

Section 2. All permanent full-time and permanent part-time employees will accrue and be entitled to use sick leave on the following basis:

- a) Regular full-time and part-time employees earn sick leave on the basis of one and one-quarter (1-¼) days for each full month of continuous employment or a total of fifteen (15) days per year. Part-time employees' and part-time less than 20-hour employees' days are based on the average number of hours worked in a day according to their regular schedule.
- b) Sick leave credits for full-time employees may be allowed to accumulate to a maximum of 150 days. Sick leave credits for permanent part-time employees may be allowed to accumulate to a maximum of 150 equivalent days.
- c) Any employee who terminates employment through retirement under G.L. Chapter 32 or death shall be entitled to cash payment at his/her current rate of pay for 25% of his/her unused accumulated sick leave up to 120 days. In case of death, the payment due hereunder shall be made to a surviving spouse, or to a designated beneficiary or to the estate.
- d) An employee who has scheduled a sick day on a day when non-essential employees are excused from work will be permitted to change the sick day to an excused absence.

Section 3. After an employee has been absent for sickness or injury for five (5) consecutive days or more, the Town may require the employee to submit adequate medical evidence from the employee's treating physician to support the need for the sick time and clearing the employee to return to work.

Section 4. The Department Head or his designee must be notified by the employee regarding the employee's absence as soon as possible, but in no event, later than one (1) hour after the beginning of the employee's workday.

Section 5. In the event the Town reasonably determines that an employee has abused sick leave, the Town, through the Town Administrator or through a Department Head with the approval of the Town Administrator, may disallow sick leave and/or may discipline an employee according to the provisions set forth in this agreement. Such an employee has recourse to the grievance procedures described above in Article VIII.

Section 6. An employee may have the option to apply accrued vacation time to sick leave in cases of prolonged illness.

Section 7. Employees may use up to five (5) sick days per year in increments of not less than 2 hours to care for a member of an employee's household or immediate family or an elderly relative. Requests to care for any other individuals shall require the approval of the Town Administrator which shall not be unreasonably withheld.

Section 8. The Sick Leave Bank (SLB) is a voluntary program for Town employees (full and part time). The basic purpose of the Sick Leave Bank is to provide additional sick days to a contributing employee for a serious, prolonged, extended illness situation. The Sick Leave Bank is available only for employee's illness. However, if an employee does not participate in the SLB by contributing sick leave hours, he/she cannot benefit from it.

Program Details:

Solicitation for participation in the SLB program shall occur in June for the next fiscal year. Unless an employee's participation in a SLB is covered by his/her individual employment agreement or a collective bargaining agreement, a participating employee shall contribute one quarter (1/4) day of earned sick leave each month. The participating employee's contribution shall continue until the SLB contains deposits of three hundred (300) sick leave days. At that point, all contributions of sick leave shall be suspended. If the SLB's deposited sick leave days then fall to one hundred fifty (150) or below, contributions shall resume as they existed before the suspension. The Committee charged with operating the SLB may request that participating employees make additional contributions of sick leave days if an unusual event occurs. New hires or current employees joining or rejoining the SLB shall be exempt from any freeze for one year from the time of their entrance into the program.

If a Town employee participates in the SLB during one Town fiscal year, but elects not to participate in the next, no sick leave days shall be returned to the employee. Once an employee's sick leave days enter the SLB, those sick leave hours can only be used in the SLB program.

SLB Committee:

The SLB program shall be administered by a SLB Committee. The committee shall have five (5) members. The members shall consist of: two (2) non Union contract employees appointed by the Town Administrator, and three (3) Union employees; one from the Wellfleet Employees Association (WEA), one from the Wellfleet Permanent Fire Fighters Union, and one from the Teamsters Union. A member of the SLB Committee may be removed from his/her position for non-attendance at four (4) consecutive SLB Committee meetings, removal or retirement from Town employment, or incapacity to serve. In the event that a member of the SLB Committee is an applicant requesting days from the SLB, an alternate voting member will be chosen from that individual's representative group to serve as a voting member for their application.

Requests to use Sick Leave Hours from the SLB:

Any participating employee may make a confidential written request to receive sick leave hours from the SLB. Such a request shall state the employee's full name, Town employment position and that the employee participates in the SLB. The request shall also provide an explanation with sufficient detail concerning why the request is being made at this time. Sufficient detail, in this context, means attaching appropriate medical documentation to support the claim in the request. The complete request shall be submitted in an envelope marked Confidential SLB Request and submitted to the Office of the Town Administrator. The Town Administrator shall as quickly as possible convey the writing to the SLB Committee in a manner that preserves the employee's confidentiality. Any retained copies of the employee's request shall be kept at Town Hall in a locked file cabinet.

The SLB Committee shall meet as quickly as possible to consider the employee's request. In deciding whether to grant the employee's request, the SLB Committee shall consider the following:

1. The doctor's written determination addressing the request;
2. The employee's prior circumstances with available sick leave, the expected duration of this health event, any documented abuse of sick leave and any additional compelling circumstances.

The SLB Committee shall deny an application for sick leave hours when:

1. The applicant is not a presently participating SLB employee;
2. The applicant has not already exhausted all accumulated sick leave time and any other available paid leave (except for Vacation and Personal time);
3. The applicant's specific health event does not render him/her incapable of performing his/her job

The SLB Committee may in its sole discretion deny an application when it finds any of the following to be true:

1. The applicant has abused sick leave in the past;
2. The applicant has not yet exhausted accumulated sick leave time and other available paid leave (except for Vacation and Personal time);
3. The applicant has made previous granted applications to the SLB and this application is deemed excessive; or
4. Other just cause for denying the application exists;
5. The applicant's request is not supported by appropriate information.

Any initial grant of sick leave days by the SLB Committee to an applicant shall not exceed thirty (30) days. An employee may make requests for additional sick leave days from the SLB in accordance with the application process set out above. Any additional grants by the SLB Committee of sick leave days may be made in increments of up to thirty (30) days. There is no entitlement to such an additional grant and any such additional grant shall be solely within the discretion of the SLB Committee. If an employee does not need to use the entire number of days granted, he/she shall inform the Town Administrator in writing in an envelope marked as detailed above. The Town Administrator shall retain such writing and have it placed in the employee's personnel file and treat it as a confidential medical record. Any unused sick bank time shall be returned to the bank.

All decisions of the SLB Committee shall be confidential and disclosed only to the limited extent needed to effectuate a granting of sick leave bank days to the employee. Denials shall be made only to the employee, members of the SLB Committee and the Town Administrator. Records of grants and denials shall be provided to the Town Administrator who will have such records maintained as confidential portions of the employee's personnel file.

Any decision to grant or deny an applicant's request for sick leave hours' rests solely within the discretion of a majority vote of the SLB Committee. The decision is final and cannot be appealed or contested in any manner.

EMPLOYEE ACKNOWLEDGEMENT

I have received the Sick Leave Bank Program Information of the Town of Wellfleet and understand that it is my responsibility to read the material and comply with all laws, policies and procedures set forth therein. I understand that these documents are not an employment contract and I understand that they can be changed or amended by the Town at any time with notice, subject to any collective

bargaining obligations. I give my permission to allow the SLB Committee to view my medical information which I may need to provide in order to adequately have my application evaluated and have a decision rendered.

I understand that if I have any questions or concerns about information provided in the Sick Leave Bank Program Information, it is my responsibility to request further information or clarification.

The information herein is current as of this printing. The Town reserves the right to change, modify, or amend all or part of any policy. Selectmen’s policies are identified specifically and should be checked for updates before reliance upon and version.

Employee Name (please print full name)

Signature of Employee Date signed

ARTICLE 15: BEREAVEMENT LEAVE

In the event of the death occurring in the immediate family of an employee, he/she shall be granted bereavement leave without loss of pay up to a maximum of four (4) regular workdays. For the purpose of this section, “immediate family” shall be spouse or domestic partner, child or a step-child, parents, step-parents, parents-in-law, grandparents, grandchildren, brother, sister, step-brother and step-sister. The Town Administrator, upon recommendation of the supervisor, may grant extension of bereavement leave without loss of pay under special circumstances, or may grant exceptions to relatives listed above.

ARTICLE 16: JURY DUTY

An employee who is called for jury duty and must be absent from regular duties will be paid the difference between his/her normal weekly wages and the money received for jury duty, upon presentation to his/her supervisor of a certified record of jury duty pay.

ARTICLE 17: MILITARY RESERVE

Any regular part-time or regular full-time employee who is a member of the National Guard or other military reserves and who is required to fulfill his/her military duty obligation by a tour of active duty, shall upon application be paid the difference between the compensation received from military pay, including allowances for meals and quarters, and the employee’s pay for normal hours. This is limited to a period not to exceed three (3) weeks per fiscal year.

If the employee's National Guard or Reserve Unit is activated into federal service, the employee will be granted a leave of absence without pay. However, upon deactivation from such federal service, the employee will be entitled to reinstatement to his/her former position with the town, without loss of seniority for time spent in active service.

ARTICLE 18: LEAVE OF ABSENCE

Employees, after twelve (12) months of employment, may for good and sufficient reason and with approval of the supervisor/department head and the Town Administrator be granted a leave of absence without pay. During such leave, the employee shall not be permitted to take other full-time employment. Group insurance may be continued as provided in the contract but the employee will not be eligible for holiday pay. One hundred percent (100%) of premium expenses shall be paid by the employee.

ARTICLE 19: MEDICAL LEAVE

Leave for serious illness in an employee's immediate family, giving birth or a birth in an employee's immediate family shall be taken in accordance with the Family and Medical Leave Act (FMLA) subject to the approval of the Department Head and Town Administrator. Such approval shall not be unreasonably denied.

ARTICLE 20: PERSONAL DAYS

Two-day absence with pay shall be granted any employee, after the provisional employment period, during each calendar year for the purpose of transaction of business of a personal nature that is difficult to transact during normal working hours. Such leave must be requested in writing at least 48 hours prior to the date selected, except in case of emergencies. The request must be submitted to the supervisor and/or Department Head for approval. Requests for personal leave shall not be unreasonably refused, withheld, or denied.

If a regular full-time or regular part-time employee does not utilize sick leave during any consecutive six-month period, the employee shall be granted one (1) personal day which may be taken in the following six-month period, according to the guidelines noted above. It shall be the responsibility of the employee to request and confirm the personal day with his/her supervisor and/or department head.

Personal days are not cumulative and are not to exceed one additional day within one fiscal year.

ARTICLE 20A: INCLEMENT WEATHER DAYS

Up to three days of absence with pay shall be granted to any employee, during each fiscal year for the purpose of an employee who can not report to work due to inclement weather, power outages, floods, or other natural disasters or acts of nature at the discretion of the employee. These days expire at the end of the fiscal year and can not be carried over year to year.

ARTICLE 21: LONGEVITY

All regular full-time employees shall receive a longevity bonus, based on anniversary date, according to the following schedule: \$375 after five (5) years of continuous service and an

additional \$50 per year for the next four years, increase to \$700 on the tenth (10th) year with an additional \$100 annually added thereafter. The longevity bonus shall be paid on the first payroll following the anniversary date to those who qualify by length of continuous service.

Regular part-time employees and Part-time less than 20 hour employees shall be entitled to one half the longevity bonus paid to full-time employees.

After ten (10) years of continuous employment, any employee who terminates employment with the town and is eligible for longevity bonus shall receive longevity payment for any time earned up to said date of termination of employment. Earned bonus will be paid at time of termination and shall be prorated if termination date does not coincide with anniversary date.

ARTICLE 22: INSURANCE

Section 1. Health

Regular full-time and regular part-time employees working more than 20 hours per week and at least 35 weeks per year, shall be eligible to participate in the Town of Wellfleet health insurance program. The town share of health insurance premium contribution shall be 65% for the duration of this Agreement. The Beach Administrator is not eligible to participate in the Town's health insurance program.

Employees eligible to participate must enroll in one of the offered plans that corresponds to the employee's status, i.e. an individual employee may not enroll in a family plan (unless required by the terms of a court decree)

In the event that a member wishes to decline group health insurance, the Town will pay the employee 25% of the Town's share of the least expensive plan to which the employee is entitled. Payment to eligible employees who decline participation in the Town's group health insurance plan will be made semi-annually on the first payroll in December and the last payroll in June for the previous six months. Employees who have not been on the payroll for the full prior six (6) month period will receive such payments on a pro-rated basis. Any employee who declines participation in the Town's group health insurance plan must provide sufficient proof of independent insurance coverage.

Section 2 – Life

Employees may elect to participate in the Town's Group Life Insurance plan. Employees who elect to have this coverage must contribute one half of the premium cost.

ARTICLE 23: ON-THE-JOB INJURIES

Employees are required to report any on-the-job injury immediately, and in no case, more than 24 hours after the incident occurs unless after the 24 hour period when notified that the employee was exposed to a hazardous material and or a communicable virus or disease. If the injury results in the inability of the employee to perform his or her job, the provisions of the workers' compensation law shall apply. The employee may receive the difference between the amount of their regular salary or wages and the amount of any disability compensation until any sick leave allowance which the employee has to his credit has been used.

ARTICLE 24: WORKING OUT OF CLASSIFICATION

Employees who are temporarily assigned in writing to a vacant position in a different job title with higher pay for two consecutive weeks or more, will be paid at the higher rate for working in the higher different job title with higher pay. Pay will be retroactive to the date of the assignment to the vacant position.

ARTICLE 25: EMPLOYEE ASSISTANCE PROGRAM

All employees shall have full rights and privileges to the Employee Assistance Program provided by the Town.

ARTICLE 26: REIMBURSEMENT FOR JOB-RELATED EDUCATION

Any job related education course requested by the Town will be paid for by the Town directly. Such training/education shall be recommended by the employee's department head and approved by the Town Administrator.

Partial Reimbursement: An employee seeking to improve his/her ability to serve the Town by taking educational and/or training courses must submit his/her written request to his/her department head. For reimbursement, any such request must be approved by both the department head and the Town Administrator prior to the beginning of the course.

- a) Unless specifically waived by the Town Administrator, the employee must take courses at times not interfering with his/her regular work schedule.
- b) The Town will pay 50% of the cost of the entrance fee, textbooks and other required materials. One half of the Town's share to be paid at outset, with remaining balance to be paid upon successful completion of the course. A minimum grade of "C" or 70% is necessary to qualify for successful completion.
- c) To qualify for partial reimbursement, the educational course must be related to the work being performed by the employee and must be at an accredited institution approved by the Town Administrator.
- d) So that the Town can fully benefit from the expenditure of funds for employee education, the employee must agree in writing, prior to taking the course, to remain in the employ of the Town for a minimum of 18 months. The 18-month period will commence following successful completion of the course. If the employee drops out of the course prior to its completion for reasons other than health or other compelling factors approved by the Town Administrator, the employee must fully reimburse the Town for the funds expended. Also, if the employee voluntarily leaves the employ of the Town prior to completion of the 18-month period, the entire cost must be reimbursed to the Town.
- e) All educational reimbursements are subject to funding by the Town
- f) With prior approval and after completion of at least one (1) year with the Town, an employee will be eligible to receive a \$100.00 bonus for a full semester course pertaining to his/her job classification, taken at an accredited college or institution.

ARTICLE 27: USE OF TOWN BUILDINGS

The Town will allow the Union to use meeting rooms for Union business meetings, provided that the Union has obtained permission for the use of the room from the Town, and that Town operations are not adversely affected by such meetings. Requests for use of meeting room space shall not be unreasonably withheld or denied. The Town will allow the Union to use department members “mail boxes” for exchange of information.

ARTICLE 28: VEHICLE USE

Section 1. Mileage

Employees required to use their private vehicle for official town business shall be compensated at the prevailing IRS rate.

Section 2. Use of Town Vehicles

Use of Town vehicles shall be negotiated and agreed upon between the Town Administrator and each Department Head for the purpose of operating each department, including but not limited to: attending meetings, emergency response, snow removal and on-call situations.

ARTICLE 29: WAGES

Effective July 1, 2023 wages shall be increased by 6.0% for all WEA Personnel.

Effective July 1, 2024 wages shall be increased by 6.25% for all WEA personnel.

Effective July 1, 2025 wages shall be increased by 6.25% for all WEA personnel.

Newly hired employees and employees who receive promotions within the bargaining unit shall receive initial compensation within the salary range for the position as shown on the attached Schedule B. Management shall notify the Union of the proposed salary for any new hire or promotion.

ARTICLE 30: MISCELLANEOUS

The failure of the Town or the Union to insist, in any one or more incidents, upon performance of any of the terms or conditions of this Agreement, shall not be considered as a waiver or relinquishment of the right of the Town or the Union to future performance of any such term or

condition. The obligations of the Town and the Union to such future performance shall continue in full force and effect.

If any provision of this Agreement or any application of this Agreement to any employee covered by the terms of this Agreement shall be found contrary to law by a Court of competent and final jurisdiction, such provision or application shall have effect only to the extent permitted by law, and all other provisions or applications of this Agreement shall continue in full force and effect.

ARTICLE 31: AGENCY SERVICE FE

In accordance with the provisions of General Laws, Chapter 150E, Section 12 as amended, and the Rules and Regulations of the Massachusetts Labor Relations Commission, the Town agrees that with the effective date of this Agreement or 30 days following the commencement of employment, whichever is later, each employee who elects not to join or maintain membership in the Union shall be required, as a condition of employment, to pay a fee to the Union in the amount that is authorized by Section 12, Chapter 150E. Said fee for the term of this contract is in accordance with Schedule Appendix "C". The Union agrees to indemnify the Town for damages or costs for complying with this article.

ARTICLE 32: UNION SECURITY CLAUSE

Pursuant to the provisions of general Laws, Chapter 180, Section 17A, Union dues shall be deducted by the Town from the salary of each employee who voluntarily executes and remits to the Town a form of authorization for payroll deduction. Dues are to be paid in accordance with Appendix "E". The Union agrees to indemnify the Town for damages or costs for complying with this article.

Such authorization may be withdrawn by the employee, giving at least 30 days' written notice to the Town, and by filing a copy thereof with the Treasurer of the Union. Transmittal of said dues will be made to the Union Treasurer within seven (7) calendar days after the month in which the dues are deducted.

ARTICLE 33: UNION BUSINESS LEAVE

The Union president or designee shall have available reasonable time with pay during their regular working hours to attend grievance meetings and/or hearings with the Town or to attend grievance arbitration. Additionally, members of the negotiation team shall have reasonable time to attend bargaining sessions for their bargaining unit. "Bargaining Sessions" means a collective bargaining negotiating session attended by both the Union and the Town.

ARTICLE 34: STABILITY OF AGREEMENT

No amendment, alteration or variation of the terms and provisions of this Agreement shall bind the parties hereto, unless made and executed in writing by parties hereto. Should the Union allege a change in the terms or conditions of employment inconsistent with G.L. c. 150E, it shall have fifteen (15) days from the date of any alleged change to request bargaining over such alleged change.

ARTICLE 35: NO STRIKES

It is understood and agreed that the services performed by the Town employees included in this Agreement are essential to public health, safety and common welfare. Therefore, the Union agrees on behalf of its members that it will not authorize, instigate, aid, condone, or engage in any strike, work stoppage or other action at any time, including upon termination of this Agreement, which will interrupt or interfere with the said service performed by the Town. No employee shall cause or take part in any strike, work stoppage or slowdown.

ARTICLE 36: DURATION OF AGREEMENT

This agreement shall enter into effect on July 1, 2023 and shall remain in effect up to and including June 30, 2026 or until a successor agreement is negotiated. Unless otherwise provided, all rights and benefits accruing to the members of the Union within the contract are retroactive to the date of signing by the Union and the Town.

Schedule A

Library Director
Assessor
Shellfish Constable
COA Director
Community Services Director
Building Inspector – Full
Building Inspector – Part Time
Health/Conservation Agent
Beach Administrator
Recreation Director

Schedule B - Wages

POSITION	FY23 Salaries	FY24	FY25	FY26
Unit A		6.00%	6.25%	6.25%
Assessor	\$88,927.76	\$ 94,263.43	\$ 100,154.89	\$ 106,414.57
Building Inspector	\$ 77,624.95	\$ 82,282.45	\$ 87,425.10	\$ 92,889.17
Community Services Director	\$103,754.23	\$ 109,979.49	\$ 116,853.21	\$ 124,156.53
Library Director	\$92,259.85	\$ 97,795.44	\$ 103,907.65	\$ 110,401.88
Recreation Director	\$82,177.83	\$ 87,108.50	\$ 92,552.79	\$ 98,337.33
Shellfish Constable	\$93,062.16	\$ 98,645.89	\$ 104,811.26	\$ 111,361.96
Unit B				
Admin - Comm. Sec, Water	\$ 54,173.00	\$ 57,423.38	\$ 61,012.34	\$ 64,825.61
Assessor - Data Collector	\$ 56,576.89	\$ 59,971.51	\$ 63,719.72	\$ 67,702.21
Assistant COA Director	\$ 71,952.01	\$ 76,269.13	\$ 81,035.95	\$ 86,100.70
Assistant DPW Director	\$ 87,974.96	\$ 93,253.45	\$ 99,081.80	\$ 105,274.41
Assistant Health/Conservation Agent	\$ 67,274.73	\$ 71,311.22	\$ 75,768.17	\$ 80,503.68
Assistant Library Director	\$ 67,540.35	\$ 71,592.77	\$ 76,067.32	\$ 80,821.53
Assistant Recreation Director	\$ 69,422.24	\$ 73,587.58	\$ 78,186.80	\$ 83,073.47
Assistant Shellfish Constable	\$ 74,156.57	\$ 78,605.97	\$ 83,518.84	\$ 88,738.77
Assistant Town Accountant	\$ 67,164.90	\$ 71,194.80	\$ 75,644.47	\$ 80,372.25
Assistant Treasurer/Collector	\$ 56,391.63	\$ 59,775.13	\$ 63,511.08	\$ 67,480.52
COA - Outreach Director	\$ 60,236.19	\$ 63,850.36	\$ 67,841.01	\$ 72,081.07
COA Office Assistant	\$ 54,992.70	\$ 58,292.26	\$ 61,935.53	\$ 65,806.50
Deputy Shellfish Constable	\$ 66,381.07	\$ 70,363.93	\$ 74,761.68	\$ 79,434.28
FD - Admin. Asst.	\$ 75,731.76	\$ 80,275.67	\$ 85,292.89	\$ 90,623.70
Health/Building - Admin. Asst	\$ 59,246.14	\$ 62,800.91	\$ 66,725.96	\$ 70,896.34
Health/Conservation Agent	\$97,133.55	\$ 102,961.56	\$ 109,396.66	\$ 116,233.95
Library Outreach Coordinator	\$ 46,800.80	\$ 49,608.85	\$ 52,709.40	\$ 56,003.74
Principal Clerk	\$ 64,999.91	\$ 68,899.90	\$ 73,206.15	\$ 77,781.53
Public Service Librarian	\$ 51,749.59	\$ 54,854.57	\$ 58,282.98	\$ 61,925.66
Youth Services Librarian	\$ 65,172.38	\$ 69,082.72	\$ 73,400.39	\$ 77,987.92

Schedule C

Agency Service Fees

Members Earnings	Monthly Fee
\$1 to \$9999	\$5.00
\$10,000 to \$19, 999	\$7.50
\$20,000 to \$29,999	\$15.00
\$30,000 to \$39,999	\$20.00
\$40,000 and over	\$30.00

IN WITNESS WHEREOF, the Town and Union have executed this agreement as of the 20th day of June, 2023.

TOWN OF WELLFLEET
EMPLOYEES ASSOCIATION
BOARD OF SELECTMEN

WELLFLEET

Ryan Curley, Chair

Nancy Vail, President

Barbara Carboni

Michael DeVasto

-

Kathleen Bacon

John Wolf

AGREEMENT

BETWEEN THE TOWN OF WELLFLEET

AND

THE WELLFLEET EMPLOYEES' ASSOCIATION

UNIT B

July 1, 2023 through June 30, 2026

TABLE OF CONTENTS

Article 1	Recognition	3
Article 2	Definitions	3
Article 3	Management Rights	3
Article 4	Employee Rights and Representation	4
Article 5	Non-Discrimination	5
Article 6	Hiring Practices and Promotions	5
Article 7	Discipline Policy	6
Article 8	Grievance and Arbitration Procedures	6
Article 9	Personnel Records	8
Article 10	Regular Work Week	8
Article 11	Overtime	8
Article 12	Holidays	9
Article 13	Vacation	9
Article 14	Sick Leave	11
Article 15	Bereavement Leave	14
Article 16	Jury Duty	14
Article 17	Military Reserve	14
Article 18	Leave of Absence	14
Article 19	Medical Leave	14
Article 20	Personal Days	14
Article 21	Longevity	15
Article 22	Insurance	15
Article 23	On-the-Job Injuries	15
Article 24	Working Out of Classification	16
Article 25	Employee Assistance Program	16
Article 26	Reimbursement of Job Related Education	16
Article 27	Use of Town Buildings	16
Article 28	Vehicle Use	17
Article 29	Wages	17
Article 30	Miscellaneous	18
Article 31	Agency Service Fee	18
Article 32	Union Security Clause	18
Article 33	Union Business Leave	18
Article 34	Stability of Agreement	18
Article 35	No Strikes	18
Article 36	Duration of Agreement	19
Schedule A	Unit B Positions	20
Schedule B	Wage Charts	22
Schedule C	Agency Service Fee Schedule	21

ARTICLE 1: RECOGNITION

The Town of Wellfleet hereby recognizes the Union as the sole and exclusive bargaining agent for the purpose of collective bargaining with respect to wages, hours and other conditions of employment for all regular full and part-time clerical and administrative employees in the job titles set forth on Schedule A and excluding the Town Executive Assistant, DPW Director, and all other confidential, managerial, casual, and other employees.

ARTICLE 2: DEFINITIONS

Employee: Any person who works for wages or salary in the service of the Town

Department Head: A town employee having direct supervision and control of a department.

Department: Any division or branch of the Town’s municipal service, whether it be under the direction and control of an appointed or elected officer, or under a board, commission, committee, or other similar agency.

Disciplinary Action: Any personnel action resulting in a written warning, suspension, demotion, or termination.

Regular Full-Time Employee: A person in the service of the Town who fills a position for not less than the regularly scheduled hours of work each week and who is engaged for a period of indefinite duration, or for a stipulated period of one year or more, or for a stipulated portion of the year of more than 35 weeks.

Regular Part-Time Employee: A person in the service of the Town who works less than the regular schedule of hours of work each week, whether working fewer hours per day or fewer days per week, but working a minimum average of 20 hours per week; and further, who is engaged for a period of indefinite duration or for a stipulated term of one year or more, and who works more than 35 weeks per year.

Regular Part-Time Fewer Than 20 hours Employee: A person in the service of the Town who works less than 20 hours per week, but who is engaged for a period of indefinite duration or for a stipulated term of one year or more, and who works more than 35 weeks per year. Employees performing in positions falling into this category shall not be eligible for benefits provided for Regular Full-Time and Regular Part-Time Employees, except as specifically stated in this contract.

Continuous Employment: Uninterrupted employment except for authorized leaves of absence. If an employee returns to employment with the town within five years of the date of termination of

employment, that employee will be entitled to reinstatement of benefits with credit for previous time worked.

ARTICLE 3: MANAGEMENT RIGHTS

Subsequent to the execution of this contract, the Town will continue to retain, whether exercised or not, all of the rights, power and authority it currently exercises under the General Laws of the Commonwealth of Massachusetts and the Wellfleet Charter to solely manage the affairs of the Town and direct its workforce, except to the extent that such rights, power and authority have been abridged, limited, or relinquished by the terms and provisions of this Agreement. By way of example, but not limitation, management retains the following rights consistent with G.L. c. 150E:

- to determine the mission, budget, and policy of the Town and its departments;
- to determine the organization of the Town and its departments, the number of employees, the work functions, and the technology of performing them;
- to determine the numbers, types, and grades, of positions or employees assigned to an organizational unit, work project, or to any location, task, vehicle, building, station, or facility;
- to determine the methods, means, and personnel by which the Town's operations are carried out;
- to manage and direct employees of the Town and to discipline employees;
- to maintain and improve orderly procedures and the efficiency of operations;
- to layoff employees in the event of lack of work, funds, or under conditions where management believes that continuation of such work would be less efficient, less productive, or less economical;
- to assign employees to staff functions from time to time as the Town determines appropriate
- to take whatever actions may be necessary to carry out its responsibilities in situations of emergency
- to enforce existing rules and regulations for the governance of the Town and its departments, and to add to or modify such regulations as it deems appropriate
- To conduct performance evaluations. Management will periodically review format and criteria with input from WEA.
- To assign office work space as appropriate for maximum efficiency. The WEA will receive a thirty (30) day notice of any proposed move of a WEA employee and be offered the opportunity to discuss the move with Management.
- The Town Administrator may offer a matching employment offer that is within twelve percent (12%) of the employee's current compensation, to an

existing employee who has received an employment offer from another potential employer.

ARTICLE 4: EMPLOYEE RIGHTS AND REPRESENTATION

Section 1.

The Town agrees not to discharge, discriminate, interfere with, restrain or coerce any employee because of his/her lawful exercise of the rights set forth in Section 2 of Chapter 150E of the General Laws.

Section 2.

The Town agrees that it will not discriminate against, interfere with or coerce against any employee because such employee gives testimony, takes part in grievance procedures or hearings, negotiations or conferences for or on behalf of the Union or any employee.

Section 3.

Employees are free to become or refrain from becoming members of the Union. Notwithstanding membership in the Union, the Union agrees to represent fully all members of the bargaining unit.

Section 4.

In the event of a conflict between any provisions of this agreement and any Personnel Ordinance, Bylaw, Rule or Regulation of the Town, the terms of the collective bargaining agreement shall prevail.

Section 5. Notice to Union

The Town shall make every effort to submit written notice to the Union with the name, job title and the effective date of actions affecting employees as follows:

1. Appointment of new employee
2. Promotion
3. Suspension
4. Termination by type (retirement, disability, involuntary with cause)
5. Authorized leaves of absence of more than one (1) month

ARTICLE 5: NON-DISCRIMINATION

The Town and the Union agree that they will not discriminate against any employee on the basis of race, creed, color, national or ethnic origin, gender, sexual preference, age, religion or marital status, political affiliation or activity, and membership or non-membership in the Union.

ARTICLE 6: HIRING PRACTICES AND PROMOTIONS

Section 1. Postings, Hiring Practices and Probation

When a new position is created or a vacancy exists that the Town determines to fill, a notice will be posted in all Town offices, wherever employees covered by this Agreement are employed, for a period of seven (7) calendar days prior to the application deadline. Internal posting of the notice shall be the responsibility of the Union. The job posting shall include the job title, salary range, a description of duties, the hours and days of work and the location, the requisite qualifications for the position, the last date for filing applications and other relevant and pertinent information.

All candidates meeting the minimum eligibility requirements for the position as determined by the Town, will be considered based on their qualifications, ability, work history and relevant experience which the Town may determine in its sole discretion

When a new employee is hired for a position within the Union, his/her salary will be within the salary range posted for the position. Should a recommended candidate's qualifications require compensation outside of the salary range due to experience and current job market conditions, Management and the WEA shall negotiate the starting salary. Such approvals shall not be unduly withheld by the union.

All new employees must submit to and pass a pre-employment fitness for duty physical examination. The Town will arrange and pay for the examination.

When a new employee is hired for a position within the Union, he/she will be employed on a probationary basis for one year following his/her initial date of hire. A terminated probationary employee is not entitled to file a grievance; termination with notice is all that is required.

Section 2. Promotion and Seniority Defined

- a) A promotion shall mean advancement to a different job title with higher pay.
- b) Seniority shall mean the length of continuous employment with the Town.

Section 3. Selection

The Town of Wellfleet is committed to a policy of hiring and promoting from within whenever possible. While selection for appointments and promotions shall be based on qualifications, seniority shall also be considered as a factor. In selecting among qualified applicants for appointments and promotions, employees with the greatest seniority shall be given preference over equally qualified applicants with lesser seniority.

Section 4. Reclassification

Any bargaining unit member whose duties change substantially and materially during the life of this agreement may file a request for reclassification with the Town Administrator. The Town Administrator or his/her designee shall review the reclassification request and issue a written decision within 90 days of the request. If the reclassification request is denied, the Union may submit the matter to the Board of Selectmen in accordance with step 3 of the Grievance Procedure, and the decision of the Board of Selectmen shall be final and not subject to Arbitration.

Section 5. Shift Preference

When more than one shift is required, employees in the same classification who work in that location may submit a written request for shift preference to the department head. Selection of employees for shift preference shall be based upon continuous service within the classification.

ARTICLE 7: DISCIPLINE POLICY

Employees may during the period of employment be disciplined for cause, including but not limited to: unsatisfactory job performance or attendance; and, violation of Town policies or regulations. The following steps shall be taken in the event that disciplinary action is deemed necessary.

- 1) **Oral Reprimand.** The Town Administrator or a Department Head or a supervisor may issue an oral warning to an employee. An oral reprimand shall be noted in the employee's personnel file.
- 2) **Written Reprimand.** The Town Administrator or a Department Head may issue a written warning. A copy of the written warning shall be placed in the employee's personnel file and carry a specified period in which the behavior shall be improved.
- 3) **Suspension – short term.** An employee may be suspended for up to five days without pay with just cause. Suspension may be in lieu of oral reprimand and written reprimand and may be effective immediately. Within 48 hours of the effective date of suspension, the employee will be provided with a written notice stating the reason for it, the length of the suspension, and the date the employee will return to work.
- 4) **Suspension – long term.** An employee may be suspended for up to ten days without pay with just cause. Suspension may be in lieu of oral reprimand and written reprimand and may be effective immediately. Within 48 hours of the effective date of suspension, the employee will be provided with a written notice stating the reason for it, the length of the suspension, and the date the employee will return to work.
- 5) **Discharge.** An employee may be discharged for just cause. The Town Administrator shall provide the employee with a written notice of discharge stating the reason for it and the effective date of the discharge.

The Town and Union acknowledge that application of the progressive discipline steps outlined above may not be appropriate in all instances. Based on the seriousness of the employee's misconduct, it is understood that the Town may take disciplinary action, up to and including termination, without proceeding through these disciplinary steps. It is also understood that it may be appropriate under some circumstances to impose a lesser form of discipline than is called for under the disciplinary steps.

Employee rights

- 1) Employees have the right to challenge disciplinary action as it arises and to request a plan for remediation, if warranted. All disciplinary action is subject to grievance and arbitration procedures as set forth in this agreement.
- 2) Oral and written reprimands shall be removed from employee files after a period of two years if no additional infractions have occurred.

ARTICLE 8: GRIEVANCE AND ARBITRATION PROCEDURES

The parties recognize that it is in the best interest of effective and harmonious performance of duties and responsibilities for prompt and equitable disposition of any grievance at the lowest organizational level possible under procedures of maximum informality and flexibility. All grievances, as defined below, shall be processed in accordance with the following procedure.

Grievance defined: A grievance shall be defined as a dispute over the interpretation or application of the express terms of this agreement.

Step 1. An employee or the Union may take up a grievance with the employee's Department Head within 14 calendar days of the occurrence of the event giving rise to the grievance in an attempt to resolve the grievance.

Step 2. If issues are not resolved in Step 1, the employee or the Union may present a grievance in writing to the Town Administrator or designee within 21 calendar days after the occurrence of the event giving rise to the grievance. The grievance shall contain:

1. Name and classification of the employee
2. Nature of the grievance
3. Steps taken to resolve the grievance informally
4. Requested remedy
5. Signature of the employee or employees involved.

The Town Administrator or designee shall have 14 calendar days to act on the grievance and his/her answer shall be in writing. During this 14-day period, the Town Administrator or designee may meet with the parties involved to discuss and try to resolve the grievance. If the grievant is a Department Head and the immediate supervisor is the Town Administrator, the employee shall skip Step 2 and immediately follow procedures set forth in Step 3 below.

Step 3. If the employee is not satisfied with the answer given in Step 3, the grievance may be submitted to the Board of Selectmen within 14 calendar days after the answer in Step 2. The Board of Selectmen shall consider it as soon as possible and shall give its reply in writing within 30 calendar days after receipt of the grievance.

Termination or Discharge. In the event of a termination or discharge (following the probationary period) an employee may submit a grievance at Step 3 within 14 calendar days of the written notice of the termination or discharge.

Arbitration. If the grievance is not resolved by the answer of the Board of Selectmen, as provided above, the Union may within 21 calendar days after such answer, upon written notice given to the Board of Selectmen, submit the grievance to arbitration in accordance with the rules of the American Arbitration Association. The arbitrator shall render a decision based solely upon the facts, evidence and contentions as presented by the parties during the arbitration proceedings and shall be governed by the following:

1. The decision of the arbitrator shall be final and binding upon the parties hereto except for review and confirmation as provided by Chapter 150C of the General Laws.
2. The expense of the arbitrator's services and the proceedings shall be borne equally by the parties involved.
3. The arbitrator shall be without power or authority to make any decision or award that violates the common law or statutory law of the Commonwealth or any rules and regulations promulgated pursuant thereto.
4. The arbitrator shall be without power to add or to subtract from the terms of the Agreement.
5. The arbitrator shall be without power or authority to render an award or decision concerning any matter that is excluded from the Grievance and Arbitration Procedure of this Agreement.

Time Limits. If the Town does not issue a written response to a grievance within the time provided in the agreement, it shall be considered a denial of the grievance and the Union or the employee may proceed to the next step of the grievance procedure. If the Union fails to timely file a grievance at step I, or fails to timely process a grievance at any step of the grievance procedure after a written decision has been issued, the grievance shall be waived with prejudice. The filing deadlines may be extended by mutual written agreement of the parties.

Settlement Authority. Although the parties agree that it may be mutually beneficial to attempt to resolve their disputes at the earliest stages of the grievance process, the resolution of any grievance prior to Step 3 is subject to the Town Administrator's approval and absent such approval, the disposition shall not be binding on the Town.

ARTICLE 9: PERSONNEL RECORDS

An employee may review his or her personnel record during the regular business hours within five business days of his or her request, and may obtain a copy of his or her personnel file within five business days of the submission of a written request to the office of the Town Administrator. Personnel records shall be defined in accordance with G.L. c. 149 §52C. No information from an employee's personnel record, other than a simple verification of employment, shall be released without the written consent of the employee to the extent allowed by law.

An employee shall have the right to place a written reply in his or her file to all complaints, reprimands or any other material derogatory or disciplinary in nature, and have it attached to said material. The employee will be shown such material to review and initial prior to its being placed in the file. The purpose of the initials is not to imply acceptance of said material but only to indicate that the employee has reviewed the information.

Where there is disagreement with any information contained in a personnel record, removal or correction of such information may be mutually agreed upon by the Town and the employee. If an agreement is not reached, the employee may submit a written statement explaining his or her position, which shall thereupon be contained therein and shall become a part of the employee's personnel record. The statement shall be included whenever information is sent to a third party, as long as the original material responded to be retained.

ARTICLE 10: REGULAR WORK WEEK

Work schedule shall consist of 5 days of in-person work schedule according to hours set by the Town Administrator or through his/her designee. Special consideration for work schedule shall be at the discretion of the Town Administrator and shall be reviewed and approved for a term no longer than one year.

ARTICLE 11: OVERTIME

Section 1. Employees who are required to work in excess of forty (40) hours in a work week shall be compensated for such excess hours at a rate of one and one half times their regular hourly rate of pay. Employees whose regular work week is less than forty (40) hours shall be compensated for hours in excess of their regular work week but less than forty (40) hours at their regular hourly rate of pay and at one and one half times their regular rate of pay for hours worked in excess of forty (40) hours in a work week. All overtime must be approved in writing by the Department Head or Town Administrator.

Section 2. All authorized work performed on Sunday or a holiday shall be paid at twice the regular rate of pay, except where Sunday is part of the regularly scheduled work week, in which case the seventh day of any scheduled work week shall be paid at twice the regular rate of pay. Any employee called back to work after completing his/her regular shift will be compensated at the applicable overtime rate of pay and for no less than two hours time unless otherwise authorized by Town Administrator or designee.

Section 3. Overtime shall be distributed equitably among employees capable of performing the assigned tasks and willing to work overtime hours. Compensatory time off in lieu of overtime payments may be granted at the same rate of pay subject to the approval of the Town Administrator or his/her designee. Such compensatory time off must be used within ninety (90) days unless otherwise authorized by Town Administrator or designee.

Section 4. Committee Secretaries who are required to work outside of their normal work hours to attend or prepare for Committee meetings, shall be permitted, with the approval of their Department Head to adjust their work schedules so as not to exceed the number of hours in their normal workweek or work day.

ARTICLE 12: HOLIDAYS

All regular full-time and regular part-time employees normally scheduled to work on one of the following holidays shall be given the day off with pay. Part time employees shall receive holiday pay prorated for their work schedule.

- New Year's Day
- Martin Luther King Day
- President's Day
- Patriots Day
- Memorial Day
- Independence Day
- Juneteenth
- Labor Day
- Columbus Day
- Veterans Day
- Thanksgiving Day
- Friday After Thanksgiving
- Christmas Day

Whenever a holiday falls on a Saturday, it will be observed on the Friday immediately prior to that Saturday and when a holiday falls on a Sunday, it will be observed on the Monday immediately following that Sunday. Any employee who is required to work on a given holiday will be compensated at the rate of double time. This includes employees who work on a call-out basis, such as the dog officer and inspectors.

Vacation days may be taken immediately before and/or after holidays, with approval from the employee's supervisor.

A paid holiday falling within a vacation period will not be charged to vacation leave.

If an employee uses sick time the day before or day following a scheduled holiday, the Town may require the employee to produce a medical certificate verifying illness prior to the payment of holiday pay. The Town will pay the cost of the certificate.

ARTICLE 13: VACATION

In accordance with the following rules and regulations, all regular full-time and regular part-time employees are entitled to annual vacations.

Vacation days shall accrue monthly and be credited annually on the employee's anniversary date of hire according to the following schedule:

<u>Years of Service</u>	<u>Vacation Time Allowed</u>
0 up to six months	None
Six months to ten years	15 days
Ten years up to fifteen years	20 days
Fifteen years and over	25 days

Employees who have earned 30 days of vacation by June 30, 2023, will be entitled to the 30 days per year until they resign or retire.

Regular part-time fewer than 20 hour employees are entitled to annual vacations as follows:

<u>Years of Service</u>	<u>Vacation Time allowed</u>
1 – 9 years	7 day
10 or more years	14 days

Regular part-time employees and regular part-time fewer than 20 hour employee’s vacation days are based on the average number of hours worked in a day according to their regular schedule.

Vacations must be taken in the anniversary year earned. Exceptions to this rule must be approved in writing by the department head. No more than two weeks of earned vacation may be carried over on an employee’s anniversary date. When a conflict in requests for vacation time arises, seniority shall prevail for no more than two weeks per year. Department heads will approve and schedule vacations. Requests for vacation time shall not be unreasonably refused, withheld or denied.

Vacation Buyback: Any employee eligible for more than three weeks vacation time may elect in lieu of time off to be paid for up to four weeks of vacation time or such lesser amount of vacation time as will leave the employee with not less than two weeks of remaining vacation time. Requests must be submitted prior to March 1st or if unforeseen circumstances arise employees may request vacation buyback with approval from the Town Administrator outside of the March 1 deadline.

Any employee leaving the service of the Town shall be compensated at his/her current rate of pay for vacation time earned but not taken.

Upon the death of an employee who is eligible for vacations under this article, payment shall be made to his/her estate.

ARTICLE 14: SICK LEAVE

Section 1. Sick leave shall be defined as any absence due to the employee's injury, illness, or appointment with a doctor or other medical professional.

Section 2. All permanent full-time and permanent part-time employees will accrue and be entitled to use sick leave on the following basis:

- a) Regular full-time and part-time employees earn sick leave on the basis of one and one-quarter (1-¼) days for each full month of continuous employment or a total of fifteen (15) days per year. Part-time employees' and part-time less than 20-hour employees' days are based on the average number of hours worked in a day according to their regular schedule.
- b) Sick leave credits for full-time employees may be allowed to accumulate to a maximum of 150 days. Sick leave credits for permanent part-time employees may be allowed to accumulate to a maximum of 150 equivalent days.
- c) Any employee who terminates employment through retirement under G.L. Chapter 32 or death shall be entitled to cash payment at his or her current rate of pay for 25% of his/her unused accumulated sick leave, up to 120 days. Employees hired after July 1, 2017 shall be entitled to a maximum payout of no more than \$3,000. In case of death, the payment due hereunder shall be made to a surviving spouse, or to a designated beneficiary or to the estate.
- d) An employee who has scheduled a sick day on a day when non-essential employees are excused from work will ~~not~~ be permitted to change the sick day to an excused absence.

Section 3. After an employee has been absent for sickness or injury for five (5) consecutive days or more, the Town may require the employee to submit adequate medical evidence from the employee's treating physician to support the need for the sick time and clearing the employee to return to work.

Section 4. The Department Head or his designee must be notified by the employee regarding the employee's absence as soon as possible, but in no event, later than one (1) hour after the beginning of the employee's workday.

Section 5. In the event the Town reasonably determines that an employee has abused sick leave, the Town, through the Town Administrator or through a Department Head with the approval of the Town Administrator, may disallow sick leave and/or may discipline an employee according to the provisions set forth in this agreement. Such an employee has recourse to the grievance procedures described above in Article VIII.

Section 6. An employee may have the option to apply accrued vacation time to sick leave in cases of prolonged illness.

Section 7. Employees may use up to five (5) sick days per year in increments of not less than 2 hours to care for a member of an employee's household or immediate family or an elderly relative. Requests to care for any other individuals shall require the approval of the Town Administrator which shall not be unreasonably withheld.

Section 8. The Sick Leave Bank (SLB) is a voluntary program for Town employees (full and part time). The basic purpose of the Sick Leave Bank is to provide additional sick days to a contributing

employee for a serious, prolonged, extended illness situation. The Sick Leave Bank is available only for employee's illness. However, if an employee does not participate in the SLB by contributing sick leave hours, he/she cannot benefit from it.

Program Details:

Solicitation for participation in the SLB program shall occur in June for the next fiscal year. Unless an employee's participation in a SLB is covered by his/her individual employment agreement or a collective bargaining agreement, a participating employee shall contribute one quarter (1/4) day of earned sick leave each month. The participating employee's contribution shall continue until the SLB contains deposits of three hundred (300) sick leave days. At that point, all contributions of sick leave shall be suspended. If the SLB's deposited sick leave days then fall to one hundred fifty (150) or below, contributions shall resume as they existed before the suspension. The Committee charged with operating the SLB may request that participating employees make additional contributions of sick leave days if an unusual event occurs. New hires or current employees joining or rejoining the SLB shall be exempt from any freeze for one year from the time of their entrance into the program.

If a Town employee participates in the SLB during one Town fiscal year, but elects not to participate in the next, no sick leave days shall be returned to the employee. Once an employee's sick leave days enter the SLB, those sick leave hours can only be used in the SLB program.

SLB Committee:

The SLB program shall be administered by a SLB Committee. The committee shall have five (5) members. The members shall consist of: two (2) non Union contract employees appointed by the Town Administrator, and three (3) Union employees; one from the Wellfleet Employees Association (WEA), one from the Wellfleet Permanent Fire Fighters Union, and one from the Teamsters Union. A member of the SLB Committee may be removed from his/her position for non-attendance at four (4) consecutive SLB Committee meetings, removal or retirement from Town employment, or incapacity to serve. In the event that a member of the SLB Committee is an applicant requesting days from the SLB, an alternate voting member will be chosen from that individual's representative group to serve as a voting member for their application.

Requests to use Sick Leave Hours from the SLB:

Any participating employee may make a confidential written request to receive sick leave hours from the SLB. Such a request shall state the employee's full name, Town employment position and that the employee participates in the SLB. The request shall also provide an explanation with sufficient detail concerning why the request is being made at this time. Sufficient detail, in this context, means attaching appropriate medical documentation to support the claim in the request. The complete request shall be submitted in an envelope marked Confidential SLB Request and submitted to the Office of the Town Administrator. The Town Administrator shall as quickly as possible convey the writing to the SLB Committee in a manner that preserves the employee's confidentiality. Any retained copies of the employee's request shall be kept at Town Hall in a locked file cabinet.

The SLB Committee shall meet as quickly as possible to consider the employee's request. In deciding whether to grant the employee's request, the SLB Committee shall consider the following:

1. The doctor's written determination addressing the request;
2. The employee's prior circumstances with available sick leave, the expected duration of this health event, any documented abuse of sick leave and any additional compelling circumstances.

The SLB Committee shall deny an application for sick leave hours when:

1. The applicant is not a presently participating SLB employee;
2. The applicant has not already exhausted all accumulated sick leave time and any other available paid leave (except for Vacation and Personal time);
3. The applicant's specific health event does not render him/her incapable of performing his/her job

The SLB Committee may in its sole discretion deny an application when it finds any of the following to be true:

1. The applicant has abused sick leave in the past;
2. The applicant has not yet exhausted accumulated sick leave time and other available paid leave (except for Vacation and Personal time);
3. The applicant has made previous granted applications to the SLB and this application is deemed excessive; or
4. Other just cause for denying the application exists;
5. The applicant's request is not supported by appropriate information.

Any initial grant of sick leave days by the SLB Committee to an applicant shall not exceed thirty (30) days. An employee may make requests for additional sick leave days from the SLB in accordance with the application process set out above. Any additional grants by the SLB Committee of sick leave days may be made in increments of up to thirty (30) days. There is no entitlement to such an additional grant and any such additional grant shall be solely within the discretion of the SLB Committee. If an employee does not need to use the entire number of days granted, he/she shall inform the Town Administrator in writing in an envelope marked as detailed above. The Town Administrator shall retain such writing and have it placed in the employee's personnel file and treat it as a confidential medical record. Any unused sick bank time shall be returned to the bank.

All decisions of the SLB Committee shall be confidential and disclosed only to the limited extent needed to effectuate a granting of sick leave bank days to the employee. Denials shall be made only to the employee, members of the SLB Committee and the Town Administrator. Records of grants and denials shall be provided to the Town Administrator who will have such records maintained as confidential portions of the employee's personnel file.

Any decision to grant or deny an applicant's request for sick leave hours' rests solely within the discretion of a majority vote of the SLB Committee. The decision is final and cannot be appealed or contested in any manner.

EMPLOYEE ACKNOWLEDGEMNT

I have received the Sick Leave Bank Program Information of the Town of Wellfleet and understand that it is my responsibility to read the material and comply with all laws, policies and procedures set forth therein. I understand that these documents are not an employment contract and I understand that they can be changed or amended by the Town at any time with notice, subject to any collective bargaining obligations. I give my permission to allow the SLB Committee to view my medical information which I may need to provide in order to adequately have my application evaluated and have a decision rendered.

I understand that if I have any questions or concerns about information provided in the Sick Leave Bank Program Information, it is my responsibility to request further information or clarification.

The information herein is current as of this printing. The Town reserves the right to change, modify, or amend all or part of any policy. Selectmen's policies are identified specifically and should be checked for updates before reliance upon and version.

Employee Name (please print full name)

Signature of Employee	Date signed
-----------------------	-------------

ARTICLE 15: BEREAVEMENT LEAVE

In the event of the death occurring in the immediate family of an employee, he/she shall be granted bereavement leave without loss of pay up to a maximum of four (4) regular workdays. For the purpose of this section, "immediate family" shall be spouse or domestic partner, child or a step-child, parents, step-parents, parents-in-law, grandparents, grandchildren, brother, sister, step-brother and step-sister.

The Town Administrator, upon recommendation of the supervisor, may grant extension of bereavement leave without loss of pay under special circumstances, or may grant exceptions to relatives listed above.

ARTICLE 16: JURY DUTY

An employee who is called for jury duty and must be absent from regular duties will be paid the difference between his/her normal weekly wages and the money received for jury duty, upon presentation to his/her supervisor of a certified record of jury duty pay.

ARTICLE 17: MILITARY RESERVE

Any regular part-time or regular full-time employee who is a member of the National Guard or other military reserves and who is required to fulfill his/her military duty obligation by a tour of active duty, shall upon application be paid the difference between the compensation received from military pay, including allowances for meals and quarters, and the employee's pay for normal hours. This is limited to a period not to exceed three (3) weeks per fiscal year.

If the employee's National Guard or Reserve Unit is activated into federal service, the employee will be granted a leave of absence without pay. However, upon deactivation from such federal service, the employee will be entitled to reinstatement to his/her former position with the town, without loss of seniority for time spent in active service.

ARTICLE 18: LEAVE OF ABSENCE

Employees, after twelve (12) months of employment, may for good and sufficient reason and with approval of the supervisor/department head and the Town Administrator be granted a leave of absence without pay. During such leave, the employee shall not be permitted to take other full-time employment. Group insurance may be continued as provided in the contract but the employee will not be eligible for holiday pay. One hundred percent (100%) of premium expenses shall be paid by the employee.

ARTICLE 19: MEDICAL LEAVE

Leave for serious illness in an employee's immediate family, giving birth or a birth in an employee's immediate family shall be taken in accordance with the Family and Medical Leave Act (FMLA) subject to the approval of the Department Head and Town Administrator. Such approval shall not be unreasonably denied.

ARTICLE 20: PERSONAL DAYS

Two-day absence with pay shall be granted any employee, after the provisional employment period, during each calendar year for the purpose of transaction of business of a personal nature that is difficult to transact during normal working hours. Such leave must be requested in writing at least 48 hours prior to the date selected, except in case of emergencies. The request must be submitted to the supervisor and/or Department Head for approval. Requests for personal leave shall not be unreasonably refused, withheld, or denied.

If a regular full-time or regular part-time employee does not utilize sick leave during any consecutive six-month period, the employee shall be granted one (1) personal day which may be taken in the following six-month period, according to the guidelines noted above. It shall be the responsibility of the employee to request and confirm the personal day with his/her supervisor and/or department head.

Personal days are not cumulative and are not to exceed two additional days within one fiscal year.

Article 20A: Inclement Weather Days

Up to three days of absence with pay shall be granted to any employee, during each fiscal year for the purpose of an employee who can not report to work due to inclement weather, power out

outages, floods, or other natural disasters or acts of nature at the discretion of the employee. These days expire at the end of the fiscal year and can not be carried over year to year.

ARTICLE 20A INCLEMENT WEATHER POLICY

In the event that Town offices are open, an employee may use either their Vacation time or their Sick time if they are unable to report to work due to inclement weather, power outages, floods, or other natural disasters or acts of nature at the discretion of the employee.

ARTICLE 21: LONGEVITY

All regular full-time employees shall receive a longevity bonus, based on anniversary date, according to the following schedule: \$375 after five (5) years of continuous service and an additional \$50 per year for each subsequent year. \$700 after ten (10) years of continuous service with an additional \$100 per year for each subsequent year. The longevity bonus shall be paid on the first payroll following the anniversary date to those who qualify by length of continuous service.

Regular part-time employees and Part-time less than 20 hour employees shall be entitled to one half the longevity bonus paid to full-time employees.

After ten (10) years of continuous employment, any employee who terminates employment with the town and is eligible for longevity bonus shall receive longevity payment for any time earned up to said date of termination of employment. Earned bonus will be paid at time of termination and shall be prorated if termination date does not coincide with anniversary date.

Upon the death of an employee who is eligible for a longevity bonus under this article, payment shall be made to his/her estate.

ARTICLE 22: INSURANCE

Section 1. Health

Regular full-time and regular part-time employees working more than 20 hours per week and at least 35 weeks per year, shall be eligible to participate in the Town of Wellfleet health insurance program. The town share of health insurance premium contribution shall be 65% for the duration of this Agreement. The Beach Administrator is not eligible to participate in the Town's health insurance program.

Employees eligible to participate must enroll in one of the offered plans that corresponds to the employee's status, i.e. an individual employee may not enroll in a family plan (unless required by the terms of a court decree)

In the event that a member wishes to decline group health insurance, the Town will pay the employee 25% of the Town's share of the least expensive plan to which the employee is entitled. Payment to eligible employees who decline participation in the Town's group health insurance plan will be made semi-annually on the first payroll in December and the last payroll in June for

the previous six months. Employees who have not been on the payroll for the full prior six (6) month period will receive such payments on a pro-rated basis. Any employee who declines participation in the Town's group health insurance plan must provide sufficient proof of independent insurance coverage.

Section 2 – Life

Employees may elect to participate in the Town's Group Life Insurance plan. Employees who elect to have this coverage must contribute one half of the premium cost.

ARTICLE 23: ON-THE-JOB INJURIES

Employees are required to report any on-the-job injury immediately, and in no case, more than 24 hours after the incident occurs unless after the 24 hour period when notified that the employee was exposed to a hazardous material and or a communicable virus or disease. If the injury results in the inability of the employee to perform his or her job, the provisions of the workers' compensation law shall apply. The employee may receive the difference between the amount of their regular salary or wages and the amount of any disability compensation until any sick leave allowance which the employee has to his credit has been used.

ARTICLE 24: WORKING OUT OF CLASSIFICATION

Employees, who are temporarily assigned in writing to a vacant position in a different job title with higher pay for two consecutive weeks or more, will be paid at the higher rate for working in the different job title with higher pay. Pay will be retroactive to the date of the assignment to the vacant position.

ARTICLE 25: EMPLOYEE ASSISTANCE PROGRAM

All employees shall have full rights and privileges to the Employee Assistance Program provided by the Town.

ARTICLE 26: REIMBURSEMENT FOR JOB-RELATED EDUCATION

Any job related education course requested by the Town will be paid for by the Town directly. Such training/education shall be recommended by the employee's department head and approved by the Town Administrator.

Partial Reimbursement: An employee seeking to improve his/her ability to serve the Town by taking educational and/or training courses must submit his/her written request to his/her department head. For reimbursement, any such request must be approved by both the department head and the Town Administrator prior to the beginning of the course.

- a) Unless specifically waived by the Town Administrator, the employee must take courses at times not interfering with his/her regular work schedule.
- b) The Town will pay 50% of the cost of the entrance fee, textbooks and other required materials. One half of the Town's share to be paid at outset, with remaining balance to be paid upon successful completion of the course. A minimum grade of "C" or 70% is necessary to qualify for successful completion.

- c) To qualify for partial reimbursement, the educational course must be related to the work being performed by the employee and must be at an accredited institution approved by the Town Administrator.
- d) So that the Town can fully benefit from the expenditure of funds for employee education, the employee must agree in writing, prior to taking the course, to remain in the employ of the Town for a minimum of 18 months. The 18-month period will commence following successful completion of the course. If the employee drops out of the course prior to its completion for reasons other than health or other compelling factors approved by the Town Administrator, the employee must fully reimburse the Town for the funds expended. Also, if the employee voluntarily leaves the employ of the Town prior to completion of the 18-month period, the entire cost must be reimbursed to the Town.
- e) All educational reimbursements are subject to funding by the Town
- f) With prior approval and after completion of at least one (1) year with the Town, an employee will be eligible to receive a \$100.00 bonus for a full semester course pertaining to his/her job classification, taken at an accredited college or institution.

ARTICLE 27: USE OF TOWN BUILDINGS

The Town will allow the Union to use meeting rooms for Union business meetings, provided that the Union has obtained permission for the use of the room from the Town, and that Town operations are not adversely affected by such meetings. Requests for use of meeting room space shall not be unreasonably withheld or denied. The Town will allow the Union to use department members "mail boxes" for exchange of information.

ARTICLE 28: VEHICLE USE

Section 1. Mileage

Employees required to use their private vehicle for official town business shall be compensated at the prevailing IRS rate.

Section 2. Use of Town Vehicles

Use of Town vehicles shall be negotiated and agreed upon between the Town Administrator and each Department Head for the purpose of operating each department, including but not limited to: attending meetings, emergency response, snow removal and on-call situations.

ARTICLE 29: WAGES

Effective July 1, 2023 wages shall be increased by 6.0% for all WEA personnel.

Effective July 1, 2024 wages shall be increased by 6.25% for all WEA personnel.

Effective July 1, 2025 wages shall be increased by 6.25% for all WEA personnel.

Newly hired employees and employees who receive promotions within the bargaining unit shall receive initial compensation of no less than 85% of the compensation received by the person vacating the position and no more than 115% of the compensation of the person vacating that position.

ARTICLE 30: MISCELLANEOUS

The failure of the Town or the Union to insist, in any one or more incidents, upon performance of any of the terms or conditions of this Agreement, shall not be considered as a waiver or relinquishment of the right of the Town or the Union to future performance of any such term or condition. The obligations of the Town and the Union to such future performance shall continue in full force and effect.

If any provision of this Agreement or any application of this Agreement to any employee covered by the terms of this Agreement shall be found contrary to law by a Court of competent and final jurisdiction, such provision or application shall have effect only to the extent permitted by law, and all other provisions or applications of this Agreement shall continue in full force and effect.

ARTICLE 31: AGENCY SERVICE FEE

In accordance with the provisions of General Laws, Chapter 150E, Section 12 as amended, and the Rules and Regulations of the Massachusetts Labor Relations Commission, the Town agrees that with the effective date of this Agreement or 30 days following the commencement of employment, whichever is later, each employee who elects not to join or maintain membership in the Union shall be required, as a condition of employment, to pay a fee to the Union in the amount that is authorized by Section 12, Chapter 150E. Said fee for the term of this contract is in accordance with Schedule Appendix "C". The Union agrees to indemnify the Town for damages or costs for complying with this article.

ARTICLE 32: UNION SECURITY CLAUSE

Pursuant to the provisions of general Laws, Chapter 180, Section 17A, Union dues shall be deducted by the Town from the salary of each employee who voluntarily executes and remits to the Town a form of authorization for payroll deduction. Dues are to be paid in accordance with Appendix "E". The Union agrees to indemnify the Town for damages or costs for complying with this article.

Such authorization may be withdrawn by the employee, giving at least 30 days' written notice to the Town, and by filing a copy thereof with the Treasurer of the Union. Transmittal of said dues will be made to the Union Treasurer within seven (7) calendar days after the month in which the dues are deducted.

ARTICLE 33: UNION BUSINESS LEAVE

The Union president or designee shall have available reasonable time with pay during their regular working hours to attend grievance meetings and/or hearings with the Town or to attend grievance arbitration. Additionally, members of the negotiation team shall have reasonable time to attend bargaining sessions for their bargaining unit. "Bargaining Sessions" means a collective bargaining negotiating session attended by both the Union and the Town.

The Union also agrees to withdraw with prejudice both MUP-12-2029 as well as similar grievance that was filed on or around April 16, 2012 regarding union meetings.

ARTICLE 34: STABILITY OF AGREEMENT

No amendment, alteration or variation of the terms and provisions of this Agreement shall bind the parties hereto, unless made and executed in writing by parties hereto. Should the Union allege a change in the terms or conditions of employment inconsistent with G.L. c. 150E, it shall have fifteen (15) days from the date of any alleged change to request bargaining over such alleged change.

ARTICLE 35: NO STRIKES

It is understood and agreed that the services performed by the Town employees included in this Agreement are essential to public health, safety and common welfare. Therefore, the Union agrees on behalf of its members that it will not authorize, instigate, aid, condone, or engage in any strike, work stoppage or other action at any time, including upon termination of this Agreement, which will interrupt or interfere with the said service performed by the Town. No employee shall cause or take part in any strike, work stoppage or slowdown.

ARTICLE 36: DURATION OF AGREEMENT

This agreement shall enter into effect on July 1, 2023 and shall remain in effect up to and including June 30, 2026 or until a successor agreement is negotiated. Unless otherwise provided, all rights and benefits accruing to the members of the Union within the contract are retroactive to the date of signing by the Union and the Town.

Schedule A
Bargaining Unit B Positions

Accounting Clerk
Administration Clerk
Administrative Assistant-Building, Health, Conservation
Administrative Assistant-Building, Health
Administrative Assistant-Fire
Animal Control Officer
Assessor Clerk
Assessor Data Collector
Assistant DPW Director
Assistant Health & Conservation Agent
Assistant Shellfish Constable
Assistant to Clerk, Treasurer
Assistant Library Director
Assistant Recreation Director
Assistant to Town Accountant
COA-Office Assistant
COA-Office Manager
COA-Outreach Coordinator
Committee Secretary-Board of Health
Committee Secretary-Water System Clerk
Deputy Shellfish Constable
Library Assistant-I
Library Assistant-II
Library-Technical Services
Library-Youth Services
Principal Clerk
Tax Collector Clerk

Schedule B - Wages

POSITION	FY23 Salaries	FY24	FY25	FY26
Unit A		6.00%	6.25%	6.25%
Assessor	\$88,927.76	\$ 94,263.43	\$ 100,154.89	\$ 106,414.57
Building Inspector	\$ 77,624.95	\$ 82,282.45	\$ 87,425.10	\$ 92,889.17
Community Services Director	\$103,754.23	\$ 109,979.49	\$ 116,853.21	\$ 124,156.53
Library Director	\$92,259.85	\$ 97,795.44	\$ 103,907.65	\$ 110,401.88
Recreation Director	\$82,177.83	\$ 87,108.50	\$ 92,552.79	\$ 98,337.33
Shellfish Constable	\$93,062.16	\$ 98,645.89	\$ 104,811.26	\$ 111,361.96
Unit B				
Admin - Comm. Sec, Water	\$ 54,173.00	\$ 57,423.38	\$ 61,012.34	\$ 64,825.61
Assessor - Data Collector	\$ 56,576.89	\$ 59,971.51	\$ 63,719.72	\$ 67,702.21
Assistant COA Director	\$ 71,952.01	\$ 76,269.13	\$ 81,035.95	\$ 86,100.70
Assistant DPW Director	\$ 87,974.96	\$ 93,253.45	\$ 99,081.80	\$ 105,274.41
Assistant Health/Conservation Agent	\$ 67,274.73	\$ 71,311.22	\$ 75,768.17	\$ 80,503.68
Assistant Library Director	\$ 67,540.35	\$ 71,592.77	\$ 76,067.32	\$ 80,821.53
Assistant Recreation Director	\$ 69,422.24	\$ 73,587.58	\$ 78,186.80	\$ 83,073.47
Assistant Shellfish Constable	\$ 74,156.57	\$ 78,605.97	\$ 83,518.84	\$ 88,738.77
Assistant Town Accountant	\$ 67,164.90	\$ 71,194.80	\$ 75,644.47	\$ 80,372.25
Assistant Treasurer/Collector	\$ 56,391.63	\$ 59,775.13	\$ 63,511.08	\$ 67,480.52
COA - Outreach Director	\$ 60,236.19	\$ 63,850.36	\$ 67,841.01	\$ 72,081.07
COA Office Assistant	\$ 54,992.70	\$ 58,292.26	\$ 61,935.53	\$ 65,806.50
Deputy Shellfish Constable	\$ 66,381.07	\$ 70,363.93	\$ 74,761.68	\$ 79,434.28
FD - Admin. Asst.	\$ 75,731.76	\$ 80,275.67	\$ 85,292.89	\$ 90,623.70
Health/Building - Admin. Asst	\$ 59,246.14	\$ 62,800.91	\$ 66,725.96	\$ 70,896.34
Health/Conservation Agent	\$97,133.55	\$ 102,961.56	\$ 109,396.66	\$ 116,233.95
Library Outreach Coordinator	\$ 46,800.80	\$ 49,608.85	\$ 52,709.40	\$ 56,003.74
Principal Clerk	\$ 64,999.91	\$ 68,899.90	\$ 73,206.15	\$ 77,781.53
Public Service Librarian	\$ 51,749.59	\$ 54,854.57	\$ 58,282.98	\$ 61,925.66
Youth Services Librarian	\$ 65,172.38	\$ 69,082.72	\$ 73,400.39	\$ 77,987.92

Schedule C

Agency Service Fees

Members Earnings	Monthly Fee
\$1 to \$9999	\$5.00
\$10,000 to \$19, 999	\$7.50
\$20,000 to \$29,999	\$15.00
\$30,000 to \$39,999	\$20.00
\$40,000 and over	\$30.00

IN WITNESS WHEREOF, the Town and Union have executed this agreement as of the 20th day of June, 2023.

TOWN OF WELLFLEET
BOARD OF SELECTMEN

WELLFLEET EMPLOYEES ASSOCIATION

Ryan Curley, Chair

Nancy Vail, President

Barbara Carboni

Michael DeVasto

—

Kathleen Bacon

John Wolf

AGREEMENT
BETWEEN THE TOWN OF WELLFLEET
AND
THE WELLFLEET EMPLOYEES' ASSOCIATION
UNIT C
July 1, 2023 through June 30, 2026

TABLE OF CONTENTS

ARTICLE 1	RECOGNITION	4
ARTICLE 2	DEFINITIONS	4
ARTICLE 3	MANAGEMENT RIGHTS	4
ARTICLE 4	EMPLOYEE RIGHTS AND REPRESENTATION	5
ARTICLE 5	NON-DISCRIMINATION	6
ARTICLE 6	HIRING PRACTICES AND PROMOTIONS	6
ARTICLE 7	DISCIPLINE	7
ARTICLE 8	GRIEVANCE AND ARBITRATION	8
ARTICLE 9	PERSONNEL RECORDS	9
ARTICLE 10	STAND-BY SCHEDULES	10
ARTICLE 11	OVERTIME	10
ARTICLE 12	HOLIDAYS	10
ARTICLE 13	BEREAVEMENT LEAVE	11
ARTICLE 14	COURT TIME	11
ARTICLE 15	MILITARY RESERVE	11
ARTICLE 16	LEAVE OF ABSENCE	12
ARTICLE 17	MEDICAL LEAVE	12
ARTICLE 18	INCENTIVE PAY	12
ARTICLE 18A	LONGEVITY	13
ARTICLE 19	INSURANCE	13
ARTICLE 20	ON THE JOB INJURIES	13
ARTICLE 21	CLOTHING, GEAR AND UNIFORMS	14
ARTICLE 22	EMPLOYEE ASSISTANCE PROGRAM	15
ARTICLE 23	VACCINATIONS	15
ARTICLE 24	TRAINING AND RECERTIFICATION	15
ARTICLE 25	ON CALL FIREFIGHTER/PARAMEDIC	17
ARTICLE 26	SQUAD STAND-BY PAY	17
ARTICLE 27	HOSPITAL TRANSPORTS	17
ARTICLE 28	CALL DURATION	17
ARTICLE 29	CALL MINIMUMS	17
ARTICLE 30	USE OF TOWN BUILDINGS	18
ARTICLE 31	VEHICLE USE	18
ARTICLE 32	WAGES	18
ARTICLE 33	MISCELLANEOUS	19
ARTICLE 34	AGENCY SERVICE FEE	19

ARTICLE 35	UNION SECURITY CLAUSE	19
ARTICLE 36	UNION BUSINESS LEAVE	20
ARTICLE 37	STABILITY OF AGREEMENT	20
ARTICLE 38	NO STRIKES	20
ARTICLE 39	DURATION OF AGREEMENT	20
APPENDIX A	HOURLY WAGES-CURRENT STAFF	21
	HOURLY WAGES - NEW HIRES	21
	CERTIFICATION STIPENDS	21

ARTICLE 1: RECOGNITION

The Town of Wellfleet (the "Town") hereby recognizes the Wellfleet Employees Association (the "Union") as the sole and exclusive bargaining agent for the purpose of collective bargaining with respect to wages, hours and other conditions of employment for all regular call fire fighters within the Town and excluding all other confidential, managerial, casual, and other employees of the Town.

ARTICLE 2: DEFINITIONS

Employee: A regular call firefighter.

Department Head: The Fire Chief or his/her designee.

Department: The Wellfleet Fire Department.

Continuous Employment: Uninterrupted employment except for authorized leaves of absence. If an employee returns to active status as a call firefighter with the town within five years of the date of termination of employment, that employee will be entitled to reinstatement of benefits with credit for previous time worked.

Disciplinary Action: Any personnel action resulting in a written warning, suspension, demotion, or termination.

Regular Call Firefighter: A person in the service of the Department who is trained to the level of a First Responder or higher and who regularly serves on an overnight standby group or who responds to an average minimum of five (5) of toned calls per month that are toned to all home receivers. Participation rates will be based on a rolling 12 month period. A call firefighter who falls below the minimum participation rate in any month will have three (3) months to increase his/her participation rates to the minimum level.

ARTICLE 3: MANAGEMENT RIGHTS

Subsequent to the execution of this contract, the Town will continue to retain, whether exercised or not, all of the rights, power and authority it currently exercises under the General Laws of the Commonwealth of Massachusetts and the Wellfleet Charter to solely manage the affairs of the Town and direct its workforce, except to the extent that such rights, power and authority have been abridged, limited, or relinquished by the terms and provisions of this Agreement. By way of example, but not limitation, management retains the following rights consistent with G.L. c. 150E:

- to determine the mission, budget, and policy of the Town and its departments;
- to determine the organization of the Town and its departments, the number of employees, the work functions, and the technology of performing them;
- to determine the numbers, types, and grades, of positions or employees assigned to an organizational unit, work project, or to any location, task, vehicle, building, station, or facility
- to determine the methods, means, and personnel by which the Town's operations are carried out;

- to manage and direct employees of the Town and to discipline employees;
- to maintain and improve orderly procedures and the efficiency of operations;
- to lay off employees in the event of lack of work, funds, or under conditions where management believes that continuation of such work would be less efficient, less productive, or less economical;

- to assign employees to staff functions from time to time as the Town determines appropriate

- to take whatever actions may be necessary to carry out its responsibilities in situations of emergency

- to enforce existing rules and regulations for the governance of the Town and its departments, and to add to or modify such regulations as it deems appropriate.

ARTICLE 4: EMPLOYEE RIGHTS AND REPRESENTATION

Section 1.

The Town agrees not to discharge, discriminate, interfere with, restrain or coerce any employee because of his/her lawful exercise of the rights set forth in Section 2 of Chapter 150E of the General Laws.

Section 2.

The Town agrees that it will not discriminate against, interfere with or coerce against any employee because such employee gives testimony, takes part in grievance procedures or hearings, negotiations or conferences for or on behalf of the Union or any employee.

Section 3.

Employees are free to become or refrain from becoming members of the Union. Notwithstanding membership in the Union, the Union agrees to represent fully all members of the bargaining unit.

Section 4.

In the event of a conflict between any provisions of this agreement and any Personnel Ordinance, Bylaw, Rule or Regulation of the Town, the terms of the collective bargaining agreement shall prevail.

Section 5 — Notice to Union

The Town shall make every effort to submit written notice to the Union with the name, job title and the effective date of actions affecting employees as follows:

1. Appointment of new employee
2. Promotion
3. Suspension
4. Termination by type (retirement, disability, involuntary with cause)
5. Authorized leave of absence of more than one (1) month

ARTICLE 5: NON-DISCRIMINATION

The Town and the Union agree that they will not discriminate against any employee on the basis of race, creed, color, national or ethnic origin, gender, sexual preference, age, religion or marital status, political affiliation or activity, and membership or non-membership in the Union.

ARTICLE 6: HIRING PRACTICES AND PROMOTIONS

Section 1. Postings, Hiring Practices and Probation

When a promotional vacancy exists that the Town decides to fill, a notice will be posted in the main Fire Station for a period of fourteen (14) calendar days prior to the application deadline. Internal posting of the notice shall be the responsibility of the Union. The job posting shall include the job title, salary grade, a description of duties, the requisite qualifications for the position, the last date for filing applications and other relevant and pertinent information.

New employees shall be placed on probationary employment status for one year following their appointment as a call firefighter. During this probationary period, an employee may be terminated with or without cause. This period may be extended upon agreement between the Union and the Town. An employee terminated during the probationary period is not entitled to file a grievance; termination with notice is all that is required.

All new employees must submit to and pass a pre-employment physical examination. The Town will arrange and pay for the examination.

Section 2. Promotion and Seniority Defined

- a) A promotion shall mean advancement to a higher grade
- b) Seniority shall mean the length of continuous active service as a call fire fighter with the Town.

Section 3. Selection

The Town of Wellfleet is committed to a policy of hiring and promoting from within whenever possible. While selection for appointments and promotions shall be based on qualifications, seniority shall also be considered as a factor. In selecting among equally qualified applicants for promotions, employees with the greatest seniority shall be given preference over similarly qualified employees with lesser seniority.

ARTICLE 7: DISCIPLINE POLICY

Employees may be disciplined for cause, including but not limited to: unsatisfactory job performance or attendance, and violation of Town policies or regulations. The following steps shall be taken in the event that disciplinary action is deemed necessary:

- 1) Oral Reprimand — the Fire Chief or an immediate supervisor may issue an oral warning to an employee. An oral reprimand shall be noted in the employee's personnel file.
- 2) Written Reprimand — the Fire Chief may issue a written warning. A copy of the written warning shall be placed in the employee's personnel file and carry a specified period in which the behavior shall be improved.
- 3) Suspension for cause – an employee may be suspended for up to five days without pay with just cause. Suspension may be in lieu of oral reprimand and written reprimand and may be effective immediately. Within 48 hours of the effective date of suspension, the employee will be provided with a written notice stating the reason for it, the length of the suspension and the date the employee will return to work.
- 4) Suspension — long term. An employee may be suspended for up to ten days without pay with just cause. Suspension may be in lieu of oral reprimand and written reprimand and may be effective immediately. Within 48 hours of the effective date of suspension, the employee will be provided with a written notice stating the reason for it, the length of the suspension and the date the employee will return to work.
- 5) Discharge - an employee may be discharged for just cause. The Fire Chief shall provide the employee with a written notice of discharge stating the reason for it and the effective date of the discharge.

The Town and Union acknowledge that application of the progressive discipline steps outlined above may not be appropriate in all instances. Based on the seriousness of the employee's misconduct, it is understood that the Town may take disciplinary action, up to and including termination, without proceeding through these disciplinary steps. It is also understood that it may be appropriate under some circumstances to impose a lesser form of discipline than is called for under the disciplinary steps.

Employee rights

Employees, other than probationary employees, have the right to challenge disciplinary action as it arises and to request a plan for remediation, if warranted. All disciplinary action is subject to grievance and arbitration procedures as set forth in this agreement.

ARTICLE 8: GRIEVANCE AND ARBITRATION PROCEDURES

The parties recognize that it is in the best interest of effective and harmonious performance of duties and responsibilities for prompt and equitable disposition of any grievance at the lowest organizational level possible under procedures of maximum informality and flexibility. All grievances, as defined below, shall be processed in accordance with the following procedure.

Grievance defined: A grievance shall be defined as a dispute over the interpretation or application of the express terms of this Agreement.

Step 1. An employee, other than a probationary employee, or the Union may take up a grievance with the Fire Chief or his/her designee within 14 calendar days of the occurrence of the event giving rise to the grievance in an attempt to resolve the grievance.

Step 2. If issues are not resolved in Step 1, the employee or the Union, may submit a grievance in writing to the Town Administrator or his/her designee, within 14 calendar days after the occurrence of the event giving rise to the grievance. The grievance shall contain:

1. Name and classification of the employee
2. Nature of the grievance
3. Steps taken to resolve the grievance informally
4. Requested remedy
5. Signature of the employee or employees involved.

The Town Administrator shall have 14 calendar days to act on the grievance and his/her answer shall be in writing. During this 14-day period, the Town Administrator or his/her designee may meet with the parties involved to discuss and try to resolve the grievance.

Step 3. If the employee is not satisfied with the answer given in Step 2, the grievance may be submitted to the Board of Selectmen within 14 calendar days after the answer in Step 2. The Board of Selectmen shall consider it as soon as possible and shall give its reply in writing within 30 calendar days after receipt of the grievance.

Termination or Discharge. In the event of a termination or discharge (following the probationary period) an employee may submit a grievance at Step 3 within 10 working days of the written notice of the termination or discharge.

Arbitration. If the grievance is not resolved by the answer of the Board of Selectmen, as provided above, the Union may within 21 calendar days after such answer, upon written notice given to the Board of Selectmen, submit the grievance to arbitration in accordance with the rules of the American Arbitration Association. The arbitrator shall render his/her decision based solely upon the facts, evidence and contentions as presented by the parties during the arbitration proceedings and shall be governed by the following:

1. The decision of the arbitrator shall be final and binding upon the parties hereto except for review and confirmation as provided by Chapter 150C of the General Laws.
2. The expense of the arbitrator's services and the proceedings shall be borne equally by the parties involved.
3. The arbitrator shall be without power or authority to make any decision or award that violates the common law or statutory law of the Commonwealth or any rules and regulations promulgated pursuant thereto.
4. The arbitrator shall be without power to add or to subtract from the terms of the Agreement.
5. The arbitrator shall be without power or authority to render an award or decision concerning any matter that is excluded from the Grievance and Arbitration Procedure of this Agreement.

Time Limits. If the Town does not issue a written response to a grievance within the time provided in the agreement, it shall be considered a denial of the grievance and the Union or the employee may proceed to the next step of the grievance procedure. If the Union fails to timely file a grievance at step I, or fails to timely process a grievance at any step of the grievance procedure after a written decision has been issued, the grievance shall be waived with prejudice. The filing deadlines may be extended by mutual written agreement of the parties.

Settlement Authority. Although the parties agree that it may be mutually beneficial to attempt to resolve their disputes at the earliest stages of the grievance process, the resolution of any grievance prior to Step IV is subject to the Town Administrator's approval and absent such approval, the disposition shall not be binding on the Town.

ARTICLE 9: PERSONNEL RECORDS

An employee may review his or her personnel record during the regular business hours within five business days of his or her request and may obtain a copy of his or her personnel file within five business days of the submission of a written request to the office of the Town Administrator. Personnel records shall be defined in accordance with G.L. c. 149 §52C. No information from an employee's personnel record, other than a simple verification of employment, shall be released without the written consent of the employee to the extent allowed by law.

An employee shall have the right to place a written reply in his/her file to all complaints, reprimands or any other material derogatory or disciplinary in nature, and have it attached to said material. The employee will be shown such material to review and initial prior to its being placed in the file. The purpose of the initials is not to imply acceptance of said material but only to indicate that the employee has reviewed the information.

Where there is disagreement with any information contained in a personnel record, removal or correction of such information may be mutually agreed upon by the Town and the employee. If an agreement is not reached, the employee may submit a written statement explaining his/her position, which shall thereupon be contained therein and shall become a part of the employee's personnel record. The statement shall be included whenever information is sent to a third party, as long as the original material responded to is retained.

ARTICLE 10: STAND-BY SCHEDULES

The Town must provide written notice at least fourteen (14) calendar days in advance of changing an employee's regular stand-by schedule.

ARTICLE 11: OVERTIME

Employees who work in excess of eight (8) hours within a twenty-four (24) hour period shall be compensated at the rate of time and one half for time worked in excess of eight hours. Group standby hours and summer shift hours are not included in the eight hour minimum.

ARTICLE 12: HOLIDAYS

Any employee who is called out or fills a department or private detail on one of the following holidays will be compensated at the rate of double time.

- New Year's Day
- Martin Luther King Day
- President's Day
- Patriots Day
- Memorial Day
- Juneteenth
- Independence Day
- Labor Day
- Columbus Day
- Veterans Day
- Thanksgiving Day
- Friday after Thanksgiving
- Veterans Day
- Christmas Day

ARTICLE 13: BEREAVEMENT LEAVE

In the event of the death occurring in the immediate family of an employee, s/he shall be granted bereavement leave without loss of pay up to a maximum of two (2) regular stand-by shifts. For the purpose of this section, "immediate family" shall be spouse or domestic partner, child or a stepchild, parents, stepparents, parents-in-law, grandparents, grandchildren, brother, sister, stepbrother and stepsister.

The Town Administrator, upon recommendation of the Fire Chief, may grant extension of bereavement leave without loss of pay under special circumstances, or may grant exceptions to relatives listed above.

ARTICLE 14: COURT TIME

Employees, who are required to attend court in connection with their duties as call firefighters, shall be paid at the rate of time and one half their hourly rate of pay from the time the employee is

required to report to the Courthouse to the time s/he is dismissed, with a minimum of three hours to be paid. Employees will be reimbursed for mileage from their home to the assigned court at the prevailing IRS rate. In no event shall this provision apply to an employee's attendance in any action in which the Town is a defendant in the action, unless the employee is called as a witness on behalf of the Town.

ARTICLE 15: MILITARY RESERVE

Any employee who is a member of the National Guard or other military reserves and who is required to fulfill his/her military duty obligation by a tour of active duty, shall upon application be paid the difference, if any, between the weekly compensation received from military pay, including allowances for meals and quarters, and the employee's average weekly pay based on their most recent 52 weeks of work. This is limited to a period not to exceed three (3) weeks per fiscal year.

If the employee's National Guard or Reserve Unit is activated into federal service, the employee will be granted a leave of absence without pay. However, upon deactivation from such federal service, the employee will be entitled to reinstatement to his/her former position with the town, without loss of seniority for time spent in active service.

ARTICLE 16: LEAVE OF ABSENCE / VACATION

Employees, after twelve (12) months of employment, may for good and sufficient reason and with approval of the supervisor/department head and the Town Administrator be granted a leave of absence without pay. Group insurance may be continued as provided in the contract. One hundred percent (100%) of premium expenses shall be paid by the employee.

Vacation

Each call member will be allotted "call nights" of vacation off per fiscal year; a call night will consist of a night from 1800 — 0700. Call members shall not be docked pay for the inability to cover their shift due to a lack of call members. Time off must be used as a full shift. Prior to using this benefit, call members must try to swap the shift with another member using the CrewSense program.

<u>Years of Service</u>	<u>Call Nights Allowed</u>
Less than a year	0
1 year but less than 5	2
6 years but less than 10	4
More than 10 years	6

ARTICLE 17: MEDICAL LEAVE

Leave for serious illness in an employee's immediate family, giving birth or a birth in an employee's immediate family shall be taken in accordance with the Family and Medical Leave Act (FMLA) subject to the approval of the Department Head and Town Administrator. Such approval shall not be unreasonably denied.

ARTICLE 18: INCENTIVE PAY

Regular Call Firefighters shall receive additional pay for responding to emergency calls according to the following schedule:

<u>Incentive Pay</u>	<u>Number of Responses</u>
\$300	25 - 50
\$400	51 - 75
\$500	76 - 100
\$600	101 - 125
\$750	126 - 150
\$1000	151 and above

Incentive pay rates will be based on the total number of toned calls an employee responds to during the period of July 1 through June 30th of each year and incentive payments will be made in August of each year. Group stand-by calls will not be included in the total number of responses.

ARTICLE 18A: LONGEVITY

All regular Call Firefighters shall receive a longevity bonus, based on anniversary date, according to the following schedule:

\$200 after five (5) years of continuous service	
An additional \$75 per year	Years 6-10
\$100 per year	Years 11-15
\$125 per year	Years 16-20
\$175 per year	Years 21 and over

The longevity bonus shall be paid on the first payroll following the anniversary date to those who qualify by length of continuous service.

After ten (10) years of continuous employment, any employee who terminates employment with the town and is eligible for longevity shall receive longevity payment for any time earned up to said date of termination of employment. Earned bonus will be paid at the time of termination and shall be prorated if termination date does not coincide with the anniversary date.

Upon the death of an employee who is eligible for a longevity bonus under this article, payment shall be made to his/her estate.

ARTICLE 19: INSURANCE

Section 1 — Health

Employees meeting the applicable eligibility requirements as determined by the Town may elect to participate in the Town's group health insurance program and shall be responsible for the full cost of premium.

Section 2 — Accidental Death & Disability

The Town will provide at no cost to employees, a \$75,000 accidental death & disability insurance policy.

ARTICLE 20: ON-THE-JOB INJURIES

Employees are required to report any on-the-job injury immediately, and in no case more than 24 hours after the incident occurs. Where the employee has been exposed to a hazardous material and or a communicable virus or disease, such notice shall be given within 24 hours after the employee becomes aware of the exposure. If, in the opinion of a qualified physician, the injury or exposure results in the inability of the employee to perform his/her regular job, the Town shall pay the employee the rate equal to the lowest paid full-time firefighter until a qualified physician determines that the employee is ready to return to his/her regular job. In all cases, it shall be the employee's responsibility to provide written documentation from a qualified physician.

If the Town disputes the findings of the employee's physician, the Town can send the employee to a physician of their choosing for a second opinion at the Town's expense. If there is a disagreement between physicians, there will be a third and final opinion by a mutually agreed upon physician paid for equally by Town and employee.

If an employee is ready to return to his/her regular job but, in the opinion of a qualified physician, in consultation with the Fire Chief or his/her designee, is not ready to return to call firefighting duties, the employee shall receive 60% of his/her previous service years' average annual call firefighter wages until a qualified physician, in consultation with the Fire Chief or his/her designee, determines that the employee is ready to resume call firefighting duties.

ARTICLE 21: CLOTHING, GEAR AND UNIFORMS

Section 1- Call Firefighter Clothing

- a) The Town agrees to supply each regular call firefighter with the following items in the style required by the department: a) The Town agrees to supply each regular call firefighter with the following items in the style required by the department:

3 blue embroidered t-shirts
1 red embroidered t-shirt
2 5.11 dress trousers
2 5.11 blue embroidered polo shirts,
1 5.11 red embroidered polo shirt
2 Reubens, 1 blue, 1 red; embroidered

Section 2 — Call-Firefighter Protective Gear

The Town shall issue and replace if no longer fit for service, turn-out gear meeting current N.F.P.A. standards as follows:

I Fire turnout coat
1 Helmet
1 Pair work gloves made of fire retardant materials
I Pair Fire Turnout Trousers with leather boots
1 Hood
I Brush fire gear
1 flashlight
1 Gear Bag

Additionally, employees with a Firefighter 1/11 or higher rating will receive all safety equipment issued by the town to full-time firefighters including but not limited to:

- 1 SCBA (Scott) air mask with speaker and mask bag
- I Life Safety escape rope

The Town agrees to a maximum payout of up to \$250.00 for all reasonable requests to replace clothing and protective gear, eyeglasses, watches, and cell phones of a member of the bargaining unit which may be damaged or destroyed in the line of said employee's duty while on duty or while said employee may be responding to, or returning from, a call to duty.

All protective gear remains the property of the Town and shall be returned to the Town in good condition, reasonable wear and tear excluded, within 2 weeks after the employee's employment with the Town ends.

ARTICLE 22: EMPLOYEE ASSISTANCE PROGRAM

All employees shall have full rights and privileges to the Employee Assistance Program provided by the Town.

ARTICLE 23: VACCINATIONS

The Town will make available to each employee a proper vaccination against Hepatitis B, Hepatitis A and Lyme disease. The Town shall request Cape Cod Hospital to report to the Fire Department within one (1) hour after discovery; any time that a patient brought in by ambulance has an infectious disease.

24: TRAINING AND RE-CERTIFICATION

Section 1. Class approval, tuition and expenses

Employees will be reimbursed tuition costs for all classes with the prior written approval of the Chief. Training time for classes that have been approved by the Fire Chief or his designee shall be paid at the hourly rate. Employees attending courses outside of Wellfleet will be allowed the use of a town vehicle or will be paid the prevailing IRS rate per mile, for travel between the employee's home and the class site. Employees shall be required to carpool to training classes whenever possible.

When an overnight stay is required and is authorized by the Fire Chief, the reasonable cost of food and lodging will be reimbursed.

Section 2. New Certification

Subject to the prior written approval of the Chief, and upon certification, employees attending Firefighter 1/11 certification classes will be paid for mileage at the prevailing IRS rate per mile. Upon proof of certification, employees will be reimbursed for the costs of tuition, fees, and for required text books and training materials. All course materials will become the property of the student. Employees shall be required to carpool to training classes whenever possible. Call firefighters who attend and complete the Fire Fighter Certification class will receive \$600 per year for five (5) years payable upon each anniversary date of certification provided that said employee continues to remain employed by the Town as a Call Fire Fighter on each respective anniversary date.

Section 3. Recertification

Employees attending EMT or Paramedic DOT recertification class, ACLS, PALS, and PHTLS will be paid their hourly rate for class and travel time to and from classes and required examination sites. Upon successful recertification, the employee will be reimbursed the cost of required textbooks and training materials. These materials will become the property of the student. Tuition reimbursement will be paid upon proof of recertification.

Employees are required to take EMT-DOT and Paramedic recertification classes within the Town or an adjoining town if they are offered. Employees who choose to take EMT and DOT recertification classes at other locations will be paid for class time only and will not be reimbursed for travel time or mileage.

The Town shall reimburse the fees for State and National Recertification of EMTs and Paramedics, including DOT and ALS classes, and any other testing that may be required.

Section 4. Training

The Fire Chief will determine what in-house training, classes or drills are necessary for each job title. All required trainings will be paid at time-and-one-half.

Section 5. Seminar Days

Subject to the prior written approval of the Fire Chief or his/her designee, members of the call department shall have the opportunity to take continuing education classes/seminars to further their knowledge and training in subjects related to the department. These classes could include but not be limited to Barnstable Fire Academy Classes and EMS related courses and seminars. Each member will have a minimum allowance of \$700 to be used for this training. This can be used for but does not limit the Town from paying in full for Paramedic and/or Firefighter 1/11 class as stated in Section 2. This is above and beyond the training and drills required by the department and DOT recertification. This allowance can be used for tuition, fees, textbooks and training materials. It will also cover class time and travel time at the member's hourly rate and the prevailing rate per mile for travel in the member's vehicle and meal allowance. If the member chooses not to use his/her education allowance it will revert to the general WFD budget. This allowance will not roll over from year to year.

ARTICLE 25: ON CALL FIREFIGHTER/PARAMEDIC

Any Call Firefighter who agrees to be available on-call beyond his/her group nights, with authorization of the Fire Chief or his designee, shall be paid at the rate of \$ 14.00 per hour.

ARTICLE 26: SQUAD STAND-BY PAY - CALL FIREFIGHTERS

Employees who agree to be on a standby group shall be compensated as follows: Stipend Pay of \$1400.00 shall be paid quarterly to each member who satisfies the obligation of filling one "on call" position on a three-squad rotation schedule. Should the obligation change to fill an on call position on a four-squad rotation or equivalent, the resultant decrease shall be reflected in a stipend pay so that \$1100.00 shall be paid quarterly to each member.

ARTICLE 27: HOSPITAL TRANSPORTS - CALL FIREFIGHTERS

Employees who make ambulance transports to the hospital or cover the station while the ambulance travels to the hospital shall be paid hourly with a 4 hour minimum on transports. Once the 4 hour minimum has been exceeded, employee will be paid for each additional hour.

ARTICLE 28: CALL DURATION - CALL FIREFIGHTERS

For the purpose of establishing payroll hours, a call will begin at the time it is toned out and will continue until the equipment is placed back in service at the station. Time for employees who do not return with the apparatus, or are released from the scene by command before the call is terminated, will end at the time they are cleared from the call.

ARTICLE 29: CALL MINIMUMS

All calls — employees shall receive a minimum of four (4) hours of pay. Once the four (4) hour minimum has been reached, the employee will receive a full hour's pay. This shall repeat until the employee is again released from the call.

ARTICLE 30: USE OF TOWN BUILDINGS

The Town will allow the Union to use meeting rooms for Union business meetings, provided that the Union has obtained permission for the use of the room from the Town, and that Town operations are not adversely affected by such meetings. Requests for use of meeting room space shall not be unreasonably withheld or denied. The Town will allow the Union to use department members' "mail boxes" for exchange of information.

ARTICLE 31: VEHICLE USE

Section 1. Mileage

Employees required to use their private vehicle for official town business shall be compensated at the prevailing IRS rate.

Section 2. Use of Town Vehicles

An employee may be allowed the use of a Town vehicle for business related purposes with the prior written authorization of the Fire Chief.

ARTICLE 32: WAGES

Effective July 1, 2023 wages shall be increased by 6% for all WEA Unit C personnel.

Effective July 1, 2024 wages shall be increased by 6.25% for all WEA Unit C personnel.

Effective July 1, 2026 wages shall be increased by 6.25% for all WEA Unit C personnel.

Employees assigned outside detail work by the Chief shall be paid at the rates listed below for all such detail work. The employee shall be reimbursed when the Town receives the money from the sponsor. Detail work shall be offered on a rotational basis. Details shall be paid for four (4) hours minimum. This paragraph would not apply to Town funded details.

FY2024	\$70 per hour
FY2025	\$75 per hour
FY2026	\$80 per hour

The Salary Schedule is attached as Schedule A.

Paramedic Certification. An EMT certified employee who becomes certified to the level of Paramedic shall receive a base hourly wage increase of 5% effective with the first pay period after submitting the new State Certification.

Loss of Certification. A Paramedic certified employee who drops a certification level will have their hourly rate decreased by 5% effective with the first pay period after losing the certification.

New hires. New hires shall be placed at an hourly wage rate appropriate for their certification and experience level as determined by the Fire Chief.

ARTICLE 33: MISCELLANEOUS

The failure of the Town or the Union to insist, in any one or more incidents, upon performance of any of the terms or conditions of this Agreement, shall not be considered as a waiver or relinquishment of the right of the Town or the Union to future performance of any such term or condition. The obligations of the Town and the Union to such future performance shall continue in full force and effect.

If any provision of this Agreement or any application of this Agreement to any employee covered by the terms of this Agreement shall be found contrary to law by a Court of competent and final jurisdiction, such provision or application shall have effect only to the extent permitted by law, and all other provisions or applications of this Agreement shall continue in full force and effect.

ARTICLE 34: AGENCY SERVICE FEE

In accordance with the provisions of General Laws, Chapter 150E, Section 12 as amended, and the Rules and Regulations of the Massachusetts Labor Relations Commission, the Town agrees that with the effective date of this Agreement or 30 days following the commencement of employment, whichever is later, each employee who elects not to join or maintain membership in the Union shall

be required, as a condition of employment, to pay a fee to the Union in the amount that is authorized by Section 12, Chapter 150E. Said fee for the term of this contract is in accordance with Appendix "E". The Union agrees to indemnify the Town for damages or costs for complying with this article.

ARTICLE 35: UNION SECURITY CLAUSE

Pursuant to the provisions of general Laws, Chapter 180, Section 17A, Union dues shall be deducted by the Town from the salary of each employee who voluntarily executes and remits to the Town a form of authorization for payroll deduction. Dues are to be paid in accordance with Appendix "E". The Union agrees to indemnify the Town for damages or costs for complying with this article.

Such authorization may be withdrawn by the employee, giving at least 30 days written notice to the Town, and by filing a copy thereof with the Treasurer of the Union. Transmittal of said dues will be made to the Union Treasurer within seven (7) calendar days after the month in which the dues are deducted.

ARTICLE 36: UNION BUSINESS LEAVE

The Union president or designee shall have available reasonable time with pay during their regular working hours to attend grievance meetings and/or hearings with the Town or to attend grievance arbitration. Additionally, members of the negotiation team shall have available reasonable time to attend bargaining sessions for their bargaining unit.

ARTICLE 37: STABILITY OF AGREEMENT

No amendment, alteration or variation of the terms and provisions of this Agreement shall bind the parties hereto, unless made and executed in writing by parties hereto. Should the Union allege a change in the terms or conditions of employment inconsistent with G.L. c. 150E, it shall have fifteen (15) days from the date of any alleged change to request bargaining over such alleged change.

ARTICLE 38: NO STRIKES

It is understood and agreed that the services performed by the Town employees included in this Agreement are essential to public health, safety and common welfare. Therefore, the Union agrees on behalf of its members that it will not authorize, instigate aid, condone, or engage in any strike, work stoppage or other action at any time, including upon termination of this Agreement, which will interrupt or interfere with the said service performed by the Town. No employee shall cause or take part in any strike, work stoppage or slowdown.

ARTICLE 39: DURATION OF AGREEMENT

This agreement shall enter into effect on July 1, 2023, and shall remain in effect up to and including June 30, 2026 or until a successor agreement is negotiated. Unless otherwise provided, all rights

and benefits accruing to the members of the Union within the contract are retroactive to the date of signing by the Union and the Town.

APPENDIX A

SCHEDULE A – HOURLY WAGES – CURRENT STAFF

Name	FY23	FY24 6%	FY25 6.25%	FY26 6.25%
William Grozier	\$ 41.07	\$ 43.53	\$ 46.26	\$ 49.15
Paul O'Neill	\$ 30.71	\$ 32.55	\$ 34.59	\$ 36.75
Wendy Willis	\$ 30.71	\$ 32.55	\$ 34.59	\$ 36.75
Ryan Komich	\$ 24.80	\$ 26.29	\$ 27.93	\$ 29.68

SCHEDULE B – HOURLY WAGES – NEW HIRES

POSITION	FY23	FY24 6%	FY25 6.25%	FY26 6.25%
New Hire - 1st Responder	\$ 19.71	\$ 20.89	\$ 22.20	\$ 23.59
New Hire - EMT	\$ 24.80	\$ 26.29	\$ 27.93	\$ 29.68
New Hire - Paramedic	\$ 27.12	\$ 28.75	\$ 30.54	\$ 32.45

CERTIFICATION STIPENDS

	FY24	FY25	FY26
EMT	\$1600.00	\$1800.00	\$2000.00
EMT – Advanced	\$2400.00	\$2600.00	\$2800.00
Paramedic	\$3000.00	\$3200.00	\$3400.00
Firefighter	\$ 750.00	\$ 750.00	\$ 750.00

Certification stipends will be paid the first pay period in December annually.

SCHEDULE B – HOURLY WAGES – NEW HIRES

POSITION	FY23	FY24	FY25	FY26
		6%	6.25%	6.25%
New Hire - 1st Responder	\$ 19.71	\$ 20.89	\$ 22.20	\$ 23.59
New Hire - EMT	\$ 24.80	\$ 26.29	\$ 27.93	\$ 29.68
New Hire - Paramedic	\$ 27.12	\$ 28.75	\$ 30.54	\$ 32.45

CERTIFICATION STIPENDS

	FY24	FY25	FY26
EMT	\$1600.00	\$1800.00	\$2000.00
EMT – Advanced	\$2400.00	\$2600.00	\$2800.00
Paramedic	\$3000.00	\$3200.00	\$3400.00
Firefighter	\$ 750.00	\$ 750.00	\$ 750.00

Certification stipends will be paid the first pay period in December annually.

IN WITNESS WHEREOF, the Town and Union have executed this agreement as of the ___th day of June, 2023.

TOWN OF WELLFLEET
BOARD OF SELECTMEN

WELLFLEET EMPLOYEES ASSOCIATION

Ryan Curley, Chair

Nancy Vail, President

Barbara Carboni

Michael DeVasto

—

Kathleen Bacon

John Wolf



SELECTBOARD

AGENDA ACTION REQUEST
Meeting Date: June 20, 2023



OPEN MEETING LAW COMPLAINT

REQUESTED BY:	Selectboard
DESIRED ACTION:	Discuss and deliberate response to open Meeting Law Complaint from Judith Ahern; filed June 2, 2023.
PROPOSED MOTION:	I move to direct Wellfleet Town Counsel, KP Law to send a response as voted on at tonight's meeting to the Division of Open Government office of the Attorney General
ACTION TAKEN:	Moved by: _____ Seconded By: _____ Condition(s):
VOTED:	Yes: ___ No: ___ Abstain: _____



OPEN MEETING LAW COMPLAINT FORM

Office of the Attorney General
One Ashburton Place
Boston, MA 02108

RECEIVED

2023 JUN -2 A 8

TOWN CLERK
TOWN OF WELLFLEET

Please note that all fields are required unless otherwise noted.

Your Contact Information:

First Name: Judith Last Name: Ahern

Address: PO Box 394

City: South Wellfleet State: MA Zip Code: 02663

Phone Number: 9174881513 Ext. _____

Email: jude@judeahern.com

Organization or Media Affiliation (if any): _____

Are you filing the complaint in your capacity as an individual, representative of an organization, or media?

(For statistical purposes only)

Individual Organization Media

Public Body that is the subject of this complaint:

City/Town County Regional/District State

Name of Public Body (including city/town, county or region, if applicable): Wellfleet Selectboard, Wellfleet Dredging Task Force, Wellfleet Shellfish Department

Specific person(s), if any, you allege committed the violation: unknown who is responsible so all of them

Date of alleged violation: May 2, 2023

Description of alleged violation:

Describe the alleged violation that this complaint is about. If you believe the alleged violation was intentional, please say so and include the reasons supporting your belief.

Note: This text field has a maximum of 3000 characters.

The Town of Wellfleet published a notice for a public hearing on May 2, 2023 apparently about dredging our harbor but included a very controversial mitigation plan ceding control of 14 acres of land in the Herring River and then 28 acres of land in Blackfish Creek to the US Army Corps of Engineers and spreading tons of clam cultch in areas that are currently not permitted for that activity. The public was not allowed to know the details of the negotiations between the Dredging Task Force and the USACE. The mitigation plan changed significantly since it was first revealed only in late March with a deadline of June 30 (so that we don't lose out on \$ 2.5m grant money from the state for dredging).

The public notice incorrectly described the hearing as subject to MGL Chapter 138 which is for alcohol. It may be an administrative mistake to include it with two other public hearings that night about liquor licenses but it's more than that. The notice does not name either area of land in our harbor offered up in this mitigation exchange nor the size which is quite substantial at 14 and 28 acres, especially when 2/3 of our town is already controlled by the National Park.

Honestly, it is still unclear to the public why this mitigation plan does not have to go before Annual Town Meeting because it would be a change in use of land. A member of the Dredging Task Force replied that it's because it's about a "resource" not "land" but nobody was allowed to question him further and he's not a lawyer. We've heard from our Shellfish Constable that they don't need to go before anyone to cultch (which was found to be not true they have to appear before our Conservation Committee at some point). The mitigation plan is completely dependent upon shellfish propagation so the Shellfish Department is heavily involved and ignoring advise from our Shellfish Advisory Board. All that being said, it is really unclear if this is a dredging issue, shellfish issue, land issue, resource issue, etc. but it is definitely NOT an alcohol license issue subject to MGL Chapter 138.

The initial meeting was requested by the Dredging Task Force but the presenters were so ill prepared and the draft proposal was embarrassingly bad (it shouldn't qualify as a public hearing for lack of substance) so it was continued, but the subsequent Selectboard meeting on May 30 was not advertised as a continuation of the initial public hearing, just "Business" in a regular Selectboard meeting.

I asked the Town to please explain why a public hearing was necessary: is it because all dredging needs a public hearing, because a change in use of land or a use of our resource or because we might enter into a contract with a Federal agency for perpetuity so they might want to run that by the People first. We do not know what law governs this situation because it was not referenced in the public hearing notice.

The Town refuses to explain, thus this complaint.

What action do you want the public body to take in response to your complaint?

Note: This text field has a maximum of 500 characters.

I want someone with legal authority to explain what law governs this (dredging) mitigation plan. I want the Town of Wellfleet to repost the public hearing properly citing the correct MGL now that we seemingly have a draft that resembles something possible (they refused to share any documents with the public before their meeting on May 30). I want the Town of Wellfleet to hold off signing any agreement with the US Army Corps of Engineers until a properly posted public hearing occurs.

Review, sign, and submit your complaint

I. Disclosure of Your Complaint.

Public Record. Under most circumstances, your complaint, and any documents submitted with your complaint, is considered a public record and will be available to any member of the public upon request.

Publication to Website. As part of the Open Data Initiative, the AGO will publish to its website certain information regarding your complaint, including your name and the name of the public body. The AGO will not publish your contact information.

II. Consulting With a Private Attorney.

The AGO cannot give you legal advice and is not able to be your private attorney, but represents the public interest. If you have any questions concerning your individual legal rights or responsibilities you should contact a private attorney.

III. Submit Your Complaint to the Public Body.

The complaint must be filed first with the public body. If you have any questions, please contact the Division of Open Government by calling (617) 963-2540 or by email to openmeeting@state.ma.us.

By signing below, I acknowledge that I have read and understood the provisions above and certify that the information I have provided is true and correct to the best of my knowledge.

Signed: _____

Date: 6/2/23

For Use By Public Body
Date Received by Public Body:

For Use By AGO
Date Received by AGO:



Provincetown Independent

Publication Name:

Provincetown Independent

Publication URL:

Publication City and State:

Provincetown, MA

Publication County:

Barnstable

Notice Popular Keyword Category:

Notice Keywords:

wellfleet

Notice Authentication Number:

202305311504348707855

1206584830

Notice URL:

provincetownindependent.org/classifieds/legal-notices/wellfleet-legal-notices/2023/04/19/wellfleet-legal-notices-32/

[Home](#) > [Search Results](#) > [Public Notice Detail](#)

[EMAIL](#)

[PRINT](#)

[Back](#)

Notice Publish Date:

Thursday, April 27, 2023

Notice Content

Town of Wellfleet

Select Board

Public Hearing

May 2, 2023

In accordance with M.G.L. Chapter 138, notice is hereby given that a public hearing will be held on Tuesday, May 2, 2023, at 7:30 p.m. both virtually and at the Wellfleet Community Center (715 Old King's Highway) to consider the following:

Dredging Task Force members will provide information and answer questions about the town's proposed mitigation plan required by the Army Corps of Engineers to secure the permit to dredge the harbor mooring field, thus allowing dredging of the first half of the mooring field to begin.

Application received April 4, 2023, from Jonathan Kells Phillips & Katie Savoy One-day Special Event Liquor License on June 24, 2023, at the Baker's Filed Pavillion for a rehearsal dinner.

Application received April 12, 2023, Chequessett Yacht & Country Club, Transfer of Alcohol License, to Cuddy Kitchen located at 680 Chequessett Neck Road, Wellfleet MA

Join Zoom Meeting

<https://us02web.zoom.us/j/85689604806?pwd=blpIVFFBZzViQ0xNWkZKMm9iMVdrdz09>

Meeting ID: 856 8960 4806

Passcode: 611877

Dial by your location

+1 929 205 6099 US (New York)

Published: Provincetown Independent, April 20 and 27, 2023

Town of Wellfleet

SELECT BOARD PUBLIC HEARING

In accordance with M.G.L. Chapter 130B, the Select Board has given notice of a public hearing will be held on **TUESDAY, MAY 2, 2023, AT 7:30 P.M.** in the auditorium at the Wellfleet Community Center, 175 Old Wellfleet Highway, to consider the following:

- Dredging Task Force members will provide information and answer questions about the water dredging mitigation plan required by the Army Corps of Engineers to secure the permit to dredge the harbor mooring field after allowing dredging of the channel at the mooring field to begin.
- Application received April 4, 2023 from Jonathan Katz through Evkate Sawyer, Cherry Special Events, for a license for June 24, 2023 at the Baker's Field Pavilion for a rehearsal dinner.

- Application received April 12, 2023 from Chequessett Yacht & Country Club Transfer of Alcohol License to Cuppa kitchen located at 680 Chequessett Neck Road, Wellfleet, MA.

Join Zoom Meeting

Meeting ID: 856 2960 4809

Passcode: 011877

Share your screen

1-929-205-6099 (US - New York)

Planned: Provisional Independent
April 20 and 27, 2023



SELECTBOARD

AGENDA ACTION REQUEST
Meeting Date: May 2, 2023

IV

PUBLIC HEARINGS

~ C ~

REQUESTED BY:	Dredging Task Force Members
DESIRED ACTION:	To provide information and answer questions on the town's proposed mitigation plan required by the Army Corps of Engineers to secure the permit to dredge the harbor mooring field.
PROPOSED MOTION:	If a motion is needed one will be made at the time this portion of the hearing.
SUMMARY:	
ACTION TAKEN:	Moved By: _____ Seconded By: _____ Condition (s):
VOTED:	

5/2/23

- D. Appointment of Lara Henry as a member to the Wellfleet Local Housing Partnership for a term of one-year.
- III. **Community Updates**
 - A. Presentation on the District Attorneys new initiatives ~ District Attorney Galibois
- IV. **Public Hearings**
 - A. Application received April 4, 2023, from Jonathan Kells Phillips & Katie Savoy One-day Special Event Liquor License on June 24, 2023, at the Baker's Field Pavilion for a rehearsal dinner.
 - B. Application received April 12, 2023, Chequessett Yacht & Country Club, Transfer of Alcohol License, to Cuddy Kitchen located at 680 Chequessett Neck Road, Wellfleet MA
 - C. Dredging Task Force members will provide information and answer questions about the town's proposed mitigation plan required by the Army Corps of Engineers to secure the permit to dredge the harbor mooring field, thus allowing dredging of the first half of the mooring field to begin.
- V. **Reorganization of the Selectboard**
 - A. The board will vote to reorganize positions.
- VI. **Use of Town Property**
 - A. Richard Cohen ~ Indian Neck Beach, Thursday August 3, 2023, 4:30pm – 8:30pm for small adult Birthday party.
 - B. Newcomb Hollow Beach Parking Lot ~ Barbara Leddy, pre wedding welcome party. ~ Thursday July 13, 2023, 6:30pm-10:30pm.
 - C. Newcomb Hollow Beach Parking Lot ~ Food Truck for private party; Thursday July 13, 2023, 6:30pm – 10:30pm ~ Joey's Joint & Food Truck
- VII. **Business**
 - A. Town Meeting Follow up, special town meeting discussion.
- VIII. **Selectboard Reports**
- IX. **Topics for Future Discussion**
- X. **Vacancy Reports**
- XI. **Minutes**
 - A. April 18, 2023
- XII. **Adjournment**



SELECTBOARD

AGENDA ACTION REQUEST
Meeting Date: May 23, 2023

VI

BUSINESS

~ A ~

REQUESTED BY:	Members of the Dredging Task Force
DESIRED ACTION:	The members will continue their presentation and discussion to the board and public on the town's proposed mitigation plans and dredging updates.
PROPOSED MOTION:	If a motion is needed for this agenda item one will be made at the time of the meeting.
SUMMARY:	
ACTION TAKEN:	Moved By: _____ Seconded By: _____ Condition(s):
VOTED:	Yea _____ Nay _____ Abstain _____

5/23/23

V. **Public Hearings**

- A. Application received on 4/14/2023 from Margaret Conor (Wellfleet, MA) and Jeffrey Pickard (Wellfleet, MA) for the renewal of shellfish grant license #s 95-9/10 consisting of approximately two acres on Egg Island for ten years, one month and 29 days beginning March 1, 2023, and expiring April 30, 2033.
- B. Application received on 4/14/2023 from Paul Conor (Wellfleet, MA) and Alfred Pickard (Wellfleet, MA) for the renewal of shellfish grant license #s 95-5/6 consisting of approximately two acres on Egg Island for ten years, one month and 29 days beginning March 1, 2023, and expiring April 30, 2033.
- C. Application received on 4/14/2023 from Matt Parent (Wellfleet, MA) for the renewal of shellfish grant license # 04-03 consisting of approximately one acre on Egg Island for 10 years and 3 days beginning April 27, 2023, and expiring April 30, 2033.
- D. Application received on 4/14/2023 from Matt Parent (Wellfleet, MA) for the renewal of shellfish grant license # 733 consisting of 0.94 acres on Old Wharf Point for 10 years and 12 days beginning April 18, 2023, and expiring April 30, 2033.
- E. **CONTINUED FROM 4/4/2023** ~ Change to Section 7.4. Location of Areas Licensed for Aquaculture (Grants) in the Town of Wellfleet Shellfishing Policy and Regulations to reference new grants and redefine the Egg Island area where grants may be located. Also, to add a map outlining the Egg Island area as Appendix E to the regulations.
- F. **CONTINUED FROM 1/31/2023** ~ Application received 1/3/2023 for a grant extension (to be numbered #2000-2 ext.) to shellfish grant license #2000-2 consisting of approximately 1.08 acres on Egg Island from Stephen Pickard (Wellfleet, MA), Iris Pickard (Wellfleet, MA) and Benjamin Pickard (Wellfleet, MA).
- G. **CONTINUED FROM 3/21/2023** ~ Application received 1/10/2023 for a grant extension (to be numbered #99-1 Ext) to shellfish grant license #99-1 consisting of approximately .43 acres on Mayo Beach from Angela Osowski (Wellfleet, MA) Robert Mallory (Wellfleet, MA) and Mary Mallory (Wellfleet, MA).

VI. **Business**

- A. Dredging Task Force members will provide information and answer questions about the town's proposed mitigation plan required by the Army Corps of Engineers to secure the permit to dredge the harbor mooring field, thus allowing dredging of the first half of the mooring field to begin.

VII. **Selectboard Reports**

VIII. **Topics for Future Discussion**

IX. **Minutes**

- A. May 16, 2023

X. **Adjournment**



Wellfleet Selectboard

The Wellfleet Selectboard will hold a public meeting on Tuesday, May 30, 2023, at 7:00 p.m. The Chapter 2 of the Acts of 2023, this meeting will be conducted in person and as a courtesy via remote means, per 940 MCR 29.10 and the Town's Remote Participation Policy. While an option for remote attendance and/or participation is provided as a courtesy to the public, the meeting/hearing may not be suspended or terminated if technological problems interrupt the virtual broadcast unless otherwise required by law.

Joining the Meeting:

In-person at the Wellfleet ACC, 715 Old King's Highway, Wellfleet, MA, 02667

Join the meeting hosted in Zoom by using the following link:

<https://us02web.zoom.us/j/85689604806?pwd=blplVFFBZzViQ0xNWkZKMm9iMVdrdz09>

By Phone: phone +1 929 205 6099 and enter Meeting ID: 856 8960 4806 | Passcode: 611877

Landline callers can participate by dialing *9 to raise their hand.

To Participate during public comment:

- Zoom: Raise hand to be called on to speak.
- Phone: dial *9 to raise your hand.

It is at the Chair's discretion to call on members of the public. All speakers must be recognized to speak. If attending a meeting in person, please find the closest available microphone and confine any personal conversations to the outside of the meeting room. Anyone may record the session but must notify the Chair and may not interfere with the meeting to record it.

Additionally, the meeting will be broadcast live, in real time, via live broadcast on Comcast cable (Wellfleet Government TV Channel 18), also available via livestream or Video on Demand (VOD) recordings at wellfleet-ma.gov

I. **Announcements, Open Session and Public Comments**

Note: Public comments are limited to no more than two minutes per speaker. The Board will not deliberate or vote on any matter raised solely during Announcements & Public Comments.

II. **Dredging of area II and Mitigation**

A. Dredging Task Force members will provide more information and answer questions about the town's proposed mitigation plan required by the Army Corps of Engineers to secure the permit to dredge the harbor mooring field, thus allowing dredging of the first half of the mooring field to begin.

III. **Adjournment**

June 14, 2023

Carolyn M. Murray
cmurray@k-plaw.comBY ELECTRONIC MAIL ONLY (openmeeting@state.ma.us)Carrie Benedon, Esq.
Director, Division of Open Government
Office of Attorney General
One Ashburton Place
Boston, MA 02108Re: Town of Wellfleet – Select Board
Open Meeting Law Complaint from Jude Ahern dated June 2, 2023

Dear Ms. Benedon:

Please be advised that this firm serves as Town Counsel to the Town of Wellfleet (the “Town”). The Town’s Selectboard (“Board”) is in receipt of an Open Meeting Law Complaint (the “Complaint”) filed by Ms. Jude Ahern (the “Complainant”), dated June 2, 2023, which was received by the Town that same day. The Complaint alleges that the Board violated the Open Meeting Law by listing an incorrect statutory reference on a public hearing advertisement relative to a dredging mitigation plan and by not bringing that plan before the Annual Town Meeting for approval. A copy of the Complaint is attached hereto as Exhibit 1.

On June 20, 2023, the Board met in open session at a properly posted meeting to discuss the Complaint and consider its response. The Board has carefully reviewed the allegations contained in the Complaint and, following such discussion, has authorized this response on its behalf, in accordance with G.L. c.30A, §23 and 940 CMR 29.05(5), which is based upon information provided by the Town.

DISCUSSION

The Complaint is not ripe for review by the Division of Open Government because 1) the Complaint was not submitted within the statutory thirty (30) day timeframe and 2) the Complaint does not allege violations of the Open Meeting Law.

I. The Complaint was untimely filed.

This Complaint is not ripe for review by the Attorney General because it was not properly filed in accordance with the Open Meeting Law. Complaints alleging violations of the Open Meeting Law must be filed, within thirty (30) days of the date of the alleged violation, with the body alleged to have violated the law. G.L. c.30A, §23(b). The Complaint related to the May 2, 2023 Board meeting and therefore, pursuant to §23(b), it was required to be filed by June 1, 2023. However, the Complaint was dated and filed on June 2, 2023 – thirty-one (31) days following the meeting at issue and after the

Carrie Benedon, Esq.
Director, Division of Open Government
June 14, 2023
Page 2

statutory deadline had elapsed. The Open Meeting Law complaint process is intended to enable communities that have violated the Law to review the matter and take corrective action, if appropriate. Because the complaint was not properly filed, the Board respectfully submits that the Division of Open Government must decline review. See OML Declination 2-20-18 (Kingston Public Bodies); see also OML Declination 8-10-16 (Mendon Board of Selectmen).

II. The Complaint does not allege violation of the Open Meeting Law.

Even if the Complaint was timely filed, however, the Complaint is not ripe for review by the Division of Open Government because the allegations contained therein do not implicate provisions of the Open Meeting Law. The provisions of G.L. c.30A, §23 state, in pertinent part, “Upon the receipt of a complaint by any person, the attorney general shall determine, in a timely manner, whether there has been a violation of the open meeting law” (emphasis added). Absent a showing or claim that the Open Meeting Law has been violated, the Division of Open Government is not empowered to review the Complaint. The Division of Open Government generally declines to review allegations that do not implicate the Open Meeting Law. See OML Declination January 25, 2016 (Nahant); OML Declination April 8, 2022 (Savoy).

Here, the Complaint alleges that the Board erred in listing a public hearing for the dredging mitigation plan as being held pursuant to G.L. c.138 when the proper statutory reference was G.L. c.130. Ex. 1, at 2. The Complaint further alleges that such plan should go before the Annual Town Meeting as “a change in use of land.” Id. Such allegations are wholly unrelated to and would not be constitute violations of the Open Meeting Law. First, the Town agrees that listing the dredging public hearing as being held pursuant to G.L. c.138 in the public hearing notice in *The Provincetown Independent* was in error. See Ex. 1, at 3–4. While G.L. c.138 liquor license hearings were being held during the same public hearing as the dredging mitigation plan, the proper statutory reference for the dredging mitigation plan is G.L. c.130. However, this minor administrative error was not replicated on the posted agenda, which is what the Open Meeting Law regulates. Ex. 1, at 6. Second, whether a particular proposal implicates other statutory provisions is outside of the scope of the Open Meeting Law. While the Town does not believe the proposed dredging mitigation plan is a change in use of land that need be presented to Town Meeting, whether Town Meeting should be involved in a board or committee decision is not germane to the Open Meeting Law.

The Complainant’s allegations plainly do not involve the Open Meeting Law, and there is no suggestion in the Complaint that any provision of the Open Meeting Law was violated by the Board. Rather, the Open Meeting Law requires that boards and committees conduct their business in a public and accessible manner. Here, the business of the board was properly conducted in compliance with the Open Meeting Law. Whether the Board acted in the manner desired by the Complainant with respect to the dredging mitigation plan is not a matter relevant to Open Meeting Law compliance and therefore is not subject to review by the Division of Open Government.



Carrie Benedon, Esq.
Director, Division of Open Government
June 14, 2023
Page 3

CONCLUSION

Based on the foregoing, the Board respectfully submits that there has been no violation of the Open Meeting Law and as such, the Board considers this matter resolved.

Please do not hesitate to contact me if you require additional information.

Very truly yours,

Carolyn M. Murray

CMM/mad
Enc.

cc: Jude Ahern (by e-mail only to jude@judeahern.com)
Select Board

867603/WELL/0178



SELECTBOARD

AGENDA ACTION REQUEST
Meeting Date: June 20, 2023

III

~ POLICE APPOINTMENTS ~

~ A ~

REQUESTED BY:	Kevin LaRocco ~ Deputy Chief
DESIRED ACTION:	To approve the appointment of officer Nichole Martinelli
PROPOSED MOTION:	I move to approve the appointment of Officer Nichole Martinelli, Congratulations and Thank you for Serving the town of Wellfleet.
ACTION TAKEN:	Moved By: _____ Seconded By: _____ Condition(s):
VOTED:	Yea _____ Nay _____ Abstain _____

Town of Wellfleet
Police Department

June 13, 2023

To: Select Board
From: Acting Chief Kevin M. LaRocco

Subject: FULL TIME POLICE OFFICER APPOINTMENT

I request Nichole Martinelli be appointed as a Full Time Police Officer subject to the successful acceptance and subsequent completion of the Massachusetts Police Training Council Academy. Ms. Martinelli will be filling one of our recent vacancies, the academy is scheduled to begin August 14, 2023 with a graduation date of February 2, 2024

Nichole Martinelli:

Physical	Complete/Passed
Physical Agility Test	In-Progress
Police Academy Application	In-Progress
Background Check	Complete/Passed
Psychological Evaluation	In-Progress

I recommend that Ms. Martinelli be appointed as above and that a conditional offer of employment be extended as follows:

- Pass a background investigation
- Pass a psychological
- Pass a physical
- Pass the Physical Agility Test (PAT test)
- Obtain or be able to obtain a MA license to carry a firearms permit (Class A)
- Complete the Full Time Police Academy
- Satisfactorily complete the Field Training program

Respectfully submitted for your information and consideration.



Kevin M. LaRocco
Acting Chief of Police

cc: Richard Waldo, Town Administrator

Nichole Martinelli

Student

Contact May 9, 2023

Address **Mark Braun**
Middleboro, MA, 02346 Wellfleet Police Department
Phone Wellfleet, MA 02346

E-mail RE: Police Officer, May 9th, 2023

edu Dear Mark Braun,

As an experienced Community Service Officer, the advertisement for Police Officer with Wellfleet Police Department sparked my interest. When reviewing the position requirements and your organization's website, I was excited to find that my qualifications and personal strengths align with your needs and mission.

I bring a comprehensive set of skills that I believe will be valuable to Wellfleet Police Department. In my Community Service Officer role, I honed my abilities in first aid and criminal investigation, providing a firm foundation for the Police Officer position. My communication, people-centric nature, and compassion have afforded me excellent critical thinking skills. I am excited to contribute my talents and proficiency in problem-solving toward your team efforts. As an engaging communicator with a proven track record in emergency response, my focus on building strong professional relationships has been a beneficial asset throughout my career.

Please review my enclosed resume for a more in-depth illustration of my work history and accomplishments. I'm eager to discuss how my personality and background fit the Police Officer role.

Thank you for your time and consideration of my candidacy.

Sincerely,
Nichole Martinelli

NICHOLE MARTINELLI

Middleboro, MA 02346

EDUCATION

Bridgewater-Raynham Regional - Bridgewater, MA *05/2004*
High School Diploma

Taunton High School - Taunton, MA *05/2004*
High School Diploma

Transferred to Taunton High School for my senior year of high school and graduated from Taunton High School

Cape Cod Community College - West Barnstable *05/2023*
Law Enforcement Certificate: Law Enforcement

- Identify, Evaluate and utilize effective verbal, non-verbal and written communication
- Apply Ethical principles in decision-making situations
- Demonstrate an understanding of diversity and multiculturalism
- Identify a problem and develop solutions
- Properly use basic criminal justice terms and concepts
- Identify, explain, and apply major theories of crime causation and individual criminal behavior
- Identify and explain the interrelationship between the major components of the criminal justice system

Cape Cod Community College - West Barnstable *Expected in 12/2023*
Associate of Science: Criminal Justice

- Dean's List [Fall 2022]
- APCO Certified
- NG911 Certified
- CJIS Certified
- CPR/First-Aid/AED Certified

PROFESSIONAL SUMMARY

Highly motivated, critical thinker who is passionate about serving the community. Looking for an opportunity to join a Cape Cod police department and demonstrate

to the community and department knowledge of the law, public safety, government, excellent communication and problem solving skills

SKILLS

- Conflict Resolution Tactics
- Safety and Security
- Law Enforcement
- Exceptional Problem Solver
- Self-Defense Training
- Law Enforcement Information Databases
- Evidence Preservation
- Cpr/First Aid Certified
- Dispatching

PROFESSIONAL EXPERIENCE

Intern | Barnstable Police Department - Barnstable, MA *03/2023 - Current*

- Patrolled assigned zones to look for criminal violations and safety issues.
- Offered security presence to special events to scan guests, monitor premises and removed unauthorized individuals.
- Conducted foot patrol to make sure homeless population wasn't causing any issues
- Excellent communication skills, both verbal and written
- Learned and adapted quickly to new technology and software applications

Bartender | Crispi's Italian Cuisine - Bridgewater, MA *11/2015 - Current*

- Organized bar inventory and storage procedures to keep stock within optimal levels and meet expected customer demands.
- Regularly cleaned and sanitized bar area, beer lockers, refrigeration and storage areas.
- Followed alcohol awareness procedures for preventing excessive guest intoxication.
- Handled simultaneous customer, team, and business needs while avoiding unnecessary delays or errors.
- Cultivated strong relationships with repeat customers, engaging in friendly conversation and memorizing drink orders to promote loyalty.
- Proficient typing skills

CERTIFICATIONS

- CJIS Certified
- APCO Certified
- NG9-1-1 Certified
- CPR/FIRST-AID/STOP the Bleed Certified



SELECTBOARD

AGENDA ACTION REQUEST
Meeting Date: June 20, 2023

IV

STRUCTURE DISCUSSIONS & PUBLIC COMMENTS

REQUESTED BY:	Ryan Curley ~ Chair
DESIRED ACTION:	To review the current length of agenda items discussed and their time frames and limits of comments.
PROPOSED MOTION:	If a motion is needed one will be made at the time of the meeting.
SUMMARY:	
ACTION TAKEN:	Moved By: _____ Seconded By: _____ Condition(s):
VOTED:	Yea _____ Nay _____ Abstain _____

From: Ryan Curley Selectboard Chair

Date: 06/15/23

Structuring Discussions and Public Comments

Dear Members of the Board and the General Public,

Recently the time it takes us to get through a meeting has been increasing for various reasons, including several contentious items involving extensive public discourse. Meetings adjourning close to midnight are not to anyone's benefit. Selectboard meetings are not a double feature at the Drive-In. We introduced the consent agenda last year to deal with overly long meetings, which has been helpful. Yet we continue to struggle with the length of sessions.

It is essential to remind everyone that most agenda items are not public hearings and conduct themselves accordingly. We, as a government, welcome participatory democracy. Public input can provide additional perspectives that lead to better decisions, and it is critical that people understand the Board's decisions. A recent SJC ruling complicates how public comments are handled. Transparency is both a duty of the office and essential in building trust. To balance these priorities, several changes need to be made to maximize the use of everyone's time and effort.

Standards for Agenda Items

As a general principle, the Board must be action-based. The Board reserves its right to make decisions it deems are in the town's best interest. The Board has required that agenda items be filed at least seven (7) days before a regularly scheduled meeting ([see meeting schedule](#)). Supporting materials should also be filed with the Executive Assistant and the Chair at this time. Open Session materials provided to the Board must be legible and sufficiently detailed for the Board to act or weigh in on.

Agendas and Packets

To the public, there is a difference between the Selectboard agenda and the packet. An agenda is a list of items that the Board will consider at a given meeting and the time and location of the meeting. Per OML, an agenda is "the list of topics must be sufficiently specific to reasonably inform the public of the issues to be discussed at the meeting." The SB packet contains supporting materials to inform decisions and is separate from the agenda.

There is no requirement to post the materials in our packets. In the spirit of transparency and as a general courtesy, the Board and the town staff do their best to post the Selectboard's packet for the public before our meetings. Please be aware that it is not always available immediately, and materials can come in after a packet is assembled. Additionally, if the Board discusses the same material as a previous meeting, those materials might not be included in a

packet. If a member of the public notices that our packet is not posted in advance of the meeting, please let us and the staff know in advance of the meeting.

Structuring Discussion

Structuring discussion to make the best use of everyone's time is essential. To accomplish I am proposing the following guidelines.

1. Members of the public who wish to comment are encouraged to do so in writing before a meeting, if possible.
2. All public comments will be limited to no more than two minutes per speaker.
3. The public should refrain from having discussions among themselves in the meeting room when they have not been recognized.
4. Structuring Discussions.
 - a. Immediately after an item is presented, the Chair will go to the board members to see if they have any questions or need clarification. This should be purely for answering board questions about an item.
 - b. The Chair will open discussion for public comments or questions.
 - i. Each recognized speaker will be given no more than two minutes.
 - ii. Members of the public must make a timely indication to that effect and are encouraged to ask any of their questions first and allow their questions to be answered if appropriate.
 - iii. Board members should refrain from debating individual points with any member of the public but may ask for clarification.
 - c. Once any public comments are made, the Chair will return to the Board for deliberation, and no additional public comments can be made. The board members can ask a question of anyone they choose, including members of the public.
5. At the Chair's discretion, our Agendas will indicate items where public comments are not allowed. Certain items, such as contract agreements and grant awards, should be limited to the Board. There are two such contracts on tonight's agenda. I am asking the public to trust my judgment.

Shellfish Hearings.

- a. Whenever reasonable, shellfish hearings will be scheduled separately from the Board's regularly scheduled meetings.
- b. Continuances should be the exception and not the rule.
- c. All the above guidelines 1-4 apply to Shellfish Hearings.

Board Conduct

There are some minor changes that I am asking the board members to be mindful of. Some of these are repeating prior guidelines.

1. Please be on time. If you are running late or not going to be able to attend, let the Chair know in advance, but provided there is a quorum, our meetings will start promptly at their scheduled time.
2. If there needs to be a recess, please make some indication to that effect. Having a single break rather than having various board members excuse themselves randomly throughout a meeting is much more productive and considerate of everyone's time.
3. A meeting will only recess once when requested unless there are compelling reasons to take an additional recess.
4. If there are questions or new points of information from a board member, please provide them to staff or the person or group presenting an item as soon as possible. This is both a courtesy and improves the quality of any discussion.
5. Please make your points succinctly, and limit repetition.



SELECTBOARD

AGENDA ACTION REQUEST
Meeting Date: June 20, 2023

V

SPECIAL TOWN MEETING

REQUESTED BY:	Dane Silverman ~ Moderator
DESIRED ACTION:	To discuss with the board the date and warrant for the Special town Meeting
PROPOSED MOTION:	Once a date has been decided a motion will be made.
SUMMARY:	
ACTION TAKEN:	Moved By: _____ Seconded By: _____ Condition(s):
VOTED:	Yea _____ Nay _____ Abstain _____



SELECTBOARD

AGENDA ACTION REQUEST
Meeting Date: June 20, 2023

VI

COMMUNITY UPDATES

~ A ~

REQUESTED BY:	Suzanne Grout-Thomas ~ Community Service Director
DESIRED ACTION:	To affirm the vote to continue to make Maguire's Landing/LeCount's Landing a resident/taxpayer Beach.
PROPOSED MOTION:	I move to approve that Maguire's Landing, also known as LeCount's Landing Beach, to be a resident and taxpayer beach for the summer season on 2023.
SUMMARY:	
ACTION TAKEN:	Moved By: _____ Seconded By: _____ Condition (s):
VOTED:	



SELECTBOARD

AGENDA ACTION REQUEST
Meeting Date: June 20, 2023

VI

COMMUNITY UPDATES

~ B ~

REQUESTED BY:	Maggie Downey ~ Cape Light Compact
DESIRED ACTION:	To update the board on their energy efficiency programs and planning for the next three-years plan.
PROPOSED MOTION:	If a motion is needed one will be made at the time of the meeting.
SUMMARY:	
ACTION TAKEN:	Moved By: _____ Seconded By: _____ Condition(s):
VOTED:	Yea _____ Nay _____ Abstain _____

Update from the Cape Light Compact

**Maggie Downey, Compact Administrator
June 20, 2023**

**Cape Light
Compact**



Working Together Toward A Smarter Energy Future

Power Supply Rates: June '23 – December '23



Jan – Dec 2022	# of Participants	Rebates/Incentives Paid to Customers
Low Income	17	\$228,065
Residential	687	\$1,087,941
Commercial	29	\$110,186
Total	733	\$1,426,192

Wellfleet's Energy Efficiency Results for 2022



Jan – Dec 2022	# of Participants	Customer Savings	kWh Saved	Rebates/Incentives Paid to Customers
Low Income	17	\$0	-10,405	\$228,065
Residential	687	\$0	-37,159	\$1,087,941
Commercial	29	\$29,368.60	146,843	\$110,186
Total	733	\$29,368.60	99,279	\$1,426,192

Energy Efficiency Highlights for 2023



- **No-Cost Energy Assessments for residents and businesses**
 - Weatherization covered at 75% for residents
 - 100% for Income Eligible customers
 - 100% for renters and Moderate Income customers
 - Weatherization available for small businesses
- **Decarbonizing Home Heating System Offering**
 - Whole Home Rebates of \$10,000
 - Partial-Home Rebate of \$1,250 per to up to \$10,000
- **Summer Sizzler June through August 31st**
 - Execute a residential weatherization contract and receive a \$100 e-gift card

Energy Efficiency Highlights for 2023



- **Old Freezer or Refrigerator?**
 - Cape Light Compact vendor will come and remove and offer a \$75 rebate
- **E-Bike Incentive for Income Eligible Customers**
 - 75% of the cost up-to \$1,200
- **Energy Star Appliance Rebates**
 - Room AC - \$40
 - Room Air Purifiers - \$40
 - Dehumidifiers - \$30
 - Electric Clothes Dryer - \$50

Cape & Vineyard Electrification Offering



- **A coordinated effort by the Cape Light Compact to decarbonize 100 homes on Cape Cod and/or Martha's Vineyard through the installation of:**
 - Weatherization (Air Sealing & Insulation)
 - Heat Pumps (replacing electric resistance/oil/propane)
 - Solar PV Panels
 - Batteries *** (for only 25 homes depending on evaluation).
 - Electric Stoves

Who Is Eligible for CVEO?



- **Residents who heat with electric resistance/propane/oil and fall into the below categories:**
 - 80 participants must be deed-restricted properties based on “affordability” or income;
 - 100% incentive/cost for Heat Pump
 - 100% incentive/cost for Solar PV
 - 100% incentive/cost for Battery (limited to 25 % of participants due to funding)
 - 20 participants must qualify as moderate income and will receive significant incentives
 - 61-80% SMI or AMI
 - Heat Pumps: Compact will cover 80% of installed cost with a maximum customer co-pay of \$5,000, balance financed with Heat Loan
 - \$15,000 incentive for Solar PV, balance financed with a Heat Loan
 - Battery financed with Heat Loan
 - Heat Loan is contingent on lender approval

Customer Flow: Contact & Initial HEA



- **Interested customers contact the Cape Light Compact at 800-797-6699.**
 - The Cape Light Compact will determine initial eligibility.
 - If determined as a good candidate, customer information is sent over to the Lead Vendor (RISE).
- **Lead Vendor will contact customer to schedule a home energy assessment.**
 - An Energy Specialist will determine necessary weatherization work (air sealing and insulation) at the home and the feasibility of the home to proceed with the installation of CVEO program technologies (solar panels/heat pumps/batteries).

2023 Income Guidelines

Income qualifications are based on annual gross household income

# OF HOUSEHOLD MEMBERS	INCOME ELIGIBLE	ENHANCED RESIDENTIAL
1	\$42,411	\$56,548
2	\$55,461	\$73,948
3	\$68,511	\$91,348
4	\$81,561	\$108,748

Residents above the listed income guidelines, please call 1-800-797-6699 for more information.

CUSTOMERS BELOW THIS INCOME LEVEL ARE ELIGIBLE FOR:

Fuel Assistance
100% Weatherization Incentive
Potential Appliance and Heating System Upgrades
Electric Discount Rate
Gas Discount Rates

CUSTOMERS BELOW THIS INCOME LEVEL ARE ELIGIBLE FOR:

100% Weatherization Incentive (Insulation)
No-cost Air Sealing





SELECTBOARD

AGENDA ACTION REQUEST
Meeting Date: June 20, 2023



PUBLIC HEARINGS

~ A ~

REQUESTED BY:	Pike Telecom ~ Marc Monestime, Sean Couepel, and Daryl Crossman
DESIRED ACTION:	To approve the Verizon and NSTAR dba Eversource to place temporarily six new conduit jointly owned poles and to remove three jointly owned poles near #1000 Chequesset Neck Rd.
PROPOSED MOTION:	I move to approve Verizon and NSTAR (dba Eversource) to place temporarily six new conduit jointly owned poles and to remove three jointly owned poles near #1000 Chequesset Neck Road, Wellfleet
SUMMARY:	
Project	Moved By: _____ Seconded By: _____ Condition(s):
VOTED:	Yea _____ Nay _____ Abstain _____



Outside Plant Engineering
44 Old Townhouse Road
South Yarmouth, MA 02664

December 15, 2022

Town of Wellfleet
Town Hall Office
300 Main Street
Wellfleet, MA 02667

Honorable Select Board,

Attached is a petition# MA2022-47 for Verizon New England Inc. and NSTAR Electric d/b/a Eversource Energy to place temporarily six new jointly owned poles 15/40A, 15/40B, 15/40C, 15/40D, 15/40E, 15/40F and, to Remove three jointly owned poles 15/42, 15/42.5, 15/43 - near #1000 Chequessett Neck Rd, in Wellfleet, MA.

Would you kindly consider this petition and return the executed copies.

Sincerely,

Verizon New England Inc.
Attn: Daryl Crossman - ROW
44 Old Townhouse Road
South Yarmouth, MA 02664

(508) 398-5754 - Office
daryl.crossman@verizon.com - Email

PETITION FOR JOINT OR IDENTICAL POLE LOCATIONS

December 15, 2022

To the Town Select Board

in **WELLFLEET**, Massachusetts

VERIZON NEW ENGLAND INC. and NSTAR ELECTRIC D/B/A EVERSOURCE ENERGY request permission to locate poles, wires, cables and fixtures including the necessary anchors, guys and other such sustaining and protecting fixtures to be owned and used in common by your petitioners, along and across the following public way or ways:

CHEQUESSETT NECK RD:

To place six (6) jointly owned poles (temporarily) 15/40A, 15/40B, 15/40C, 15/40D, 15/40E, 15/40F AND to remove four (3) jointly owned poles 15/42, 15/42.5, 15/43 near #1000 Chequessett Neck Rd, Wellfleet, MA.

NECESSITY – This work is necessary to accommodate the construction of the new bridge over the Herring River.

Wherefore they pray that after due notice and hearing as provided by law, they be granted joint or identical locations for and permission to erect and maintain poles, wires and cables, together with anchors, guys and other such sustaining and protecting fixtures as they may find necessary, said poles to be erected substantially in accordance with the plan filed herewith marked-VZ N.E. Inc. Plan No. **MA2022-47** Dated **December 5th, 2022**.

Also for permission to lay and maintain underground laterals, cables and wires in the above or intersecting public ways for the purpose of making connections with such poles and buildings as each of said petitioners may desire for distributing purposes.

Your petitioners agree that space shall be reserved and maintained for the limited purpose of attaching one-way low voltage fire and police signaling wires owned by the municipality or governmental entity for public safety purposes only.

VERIZON NEW ENGLAND INC.

By 
Daryl Crossman - Manager - Rights of Way

Dated this 15 day of Dec, 2022.

NSTAR ELECTRIC D/B/A EVERSOURCE ENERGY

By _____
Right of Way Representative

Dated this _____ day of _____, 2022.

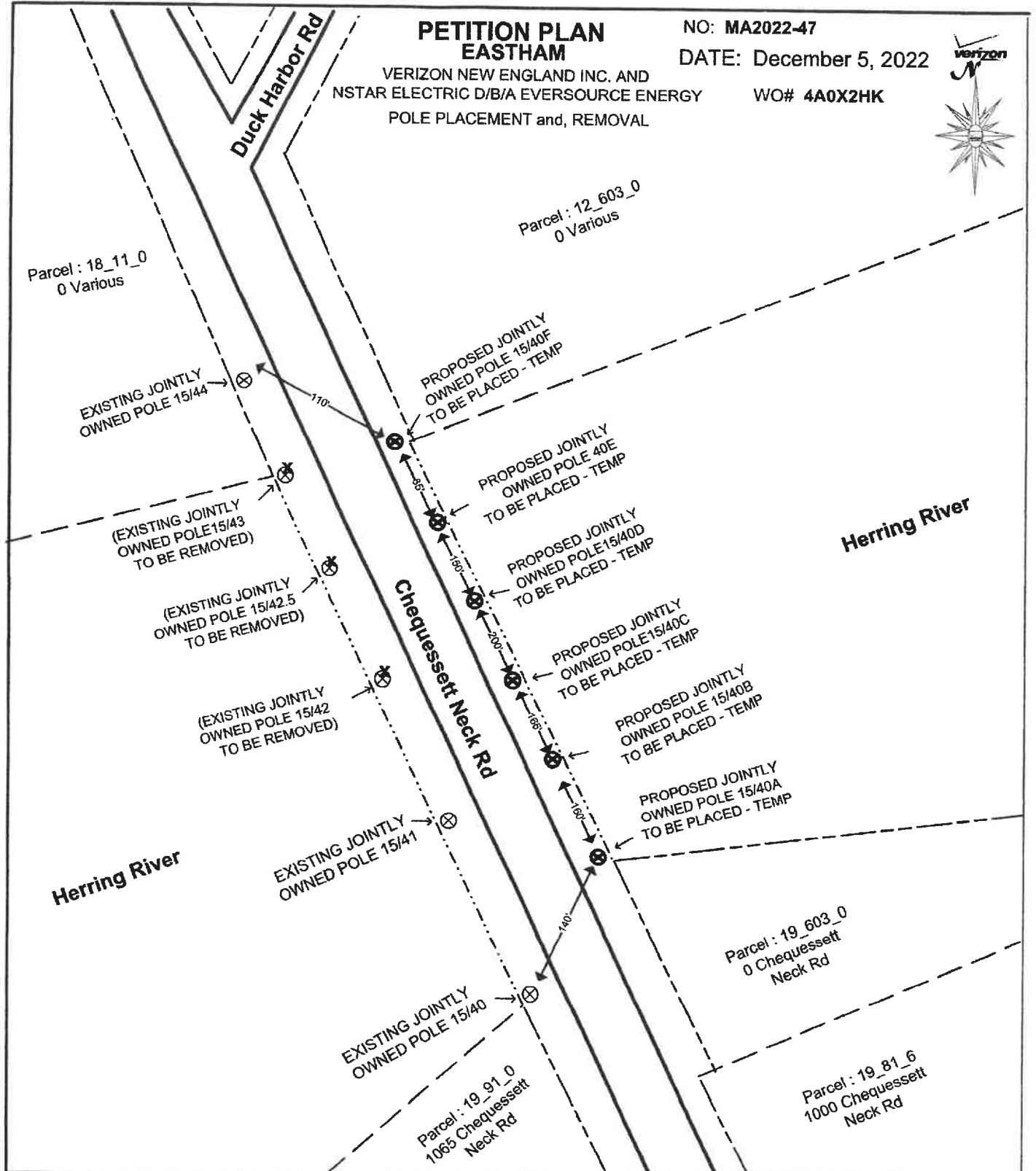
**PETITION PLAN
EASTHAM**

VERIZON NEW ENGLAND INC. AND
NSTAR ELECTRIC D/B/A EVERSOURCE ENERGY
POLE PLACEMENT and, REMOVAL

NO: MA2022-47

DATE: December 5, 2022

WO# 4A0X2HK



- LEGEND**
- EXISTING JOINTLY OWNED POLE TO REMOVE OR RELOCATE
 - PROPOSED JOINTLY OWNED POLE
 - EXISTING JOINTLY OWNED POLE TO REMAIN

- EDGE OF BRIDGE
- EDGE OF PAVEMENT
- EDGE OF PROPERTY
- CENTER OF ROAD

ABUTTERS LIST

PARCEL ID: 19_91_0
1065 CHEQUESSETT NECK RD

EURICH DONALD A & LAZARUS JILL
7 WALNUT ST
NEWTONVILLE, MA 02460

PARCEL ID: 19_81_6
1000 CHEQUESSETT NECK RD

WELLFLEET CONSERVATION TRUST
BOX 84
WELLFLEET, MA 02667

PARCEL ID: 19_603_0
0 CHEQUESSETT NECK RD

CAPE COD NATIONAL SEASHORE
99 MARCONI SITE RD
WELLFLEET, MA 02667

PARCEL ID: 12_603_0
0 VARIOUS

CCNS
0 VARIOUS
WELLFLEET, MA 00000

PARCEL ID: 18_11_0
0 VARIOUS

CCNS
0 VARIOUS
WELLFLEET, MA 00000

ORDER FOR JOINT OR IDENTICAL POLE LOCATIONS

By the Select Board of the Town of WELLFLEET, Massachusetts.

Notice having been given and a public hearing held, as provided by law,
IT IS HEREBY ORDERED:

that VERIZON NEW ENGLAND INC. and NSTAR ELECTRIC D/B/A EVERSOURCE ENERGY, be, and they are hereby granted joint or identical locations for and permission to erect and maintain poles and their respective wires and cables to be placed thereon, together with anchors guys and other such sustaining and protecting fixtures as said Companies may deem necessary, in public way or ways hereinafter referred to, as requested in petition of said Companies dated the 5th day of December 2022.

CHEQUESSETT NECK RD:

To place six (6) jointly owned poles (temporarily) 15/40A, 15/40B, 15/40C, 15/40D, 15/40E, 15/40F AND to remove four (3) jointly owned poles 15/42, 15/42.5, 15/43 near #1000 Chequessett Neck Rd, Wellfleet, MA.

NECESSITY – This work is necessary to accommodate the construction of the new bridge over the Herring River.

All construction under this order shall be in accordance with the following conditions:

Poles shall be of sound timber, and reasonably straight and shall be set substantially at the points indicated upon the plan marked-VZ N. E. Inc. No. **MA2022-47** in a package Dated **December 5, 2022** - filed with said petition.

The following are the public ways or parts of ways along which the poles above referred to may be erected, and the number of poles, which may be erected thereon under this order:

Chequessett Neck Rd
Pole placement, removal and relocation to place new cable into new conduit.

Also that permission be and hereby is granted to each of said Companies to lay and maintain underground laterals, cables and wires in the above or intersecting public ways for the purpose of making connections with such poles and buildings as each may desire for distributing purposes.

I hereby certify that the foregoing order was adopted at a meeting of the SELECT BOARD of Wellfleet, Massachusetts held on the _____ day of _____ 20__.

Select Board Clerk

We hereby certify that on _____ 20____, at _____ o'clock _____ m., at the _____ a public hearing was held on the petition of the VERIZON NEW ENGLAND INC. and NSTAR ELECTRIC D/B/A EVERSOURCE ENERGY for permission to erect the poles, wires, cables, fixtures and connections described in the order herewith recorded, and that we mailed at least seven days before said hearing a written notice of the time and place of said hearing to each of the owners of real estate (as determined by the last preceding assessment for taxation) along the ways or parts of ways upon which the Companies are permitted to erect poles, wires, cables, fixtures and connections under said order. And that thereupon said order was duly adopted.

Select Board of Wellfleet, Massachusetts

CERTIFICATE

i hereby certify that the foregoing is a true copy of a joint location order and certificate of hearing with notice adopted by the SELECT BOARD for the Town of Wellfleet, Massachusetts, on the _____ day of _____ 20____, and recorded with the records of location orders of said Town. Book _____, Page _____. this certified copy is made under the provisions of Chapter 166 of General Laws and any additions thereto or amendments thereof.

Attest:

Town Clerk

PLEASE RETURN TO: Verizon New England Inc.,
Attn: Daryl Crossman – ENG – ROW
44 Old Townhouse Rd, South Yarmouth, MA 02664

ORDER FOR JOINT OR IDENTICAL POLE LOCATIONS

By the Select Board of the Town of WELLFLEET, Massachusetts.

Notice having been given and a public hearing held, as provided by law,
IT IS HEREBY ORDERED:

that VERIZON NEW ENGLAND INC. and NSTAR ELECTRIC D/B/A EVERSOURCE ENERGY, be, and they are hereby granted joint or identical locations for and permission to erect and maintain poles and their respective wires and cables to be placed thereon, together with anchors guys and other such sustaining and protecting fixtures as said Companies may deem necessary, in public way or ways hereinafter referred to, as requested in petition of said Companies dated the 5th day of December 2022.

CHEQUESSETT NECK RD:

To place six (6) jointly owned poles (temporarily) 15/40A, 15/40B, 15/40C, 15/40D, 15/40E, 15/40F AND to remove four (3) jointly owned poles 15/42, 15/42.5, 15/43 near #1000 Chequessett Neck Rd, Wellfleet, MA.

NECESSITY – This work is necessary to accommodate the construction of the new bridge over the Herring River.

All construction under this order shall be in accordance with the following conditions:

Poles shall be of sound timber, and reasonably straight and shall be set substantially at the points indicated upon the plan marked-VZ N. E. Inc. No. **MA2022-47** in a package Dated **December 5, 2022** - filed with said petition.

The following are the public ways or parts of ways along which the poles above referred to may be erected, and the number of poles, which may be erected thereon under this order:

Chequessett Neck Rd
Pole placement, removal and
relocation to place new cable into
new conduit.

Also that permission be and hereby is granted to each of said Companies to lay and maintain underground laterals, cables and wires in the above or intersecting public ways for the purpose of making connections with such poles and buildings as each may desire for distributing purposes.

I hereby certify that the foregoing order was adopted at a meeting of the SELECT BOARD of Wellfleet, Massachusetts held on the _____ day of _____ 20__.

Select Board Clerk

We hereby certify that on _____ 20 __, at _____ o'clock _____ m., at the _____ a public hearing was held on the petition of the VERIZON NEW ENGLAND INC. and NSTAR ELECTRIC D/B/A EVERSOURCE ENERGY for permission to erect the poles, wires, cables, fixtures and connections described in the order herewith recorded, and that we mailed at least seven days before said hearing a written notice of the time and place of said hearing to each of the owners of real estate (as determined by the last preceding assessment for taxation) along the ways or parts of ways upon which the Companies are permitted to erect poles, wires, cables, fixtures and connections under said order. And that thereupon said order was duly adopted.

Select Board of Wellfleet, Massachusetts

CERTIFICATE

I hereby certify that the foregoing is a true copy of a joint location order and certificate of hearing with notice adopted by the SELECT BOARD for the Town of Wellfleet, Massachusetts, on the _____ day of _____ 20 __, and recorded with the records of location orders of said Town, Book _____, Page _____. this certified copy is made under the provisions of Chapter 166 of General Laws and any additions thereto or amendments thereof.

Attest:

Town Clerk

PLEASE RETURN TO: Eversource Energy
Attn: Right Of Way
484 Willow Street, Yarmouth, MA 02673

ORDER FOR JOINT OR IDENTICAL POLE LOCATIONS

By the Select Board of the Town of WELLFLEET, Massachusetts.

Notice having been given and a public hearing held, as provided by law,
IT IS HEREBY ORDERED:

that VERIZON NEW ENGLAND INC. and NSTAR ELECTRIC D/B/A EVERSOURCE ENERGY, be, and they are hereby granted joint or identical locations for and permission to erect and maintain poles and their respective wires and cables to be placed thereon, together with anchors guys and other such sustaining and protecting fixtures as said Companies may deem necessary, in public way or ways hereinafter referred to, as requested in petition of said Companies dated the 5th day of December 2022.

CHEQUESSETT NECK RD:

To place six (6) jointly owned poles (temporarily) 15/40A, 15/40B, 15/40C, 15/40D, 15/40E, 15/40F AND to remove four (3) jointly owned poles 15/42, 15/42.5, 15/43 near #1000 Chequessett Neck Rd, Wellfleet, MA.

NECESSITY – This work is necessary to accommodate the construction of the new bridge over the Herring River.

All construction under this order shall be in accordance with the following conditions:

Poles shall be of sound timber, and reasonably straight and shall be set substantially at the points indicated upon the plan marked-VZ N. E. Inc. No. **MA2022-47** in a package Dated **December 5, 2022** - filed with said petition.

The following are the public ways or parts of ways along which the poles above referred to may be erected, and the number of poles, which may be erected thereon under this order:

Chequessett Neck Rd
Pole placement, removal and
relocation to place new cable into
new conduit.

Also that permission be and hereby is granted to each of said Companies to lay and maintain underground laterals, cables and wires in the above or intersecting public ways for the purpose of making connections with such poles and buildings as each may desire for distributing purposes.

I hereby certify that the foregoing order was adopted at a meeting of the SELECT BOARD of Wellfleet, Massachusetts held on the _____ day of _____ 20__.

Select Board Clerk

We hereby certify that on _____ 20 __, at _____ o'clock _____ m., at the _____ a public hearing was held on the petition of the VERIZON NEW ENGLAND INC. and NSTAR ELECTRIC D/B/A EVERSOURCE ENERGY for permission to erect the poles, wires, cables, fixtures and connections described in the order herewith recorded, and that we mailed at least seven days before said hearing a written notice of the time and place of said hearing to each of the owners of real estate (as determined by the last preceding assessment for taxation) along the ways or parts of ways upon which the Companies are permitted to erect poles, wires, cables, fixtures and connections under said order. And that thereupon said order was duly adopted.

Select Board of Wellfleet, Massachusetts

CERTIFICATE

I hereby certify that the foregoing is a true copy of a joint location order and certificate of hearing with notice adopted by the SELECT BOARD for the Town of Wellfleet, Massachusetts, on the _____ day of _____ 20 __, and recorded with the records of location orders of said Town, Book _____, Page _____. This certified copy is made under the provisions of Chapter 166 of General Laws and any additions thereto or amendments thereof.

Attest:

Town Clerk



SELECTBOARD

AGENDA ACTION REQUEST
Meeting Date: June 20, 2023

VII

PUBLIC HEARINGS

~ B ~

REQUESTED BY:	Pike Telecom ~ Marc Monestime, Sean Couepel, and Daryl Crossman
DESIRED ACTION:	To approve the placement of conduit provided by Mass DOT at 1065 Chequessett Neck Road.
PROPOSED MOTION: Summary:	I move to approve the placement of approximately 800 feet of new conduit, provided by MASS DOT at 1065 Chequessett Neck Road, Wellfleet.
ACTION TAKEN:	Moved By: _____ Seconded By: _____ Condition(s):
VOTED:	Yea _____ Nay _____ Abstain _____



Outside Plant Engineering
44 Old Townhouse Road
South Yarmouth, MA 02664

February 7, 2023

Town of Wellfleet
Town Hall Office
300 Main Street
Wellfleet, MA 02667

Honorable Select Board,

Attached is a petition# MA2022-48, for Verizon New England Inc., to place approximately eight-hundred feet (800') of new cable in conduit provided by MassDOT, at #1065 Chequessett Neck Rd, in Wellfleet, MA.

Would you kindly consider this petition and return the executed copies.

Sincerely,

A handwritten signature in black ink that reads "Daryl Crossman". The signature is written in a cursive, flowing style.

Verizon New England Inc.
Attn: Daryl Crossman
44 Old Townhouse RD
South Yarmouth, MA 02664

Phone: 508-398-5754
daryl.crossman@verizon.com

**PETITION PLAN
WELLFLEET**

VERIZON NEW ENGLAND INC.
CABLE PLACEMENT

NO: MA2022-48
DATE: December 1, 2022
WO# 4A0X2HX



Parcel : 18_11_0
0 Various

Parcel : 12_603_0
0 Various

EXISTING POLE 15/44

Herring River

Herring River

1 - 4" PVC to be Placed by MassDOT
800' OF NEW CABLE
Chequessett Neck Rd


Parcel : 19_603_0
0 Chequessett
Neck Rd



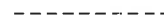

EXISTING POLE 15/41

Parcel : 19_81_6
1000 Chequessett
Neck Rd

Parcel : 19_91_0
1065 Chequessett
Neck Rd

LEGEND

 EXISTING JOINTLY OWNED POLE TO REMAIN

-  EDGE OF BRIDGE
-  EDGE OF PAVEMENT
-  EDGE OF PROPERTY
-  CENTER OF ROAD

ABUTTERS LIST

PARCEL ID: 19_91_0
1065 CHEQUESSETT NECK RD

EURICH DONALD A & LAZARUS JILL
7 WALNUT ST
NEWTONVILLE, MA 02460

PARCEL ID: 19_81_6
1000 CHEQUESSETT NECK RD

WELLFLEET CONSERVATION TRUST
BOX 84
WELLFLEET, MA 02667

PARCEL ID: 19_603_0
0 CHEQUESSETT NECK RD

CAPE COD NATIONAL SEASHORE
99 MARCONI SITE RD
WELLFLEET, MA 02667

PARCEL ID: 12_603_0
0 VARIOUS

CCNS
0 VARIOUS
WELLFLEET, MA 00000

PARCEL ID: 18_11_0
0 VARIOUS

CCNS
0 VARIOUS
WELLFLEET, MA 00000

ORDER FOR CONDUIT LOCATION

By the Town Council of the Town of Wellfleet, Massachusetts.

Notice having been given and a public hearing held, as provided by law,
It is HEREBY ORDERED:

That permission be and hereby is granted VERIZON NEW ENGLAND INC. to lay and maintain underground wires and cables to be placed therein, under the surface of the following public way or ways as requested in petition of said Company dated the 7th day of February 2023.

Chequessett Neck Rd:

Place approximately eight-hundred feet (800') of cable beginning at an existing pole 15/41 at 1065 Chequessett Neck Rd, which is situated on the southerly side of Babcock Street, thence extending in a northerly direction across Chequessett Neck Rd, to existing pole 15/44 at the corner of Chequessett neck Rd and Duck Harbor Rd.

This petition is necessary in order to place new cable and provide service to this area.

Substantially as shown on plan marked- VZ N.E. Inc. No. MA2022-48 dated December 1st, 2022 - filed with said petition. Also, that permission be and hereby is granted said VERIZON NEW ENGLAND INC. to lay and maintain underground conduits, manholes, cables and wires in the above or intersecting public ways for the purpose of making connections with such poles and buildings as it may desire for distributing purposes.

The foregoing permission is subject to the following conditions:

1. The conduits and manholes shall be of such material and construction and all work done in such manner as to be satisfactory to such municipal officers as it may appoint to the supervision of the work, and a plan showing the location of conduits constructed shall be filed with the Town when the work is completed.
2. In every underground main line conduit constructed by said Company hereunder one duct not less than three inches in diameter shall be reserved and maintained for the limited purpose of attaching one-way low voltage fire and police signaling wires owned by the municipality or governmental entity for public safety purposes only.
3. Said Company shall indemnify and save the Town harmless against all damages, costs and expense whatsoever to which the Town may be subjected in consequence of the acts or neglect of said Company, its agents or servants, or in any manner arising from the rights and privileges granted it by the Town.
4. In addition said Company shall, before a public way is disturbed for the laying of its wire or conduits, execute its bond in a penal sum of Ten Thousand Dollars (\$10,000) (reference being had to the bond already on file with said Town) conditioned for the faithful performance of it duties under this permit.
5. Said Company shall comply with the requirements of existing by-laws and such as may hereafter be adopted governing the construction and maintenance of conduits and wires, so far as the same are not inconsistent with the laws of the Commonwealth.

I hereby certify that the foregoing order was adopted at a meeting of the Town Council of the Town of WELLFLEET, Massachusetts, held on the _____ day of _____ 2023.

Selectboard Clerk

ORDER FOR CONDUIT LOCATION

We hereby certify that on _____ 2023, at ____ o'clock ____ M. at _____
_____ a public hearing was held on the petition of the VERIZON NEW ENGLAND INC. for
permission to lay and maintain underground conduits, manholes and connection, with the wires and cables to be placed
therein, described in the order herewith recorded, and that we mail at least seven days before said hearing a written notice
of the time and place of said hearing to each of the owners of real estate (as determined by the last preceding assessment
for taxation) along the ways or parts of ways upon which the Company is permitted to construct the lines of said
Company under said order. And that thereupon said order was duly adopted.

Town Council of the Town of WELLFLEET, Massachusetts

CERTIFICATE

I hereby certify that the foregoing is a true copy of location order, and certificate of hearing with notice adopted
by the Town Council of the Town of WELLFLEET, Massachusetts, on the _____ day of _____
2023, and recorded with the records of location orders of said Town, Book _____ Page _____. This certified copy
is made under the provisions of Chapter 166 General Laws and any additions thereto or amendments thereof.

Attest:

Town Clerk

**PLEASE RETURN TO: Verizon New England Inc.,
Attn: Daryl Crossman – ENG – ROW
44 Old Townhouse Rd, South Yarmouth, MA 02664**

ORDER FOR CONDUIT LOCATION

By the Town Council of the Town of Wellfleet, Massachusetts.

Notice having been given and a public hearing held, as provided by law,
It is HEREBY ORDERED:

That permission be and hereby is granted VERIZON NEW ENGLAND INC. to lay and maintain underground wires and cables to be placed therein, under the surface of the following public way or ways as requested in petition of said Company dated the 7th day of February 2023.

Chequessett Neck Rd:

Place approximately eight-hundred feet (800') of cable beginning at an existing pole 15/41 at 1065 Chequessett Neck Rd, which is situated on the southerly side of Babcock Street, thence extending in a northerly direction across Chequessett Neck Rd, to existing pole 15/44 at the corner of Chequessett neck Rd and Duck Harbor Rd.

This petition is necessary in order to place new cable and provide service to this area.

Substantially as shown on plan marked- VZ N.E. Inc. No. MA2022-48 dated December 1st, 2022 - filed with said petition. Also, that permission be and hereby is granted said VERIZON NEW ENGLAND INC. to lay and maintain underground conduits, manholes, cables and wires in the above or intersecting public ways for the purpose of making connections with such poles and buildings as it may desire for distributing purposes.

The foregoing permission is subject to the following conditions:

1. The conduits and manholes shall be of such material and construction and all work done in such manner as to be satisfactory to such municipal officers as it may appoint to the supervision of the work, and a plan showing the location of conduits constructed shall be filed with the Town when the work is completed.
2. In every underground main line conduit constructed by said Company hereunder one duct not less than three inches in diameter shall be reserved and maintained for the limited purpose of attaching one-way low voltage fire and police signaling wires owned by the municipality or governmental entity for public safety purposes only.
3. Said Company shall indemnify and save the Town harmless against all damages, costs and expense whatsoever to which the Town may be subjected in consequence of the acts or neglect of said Company, its agents or servants, or in any manner arising from the rights and privileges granted it by the Town.
4. In addition said Company shall, before a public way is disturbed for the laying of its wire or conduits, execute its bond in a penal sum of Ten Thousand Dollars (\$10,000) (reference being had to the bond already on file with said Town) conditioned for the faithful performance of it duties under this permit.
5. Said Company shall comply with the requirements of existing by-laws and such as may hereafter be adopted governing the construction and maintenance of conduits and wires, so far as the same are not inconsistent with the laws of the Commonwealth.

I hereby certify that the foregoing order was adopted at a meeting of the Town Council of the Town of WELLFLEET, Massachusetts, held on the _____ day of _____ 2023.

Selectboard Clerk

ORDER FOR CONDUIT LOCATION

We hereby certify that on _____ 2023, at _____ o'clock ____ M. at _____ a public hearing was held on the petition of the VERIZON NEW ENGLAND INC. for permission to lay and maintain underground conduits, manholes and connection, with the wires and cables to be placed therein, described in the order herewith recorded, and that we mail at least seven days before said hearing a written notice of the time and place of said hearing to each of the owners of real estate (as determined by the last preceding assessment for taxation) along the ways or parts of ways upon which the Company is permitted to construct the lines of said Company under said order. And that thereupon said order was duly adopted.

Town Council of the Town of WELLFLEET, Massachusetts

CERTIFICATE

I hereby certify that the foregoing is a true copy of location order, and certificate of hearing with notice adopted by the Town Council of the Town of WELLFLEET, Massachusetts, on the _____ day of _____ 2023, and recorded with the records of location orders of said Town, Book _____ Page _____. This certified copy is made under the provisions of Chapter 166 General Laws and any additions thereto or amendments thereof.

Attest:

Town Clerk



SELECTBOARD

AGENDA ACTION REQUEST
Meeting Date: June 20, 2023

VII

PUBLIC HEARINGS

~ C ~

REQUESTED BY:	MJT Enterprises Inc. dba Blackfish Variety
DESIRED ACTION:	To approve the change of manager application
PROPOSED MOTION: SUMMARY:	I move to approve the application submitted May 22, 2023, for the change of manager to MJT Enterprises, Inc. doing business as Blackfish variety located at 1600 State Highway Wellfleet
ACTION TAKEN:	Moved By: _____ Seconded By: _____ Condition(s):
VOTED:	Yea _____ Nay _____ Abstain _____



The Commonwealth of Massachusetts
Alcoholic Beverages Control Commission

For Reconsideration

LICENSING AUTHORITY CERTIFICATION

Wellfleet

City /Town

00058-PK-1348

ABCC License Number

TRANSACTION TYPE (Please check all relevant transactions):

The license applicant petitions the Licensing Authorities to approve the following transactions:

- New License
- Change of Location
- Change of Class (i.e. Annual / Seasonal)
- Change Corporate Structure (i.e. Corp / LLC)
- Transfer of License
- Alteration of Licensed Premises
- Change of License Type (i.e. club / restaurant)
- Pledge of Collateral (i.e. License/Stock)
- Change of Manager
- Change Corporate Name
- Change of Category (i.e. All Alcohol/Wine, Malt)
- Management/Operating Agreement
- Change of Officers/
Directors/LLC Managers
- Change of Ownership Interest
(LLC Members/ LLP Partners,
Trustees)
- Issuance/Transfer of Stock/New Stockholder
- Change of Hours
- Other
- Change of DBA

APPLICANT INFORMATION

Name of Licensee DBA

Street Address Zip Code

Manager

Granted under Special Legislation? Yes No

If Yes, Chapter
of the Acts of (year)

\$15 Package Store Annual Wines and Malt Beverages

Type (i.e. restaurant, package store) Class (Annual or Seasonal) Category (i.e. Wines and Malts / All Alcohol)

DESCRIPTION OF PREMISES Complete description of the licensed premises

two story 2,226 nsq. ft. building consisting of a variety/convenience store on the first floor, Southwest entrance/exit, North exit, Easterly exit amd Northeasterly exit.

LOCAL LICENSING AUTHORITY INFORMATION

Application filed with the LLA: Date Time

Advertised Yes No Date Published Publication

Abutters Notified: Yes No Date of Notice

Date APPROVED by LLA Decision of the LLA

Additional remarks or conditions (E.g. Days and hours)

For Transfers ONLY:
Seller License Number: Seller Name:

The Local Licensing Authorities By:

Alcoholic Beverages Control Commission
Ralph Sacramone
Executive Director



The Commonwealth of Massachusetts
 Alcoholic Beverages Control Commission
 95 Fourth Street, Suite 3, Chelsea, MA 02150-2358
 www.mass.gov/abcc

RETAIL ALCOHOLIC BEVERAGES LICENSE APPLICATION
 MONETARY TRANSMITTAL FORM

AMENDMENT-Change of Manager

APPLICATION SHOULD BE COMPLETED ON-LINE, PRINTED, SIGNED, AND SUBMITTED TO THE LOCAL LICENSING AUTHORITY.

ECRT CODE: RETA

Please make \$200.00 payment here: ABCC PAYMENT WEBSITE

PAYMENT MUST DENOTE THE NAME OF THE LICENSEE CORPORATION, LLC, PARTNERSHIP, OR INDIVIDUAL AND INCLUDE THE PAYMENT RECEIPT

ABCC LICENSE NUMBER (IF AN EXISTING LICENSEE, CAN BE OBTAINED FROM THE CITY) 00058-PK-1348

ENTITY/ LICENSEE NAME MJT Enterprises Inc

ADDRESS 1600 State Highway Wellfleet MA 02667

CITY/TOWN Wellfleet STATE MA ZIP CODE 02667

For the following transactions (Check all that apply):

- | | | | |
|--|---|---|---|
| <input type="checkbox"/> New License | <input type="checkbox"/> Change of Location | <input type="checkbox"/> Change of Class (i.e. Annual / Seasonal) | <input type="checkbox"/> Change Corporate Structure (i.e. Corp / LLC) |
| <input type="checkbox"/> Transfer of License | <input type="checkbox"/> Alteration of Licensed Premises | <input type="checkbox"/> Change of License Type (i.e. club / restaurant) | <input type="checkbox"/> Pledge of Collateral (i.e. License/Stock) |
| <input checked="" type="checkbox"/> Change of Manager | <input type="checkbox"/> Change Corporate Name | <input type="checkbox"/> Change of Category (i.e. All Alcohol/Wine, Malt) | <input type="checkbox"/> Management/Operating Agreement |
| <input type="checkbox"/> Change of Officers/
Directors/LLC Managers | <input type="checkbox"/> Change of Ownership Interest
(LLC Members/ LLP Partners,
Trustees) | <input type="checkbox"/> Issuance/Transfer of Stock/New Stockholder | <input type="checkbox"/> Change of Hours |
| | | <input type="checkbox"/> | <input type="checkbox"/> Change of DBA |

THE LOCAL LICENSING AUTHORITY WILL NOT ACCEPT THIS APPLICATION UNTIL YOU HAVE PAID THE FEE. PLEASE VISIT THE LOCAL LICENSING AUTHORITY WEBSITE TO SUBMIT THIS APPLICATION AND TO PAY THE FEE. PLEASE REPLACE PORTAL

Alcoholic Beverages Control Commission

Chelsea, MA 02150-2358

public hearing
 6-20-2023



The Commonwealth of Massachusetts
 Alcoholic Beverages Control Commission
 95 Fourth Street, Suite 3, Chelsea, MA 02150-2358
 www.mass.gov/abcc

AMENDMENT-Change of Manager **Change of License Manager**

1. BUSINESS ENTITY INFORMATION

Entity Name: MJT Enterprises Inc Municipality: Wellfleet ABCC License Number: 00058-PK-1348

2. APPLICATION CONTACT

The application contact is the person who should be contacted with any questions regarding this application.

Name: Raige Marsh Title: Controller Email: rmarsh@capewell.com Phone: 774 212 2516

3A. MANAGER INFORMATION

The individual that has been appointed to manage and control of the licensed business and premises.

Proposed Manager Name: Christina Enos Date of Birth: 9/15/1973 SSN: 255 53 9846
 Residential Address: 329 Mt6 Truro MA 02666
 Email: turner73.enos@gmail.com Phone: 774 353 8680
 Please indicate how many hours per week you intend to be on the licensed premises: 40 Last-Approved License Manager: Laura Parker

3B. CITIZENSHIP/BACKGROUND INFORMATION

Are you a U.S. Citizen? Yes No *Manager must be U.S. citizen
 If yes, attach one of the following as proof of citizenship US Passport, Voter's Certificate, Birth Certificate or Naturalization Papers.
 Have you ever been convicted of a state, federal, or military crime? Yes No
 If yes, fill out the table below and attach an affidavit providing the details of any and all convictions. Attach additional pages, if necessary, utilizing the format below.

Date	Municipality	Charge	Disposition

3C. EMPLOYMENT INFORMATION

Please provide your employment history. Attach additional pages, if necessary, utilizing the format below.

Start Date	End Date	Position	Employer	Supervisor Name
<u>7/20/2016</u>	<u>Current</u>	<u>Manager</u>	<u>Blackfish Variety</u>	<u>Raige Marsh</u>
<u>2013</u>	<u>2016</u>	<u>Attendant</u>	<u>Salty Market</u>	<u>Clare Ellory</u>

3D. PRIOR DISCIPLINARY ACTION

Have you held a beneficial or financial interest in, or been the manager of, a license to sell alcoholic beverages that was subject to disciplinary action? Yes No If yes, please fill out the table. Attach additional pages, if necessary,utilizing the format below.

Date of Action	Name of License	State	City	Reason for suspension, revocation or cancellation

I hereby swear under the pains and penalties of perjury that the information I have provided in this application is true and accurate:

Manager's Signature: [Signature] Date: 5/22/23

APPLICANT'S STATEMENT

I, Halcyone Tushy the: sole proprietor; partner; corporate principal; LLC/LLP manager
Authorized Signatory

of AIT Enterprises Inc
Name of the Entity/Corporation

hereby submit this application (hereinafter the "Application"), to the local licensing authority (the "LLA") and the Alcoholic Beverages Control Commission (the "ABCC" and together with the LLA collectively the "Licensing Authorities") for approval.

I do hereby declare under the pains and penalties of perjury that I have personal knowledge of the information submitted in the Application, and as such affirm that all statements and representations therein are true to the best of my knowledge and belief. I further submit the following to be true and accurate:

- (1) I understand that each representation in this Application is material to the Licensing Authorities' decision on the Application and that the Licensing Authorities will rely on each and every answer in the Application and accompanying documents in reaching its decision;
- (2) I state that the location and description of the proposed licensed premises are in compliance with state and local laws and regulations;
- (3) I understand that while the Application is pending, I must notify the Licensing Authorities of any change in the information submitted therein. I understand that failure to give such notice to the Licensing Authorities may result in disapproval of the Application;
- (4) I understand that upon approval of the Application, I must notify the Licensing Authorities of any change in the ownership as approved by the Licensing Authorities. I understand that failure to give such notice to the Licensing Authorities may result in sanctions including revocation of any license for which this Application is submitted;
- (5) I understand that the licensee will be bound by the statements and representations made in the Application, including, but not limited to the identity of persons with an ownership or financial interest in the license;
- (6) I understand that all statements and representations made become conditions of the license;
- (7) I understand that any physical alterations to or changes to the size of the area used for the sale, delivery, storage, or consumption of alcoholic beverages, must be reported to the Licensing Authorities and may require the prior approval of the Licensing Authorities;
- (8) I understand that the licensee's failure to operate the licensed premises in accordance with the statements and representations made in the Application may result in sanctions, including the revocation of any license for which the Application was submitted; and
- (9) I understand that any false statement or misrepresentation will constitute cause for disapproval of the Application or sanctions including revocation of any license for which this Application is submitted.
- (10) I confirm that the applicant corporation and each individual listed in the ownership section of the application is in good standing with the Massachusetts Department of Revenue and has complied with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting of child support.

Signature:

Halcyone Tushy

Date:

5/22/23

Title:

Treasurer



JEAN M. LORIZZO, ESQ.
CHAIRMAN

Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
95 Fourth Street, Suite 3
Chelsea, MA 02150

CORI REQUEST FORM

The Alcoholic Beverages Control Commission ("ABCC") has been certified by the Criminal History Systems Board to access conviction and pending Criminal Offender Record Information ("CORI"). For the purpose of approving each shareholder, owner, licensee or applicant for an alcoholic beverages license, I understand that a criminal record check will be conducted on me, pursuant to the above. The information below is correct to the best of my knowledge.

ABCC LICENSE INFORMATION

ABCC NUMBER: 0055 (M1178) LICENSEE NAME: MOT Enterprises Inc CITY/TOWN: Wellfleet

APPLICANT INFORMATION

LAST NAME: Eius FIRST NAME: Christina MIDDLE NAME: Marie

MAIDEN NAME OR ALIAS (IF APPLICABLE): Turner PLACE OF BIRTH: Ft Reming Ga

DATE OF BIRTH: 9-15-73 SSN: 255-53-5846 ID THEFT INDEX PIN (IF APPLICABLE):

MOTHER'S MAIDEN NAME: Adams DRIVER'S LICENSE #: 581166886 STATE LIC. ISSUED: MASS

GENDER: FEMALE HEIGHT: 5 7 WEIGHT: 150 EYE COLOR: HAZEL

CURRENT ADDRESS: 309 Et Co Truro

CITY/TOWN: Truro STATE: ma ZIP: 02666

FORMER ADDRESS: 31 Conant St

CITY/TOWN: Provincetown STATE: ma ZIP: 02657

PRINT AND SIGN

PRINTED NAME: Christina Eius APPLICANT/EMPLOYEE SIGNATURE: [Signature]

NOTARY INFORMATION

On this [] before me, the undersigned notary public, personally appeared []

(name of document signer), proved to me through satisfactory evidence of identification, which were []

to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he) (she) signed it voluntarily for its stated purpose.

[]

NOTARY

DIVISION USE ONLY

REQUESTED BY: [] SIGNATURE OF CORI-AUTHORIZED EMPLOYEE: []

The BCC Identity Theft Index PIN Number is to be completed by those applicants that have been covered on Identity Theft PIN Number by the BCC. Certified agencies are required to provide all applicants the opportunity to include this information to ensure the accuracy of the CORI request process. All CORI request forms that include this field are required to be submitted to the BCC via mail or by fax to (617) 699-0534.

ANNUAL

LICENSE

00058-PK-1348

ALCOHOLIC BEVERAGES

THE LICENSING BOARD OF

The Town of Wellfleet

MASSACHUSETTS

HEREBY GRANTS A

RETAIL PACKAGE GOODS STORE

License to Expose, Keep for Sale, and to Sell

Wines and Malt Beverages

Not To Be Drunk On the Premises

To Blackfish Variety

1600 State Highway Laura Parker, Manager

on the following described premises

Two story 2,226 sq. ft. building consisting of a variety/convenience store

on the first floor. Southwest entrance/exit, North exit, Easterly exit

and Northeasterly exit.

This license is granted and accepted upon the express condition that the licensee shall, in all respects, conform to all the provisions of the Liquor Control Act, Chapter 188 of the General Laws, as amended, and any rules or regulations made thereunder by the licensing authorities. This license expires December 31st, 2020., unless earlier suspended, cancelled or revoked.

IN TESTIMONY WHEREOF, the undersigned have hereunto affixed their official signatures this twelfth day of November 20 19

The Hours during which Alcoholic Beverages may be sold are

From
8:00 am - 11:00 pm
Sundays from 12 noon - 11:00 pm
Memorial Day 12 noon - 11:00 pm
No Thanksgiving or Christmas.

[Handwritten signatures]
Justina Cadson
LICENSING BOARD



Jean M. Lorizio, Esq.
Commission Chairman

**Commonwealth Of Massachusetts
Department Of The State Treasurer
Alcoholic Beverages Control Commission
95 Fourth Street, Suite 3
Chelsea, MA 02150-2358**

**2020
Retail License Renewal**

License Number: 00058-PK-1348	Municipality: WELLFLEET
License Name : Mjt Enterprises Inc	License Class: Annual
DBA : Blackfish Variety	License Type: Package Store
Premise Address: 1600 State Highway Wellfleet, MA 02667	License Category: Wines and Malt
Manager: Laura Jean Parker	

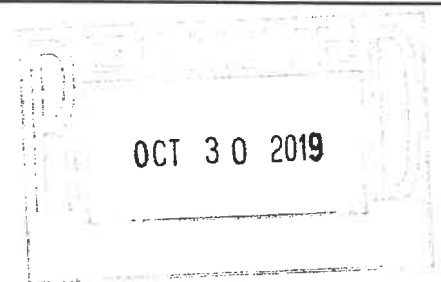
I hereby certify and swear under penalties of perjury that:

1. I am authorized to sign this renewal pursuant to M.G.L. Chapter 138;
2. The renewed license is of the same class, type, category as listed above;
3. The licensee has complied with all laws of the Commonwealth relating to taxes; and
4. The premises are now open for business (if not, explain below).

Laura Jean Parker
Signature

October 29th 2019
Date

Additional Information:





SELECTBOARD

AGENDA ACTION REQUEST
Meeting Date: June 20, 2023

VII

PUBLIC HEARINGS

~ D ~

REQUESTED BY:	Craig Whilby
DESIRED ACTION:	To approve the special event liquor license for July 29, 2023.
PROPOSED MOTION:	I move to continue this hearing for the applicant to find a more appropriate beach in Wellfleet given the time of the season, and to the satisfactory of the Beach Director.
SUMMARY:	
ACTION TAKEN:	Moved By: _____ Seconded By: _____ Condition(s):
VOTED:	Yea _____ Nay _____ Abstain _____

TOWN OF WELLFLEET
APPLICATION FOR SPECIAL EVENT LIQUOR LICENSE

1. Applicant: Craig Whilby Affiliation: _____
Address: CWhilby7@gmail.com Telephone: 774-325-6461
2. Type of License All Alcohol (\$150/day Beer and Wine (\$100/day _____)
3. Type of Activity Being Conducted Beach Bikini event
4. Date: 07/29/23 Hours of Service: 3pm - 10pm
5. Description of Premises: Newcomb Hollow Beach

6. Name, Address, Telephone of Designated Manager (person responsible for activity)

Craig Whilby, 18 Bayview Rd, Hyannis MA, 02601
774-325-6461

7. If activity involves food service, please describe fully (i.e. raw Shellfish, heated casseroles, bakery goods, etc.)

Jerk Chicken, festival (dough), soup,
Steam fish,



Applicant's Signature

Fee: \$ 150

Processing Fee: \$50.00

Police Department: NO - LaRocco

Building Department: _____

Comments/Conditions: _____

Comments/Conditions: _____

do busy to have
lots of people

Fire Department: NO

Health Department: _____

Comments/Conditions: Chief Pawley
to busy for a
paid event

Comments/Conditions: _____

DPW Department: NO -

Town Administrator: _____

Comments/Conditions: _____

Comments/Conditions: _____

Other: _____

Other: _____

Date Received

Fee

Date Issued



SELECTBOARD

AGENDA ACTION REQUEST
Meeting Date: June 20, 2023

VIII

USE OF TOWN PROPERTY

~ A ~

REQUESTED BY:	Neal Nichols, Jr.
DESIRED ACTION:	To approve the use of Baker's Field Pavilion and shaded areas in that location for Children's Art classes
PROPOSED MOTION:	I move to approve the use of Baker's Field Pavilion and other shaded areas in the Mayo Beach/Baker's Field vicinity for the various dates and times listed on the application, for a fee of \$200 and to waive the requirement for the presence of town recreation staff as has been done in previous years.
SUMMARY:	
ACTION TAKEN:	Moved By: _____ Seconded By: _____ Condition(s):
VOTED:	Yea _____ Nay _____ Abstain _____

APPLICATION FOR PERMIT TO USE TOWN OWNED PROPERTY

TOWN OF WELFLEET
300 MAIN STREET
WELFLEET, MA 02667

Applicant NEAL NICHOLS JR Affiliation or Group ILLUSTRATOR-ARTIST
Telephone Number 774-722-2358 Mailing Address PO BOX 738
Email address GEOGRAPHYGAMESHOW@YAHOO.COM N. EASTHAM, MA 02651

Town Property to be used (include specific area) BAKERS FIELD PAVILION- AND/OR OTHER SHADED AREAS
THAT ACCOMMODATE TABLE+CHAIRS.

Date(s) and hours of use: 10-14 JUL, 17-21 JUL, 24-28 JUL, 31 JUL-4 AUG, 14-18 AUG (M-F) (9-11AM) 21-25 AUG (330-5PM)

Describe activity including purpose, number of persons involved, equipment to be used, parking arrangements, food/beverage service, etc. Also, please indicate if fees will be charged by applicant.
DRAWING CLASSES; AVG 2-5 STUDENTS ENROLLED -ACTUAL NUMBER UNPREDICTABLE; AVG FEE
\$200 WEEK; MATERIALS INCLUSIVE; NO FOOD OR BEVERAGE SERVICES; NO PARKING NECESSARY AS
PARENTS DROP OFF AND PICK UP STUDENTS- EQUIPMENT INCLUDES FOLD TABLE AND CHAIRS.

Describe any Town services requested (police details, DPW assistance, etc.)
NO ADDITIONAL SERVICES NEEDED; ENTIRELY PORTABLE - TABLE+CHAIRS.

NOTE TO APPLICANTS: All applications must be accompanied by a non refundable \$50.00 processing fee. Applications must be received at least 30 days prior to the first event date to ensure that all reviews can be completed prior to the event. This application is only for permission to use Town property. Any additional licenses, such as food service permit, etc., may be required and it is the applicant's responsibility to secure the same.

Action by the Board of Selectmen:
_____ Approved as submitted
_____ Approved with the following condition(s): _____
_____ Disapproved for following reason(s): _____

Date: _____ Processing Fee: \$50.00 ✓
Fee: _____

12 JUNE 2023

RAISED IN WENFLEET VIA A LARGE FAMILY; IT WAS IN MY INTEREST TO OFFER QUALITY DRAWING LESSONS AT AN AFFORDABLE RATE. THROUGHOUT THE YEARS, THIS HAS BEEN SUCCESSFUL, AND IN CERTAIN CIRCUMSTANCES, REDUCED; OR NO FEE CLASSES HAVE BEEN OFFERED. IN COMPARISON TO LOCATIONS SUCH AS "CASTLE HILL" OR "PAAM"; MY RATES ARE A FRACTION OF THE INVESTMENT REQUIRED FOR A STUDENT TO ATTEND THOSE SITES.

THESE CLASSES ARE ENTIRELY PORTABLE, AS FOLDING TABLE AND CHAIRS ARE ALL THAT IS NECESSARY TO TEACH DRAWING TECHNIQUES THAT ENHANCE STUDENTS' ABILITIES AND SELF-ESTEEM WHILST LEARNING. THE PAVILION PROVIDES ADEQUATE SHELTER AND SUN-BLOCK; AND IN ALL THE YEARS, NEVER HAS OUR PRESCENCE INTERFERRED WITH ANYONE, NOR REQUIRED ADDITIONAL SERVICES TO CONDUCT. IN THE EVENT OF CONFLICT WITH ANOTHER EVENT, IT IS SIMPLE TO LOCATE THE TABLE AND CHAIRS ELSEWHERE ON PROPERTY AND CONTINUE THE DRAWING SESSIONS. OTHERS, IN PAST HAVE SHELTERED FROM SUN UNDER THE PAVILION AND WERE ALWAYS IMPRESSED TO WITNESS THE WORK OF STUDENTS TAKING PLACE, THEREFORE, USE OF THE PAVILION ISN'T AN "EXCLUSIVE USE" AS ACCESS TO OTHERS IS NOT RESTRICTED LIKEWISE A "PRIVATE EVENT."

THANK YOU FOR REVIEWING MY INFORMATION, & LOOK FORWARD TO ANOTHER GREAT SUMMER TEACHING ART AT HOME AGAIN,
RESPECTFULLY SUBMITTED -



NEAL NICHOLS, JR

APPLICANT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND INSPECTIONS

Health/Conservation Agent: N/A Comments/Conditions: Permits/Inspections needed:	Inspector of Buildings: N/A Comments/Conditions: Permits/Inspections needed:
---	--

Police Department: ok - Deputy Chief Comments/Conditions: LaRocco	Fire Department: ok - Chief Pauley Comments/Conditions:
--	--

DPW: ok - Jay Norton Comments/Conditions	Community Services Director: ok - Suzanne Thomas Comments/Conditions: →
---	--

Harbormaster: W/A Comments/Conditions	Shellfish: N/A Comments/Conditions
--	---

Recreation: ok - Becky Comments/Conditions Rosenberg	Town Administrator: Comments/Conditions
---	---



SELECTBOARD

AGENDA ACTION REQUEST
Meeting Date: June 20, 2023

IX

BOARD/COMMITTEE APPOINTMENTS AND UPDATES

~ A ~

REQUESTED BY:	Various Boards and Committee Members
DESIRED ACTION:	To approve the renewal of all board and committee members that their terms are up on June 30, 2023.
PROPOSED MOTION:	I move to approve the list of the board and committee members highlighted in the June 20, 2023, Selectboard Packet for the appropriate terms listed on the town's application for board and committee members. To be sworn in by the Town Clerk before voting the next scheduled board/committee meeting.
SUMMARY:	
ACTION TAKEN:	Moved By: _____ Seconded By: _____ Condition(s):
VOTED:	Yea _____ Nay _____ Abstain _____

BOARD AND COMMITTEE MEMBERS
May 23, 2023

Affordable Housing Trust: 1 year term

Hary Terkanian	Trustee	6/30/2023
Elaine Mellroy	Trustee	6/30/2023
Gary Sorkin	Trustee	6/30/2023
Sharon Rule-Agger	Trustee	6/30/2023
James Hood	Trustee	6/30/2023
Kathleen Nagle	Trustee	6/30/2023
Michael DeVasto	Trustee	6/30/2023

Bike and Walkways Committee: * No Longer Meet *****

Peter Cook	Chair	6/30/2022
Rebecca Broadwick Noble	Vice-Chair	6/30/2022
Christie O’Campbell	Clerk	6/30/2022
Ned Oliver	Member	6/30/2022
Vacant Position		

Board of Assessors:

Diane Galvin	Chair	6/30/2024
Gail Stewart	Member	6/30/2024
Nancy Vail	Member	6/30/2025

Board of Health:

Nicholas Picariello	Chair
Janet Drohan	Member
Gary Locke	Member
Deborah Freeman	Member
Kenneth Granlund	Member

Board of Water Commissioners:

James Hood	Chair
Curt Felix	Member
Neil Gadwa	Member
Thomas Flynn	Member
Catharie Nass	Member ~ resigning 6/30/2023

Board of Registrars

Andrea Pluhar-2025

Sheryl Jaffee – 2023

Jennifer Congel -ex officio

Vacancy

Building and Needs Assessment:

Sean Donoghue	Member	6/30/2022
Jason Horowitz	Member	6/30/2022
Vacant Position		

Bylaw Committee:

Dawn Rickman	Member	ATM 2025
Lizanne Stansell	Member	ATM 2023
Sam Pickard	Member	ATM 2024

Cable Internet and Cellular Service Advisory Committee:

Josh Yeston	Chair	06/30/2025
Steve Kopits	Vice Chair	06/30/2023
Larry Marschal	Member	06/30/2025
Heather Doyle	Member	06/30/2024
Thomas Cole	Member	06/30/2023

Cemetery Commission:

Nancy Vail	Chair	ATE 2022
Bonnie Robicheau	Member	ATE 2023
David Agger	Member	ATE 2024

Commission on Disabilities:

Suzanne Grout Thomas	ADA Coordinator	
Frederick Gentner	Member	6/30/2023
Kate Clemens	Member	6/30/2023
George Harris	Member	6/30/2024
James McAuliffe	Member	6/30/2024

Community Preservation Committee:

Gary Sorkin	Chair, LHP Representative
Janis Plaue	Vice-Chair Member at Large
Elaine McIlroy	Member, Wellfleet Housing Authority Rep.
Fred Streams	Member, Open Space Rep.
James McAuliffe	Member, Historical Commission Rep.
David Mead-Fox	Member, Planning Board Rep.
Rhonda Fowler	Member, Recreation Committee Rep.
Michael Fischer	Member, Conservation Commission Rep.
Geraldine Ramer	Member at Large

Clean Water Advisory Committee:

Curt Felix	Chair	6/30/2023
Fred Vanderschmidt	Vice-Chair	6/30/2024
John Cumbler	Member	6/30/2023
Richard Wulsin	Member	6/30/2024
Vacant Position		
Vacant Position		

Conservation Commission:

John Cumbler	Member	6/30/2022
Barbara Brennessel	Member	6/30/2022
Michael Fischer	Member	6/30/2024
Leon Shreves	Member	6/30/2023
Benjamin Fairbank	Member	6/30/2023
Martin Murphy	Member	6/30/2024
Robert Stewart	Member	6/30/2026

Council on Aging Advisory Board:

C. Wilson Sullivan	Chair	6/30/2024
Laura Gazzano	Member	6/30/2024
Sarah Multer	Member	6/30/2023
Brian Quigley	Member	6/30/2023
Dian K. Reynolds	Member	6/30/2023
Judith Cumbler	Member	6/30/2024
Denya LeVine	Member	6/30/2024
VACANT		

Cultural Council:

Carolyn Rogers	Chair	6/30/2025
Francis Corbin	Treasurer	6/30/2025
Susan Blake	Secretary	6/30/2023
Yvonne Barocas	Member	6/30/2023
Merrill Mead-Fox	Member	6/30/2024
Kevin McMahon	Member	6/30/2024
Moira Meehan	Member	6/30/2024
David Blackman	Member	6/30/2024
Vicki Solomon	Member	6/30/2024
Kathleen Grzewinski	Member	6/30/2025

Dredging Task Force:

Christopher Allgeier	Co-Chair	6/30/2025
Joseph Aberdale	Co-Chair	6/30/2023
Skip Annette	Member	6/30/2025
Curt Felix	Member	
VACANT POSITION	Member	
VACANT POSITION	Member	

Energy and Climate Action Committee:

Suzanne Ryan	Chair	6/30/2025
Lilli-Ann Green	Vice Chair	6/30/2023
(Mary) Carol Magenau	Secretary	6/30/2025
Robert Shapiro	Member	6/30/2025
David Mead-Fox	Member	6/30/2024
Gorham Brigham	member	6/30/2025.
Jeff Tash	FinCom Rep	
Jay Norton	DPW Rep	
VACANCY		
VACANCY		

Finance Committee:

Kathleen Granlund	Chair	ATM 2023
Fred Magee	Vice-Chair	ATM 2023
Stephen Polowczyk	Member	ATM 2023
Robert Wallace	Member	ATM 2023
Ira Wood	Member	ATM 2023
Jeff Tash	Member	ATM 2023
Moe Barocas	Member	ATM 2023
Jennifer Rhodes	Member	ATM 2023
VACANCY		

Historical Commission:

Merrill Mead-Fox	Co-Chair	6/30/2024
Susan Baker	Co-Chair	6/30/2024
Timothy Curley-Eagan	Member	6/30/2024
Gordon Kahn	Member	6/30/2024
James McAuliffe	Member	6/30/2024
David Kornetsky	Member	6/30/2025
Milton Gatch	Member	6/30/2024

Housing Authority:

Elaine McIlroy	Chair	ATE 2026
Sarah Pechukas Silvka	Member	ATE 2026
Gary Sorkin	Member	ATE 2025
Richard Ciotti	Member	ATE 2024
Michele Olem	Member	ATE 2027

Library Trustees:

Robin Robinson	Chair	ATE 2023
Andrew Freeman	Member	ATE 2023
Yvonne Barocas	Member	ATE 2024
Adam James Miller	Member	ATE 2024
Kathleen Shorr	Member	ATE 2024
Kathleen Hickey	Member	ATE 2025

Local Comprehensive Planning Committee:

Haven't had a meeting since March 2020

Suzanne Grout-Thomas Community Service Rep.

Local Housing Partnership:

Sharon Rule Agger	Member	6/30/2025
Anne Suggs	Member	6/30/2023
Judy Taylor	Member	6/30/2025
Karen Kaminski	Member	6/30/2025
Susan Spear	Member	6/30/2023
Gary Sorkin	Housing Authority	
Alfred Pickard Jr.	Planning Board	
John Cumbler	Open Space	
Sharon Inger	Zoning Board of Appeals	

Marina Advisory Committee:

Joseph Aberdale	Chair	6/30/2024
David Stamatis	Vice-Chair	6/30/2024
Edward Kane	Member	6/30/2024
William Barrio	Member	6/30/2024
Fredrick Felix	Member	6/30/2024
Martha Wilson	Member	6/30/2023
Doug Straus	Alternate	6/30/2024
James Gray	Alternate	6/30/2024

Natural Resources Advisory Board:

John Duane	Chair	6/30/2024
Laura Hewitt	Member	6/30/2025
Thomas Slack	Member	6/30/2023
Herbert Gstalder	Member	6/30/2024

Open Space Committee:

Bruce Hurter	Chair	6/30/2024
Thomas Slack	Vice-Chair	6/30/2024
Lynn Southey	Member	6/30/2024
Margaret Sagan	Secretary	6/30/2024
Fred Streams	Member	6/30/2024
John Grieb	Member	6/30/2024
Elizabeth McDonald	Member	6/30/2024

Personnel Board: *** HASN'T MET ***

Steven Gazzano	Member	6/30/2021
James McAuliffe	Member	6/30/2024
Berta Bruinooge	Member	6/30/2021
Lori Rutter	Member	6/30/2024
Stephen Polowczyk	Finance Committee Rep.	

Planning Board:

Gerald E. Parent	Chair	6/30/2025
Beth Singer	Member	6/30/2026
Alfred Pickard Jr.	Member	6/30/2026
David Mead-Fox	Member	6/30/2024
Bonnie Shepard	Member	6/30/2024
Olga Kahn	Member	6/30/2023 – resigning
Vacant Position	Alternate	
Vacant Position	Alternate	

Recreation Committee:

Christine Bezio	Member	6/30/2023
Kerry Cox	Member	6/30/2022
Kevin Scalley	Member	6/30/2023
Kathleen Granlund	FinCom Rep	
Rhonda Fowler	CPC Liaison	

Recycling Committee

Christine Shreeves	Co-Chair	6/30/2025
Lydia Vivante	Co-Chair	6/30/2025
Jaya Karlson	Member	6/30/2024
Nancy Najmi	Member	6/30/2024
Christine Wisniewski	Member	6/30/2024
Olivia Kraus	Member	6/30/2024
(Mary) Carol Magenau	Member	6/30/2026
VACANT POSITION	Alternate	
VACANT POSITION	Alternate	

Rights of Public Access Committee *** CAN'T MEET ***

Melissa Yow	Member	6/30/2021
VACANT POSITION	Member	
VACANT POSITION	Member	
VACANT POSITION	Member	
VACANT POSITION	Member	

Selectboard:

Ryan Curley	Chair	ATE 2026
Barbara Carboni	Vice-Chair	ATE 2025
Michael DeVasto	Member	ATE 2024
Kathleen Bacon	Member	ATE 2024
John Wolf	Member	ATE 2024

Shellfish Advisory Board:

Rebecca Taylor	Chair	6/30/2024
Thomas Siggia	Vice-Chair	6/30/2023 Resigning
John Duane	Member	6/30/2024
Nick Sirucek	Member	6/30/2025
Ethan Etsey	Member	6/30/2024
Karen Johnson	Member	6/30/2025
Stephen Pickard	Member	6/30/2025
Damian Parkington	Alternate	6/30/2025
Adrien Kmiec	Alternate	6/30/2026 – application to be a voting member.

Social Human Services:

Francis Corbin	Chair	ATM 2023
Nancy Winslow	Member	ATM 2024
Madeline Entel	Member	ATM 2024
Sara Blanford	Member	ATM 2023
Suzanne Grout-Thomas	Ex-Officio	

Taxation Aid Committee:

Dawn Rickman	Chair	6/30/2023
Nancy Bierhans	Vice-Chair	6/30/2023
Susan Messina	Secretary	6/30/2024
Dian Galvin	BOA	
Cameron Scott	Ex-Officio	

Wellfleet Elementary School Committee:

Martha Gordon	Chair	ATE 2026
Liberty Schlipp	Member	ATE 2024
Laura Baghetti	Member	ATE 2026
Joan Zukas	Member	ATE 2025

Zoning Board of Appeals:

Sharon Inger	Chair	6/30/2023
Michael Lynch	Vice-Chair	6/30/2023
Theodore Heyliger	Clerk	6/30/2025
C. Wilson Sullivan	Member	6/30/2023
Trevor Pontbriand	Member	6/30/2024
Reatha Ciotti	Alternate	6/30/2023
Janet Morrissey	Alternate	6/30/2024
Andrew Freeman	Alternate	6/30/2023
Al Mueller	Alternate	6/30/2024



SELECTBOARD

AGENDA ACTION REQUEST
Meeting Date: June 20, 2023

X

BUSINESS

~ A ~

REQUESTED BY:	Michael Cicale ~ Transfer Station Foreman, Jay Norton ~ DPW Director
DESIRED ACTION:	To review and make recommendations to the Wellfleet Board of Health regarding the amended fees.
PROPOSED MOTION:	I move to recommend the transfer station fees that were provided tonight to the Wellfleet Board of Health to hold a public hearing.
SUMMARY:	
ACTION TAKEN:	Moved By: _____ Seconded By: _____ Condition(s):
VOTED:	Yea _____ Nay _____ Abstain _____



SELECTBOARD

AGENDA ACTION REQUEST
Meeting Date: June 20, 2023

X

BUSINESS

~ B ~

REQUESTED BY:	Carole Ridley ~ Herring River Restoration Project
DESIRED ACTION:	To accept the grant from National Oceanic and Atmospheric Administration for the Herring River Restoration Project
PROPOSED MOTION: Summary:	I move to accept the grant of \$14,690,000 from the NOAA Transformation Habitat Restoration Program to help fund construction of Phase 1 of the Herring River Restoration Project, and to authorize the Town Administrator to take all steps necessary to accept the award.
ACTION TAKEN:	Moved By: _____ Seconded By: _____ Condition(s):
VOTED:	Yea _____ Nay _____ Abstain _____

Memorandum

To: Wellfleet Selectboard
From: Carole Ridley, Project Coordinator
Date: June 15, 2023
Re: Acceptance of NOAA Grant Award

The Town has received an award in the amount of \$14,690,000 from the National Oceanic Atmospheric Administration (NOAA) Transformation Habitat Restoration Program to help fund construction of Phase 1 of the Herring River Restoration Project. The grant provides the final funding needed to construct all Phase 1 infrastructure on town-owned land, and undertake Phase 1 flood protection measures on private property.

The NOAA grant funds will be used as follows:

- Chequessett Neck Bridge construction - \$970,218
- Low road elevation/culvert replacement - \$9,125,000
- Project Management (owner's project representative and design engineer services) - \$900,000
- Subawards
 - to Friends of Herring River for permit compliance and implementation support - \$350,000
 - to Chequessett Club for fill removal, placement and grading - \$2,315,000
- Indirect Expenses (to cover costs associated with grant administration and financial management) - \$1,029,782

The Town is committing non-federal match in the amount of \$1,475,000 which will come from MA DER grant funds that have been awarded to and accepted by the Town.

All grant documents provided by NOAA are enclosed, including all applicable terms and conditions. The documents have been submitted to Town Counsel for review.

A grant orientation meeting was hosted by NOAA including the Town Administrator, Assistant Town Accountant, DPW Director, Owners Project Representative and Clifton Larson Allen to integrate NOAA requirements with ongoing grant tracking and reporting procedures.

Upon authorization from the Selectboard, the Town Administrator would accept the award online through grants.gov. The term of the grant is three years.

Suggested motion: I move to accept the grant of \$14,690,000 from the NOAA Transformation Habitat Restoration Program to help fund construction of Phase 1 of the Herring River Restoration Project, and to authorize the Town Administrator to take all steps necessary to accept the award.

February 18, 2021

Administrative Standard Award Conditions for National Oceanic and Atmospheric Administration (NOAA) Financial Assistance Awards U.S. Department of Commerce

This Federal assistance award will be implemented using “[Grants Online](#),” a Federal information technology system for grants management and processing. Grants Online allows the recipient to accept awards electronically, manage user roles for individuals within their organization, and submit post-award action requests, financial reports, performance progress reports, and tangible personal property and real property reports. You can contact the Grants Online Help Desk for assistance in obtaining your login credentials.

Contact the Grants Online Help Desk at GrantsOnline.HelpDesk@noaa.gov, (240) 533-9533, between the hours of 8:00 a.m. and 6:00 p.m. Eastern Time Monday through Friday excluding Federal holidays. Please refer to the NOAA website at <https://www.noaa.gov/organization/information-technology/grant-recipient-user-resources> for additional information.

I. Award Payments – ASAP Enrollment

Consistent with 2 C.F.R. §200.305 and Department of Commerce Financial Assistance Standard Terms and Conditions (Commerce Terms), recipient award payments will be made through electronic funds transfers using the U.S. Department of the Treasury’s Automated Standard Application for Payments (ASAP) system. Recipients must enroll in ASAP system by first submitting an Organization Profile Change Request via Grants Online, which will include the following requirements:

- EIN#
- DUNS#
- Name of Organization
- Type of Organization (i.e. Non-profit, For Profit, State etc.)
- Address
- Point of Contact
- Title
- Point of Contact's Email Address
- Phone Number

If your organization is not currently enrolled in ASAP, please submit an Organization Profile Change Request in Grants Online as soon as possible to begin the enrollment process. New ASAP enrollments can take up to a month to be completed.

II. Reporting

A. Financial Reports

The recipient will use NOAA’s Grants Online system to complete Federal Financial Reports (SF-425), required by 2 CFR §200.328 and Commerce Terms. Grants Online will notify the recipient organization

February 18, 2021

via email when SF-425s are available for reporting and submission through the Grants Online system. The status of all reports can be seen under “Financial Reports” under the Grants File.

To complete a report, login to NOAA Grants Online at <https://grantsonline.rdc.noaa.gov>, search for the award and navigate to the Grants File overview page. Find the report near the bottom of the page and click on the link to the report to complete the report. For multiple awards that require Federal Financial Reports (SF-425) covering the same period, the recipient may create and submit a multi-award SF-425 from the —Awards tab. For additional assistance with Grants Online, please review the Recipient Quick Reference Guide available at https://www.noaa.gov/sites/default/files/atoms/files/GrantRecipients_Quick_Ref_Guide.pdf. This site also has additional detailed recipient assistance material. If you are having problems with accessing Grants Online, please contact the Grants Online Help Desk at (240) 533-9533 or GrantsOnline.HelpDesk@noaa.gov.

1. Request for Advance or Reimbursement (SF-270)
 - a. The SF-270 shall NOT be submitted by the recipient using the Department of Treasury ASAP system unless specifically directed by a specific award condition.
 - b. Semi-annual Federal Financial Reports (SF-425) are not required if the SF-270 is used; however, a Final SF-425 will be required.
 - c. If your organization is registered in ASAP, reimbursements will be made through ASAP.
2. Federal Financial Report (SF-425) - Due semi-annually; reported under the —“Federal Cash” line of the report.
 - a. The SF-425 shall be submitted on a semi-annual basis. If the recipient is reporting on more than one NOAA grant and/or agreement, then the SF-425 attachment must be used.
 - b. Interim semi-annual Federal Financial Reports (SF-425) are due no later than 30 days after the semi-annual reporting periods ending March 31 and September 30 for the cumulative project period of the award.
 - c. The SF-425 is required for any recipient using ASAP for payment. If converting to ASAP during the course of the Award, the SF-425 forms will be due as described above starting with the ASAP conversion date.
3. Federal Financial Report (SF-425) - (final report only)
 - a. A final comprehensive Federal Financial Report must be submitted within 120 days after the period of performance end date. Subrecipients must submit final reports to the pass-through entity, no later than 90 days after the period of performance end date. The recipient’s report shall cover the entire period of performance from the start date through the end date of the original award, or approved extended end date (e.g., no-cost extension or extension to the closeout period) of the award, and must include the cumulative total of indirect costs charged to the award. This final report must not be submitted until cash on hand is \$0. If necessary, reach out to your grants specialist for information on how to return funds if your organization has cash on hand at the end of closeout.

B. Performance Reports

The recipient will use NOAA's Grants Online system to submit Performance Progress Reports, required by 2 CFR §200.329 and Commerce Terms. The Grants Online System will notify your organization through email when performance progress reports are available for reporting and submission through NOAA Grants Online. Recipients are responsible for ensuring all personnel listed on an award have a current email address. The status of reports can be seen under "Progress Reports" under the Grant File.

To complete your report, login to NOAA Grants Online at <https://grantsonline.rdc.noaa.gov/>, search for the award and navigate to the Grants File overview page. Then find the report near the bottom of the page and click on the link to the report to complete it. Your organization must attach the report document for submission. The Federal Program Officer is the authority on the acceptable form and content of Project Progress Reports. For additional assistance with Grants Online, please review the Recipient Quick Reference Guide available at https://www.noaa.gov/sites/default/files/atoms/files/GrantRecipients_Quick_Ref_Guide.pdf. This site also has additional detailed recipient assistance material. If you are having problems with your access to Grants Online, please contact the Grants Online Help Desk at (240) 533-9533 or GrantsOnline.HelpDesk@noaa.gov.

1. Frequency: Performance reports are due on a semi-annual basis unless otherwise specified in a specific award condition, no later than 30 days following the end of each six (6) month period from the start date of the original award. The last semi-annual performance report is required. The final report, which summarizes activities conducted during the entire award, must be submitted within 120 days following the period of performance end date. Subrecipients must submit final reports to the pass-through entity, no later than 90 days after the period of performance end date.
2. For awards governed by the Federal-wide Research Terms and Conditions, recipients must complete the Research Performance Progress Report (RPPR). The Department of Commerce implemented a RPPR for research awards in accordance with the requirement for recipient submission of performance reports using OMB-approved government-wide standard information collections per 2 C.F.R. §200.329. The recipient must complete the RPPR directly in Grants Online. Also, the RPPR format and instructions are available at <https://www.commerce.gov/oam/policy/financial-assistance-policy>.

C. Property Reports and Disposition

Property records, including any documentation relating to disposition of property, required by 2 CFR §200.310-316, are to be submitted in NOAA's Grants Online System. The Tangible Personal Property Report (SF-428) and the Real Property Status Report (SF-429) should be included in documentation, as applicable. At the end of the period of performance, but no later than the closeout period, the recipient must report on property using the property forms (SF-428/SF-429 forms) located at <https://www.grants.gov/web/grants/forms/post-award-reporting-forms.html#sortby=1>. Such property shall include real property (§200.311), Federally-owned and exempt property (§200.312), equipment acquired with grant funds (§200.313), and residual inventory of unused supplies exceeding \$5,000 in total aggregate value (§200.314). The recipient must request property disposition instructions from NOAA. In addition, recipients may be required to submit annual reports on real property, per §200.330.

February 18, 2021

Research awards should also refer to the Federal-wide Research Terms and Conditions at <http://www.nsf.gov/awards/managing/rtc.jsp>.

D. Reporting Subawards and Executive Compensation

The recipient is reminded that the Commerce Terms require specified reporting regarding subawards and executive compensation, per the Federal Funding Accountability and Transparency Act (FFATA). This information is not reported through Grants Online. Follow reporting instructions in the Commerce Terms.

III. Scientific Integrity

A. General Guidelines

1. *Maintaining Integrity.* The non-Federal entity shall maintain the scientific integrity of research performed pursuant to this grant or financial assistance award including the prevention, detection, and remediation of any allegations regarding the violation of scientific integrity or scientific and research misconduct, and the conduct of inquiries, investigations, and adjudications of allegations of violations of scientific integrity or scientific and research misconduct. All the requirements of this provision flow down to subrecipients.
2. *Peer Review.* The peer review of the results of scientific activities under a NOAA grant, financial assistance award, or cooperative agreement shall be accomplished to ensure consistency with NOAA standards on quality, relevance, scientific integrity, reproducibility, transparency, and performance. NOAA will ensure that peer review of "influential scientific information" or "highly influential scientific assessments" is conducted in accordance with the Office of Management and Budget (OMB) Final Information Quality Bulletin for Peer Review and NOAA policies on peer review, such as the Information Quality Guidelines.
3. In performing or presenting the results of scientific activities under the NOAA grant, financial assistance award, or cooperative agreement and in responding to allegations regarding the violation of scientific integrity or scientific and research misconduct, the non-Federal entity and all subrecipients shall comply with the provisions herein and NOAA Administrative Order (NAO) 202-735D, Scientific Integrity, and its Procedural Handbook, including any amendments thereto. That Order can be found at <http://nrc.noaa.gov/ScientificIntegrityCommons.aspx>.
4. *Primary Responsibility.* The non-Federal entity shall have the primary responsibility to prevent, detect, and investigate allegations of a violation of scientific integrity or scientific and research misconduct. Unless otherwise instructed by the grants officer, the non-Federal entity shall promptly conduct an initial inquiry into any allegation of such misconduct and may rely on its internal policies and procedures, as appropriate, to do so.
5. By executing this grant, financial assistance award, or cooperative agreement the non-Federal entity provides its assurance that it has established an administrative process for performing an inquiry, investigating, and reporting allegations of a violation of scientific

integrity or scientific and research misconduct; and that it will comply with its own administrative process for performing an inquiry, investigation, and reporting of such misconduct.

6. The non-Federal entity shall insert this provision in all subawards at all tiers under this grant, financial assistance award, or cooperative agreement.

B. Investigating Scientific Integrity or Scientific and Research Misconduct

1. *Initiating Investigation.* If the non-Federal entity or subrecipient determines that there is sufficient evidence to proceed to an investigation, it shall notify the grants officer and, unless otherwise instructed, the non-Federal entity or subrecipient shall:
 - a. Promptly conduct an investigation to develop a complete factual record and an examination of such record leading to either a finding regarding the violation of scientific integrity or scientific and research misconduct and an identification of appropriate remedies or a determination that no further action is warranted.
 - b. If the investigation leads to a finding regarding the violation of scientific integrity or scientific and research misconduct, obtain adjudication by a neutral third party adjudicator. The adjudication must include a review of the investigative record and, as warranted, a determination of appropriate corrective actions and sanctions.
2. *Finalizing Investigation.* When the investigation is complete, the non-Federal entity shall forward to the grants officer a copy of the evidentiary record, the investigative report, any recommendations made to the non-Federal entity adjudicating official, the adjudicating official's decision and notification of any corrective action taken or planned, and the subject's written response (if any).

C. Findings and Corrective Actions

If the non-Federal entity finds that scientific integrity has been violated or scientific and research misconduct has occurred, it shall assess the seriousness of the misconduct and its impact on the research completed or in process and shall:

- a. Take all necessary corrective actions, which includes, but are not limited to, correcting the research record, and, as appropriate, imposing restrictions, controls, or other parameters on research in process or to be conducted in the future, and
- b. Coordinate remedial action with the grants officer.

IV. Data Sharing Directive

The Data and Publication Sharing Directive for NOAA Grants, Cooperative Agreements, and Contracts ensures that environmental data funded extramurally by NOAA are made publicly accessible in a timely fashion (typically within two years of collection), and that final manuscripts of peer-reviewed research papers are deposited with the NOAA Central Library (upon acceptance by the journal, or no later than at

time of publication). Therefore, non-Federal entities, or recipients, must make data produced under financial assistance publicly accessible in accordance with the Data Management Plan included with the Proposal, unless the grant program grants a modification or an exemption. The text of the Directive is available at <https://nosc.noaa.gov/EDMC/PD.DSP.php>.

1. **Data Sharing:** Environmental data collected or created under this Grant, Cooperative Agreement, or Contract must be made publicly visible and accessible in a timely manner, free of charge or at minimal cost that is no more than the cost of distribution to the user, except where limited by law, regulation, policy, or national security requirements. Data are to be made available in a form that would permit further analysis or reuse: data must be encoded in a machine-readable format, preferably using existing open format standards; data must be sufficiently documented, preferably using open metadata standards, to enable users to independently read and understand the data. The location (internet address) of the data should be included in the final report. Pursuant to NOAA Information Quality Guidelines,¹ data should undergo quality control (QC) and a description of the QC process and results should be referenced in the metadata.^{2,3}
2. **Timeliness:** Data accessibility must occur no later than publication of a peer-reviewed article based on the data, or two years after the data are collected and verified, or two years after the original end date of the grant (not including any extensions or follow-on funding), whichever is soonest, unless a delay has been authorized by the NOAA funding program.
3. **Disclaimer:** Data produced under this award and made available to the public must be accompanied by the following statement: "These data and related items of information have not been formally disseminated by NOAA, and do not represent any agency determination, view, or policy."
4. **Failure to Share Data:** Failing or delaying to make environmental data accessible in accordance with the submitted Data Management Plan, unless authorized by the NOAA Program, may lead to enforcement actions, and will be considered by NOAA when making future award decisions. Funding recipients are responsible for ensuring these conditions are also met by sub-recipients and subcontractors.
5. **Funding acknowledgement:** Federal funding sources shall be identified in all scholarly publications. An Acknowledgements section shall be included in the body of the publication stating the relevant Grant Programs and Award Numbers. In addition, funding sources shall be reported during the publication submission process using the FundRef mechanism (<http://www.crossref.org/fundref/>) if supported by the Publisher.
6. **Manuscript submission:** The final pre-publication manuscripts of scholarly publications produced with NOAA funding shall be submitted to the NOAA Institutional Repository at <https://repository.library.noaa.gov> after acceptance, and no later than upon publication, of the paper by a journal. NOAA will produce a publicly-visible catalog entry directing users to the published version of the article. After an embargo period of one year after publication, NOAA shall make the manuscript itself publicly visible, free of charge, while continuing to direct users to the published version of record.

- 7. Data Citation:** Publications based on data, and new products derived from source data, must cite the data used according to the conventions of the Publisher, using unambiguous labels such as Digital Object Identifiers (DOIs). All data and derived products that are used to support the conclusions of a peer-reviewed publication must be made available in a form that permits verification and reproducibility of the results.

1 http://www.cio.noaa.gov/services_programs/IQ_Guidelines_103014.html

2 Failure to perform quality control does not constitute an excuse not to share data.

3 Data without QC are considered "experimental products" and their dissemination must be accompanied by explicit limitations on their quality or by an indicated degree of uncertainty.

V. Post Award Actions Requests

Grants Online provides the ability for recipients to submit post award action requests. The Department of Commerce requires that post award action requests be approved by an Authorized Representative. Grants Online enforces this business rule by routing all post award action requests through the recipient organizations Authorized Representative(s). Recipients must follow the guidance provided in Grants Online at https://www.noaa.gov/sites/default/files/atoms/files/Recipient_AAR_Help_0.pdf.

Per 2 CFR §200.332, recipients/pass through entities (PTEs) are given the authority to impose additional restrictions on subrecipients in order for the recipient/PTE to meet its own responsibility to the Federal awarding agency. Recipients/PTEs may, at their discretion, opt to restrict the waived prior approvals identified in the Research Terms, if applicable, to their subrecipients. Recipients/PTEs should identify the applicable prior approval terms in their own subaward agreements.

VI. Negotiated Indirect Cost Rate Agreements

This term supplements the Commerce Terms. Recipients must submit new or updated Negotiated Indirect Cost Rate Agreements (NICRA) to the NOAA Grants Office, when applicable. NICRAs can be submitted to the NOAA Grants Office through an email to the assigned Grants Specialist and Grants Officer for recordkeeping.

If NOAA is your organization's cognizant agency the applicant may contact the NOAA Grants Office if they wish to establish an agreement, if an applicant has not previously established an indirect cost rate agreement with a Federal agency. The negotiation and approval of a rate is subject to the procedures required by NOAA and the Commerce Terms. Per the 2 CFR 200 revisions effective as of November 12, 2020, any recipient that does not have a current negotiated (including provisional) rate, except for those recipients described in 2 CFR 200, Appendix VII, paragraph D.1.b., may opt to use the de minimis indirect cost rate of 10% of Modified Total Direct Cost (as allowable under 2 CFR §200.414). Also, NOAA may permit the recipient to use its last expired approved rate along with acknowledgment from their cognizant agency that their new indirect cost proposal has been received.

VII. Research Terms and Conditions

For awards designated on the CD-450 as Research, the Commerce Terms, and the Federal-wide Research Terms and Conditions (Research Terms) as implemented by the Department of Commerce, currently at <https://www.nsf.gov/awards/managing/rtc.isp>, both apply to the award. The Commerce Terms and the Research Terms are generally intended to harmonize with each other; however, where the Commerce Terms and the Research Terms differ in a Research award, the Research Terms prevail, unless otherwise indicated in a specific award condition.

VIII. Audit Findings Follow-up and Corrective Action

In accordance with 2 C.F.R. §200.511 and the Commerce Terms, an auditee is responsible for follow-up and corrective action on all audit findings. For information on the summary of prior year audit findings and the corrective action plan, please also refer to §200.511(b) (1) (2), and (3) (i) (ii) (iii), and refer to §200.516 Audit findings, paragraph (c).

Paragraph (c) Corrective action plan of 2 C.F.R. §200.511 Audit Findings Follow-up, further states that at the completion of the audit, the auditee must prepare a corrective action plan to address each audit finding included in the current year auditor's reports. As defined in 2 CFR Part 200, a corrective action means action taken by the auditee that: (a) Corrects identified deficiencies; (b) Produces recommended improvements; or (c) Demonstrates that audit findings are either invalid or do not warrant auditee action. The corrective action plan must provide the name(s) of the contact person(s) responsible for corrective action, the corrective action planned, and the anticipated completion date. If the auditee does not agree with the audit findings or believes corrective action is not required, then the corrective action plan must include an explanation and specific reasons.

NOAA as the cognizant, oversight, or Federal awarding agency of the auditee is responsible for follow-up on audit findings to ensure that the auditee takes appropriate and timely corrective action. As part of audit follow-up, NOAA must: (i) issue a management decision as prescribed in §200.521 Management decision; and (ii) monitor the recipient taking appropriate and timely corrective action. For additional information on applicable Federal agency responsibilities of NOAA for follow-up with corrective actions, see §200.513 Responsibilities.

IX. Audit Resolution

Recipients that expend \$750,000 or more in Federal funds during the recipient's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with §200.501. As provided in §200.513, a Federal awarding agency is responsible for issuing a management decision for findings that relate to Federal awards it makes to recipients.

As further prescribed in DOC's Departmental Administrative Order (DAO) 213-5 and 2 C.F.R. Part 200 Subpart F, Department and operating unit personnel shall act promptly to resolve both the financial and nonfinancial issues identified in an audit report. Comments, arguments, and evidence (if any) submitted by the auditee and the operating unit shall be considered in resolving the findings. A DOC decision on the resolution of audit findings and recommendations will be made in accordance with the procedures and within the specified time frames identified in DAO 213-5.

February 18, 2021

The audit action official shall issue the Management Decision and Audit Resolution Determination. The Management Decision and Audit Resolution Determination will be maintained in the official grant file and a copy will be forwarded to the Program Officer.

Recipients are afforded the opportunity to appeal the Audit Resolution Determination. The appeal process is the last opportunity for auditees to provide evidence to support their disputes. NOAA will not accept any submission from a recipient regarding an appeal after the established deadline, unless requested by the Grants Officer, the Office of Inspector General, or the Office of the General Counsel. After the Department renders a decision on an appeal, there are no other administrative appeals available.

An audit of the award may result in the disallowance of costs incurred by the recipient and the establishment of a debt (account receivable) due to DOC.

Recipients are responsible for the repayment of audit-related debts and for the collection of audit-related debts from their sub recipients where an audit has determined funds are owed. This does not relieve the recipient of liability for the debt.

X. NOAA Sexual Assault and Sexual Harassment Prevention and Response Policy

1. NOAA requires organizations receiving federal assistance to report findings of sexual harassment, or any other kind of harassment, regarding a Principal Investigator (PI), co-PI, or any other key personnel in the award. The recipient must report to the NOAA Grants Officer and Program Officer if the PI, co-PI, or other key personnel are placed on administrative leave relating to a harassment finding or investigation. NOAA may take unilateral action as necessary to protect the safety of all personnel on a project supported by financial assistance, to include suspending or terminating an award or requiring a recipient to replace or remove personnel.

If the award involves the use of NOAA-operated facilities and/or vessels, the recipient must adhere to the following specific requirements:

- Financial assistance awards involving the use of NOAA operated-facilities: [NOAA Sexual Assault and Sexual Harassment Prevention and Response Policy Applicable to Financial Assistance Awards Involving NOAA-Operated Facilities \(May 2018\)](#)
- Financial assistance awards involving the use of vessels: [NOAA Sexual Assault and Sexual Harassment Prevention and Response Policy Applicable to Financial Assistance Awards Involving the Use of a Vessel\(s\) under NOAA Contract, Order, Grant, or Cooperative Agreement \(May 2018\)](#)

Direct links to the requirements for awards involving the use of NOAA operated-facilities and/or vessels may be found at <https://www.noaa.gov/organization/acquisition-grants/noaa-workplace-harassment-training-for-contractors-and-financial>. Note that these policies include required training.

February 18, 2021

2. NOAA expects all financial assistance recipients to establish and maintain clear and unambiguous standards of behavior to ensure harassment free workplaces wherever NOAA grant or cooperative agreement work is conducted, including notification pathways for all personnel, including students, on the awards. This expectation includes activities at all on- and offsite facilities and during conferences and workshops. All such settings should have accessible and evident means for reporting violations and recipients should exercise due diligence with timely investigations of allegations and corrective actions.
3. The NOAA Workplace Violence Prevention and Response Program (WVPR) works to establish a culture of professionalism and respect through violence prevention and response; education and training; victim support; reporting procedures and appropriate accountability that enhances the safety and well-being of all NOAA employees, affiliates, and visitors. Please visit <https://www.noaa.gov/workplace-violence-prevention-response-program> for more information.

DEPARTMENT OF COMMERCE
FINANCIAL ASSISTANCE
STANDARD TERMS AND CONDITIONS



12 November 2020

**DEPARTMENT OF COMMERCE
FINANCIAL ASSISTANCE STANDARD TERMS AND CONDITIONS**

Table of Contents

PREFACE	5
A. PROGRAMMATIC REQUIREMENTS	6
.01 Reporting Requirements	6
.02 Revisions of Program Plans	8
.03 Other Federal Awards with Similar Programmatic Activities	9
.04 Prohibition against Assignment by a Non-Federal Entity	9
.05 Disclaimer Provisions	9
.06 Unsatisfactory Performance or Non-Compliance with Award Provisions	9
B. FINANCIAL REQUIREMENTS.....	10
.01 Financial Management.....	10
.02 Award Payments	10
.03 Federal and Non-Federal Sharing	12
.04 Budget Changes and Transfer of Funds among Categories.....	12
.05 Program Income.....	13
.06 Indirect or Facilities and Administrative Costs	13
.07 Incurring Costs or Obligating Federal Funds Before and After the Period of Performance	15
.08 Tax Refunds	16
.09 Internal Controls	16
C. PROPERTY STANDARDS.....	16
.01 Standards.....	16
.02 Real and Personal Property	16
.03 Intellectual Property Rights	17
D. AUDITS	19
.01 Organization-Wide, Program-Specific, and Project Audits.....	19
.02 Audit Resolution Process.....	20
E. DEBTS	21
.01 Payment of Debts Owed to the Federal Government	21
.02 Late Payment Charges	21
.03 Barring Delinquent Federal Debtors from Obtaining Federal Loans or Loan Insurance Guarantees.....	22

.04	Effect of Judgment Lien on Eligibility for Federal Grants, Loans, or Programs.....	22
F.	CONFLICT OF INTEREST, CODE OF CONDUCT AND OTHER REQUIREMENTS PERTAINING TO DOC FINANCIAL ASSISTANCE AWARDS, INCLUDING SUBAWARD AND PROCUREMENT ACTIONS	22
.01	Conflict of Interest and Code of Conduct.....	22
.02	Nonprocurement Debarment and Suspension.....	23
.03	Requirements for Subawards	23
.04	Requirements for Procurements.....	23
.05	Whistleblower Protections	24
.06	Small Businesses, Minority Business Enterprises and Women’s Business Enterprises	24
G.	NATIONAL POLICY REQUIREMENTS	25
.01	United States Laws and Regulations.....	25
.02	Non-Discrimination Requirements	25
a.	Statutory Provisions	25
b.	Other Provisions.....	26
c.	Title VII Exemption for Religious Organizations	27
.03	LOBBYING RESTRICTIONS.....	27
a.	Statutory Provisions	27
b.	Disclosure of Lobbying Activities	27
.04	Environmental Requirements.....	27
a.	The National Environmental Policy Act (42 U.S.C. §§ 4321 <i>et seq.</i>).....	28
b.	The National Historic Preservation Act (16 U.S.C. §§ 470 <i>et seq.</i>)	28
c.	Executive Order 11988 (Floodplain Management) and Executive Order 11990 (Protection of Wetlands).....	29
d.	Clean Air Act (42 U.S.C. §§ 7401 <i>et seq.</i>), Federal Water Pollution Control Act (33 U.S.C. §§ 1251 <i>et seq.</i>) (Clean Water Act), and Executive Order 11738 (“Providing for administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal contracts, grants or loans”).....	29
e.	The Flood Disaster Protection Act (42 U.S.C. §§ 4002 <i>et seq.</i>).....	29
f.	The Endangered Species Act (16 U.S.C. §§ 1531 <i>et seq.</i>).....	29
g.	The Coastal Zone Management Act (16 U.S.C. §§ 1451 <i>et seq.</i>).....	29
h.	The Coastal Barriers Resources Act (16 U.S.C. §§ 3501 <i>et seq.</i>).....	30
i.	The Wild and Scenic Rivers Act (16 U.S.C. §§ 1271 <i>et seq.</i>).....	30
j.	The Safe Drinking Water Act of 1974, as amended, (42 U.S.C. §§ 300f <i>et seq.</i>).....	30
k.	The Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 <i>et seq.</i>).....	30

l.	The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly known as Superfund) (42 U.S.C. §§ 9601 <i>et seq.</i>) and the Community Environmental Response Facilitation Act (42 U.S.C. § 9601 note <i>et seq.</i>)	30
m.	Executive Order 12898 (“Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations”)	30
n.	The Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1801 <i>et seq.</i>)	30
o.	Clean Water Act (CWA) Section 404 (33 U.S.C. § 1344)	31
p.	Rivers and Harbors Act (33 U.S.C. § 407)	31
q.	The Migratory Bird Treaty Act (16 U.S.C. §§ 703-712), Bald and Golden Eagle Protection Act (16 U.S.C. § 668 <i>et seq.</i>), and Executive Order 13186 (Responsibilities of Federal Agencies to Protect Migratory Birds, January 10, 2001)	31
r.	Executive Order 13112 (Invasive Species, February 3, 1999)	31
s.	Fish and Wildlife Coordination Act (16 U.S.C. § 661 <i>et seq.</i>)	31
.05	OTHER NATIONAL POLICY REQUIREMENTS	32
a.	Buy-American Preferences	32
b.	Criminal and Prohibited Activities	32
c.	Drug-Free Workplace	33
d.	Foreign Travel	33
e.	Increasing Seat Belt Use in the United States	34
f.	Federal Employee Expenses and Subawards or Contracts Issued to Federal Employees or Agencies	34
g.	Minority Serving Institutions Initiative	34
h.	Research Misconduct	35
i.	Research Involving Human Subjects	35
j.	Care and Use of Live Vertebrate Animals	36
k.	Management and Access to Data and Publications	37
l.	Homeland Security Presidential Directive	38
m.	Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations	38
n.	The Trafficking Victims Protection Act of 2000 (22 U.S.C. § 7104(g)), as amended, and the implementing regulations at 2 C.F.R. Part 175	40
o.	The Federal Funding Accountability and Transparency Act (FFATA) (31 U.S.C. § 6101 note)	42
p.	Recipient Integrity and Performance Matters (Appendix XII to 2 C.F.R. Part 200)	47
q.	Never Contract with the Enemy (2 C.F.R Part 183; 2 C.F.R. § 200.215)	49

r. Prohibition on certain telecommunications and video surveillance services or equipment (Public Law 115-232, section 889; 2 C.F.R. § 200.216)	50
s. Federal Financial Assistance Planning During a Funding Hiatus or Government Shutdown	51

PREFACE

This document sets out the standard terms and conditions (ST&Cs) applicable to this U.S. Department of Commerce (DOC or Commerce) financial assistance award (hereinafter referred to as the DOC ST&Cs or Standard Terms). A non-Federal entity¹ receiving a DOC financial assistance award must, in addition to the assurances made as part of the application, comply and require each of its subrecipients, contractors, and subcontractors employed in the completion of the project to comply with all applicable statutes, regulations, executive orders (E.O.s), Office of Management and Budget (OMB) circulars, provisions of the OMB *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (codified at 2 C.F.R. Part 200) (OMB Uniform Guidance), provisions of these Standard Terms, and any other terms and conditions incorporated into this DOC financial assistance award. In addition, unless otherwise provided by the terms and conditions of this DOC financial assistance award, Subparts A through E of 2 C.F.R. Part 200 and the Standard Terms are applicable to for-profit entities, foreign public entities and to foreign organizations that carry out a DOC financial assistance award.²

This award is subject to the laws and regulations of the United States. Any inconsistency or conflict in terms and conditions specified in the award will be resolved according to the following order of precedence: federal laws and regulations, applicable notices published in the *Federal Register*, E.O.s, OMB circulars, DOC ST&Cs, agency standard award conditions (if any), and specific award conditions. A specific award condition may amend or take precedence over a Standard Term on a case-by-case basis, when indicated by the specific award condition.

Some of the Standard Terms herein contain, by reference or substance, a summary of the pertinent statutes, regulations published in the *Federal Register* or Code of Federal Regulations (C.F.R.), E.O.s, OMB circulars, or the certifications and assurances provided by applicants through Standard Forms (*e.g.*, SF-424s) or through DOC forms (*e.g.* Form CD-511). To the extent that it is a summary, such Standard Term provision is not in derogation of, or an amendment to, any such statute, regulation, E.O., OMB circular, certification, or assurance.

¹ Note that the OMB Uniform Guidance uses the term “non-Federal entity” to generally refer to an entity that carries out a Federal award as a recipient or subrecipient. Because some of the provisions of these DOC ST&Cs apply to recipients rather than subrecipients, or vice versa, for clarity, these DOC ST&Cs use the terms “non-Federal entity,” “recipient,” and “subrecipient” consistent with their meanings in the OMB Uniform Guidance. In addition, the OMB Uniform Guidance uses the term “pass-through entity” to refer to a non-Federal entity that makes a subaward. As defined at 2 C.F.R. § 200.1:

“Non-Federal entity” is “a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient.”

“Recipient” is “an entity, usually but not limited to non-Federal entities, that receives a Federal award directly from a Federal awarding agency. The term recipient does not include subrecipients or individuals that are beneficiaries of the award.”

“Subrecipient” is “an entity, usually but not limited to non-Federal entities, that receives a subaward from a pass-through entity to carry out part of a Federal award; but does not include an individual that is a beneficiary of such award. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.”

“Pass-through entity” is “a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.”

² See 2 C.F.R. § 200.1 for the definitions of “foreign public entity” and “foreign organization.”

DOC commenced implementation of the Research Terms and Conditions (RT&Cs) for Federal awards effective October 1, 2017; the RT&Cs address and implement the Uniform Guidance issued by OMB. For awards designated on the Form CD-450 (Financial Assistance Award) as Research, both the DOC ST&Cs and the RT&Cs as implemented by DOC apply to the award. The RT&Cs as well as the DOC implementation statement, agency specific requirements, prior approval matrix, subaward requirements, and national policy requirements are posted on the National Science Foundation's website – <https://www.nsf.gov/awards/managing/rtc.jsp>. The DOC ST&Cs and the RT&Cs are generally intended to harmonize with each other; however, where the DOC ST&Cs and the RT&Cs differ in a Research award, the RT&Cs prevail, unless otherwise indicated in a specific award condition.

A. PROGRAMMATIC REQUIREMENTS

.01 Reporting Requirements

a. Recipients must submit all reports as required by DOC, electronically or, if unable to submit electronically, in hard copy, as outlined below and as may be supplemented by the terms and conditions of a specific DOC award.

b. Performance (Technical) Reports. Recipients must submit performance (technical) reports to the Program Officer. Performance (technical) reports should be submitted in the same frequency as the Form SF-425 (Federal Financial Report), unless otherwise directed by the Grants Officer.

1. Performance (technical) reports must contain the information prescribed in 2 C.F.R. § 200.329 (Monitoring and reporting program performance), unless otherwise specified in the award conditions.

2. As appropriate and in accordance with the format provided by the Program Officer (or other OMB-approved information collections, including the Research Program Performance Report [RPPR] as adopted by DOC for use in research awards), recipients are required to relate financial data to the performance accomplishments of this Federal award. When applicable, recipients must also provide cost information to demonstrate cost effective practices (e.g., through unit cost data). The recipient's performance will be measured in a way that will help DOC to improve program outcomes, share lessons learned, and spread the adoption of best or promising practices. As described in 2 C.F.R. § 200.211 (Information contained in a Federal award), DOC will identify the timing and scope of expected performance by the recipient as related to the outcomes intended to be achieved by the Federal program.

3. Recipients (or pass-through entities as applicable) must submit a final performance report within 120 calendar days after the expiration of the period of performance. The subrecipient is required to submit its final performance report to the pass-through entity within 90 calendar days unless an extension has been granted.

c. **Financial Reports.** In accordance with 2 C.F.R. § 200.328 (Financial reporting), the recipient must submit a Form SF-425 (Federal Financial Report) or any successor form on a semi-annual basis for the periods ending March 31 and September 30, or any portion thereof, unless otherwise specified in a specific award condition. Reports must be submitted to DOC as directed by the Grants Officer, in accordance with the award conditions and are due no later than 30 calendar days following the end of each reporting period. Recipients (or pass-through entities as applicable) must submit a final Form SF-425 within 120 calendar days after the expiration of the period of performance. The subrecipient is required to submit its financial report to the pass-through entity within 90 calendar days unless an extension has been granted. A recipient may submit a final financial report in lieu of an interim financial report due at the end of the period of performance (e.g., in lieu of submitting a financial report for the last semi-annual or other reporting under an award, a recipient may submit a final (cumulative) financial report covering the entire award period).

d. **Real Property, Tangible Personal Property and Intangible Property Reports and Requests for Dispositions.** Unless otherwise required by the terms and conditions of a DOC financial assistance award, where real property, tangible personal property or intangible property is acquired or improved (in the case of real property or tangible personal property), or produced or acquired (in the case of intangible property), pursuant to a DOC award, non-Federal entities are required to submit the following real property, tangible personal property and intangible property reports (as appropriate):

1. **Real Property Status Reports and Requests for Dispositions:** Non-Federal entities must submit reports using Form SF-429 (Real Property Status Report) or any successor form, including appropriate attachments thereto, at least annually disclosing the status of real property that is Federally-owned property or real property in which the Federal Government retains a Federal Interest, unless the Federal Interest in the real property extends 15 years or longer. In cases where the Federal Interest attached is for a period of 15 years or more, the DOC or pass-through entity, at its option, may require the non-Federal entity to report at various multi-year frequencies (e.g., every two years or every three years, not to exceed a five-year reporting period; or, the DOC or pass-through entity may require annual reporting for the first three years of a Federal award and thereafter require reporting every five years). In addition, DOC or a pass-through entity may require a non-Federal entity to submit Form SF-429, with appropriate attachments, relating to a non-Federal entity's request to acquire, improve or contribute real property under a DOC financial assistance award. Non-Federal entities wishing to dispose of real property acquired or improved, in whole or in part, pursuant to a DOC award must request disposition instructions, including the submission of Form SF-429, with appropriate attachments, from the Grants Officer in accordance with the requirements set forth in 2 C.F.R. § 200.311(c). *See also* the real property standards set forth in Section C. of these Standard Terms (Property Standards).

2. **Tangible Personal Property Status Reports and Requests for Dispositions:** DOC or a pass-through entity may also require a non-Federal entity to submit periodic reports using Form SF-428 (Tangible Personal Property Report) or any successor form, including appropriate attachments thereto, concerning tangible personal property that is Federally-owned or tangible personal property in which the Federal Government retains an interest. In

addition, DOC or a pass-through entity may require a non-Federal entity to submit Form SF-428 in connection with a non-Federal entity's request to dispose of tangible personal property acquired under a DOC financial assistance award. Non-Federal entities wishing to dispose of tangible personal property acquired or improved, in whole or in part, pursuant to a DOC award must request disposition instructions, including the submission of Form SF-428, with appropriate attachments, from the Grants Officer in accordance with the requirements set forth in 2 C.F.R. § 200.313(e). *See also* the tangible property standards set forth in Section C. of these Standard Terms (Property Standards).

3. Intangible Property Status Reports and Requests for Dispositions: The specific requirements governing the development, reporting, and disposition of rights to intangible property, including inventions and patents resulting from DOC awards, are set forth in 37 C.F.R. Part 401, which is hereby incorporated by reference into this award. Non-Federal entities are required to submit their disclosures, elections, and requests for waiver from any requirement for substantial U.S. manufacture, electronically using the Interagency Edison extramural invention reporting system (iEdison) at www.iedison.gov. Non-Federal entities may obtain a waiver of this electronic submission requirement by providing to the Grants Officer compelling reasons for allowing the submission of paper reports. When no longer needed for the originally authorized purpose, disposition of the intangible property must occur in accordance with the provisions in 2 C.F.R. § 200.313(e). *See also* the intangible property standards set forth in Section C. of these Standard Terms (Property Standards).

e. Subawards and Executive Compensation Reports. For reporting requirements on subawards and Executive Compensation, see paragraph G.05.o of these Standard Terms (The Federal Funding Accountability and Transparency Act (FFATA) (31 U.S.C. § 6101 note)).

f. Recipient Integrity and Performance Matters. For reporting requirements pertaining to integrity and performance matters, see paragraph G.05.p of these Standard Terms (Recipient Integrity and Performance Matters (Appendix XII to 2 C.F.R. Part 200)).

g. Research Performance Progress Reports. All research awards shall submit the Research Performance Progress Report (RPPR) in accordance with instructions set forth in the following link: [RPPR Instructions](#).

.02 Revisions of Program Plans

In accordance with 2 C.F.R. § 200.308 (Revision of budget and program plans) and 2 C.F.R. § 200.407 (Prior written approval (prior approval)), the recipient must obtain prior written approval from the DOC Grants Officer for certain proposed programmatic change requests, unless otherwise provided by the terms and conditions of a DOC award. Requests for prior approval for changes to program plans must be submitted to the Federal Program Officer (or electronically for awards administered through Grants Online). Requests requiring prior DOC approval are not effective unless and until approved in writing by the DOC Grants Officer.

.03 Other Federal Awards with Similar Programmatic Activities

The recipient must immediately provide written notification to the DOC Program Officer and the DOC Grants Officer if, subsequent to receipt of the DOC award, other financial assistance is received to support or fund any portion of the scope of work incorporated into the DOC award. DOC will not pay for costs that are funded by other sources.

.04 Prohibition against Assignment by a Non-Federal Entity

A non-Federal entity must not transfer, pledge, mortgage, assign, encumber or hypothecate a DOC financial assistance award or subaward, or any rights to, interests therein or claims arising thereunder, to any party or parties, including but not limited to banks, trust companies, other financing or financial institutions, or any other public or private organizations or individuals without the express prior written approval of the DOC Grants Officer or the pass-through entity (which, in turn, may need to obtain prior approval from the DOC Grants Officer).

.05 Disclaimer Provisions

a. The United States expressly disclaims all responsibility or liability to the non-Federal entity or third persons (including but not limited to contractors) for the actions of the non-Federal entity or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any subaward, contract, or subcontract under this award.

b. The acceptance of this award or any subaward by the non-Federal entity does not in any way constitute an agency relationship between the United States and the non-Federal entity or the non-Federal entity's contractors or subcontractors.

.06 Unsatisfactory Performance or Non-Compliance with Award Provisions

a. Failure to perform the work in accordance with the terms of the award and maintain satisfactory performance as determined by DOC may result in the imposition of additional award conditions pursuant to 2 C.F.R. § 200.208 (Specific conditions) or other appropriate enforcement action as specified in 2 C.F.R. § 200.339 (Remedies for noncompliance).

b. Failure to comply with the provisions of an award will be considered grounds for appropriate enforcement action pursuant to 2 C.F.R. § 200.339 (Remedies for noncompliance), including but not limited to: the imposition of additional award conditions in accordance with 2 C.F.R. § 200.208 (Specific conditions); temporarily withholding award payments pending the correction of the deficiency; changing the payment method to reimbursement only; the disallowance of award costs and the establishment of an accounts receivable; wholly or partially suspending or terminating an award; initiating suspension or debarment proceedings in accordance with 2 C.F.R. Parts 180 and 1326; and such other remedies as may be legally available.

c. 2 C.F.R. §§ 200.340 (Termination) through 200.343 (Effects of suspension and termination) apply to an award that is terminated prior to the end of the period of performance

due to the non-federal entity's material failure to comply with the award terms and conditions. In addition, the failure to comply with the provisions of a DOC award may adversely impact the availability of funding under other active DOC or Federal awards and may also have a negative impact on a non-Federal entity's eligibility for future DOC or Federal awards.

B. FINANCIAL REQUIREMENTS

.01 Financial Management

a. In accordance with 2 C.F.R. § 200.302(a) (Financial Management), each State must expend and account for the Federal award in accordance with State laws and procedures for expending and accounting for the State's own funds. In addition, the State's and any other non-Federal entity's financial management systems, including records documenting compliance with Federal statutes, regulations, and the terms and conditions of the Federal award, must be sufficient to permit the preparation of reports required by general and program-specific terms and conditions; and the tracing of funds to a level of expenditures adequate to establish that such funds have been used in accordance with Federal statutes, regulations, and the terms and conditions applicable to the Federal award. *See also* 2 C.F.R. § 200.450 (Lobbying) for additional management requirements to verify that Federal funds are not used for unallowable lobbying costs.

b. The financial management system of each non-Federal entity must provide all information required by 2 C.F.R. § 200.302(b). *See also* 2 C.F.R. §§ 200.334 (Retention requirements for records); 200.335 (Requests for transfer of records); 200.336 (Methods for collection, transmission and storage of information); 200.337 (Access to records); and 200.338 (Restrictions on public access to records).

.02 Award Payments

a. Consistent with 2 C.F.R. § 200.305(a) (Federal payment), for States, payments are governed by Treasury-State Cash Management Improvement Act (CMIA) agreements and default procedures codified at 31 C.F.R. Part 205 (Rules and Procedures for Efficient Federal-State Funds Transfers) and Treasury Financial Manual Volume I, 4A-2000 (Overall Disbursing Rules for All Federal Agencies).

b. Consistent with 2 C.F.R. § 200.305(b), for non-Federal entities other than States, payment methods must minimize the amount of time elapsing between the transfer of funds from the U.S. Treasury or the pass-through entity and the disbursement by the non-Federal entity.

1. The Grants Officer determines the appropriate method of payment and, unless otherwise stated in a specific award condition, the advance method of payment must be authorized. Advances must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the non-Federal entity in carrying out the purpose of the approved program or project. Unless otherwise provided by the terms and conditions of a DOC award, non-Federal entities must time advance payment requests so that Federal funds are on hand for a maximum of 30 calendar days before being disbursed by the

non-Federal entity for allowable award costs.

2. If a non-Federal entity demonstrates an unwillingness or inability to establish procedures that will minimize the time elapsing between the transfer of funds and disbursement by the non-Federal entity or if a non-Federal entity otherwise fails to continue to qualify for the advance method of payment, the Grants Officer or the pass-through entity may change the method of payment to reimbursement only.

c. Unless otherwise provided for in the award terms, payments from DOC to recipients under this award will be made using the Department of Treasury's Automated Standard Application for Payment (ASAP) system. Under the ASAP system, payments are made through preauthorized electronic funds transfers directly to the recipient's bank account, in accordance with the requirements of the Debt Collection Improvement Act of 1996. To receive payments under ASAP, recipients are required to enroll with the Department of Treasury, Financial Management Service, Regional Financial Centers, which allows them to use the on-line and Voice Response System (VRS) method of withdrawing funds from their ASAP established accounts. The following information will be required to make withdrawals under ASAP:

1. ASAP account number – the Federal award identification number found on the cover sheet of the award;
2. Agency Location Code (ALC); and
3. Region Code.

d. Recipients enrolled in the ASAP system do not need to submit a Form SF-270 (Request for Advance or Reimbursement) for payments relating to their award. Awards paid under the ASAP system will contain a specific award condition, clause, or provision describing enrollment requirements and any controls or withdrawal limits set in the ASAP system.

e. When the Form SF-270 or successor form is used to request payment, the recipient must submit the request no more than monthly, and advances must be approved for periods to cover only expenses reasonably anticipated over the next 30 calendar days. Prior to receiving payments via the Form SF-270, the recipient must complete and submit to the Grants Officer the Form SF-3881 (ACH Vendor Miscellaneous Payment Enrollment Form) or successor form along with the initial Form SF-270. Form SF-3881 enrollment must be completed before the first award payment can be made via a Form SF-270 request.

f. The Federal award identification number must be included on all payment-related correspondence, information, and forms.

g. Non-Federal entities receiving advance award payments must adhere to the depository requirements set forth in 2 C.F.R. §§ 200.305(b)(7) through (b)(11). Interest amounts up to \$500 per non-Federal entity's fiscal year may be retained by the non-Federal entity for administrative expenses.

.03 Federal and Non-Federal Sharing

a. Awards that include Federal and non-Federal sharing incorporate a budget consisting of shared allowable costs. If actual allowable costs are less than the total approved budget, the Federal and non-Federal cost shares must be calculated by applying the approved Federal and non-Federal cost share ratios to actual allowable costs. If actual allowable costs exceed the total approved budget, the Federal share must not exceed the total Federal dollar amount authorized by the award.

b. The non-Federal share, whether in cash or third-party in-kind contributions, is to be paid out at the same general rate as the Federal share. Exceptions to this requirement may be granted by the Grants Officer based on sufficient documentation demonstrating previously determined plans for, or later commitment of, cash or third-party in-kind contributions. In any case, the recipient must meet its cost share commitment as set forth in the terms and conditions of the award; failure to do so may result in the assignment of specific award conditions or other further action as specified in Standard Term A.06 (Unsatisfactory Performance or Non-Compliance with Award Provisions). The non-Federal entity must create and maintain sufficient records justifying all non-Federal sharing requirements to facilitate questions and audits; see Section D of these Standard Terms (Audits), for audit requirements. *See* 2 C.F.R. § 200.306 for additional requirements regarding cost sharing.

.04 Budget Changes and Transfer of Funds among Categories

a. Recipients are required to report deviations from the approved award budget and request prior written approval from DOC in accordance with 2 C.F.R. § 200.308 (Revision of budget and program plans) and 2 C.F.R. § 200.407 (Prior written approval (prior approval)). Requests for such budget changes must be submitted to the Grants Officer (or electronically for awards serviced through Grants Online) who will notify the recipient of the final determination in writing. Requests requiring prior DOC approval do not become effective unless and until approved in writing by the DOC Grants Officer.

b. In accordance with 2 C.F.R. § 200.308(f), transfers of funds by the recipient among direct cost categories are permitted for awards in which the Federal share of the project is equal to or less than the simplified acquisition threshold. For awards in which the Federal share of the project exceeds the simplified acquisition threshold, transfers of funds among direct cost categories must be approved in writing by the Grants Officer when the cumulative amount of such direct costs transfers exceeds 10 percent of the total budget as last approved by the Grants Officer. The 10 percent threshold applies to the total Federal and non-Federal funds authorized by the Grants Officer at the time of the transfer request. This is the accumulated amount of Federal funding obligated to date by the Grants Officer along with any non-Federal share. The same requirements apply to the cumulative amount of transfer of funds among programs, functions, and activities. This transfer authority does not authorize the recipient to create new budget categories within an approved budget without Grants Officer approval. Any transfer that causes any Federal appropriation, or part thereof, to be used for an unauthorized purpose is not and will not be permitted. In addition, this provision does not prohibit the recipient from requesting Grants Officer approval for revisions to the budget. *See* 2 C.F.R. § 200.308 (Revision

of budget and program plans) (as applicable) for specific requirements concerning budget revisions and transfer of funds between budget categories.

.05 Program Income

Unless otherwise indicated in the award terms, program income may be used for any required cost sharing or added to the project budget, consistent with 2 C.F.R. § 200.307 (Program income).

.06 Indirect or Facilities and Administrative Costs

a. Indirect costs (or facilities and administration costs (F&A)) for major institutions of higher education and major nonprofit organizations can generally be defined as costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved. Indirect costs will not be allowable charges against an award unless permitted under the award and specifically included as a line item in the award's approved budget.

b. Unrecovered indirect costs, including unrecovered indirect costs on cost sharing or matching, may be included as part of cost sharing or matching as allowed under 2 C.F.R. § 200.306(c) (Cost sharing or matching) or the terms and conditions of a DOC award.

c. Cognizant Agency for Indirect (F&A) Costs. OMB established the cognizant agency concept, under which a single agency represents all others in dealing with non-Federal entities in common areas. The cognizant agency for indirect costs reviews and approves non-Federal entities' indirect cost rates. In accordance with Appendices III – VII to 2 C.F.R. Part 200 the cognizant agency for indirect costs reviews and approves non-Federal entities' indirect cost rates. With respect to for-profit organizations, the term cognizant Federal agency generally is defined as the agency that provides the largest dollar amount of negotiated contracts, including options. *See* 48 C.F.R. § 42.003. If the only Federal funds received by a commercial organization are DOC award funds, then DOC becomes the cognizant Federal agency for indirect cost negotiations.

1. General Review Procedures Where DOC is the Cognizant Agency.

i. Within 90 calendar days of the award start date, the recipient must submit to the Grants Officer any documentation (indirect cost proposal, cost allocation plan, etc.) necessary to allow DOC to perform the indirect cost rate proposal review. Below are two sources available for guidance on how to put an indirect cost plan together:

- (A) Department of Labor: <https://www.dol.gov/oasam/boc/dcd/np-comm-guide.htm>
or
- (B) Department of the Interior: <https://www.doi.gov/ibc/services/finance/indirect-Cost-Services/>.

ii. The recipient may use the rate proposed in the indirect cost plan as a provisional rate until the DOC provides a response to the submitted plan.

- iii. The recipient is required to annually submit indirect cost proposals no later than six months after the recipient's fiscal year end, except as otherwise provided by 2 C.F.R. § 200.414(g).
2. When DOC is not the oversight or cognizant Federal agency, the recipient must provide the Grants Officer with a copy of a negotiated rate agreement or a copy of the transmittal letter submitted to the cognizant or oversight Federal agency requesting a negotiated rate agreement within 30 calendar days of receipt of a negotiated rate agreement or submission of a negotiated rate proposal.
3. If the recipient is proposing indirect costs as part of a project budget, but is not required to have a negotiated rate agreement pursuant to 2 C.F.R. Part 200, Appendix VII, Paragraph D.1.b (*i.e.*, a governmental department or agency that receives \$35 million or less in direct Federal funding), the recipient may be required to provide the Grants Officer with a copy of its Certificate of Indirect Costs as referenced in 2 C.F.R. Part 200, Appendix VII, Paragraph D.3. or such other documentation, acceptable in form and substance to the Grants Officer, sufficient to confirm that proposed indirect costs are calculated and supported by documentation in accordance with 2 C.F.R. Part 200, Appendix VII. In cases where the DOC is the recipient's cognizant Federal agency, the DOC reserves the right, pursuant to 2 C.F.R. Part 200, Appendix VII, Paragraph D.1.b, to require the recipient to submit its indirect cost rate proposal for review by DOC.
 - d. If the recipient fails to submit required documentation to DOC within 90 calendar days of the award start date, the Grants Officer may amend the award to preclude the recovery of any indirect costs under the award. If the DOC, oversight, or cognizant Federal agency determines there is a finding of good and sufficient cause to excuse the recipient's delay in submitting the documentation, an extension of the 90-day due date may be approved by the Grants Officer.
 - e. The maximum dollar amount of allocable indirect costs for which DOC will reimburse the recipient is the lesser of:
 1. The line item amount for the Federal share of indirect costs contained in the approved award budget, including all budget revisions approved in writing by the Grants Officer; or
 2. The Federal share of the total indirect costs allocable to the award based on the indirect cost rate approved by the cognizant agency for indirect costs and applicable to the period in which the cost was incurred, in accordance with 2 C.F.R. 200 Appendix III, C.7, provided that the rate is approved on or before the award end date.
 - f. In accordance with 2 CFR § 200.414(c)(3), DOC set forth policies, procedures, and general decision-making criteria for deviations from negotiated indirect cost rates. These policies and procedures are applicable to all Federal financial assistance programs awarded and administered by DOC bureaus as Federal awarding agencies and may be found at http://www.osec.doc.gov/oam/grants_management/policy/documents/FAM%202015-02.pdf.

g. In accordance with 2 CFR § 200.414(g), any non-Federal entity that has a negotiated indirect cost rate may apply to the entity's cognizant agency for indirect costs for a one-time extension of a currently negotiated indirect cost rate for a period of up to four years, reducing the frequency of rate calculations and negotiations between an institution and its cognizant agency.

h. In accordance with 2 CFR § 200.414(f), any non-Federal entity that does not have a current negotiated (including provisional) rate, except for those non-Federal entities described in paragraph D.1.b of Appendix VII to 2 CFR Part 200, may elect to charge a de minimis rate of 10 percent of modified total direct costs. No documentation is required to justify the 10 percent de minimis indirect cost rate.

.07 Incurring Costs or Obligating Federal Funds Before and After the Period of Performance

a. In accordance with 2 C.F.R. § 200.309 (Modifications to Period of Performance) and the terms and conditions of a DOC award, a non-Federal entity may charge to the Federal award only allowable costs incurred during the period of performance, which is established in the award document. As defined at 2 C.F.R. § 200.1, the "period of performance" means the total estimated time interval between the start of an initial Federal award and the planned end date, which may include one or more funded portions, or budget periods. Identification of the Period of Performance in the Federal award per § 200.211(b)(5) does not commit the awarding agency to fund the award beyond the currently approved budget period." The period of performance may sometimes be referred to as the project period or award period. This Standard Term is subject to exceptions for allowable costs pertaining to: (i) pre-award costs (*see* 2 C.F.R. § 200.458); (ii) publication and printing costs (*see* 2 C.F.R. § 200.461); and administrative costs incurred relating to the close-out of an award (*see* 2 C.F.R. § 200.344).

b. Reasonable, necessary, allowable and allocable administrative award closeout costs are authorized for a period of up to 120 calendar days following the end of the period of performance. For this purpose, award closeout costs are those strictly associated with close-out activities and are typically limited to the preparation of final progress, financial, and required project audit reports, unless otherwise approved in writing by the Grants Officer. A non-Federal entity may request an extension of the 120-day closeout period, as provided in 2 C.F.R. § 200.344 (Closeout).

c. Unless authorized by a specific award condition, any extension of the period of performance may only be authorized by the Grants Officer in writing. This is not a delegable authority. Verbal or written assurances of funding from anyone other than the Grants Officer does not constitute authority to obligate funds for programmatic activities beyond the end of the period of performance.

d. The DOC has no obligation to provide any additional prospective funding. Any amendment of the award to increase funding and to extend the period of performance is at the sole discretion of DOC.

.08 Tax Refunds

The non-Federal entity shall contact the Grants Officer immediately upon receipt of the refund of any taxes, including but not limited to Federal Insurance Contributions Act (FICA) taxes, Federal Unemployment Tax Act (FUTA) taxes, or Value Added Taxes (VAT) that were allowed as charges to a DOC award, regardless of whether such refunds are received by the non-Federal entity during or after the period of performance. The Grants Officer will provide written disposition instructions to the non-Federal entity, which may include the refunded taxes being credited to the award as either a cost reduction or a cash refund, or may allow the non-Federal entity to use such refunds for approved activities and costs under a DOC award. *See* 2 C.F.R. § 200.470 (Taxes (including Value Added Tax)).

.09 Internal Controls

Each recipient must comply with standards for internal controls described at 2 C.F.R. § 200.303 (Internal controls). The “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States referenced in § 200.303 are available online at <http://www.gao.gov/assets/80/76455.pdf> and the “Internal Control Integrated Framework” issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) is available online at [Internal Control Guidance](#).

C. PROPERTY STANDARDS

.01 Standards

Each non-Federal entity must comply with the Property Standards set forth in 2 C.F.R. §§ 200.310 (Insurance coverage) through 200.316 (Property trust relationship).

.02 Real and Personal Property

a. In accordance with 2 C.F.R. § 200.316 (Property trust relationship), real property, equipment, and other personal property acquired or improved with a Federal award must be held in trust by the non-Federal entity as trustee for the beneficiaries of the project or program under which the property was acquired or improved. This trust relationship exists throughout the duration of the property’s estimated useful life, as determined by the Grants Officer in consultation with the Program Office, during which time the Federal Government retains an undivided, equitable reversionary interest in the property (Federal Interest). During the duration of the Federal Interest, the non-Federal entity must comply with all use and disposition requirements and restrictions as set forth in 2 C.F.R. §§ 200.310 (Insurance coverage) through 200.316 (Property trust relationship), as applicable, and in the terms and conditions of the Federal award.

b. The Grants Officer may require a non-Federal entity to execute and to record (as applicable) a statement of interest, financing statement (form UCC-1), lien, mortgage or other public notice of record to indicate that real or personal property acquired or improved in whole or in part with Federal funds is subject to the Federal Interest, and that certain use and disposition

requirements apply to the property. The statement of interest, financing statement (Form UCC 1), lien, mortgage or other public notice must be acceptable in form and substance to the DOC and must be placed on record in accordance with applicable State and local law, with continuances re-filed as appropriate. In such cases, the Grants Officer may further require the non-Federal entity to provide the DOC with a written statement from a licensed attorney in the jurisdiction where the property is located, certifying that the Federal Interest has been protected, as required under the award and in accordance with applicable State and local law. The attorney's statement, along with a copy of the instrument reflecting the recordation of the Federal Interest, must be returned to the Grants Officer. Without releasing or excusing the non-Federal entity from these obligations, the non-Federal entity, by execution of the financial assistance award or by expending Federal financial assistance funds (in the case of a subrecipient), authorizes the Grants Officer and/or program office to file such notices and continuations as it determines to be necessary or convenient to disclose and protect the Federal Interest in the property. The Grants Officer may elect not to release any or a portion of the Federal award funds until the non-Federal entity has complied with this provision and any other applicable award terms or conditions, unless other arrangements satisfactory to the Grants Officer are made.

.03 Intellectual Property Rights

a. General. The rights to any work or other intangible property produced or acquired under a Federal award are determined by 2 C.F.R. § 200.315 (Intangible property). The non-Federal entity owns any work produced or purchased under a Federal award subject to the DOC's royalty-free, nonexclusive, and irrevocable right to obtain, reproduce, publish, or otherwise use the work or authorize others to receive, reproduce, publish, or otherwise use the work for Government purposes.

b. Inventions. Unless otherwise provided by law, the rights to any invention made by a non-Federal entity under a DOC financial assistance award are determined by the Bayh-Dole Act, Pub. L. No. 96-517, as amended, and as codified in 35 U.S.C. § 200 *et seq.*, and modified by E.O. 12591 (52 FR 13414), as amended by E.O. 12618 (52 FR 48661). 35 U.S.C. § 201(h) defines "small business firm" as "a small business concern as defined at section 2 of Public Law 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration." Section 1(b)(4) of E.O. 12591 extended the Bayh-Dole Act to non-Federal entities "regardless of size" to the extent permitted by law. The specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from Federal awards are described in more detail in 37 C.F.R. Part 401, which implements 35 U.S.C. 202 through 204 and includes standard patent rights clauses in 37 C.F.R. § 401.14, which is hereby incorporated by reference into this award.

The Bayh-Dole regulations set forth in 37 C.F.R. parts 401 and 404 were amended by 83 FR 15954, with an effective date of May 14, 2018 (Amended Bayh-Dole Regulations). The Amended Bayh-Dole Regulations apply to all new financial assistance awards issued on or after May 14, 2018. The Amended Bayh-Dole Regulations do not apply to financial assistance awards issued prior to May 14, 2018, including amendments made to such awards, unless an award amendment includes a specific condition incorporating the Amended Bayh-Dole Regulations into the terms and conditions of the subject award.

1. **Ownership.** A non-Federal entity may have rights to inventions in accordance with 37 C.F.R. Part 401. These requirements are technical in nature and non-Federal entities are encouraged to consult with their Intellectual Property counsel to ensure the proper interpretation of and adherence to the ownership rules. Unresolved questions pertaining to a non-Federal entities' ownership rights may further be addressed to the Grants Officer.

2. **Responsibilities - iEdison.** The non-Federal entity must comply with all the requirements of the standard patent rights clause and 37 C.F.R. Part 401, including the standard patent rights clause in 37 C.F.R. § 401.14. Non-Federal entities are required to submit their disclosures, elections, and requests for waiver from any requirement for substantial U.S. manufacture, electronically using the Interagency Edison extramural invention reporting system (iEdison) at www.iedison.gov. Non-Federal entities may obtain a waiver of this electronic submission requirement by providing the Grants Officer with compelling reasons for allowing the submission of paper reports.

c. **Patent Notification Procedures.** Pursuant to E.O. 12889 (58 FR 69681), the DOC is required to notify the owner of any valid patent covering technology whenever the DOC or a non-Federal entity, without making a patent search, knows (or has demonstrable reasonable grounds to know) that technology covered by a valid United States patent has been or will be used without a license from the owner. To ensure proper notification, if the non-Federal entity uses or has used patented technology under this award without a license or permission from the owner, the non-Federal entity must notify the Grants Officer.

This notice does not constitute authorization or consent by the Government to any copyright or patent infringement occurring under the award.

d. A non-Federal entity may copyright any work produced under a Federal award, subject to the DOC's royalty-free, nonexclusive, and irrevocable right to obtain, reproduce, publish, or otherwise use the work, or authorize others to do so for Government purposes. Works jointly authored by DOC and non-Federal entity employees may be copyrighted, but only the part of such works authored by the non-Federal entity is protectable in the United States because, under 17 U.S.C. § 105, copyright protection is not available within the United States for any work of the United States Government. On occasion and as permitted under 17 U.S.C. § 105, DOC may require the non-Federal entity to transfer to DOC a copyright in a particular work for Government purposes or when DOC is undertaking primary dissemination of the work.

e. **Freedom of Information Act (FOIA).** In response to a FOIA request for research data relating to published research findings (as defined by 2 C.F.R. § 200.315(e)(2)) produced under a Federal award that were used by the Federal government in developing an agency action that has the force and effect of law, the DOC will request, and the non-Federal entity must provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA.

D. AUDITS

Under the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3, §§ 1 *et seq.*, an audit of the award may be conducted at any time. The Inspector General of the DOC, or any of his or her duly authorized representatives, must have the right to access any pertinent books, documents, papers, and records of the non-Federal entity, whether written, printed, recorded, produced, or reproduced by any electronic, mechanical, magnetic, or other process or medium, to make audits, inspections, excerpts, transcripts, or other examinations as authorized by law. This right also includes timely and reasonable access to the non-Federal entity's personnel for interview and discussion related to such documents. *See* 2 C.F.R. § 200.337 (Access to records). When the DOC Office of Inspector General (OIG) requires a program audit on a DOC award, the OIG will usually make the arrangements to audit the award, whether the audit is performed by OIG personnel, an independent accountant under contract with DOC, or any other Federal, State, or local audit entity.

.01 Organization-Wide, Program-Specific, and Project Audits

a. A recipient must, within 90 days of the end of its fiscal year, notify the Grants Officer of the amount of Federal awards, including all DOC and non-DOC awards, that the recipient expended during its fiscal year.

b. Recipients that are subject to the provisions of Subpart F of 2 C.F.R. Part 200 and that expend \$750,000 or more in a year in Federal awards during their fiscal year must have an audit conducted for that year in accordance with the requirements contained in Subpart F of 2 C.F.R. Part 200. Within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a different period is specified in a program-specific audit guide, a copy of the audit must be submitted electronically to the Federal Audit Clearinghouse (FAC) through the FAC's Internet Data Entry System (IDES) (<https://harvester.census.gov/facides/>). In accordance with 2 C.F.R. § 200.425 (Audit services), the recipient may include a line item in the budget for the allowable costs associated with the audit, which is subject to the approval of the Grants Officer.

c. Unless otherwise specified in the terms and conditions of the award, entities that are not subject to Subpart F of 2 C.F.R. Part 200 (e.g., for-profit entities, foreign public entities and foreign organizations) and that expend \$750,000 or more in DOC funds during their fiscal year (including both as a recipient and a subrecipient) must submit to the Grants Officer either: (i) a financial related audit of each DOC award or subaward in accordance with Generally Accepted Government Auditing Standards (GAGAS); or (ii) a project specific audit for each award or subaward in accordance with the requirements contained in 2 C.F.R. § 200.507. Within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a different period is specified in a program-specific audit guide, a copy of the audit must be submitted to the Grants Officer. In accordance with 2 C.F.R. § 200.425, the recipient may include a line item in the budget for the allowable costs associated with the audit, which is subject to the approval of the Grants Officer. Entities that are not subject to Subpart F of 2 C.F.R. Part 200 and that expend less than \$750,000 in DOC funds in a given fiscal year are

not required to submit an audit(s) for that year, but must make their award-related records available to DOC or other designated officials for review and audit.

d. Recipients are responsible for compliance with the above audit requirements and for informing the Grants Officer of the status of their audit, including when the relevant audit has been completed and submitted in accordance with the requirements of this section. Failure to provide audit reports within the timeframes specified above may result in appropriate enforcement action, up to and including termination of the award, and may jeopardize eligibility for receiving future DOC awards.

e. In accordance with 2 C.F.R. § 200.332(d)(3), pass-through entities are responsible for issuing a management decision for applicable audit findings pertaining only to the Federal award provided by the pass-through entity to a subrecipient.

.02 Audit Resolution Process

a. An audit of the award may result in the disallowance of costs incurred by the recipient and the establishment of a debt (account receivable) due to DOC. For this reason, the recipient should take seriously its responsibility to respond to all audit findings and recommendations with adequate explanations and supporting evidence whenever audit results are disputed.

b. A recipient whose award is audited has the following opportunities to dispute the proposed disallowance of costs and the establishment of a debt:

1. The recipient has 30 calendar days from the date of the transmittal of the draft audit report to submit written comments and documentary evidence.

2. The recipient has 30 calendar days from the date of the transmittal of the final audit report to submit written comments and documentary evidence.

3. The DOC will review the documentary evidence submitted by the recipient and will notify the recipient of the results in an *Audit Resolution Determination Letter*. The recipient has 30 calendar days from the date of receipt of the *Audit Resolution Determination Letter* to submit a written appeal, unless this deadline is extended in writing by the DOC. The appeal is the last opportunity for the recipient to submit written comments and documentary evidence to the DOC to dispute the validity of the audit resolution determination.

4. An appeal of the Audit Resolution Determination does not prevent the establishment of the audit-related debt nor does it prevent the accrual of applicable interest, penalties and administrative fees on the debt in accordance with 15 C.F.R. Part 19. If the Audit Resolution Determination is overruled or modified on appeal, appropriate corrective action will be taken retroactively.

5. The DOC will review the recipient's appeal and notify the recipient of the results in an *Appeal Determination Letter*. After the opportunity to appeal has expired or after the appeal determination has been rendered, DOC will not accept any further documentary evidence from the recipient. No other administrative appeals are available in DOC.

E. DEBTS

.01 Payment of Debts Owed to the Federal Government

a. The non-Federal entity must promptly pay any debts determined to be owed to the Federal Government. Any funds paid to a non-Federal entity in excess of the amount to which the non-Federal entity is finally determined to be entitled under the terms of the Federal award constitute a debt to the Federal government. In accordance with 2 C.F.R. § 200.346 (Collection of amounts due), if not paid within 90 calendar days after demand, DOC may reduce a debt owed to the Federal Government by:

1. Making an administrative offset against other requests for reimbursement;
2. Withholding advance payments otherwise due to the non-Federal entity; or
3. Taking any other action permitted by Federal statute.

The foregoing does not waive any claim on a debt that DOC may have against another entity, and all rights and remedies to pursue other parties are preserved.

b. DOC debt collection procedures are set out in 15 C.F.R. Part 19. In accordance with 2 C.F.R. § 200.346 (Collection of amounts due) and 31 U.S.C. § 3717, failure to pay a debt owed to the Federal Government must result in the assessment of interest, penalties and administrative costs in accordance with the provisions of 31 U.S.C. § 3717 and 31 C.F.R. § 901.9. Commerce entities will transfer any Commerce debt that is delinquent for more than 120 calendar days to the U.S. Department of the Treasury's Financial Management Service for debt collection services, a process known as cross-servicing, pursuant to 31 U.S.C. § 3711(g), 31 C.F.R. § 285.12, and 15 C.F.R. § 19.9. DOC may also take further action as specified in DOC ST&C A.06 (Unsatisfactory Performance or Non-Compliance with Award Provisions). Funds for payment of a debt must not come from other Federally-sponsored programs, and the DOC may conduct on-site visits, audits, and other reviews to verify that other Federal funds have not been used to pay a debt.

.02 Late Payment Charges

a. Interest will be assessed on the delinquent debt in accordance with section 11 of the Debt Collection Act of 1982, as amended (31 U.S.C. § 3717(a)). The minimum annual interest rate to be assessed is the U.S. Department of the Treasury's Current Value of Funds Rate (CVFR). The CVFR is available online at https://www.fiscal.treasury.gov/fsreports/rpt/cvfr/cvfr_home.htm and also published by the Department of the Treasury in the *Federal Register* (<http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR>) and in the *Treasury Financial Manual Bulletin*. The assessed rate must remain fixed for the duration of the indebtedness.

b. Penalties will accrue at a rate of not more than six percent per year or such other higher rate as authorized by law.

c. Administrative charges, i.e., the costs of processing and handling a delinquent debt, will be determined by the Commerce entity collecting the debt, as directed by the Office of the Chief Financial Officer and Assistant Secretary for Administration.

.03 Barring Delinquent Federal Debtors from Obtaining Federal Loans or Loan Insurance Guarantees

Pursuant to 31 U.S.C. § 3720B and 31 C.F.R. § 901.6, unless waived by DOC, the DOC is not permitted to extend financial assistance in the form of a loan, loan guarantee, or loan insurance to any person delinquent on a nontax debt owed to a Federal agency. This prohibition does not apply to disaster loans.

.04 Effect of Judgment Lien on Eligibility for Federal Grants, Loans, or Programs

Pursuant to 28 U.S.C. § 3201(e), unless waived by the DOC, a debtor who has a judgment lien against the debtor's property for a debt to the United States is not eligible to receive any grant or loan that is made, insured, guaranteed, or financed directly or indirectly by the United States or to receive funds directly from the Federal Government in any program, except funds to which the debtor is entitled as beneficiary, until the judgment is paid in full or otherwise satisfied.

F. CONFLICT OF INTEREST, CODE OF CONDUCT AND OTHER REQUIREMENTS PERTAINING TO DOC FINANCIAL ASSISTANCE AWARDS, INCLUDING SUBAWARD AND PROCUREMENT ACTIONS

.01 Conflict of Interest and Code of Conduct

a. DOC Conflict of Interest Policy. In accordance with 2 C.F.R. § 200.112 (Conflict of interest), the non-Federal entity must disclose in writing any potential conflict of interest to the DOC or pass-through entity. In addition, a non-Federal entity will establish and maintain written standards of conduct that include safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain in the administration of an award. It is the DOC's policy to maintain the highest standards of conduct and to prevent real or apparent conflicts of interest in connection with DOC financial assistance awards.

b. A conflict of interest generally exists when an interested party participates in a matter that has a direct and predictable effect on the interested party's personal or financial interests. A financial interest may include employment, stock ownership, a creditor or debtor relationship, or prospective employment with the organization selected or to be selected for a subaward. A conflict also may exist where there is an appearance that an interested party's objectivity in performing his or her responsibilities under the project is impaired. For example, an appearance of impairment of objectivity may result from an organizational conflict where, because of other activities or relationships with other persons or entities, an interested party is unable to render

impartial assistance, services or advice to the recipient, a participant in the project or to the Federal Government. Additionally, a conflict of interest may result from non-financial gain to an interested party, such as benefit to reputation or prestige in a professional field. For purposes of the DOC Conflict of Interest Policy, an interested party includes, but is not necessarily limited to, any officer, employee or member of the board of directors or other governing board of a non-Federal entity, including any other parties that advise, approve, recommend, or otherwise participate in the business decisions of the recipient, such as agents, advisors, consultants, attorneys, accountants or shareholders. This also includes immediate family and other persons directly connected to the interested party by law or through a business arrangement.

c. Procurement-related conflict of interest. In accordance with 2 C.F.R. § 200.318 (General procurement standards), non-Federal entities must maintain written standards of conduct covering conflicts of interest and governing the performance of their employees engaged in the selection, award and administration of contracts. *See* paragraph F.04 of these Standard Terms (Requirements for Procurements).

.02 Nonprocurement Debarment and Suspension

Non-Federal entities must comply with the provisions of 2 C.F.R. Part 1326 (Nonprocurement Debarment and Suspension), which generally prohibit entities that have been debarred, suspended, or voluntarily excluded from participating in Federal nonprocurement transactions either through primary or lower tier covered transactions, and which set forth the responsibilities of recipients of Federal financial assistance regarding transactions with other persons, including subrecipients and contractors.

.03 Requirements for Subawards

a. The recipient or pass-through entity must require all subrecipients, including lower tier subrecipients, to comply with the terms and conditions of a DOC financial assistance award, including applicable provisions of the OMB Uniform Guidance (2 C.F.R. Part 200), and all associated Terms and Conditions set forth herein. *See* 2 C.F.R. § 200.101(b)(2) (Applicability to different types of Federal awards), which describes the applicability of 2 C.F.R. Part 200 to various types of Federal awards and §§ 200.331-333 (Subrecipient monitoring and management).

b. The recipient or pass through entity may have more restrictive policies for the RTC *waived* prior approvals (no-cost extensions, re-budgeting, etc.) for their subaward recipients. Such restrictive policies must be addressed in their subaward agreements and in accordance with §200.331.

.04 Requirements for Procurements

a. States. Pursuant to 2 C.F.R. § 200.317 (Procurements by states), when procuring property and services under this Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. The State must comply with 2 C.F.R. §§ 200.321 (Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms), 200.322 (Domestic preferences for procurements), and

200.323 (Procurement of recovered materials), and ensure that every purchase order or other contract includes any clauses required by 2 C.F.R. § 200.327 (Contract provisions).

b. **Other Non-Federal Entities.** All other non-Federal entities, including subrecipients of a State, must follow the procurement standards in 2 C.F.R. §§ 200.318 (General procurement standards) through 200.327 (Contract provisions) which include the requirement that non-Federal entities maintain written standards of conduct covering conflicts of interest and governing the performance of their employees engaged in the selection, award, and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest.

.05 Whistleblower Protections

This award is subject to the whistleblower protections afforded by 41 U.S.C. § 4712 (Enhancement of contractor protection from reprisal for disclosure of certain information), which generally provide that an employee or contractor (including subcontractors and personal services contractors) of a non-Federal entity may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body information that the employee reasonably believes is evidence of gross mismanagement of a Federal award, subaward, or a contract under a Federal award or subaward, a gross waste of Federal funds, an abuse of authority relating to a Federal award or subaward or contract under a Federal award or subaward, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal award, subaward, or contract under a Federal award or subaward. These persons or bodies include:

- a. A Member of Congress or a representative of a committee of Congress.
- b. An Inspector General.
- c. The Government Accountability Office.
- d. A Federal employee responsible for contract or grant oversight or management at the relevant agency.
- e. An authorized official of the Department of Justice or other law enforcement agency.
- f. A court or grand jury.
- g. A management official or other employee of the contractor, subcontractor, or grantee who has the responsibility to investigate, discover, or address misconduct.

Non-Federal entities and contractors under Federal awards and subawards must inform their employees in writing of the rights and remedies provided under 41 U.S.C. § 4712, in the predominant native language of the workforce.

.06 Small Businesses, Minority Business Enterprises and Women's Business Enterprises

In accordance with 2 C.F.R. § 200.321 (Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms), the recipient must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. DOC encourages non-Federal entities to use small

businesses, minority business enterprises and women’s business enterprises in contracts under financial assistance awards. The Minority Business Development Agency within the DOC will assist non-Federal entities in matching qualified minority business enterprises with contract opportunities. For further information visit MBDA’s website at <http://www.mbda.gov>. If you do not have access to the Internet, you may contact MBDA via telephone or mail:

U.S. Department of Commerce
Minority Business Development Agency
Herbert C. Hoover Building
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230
(202) 482-0101

G. NATIONAL POLICY REQUIREMENTS

.01 United States Laws and Regulations

This award is subject to the laws and regulations of the United States. The recipient must comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

.02 Non-Discrimination Requirements

No person in the United States may, on the ground of race, color, national origin, handicap, age, religion, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under, any program or activity receiving Federal financial assistance. The recipient agrees to comply with the non-discrimination requirements below:

a. Statutory Provisions

1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d *et seq.*) and DOC implementing regulations published at 15 C.F.R. Part 8 prohibiting discrimination on the grounds of race, color, or national origin under programs or activities receiving Federal financial assistance;
2. Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681 *et seq.*) prohibiting discrimination on the basis of sex under Federally assisted education programs or activities;
3. The Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 *et seq.*) prohibiting discrimination on the basis of disability under programs, activities, and services provided or made available by State and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation;
4. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), and DOC implementing regulations published at 15 C.F.R. Part 8b prohibiting discrimination on the

basis of handicap under any program or activity receiving or benefiting from Federal assistance.

For purposes of complying with the accessibility standards set forth in 15 C.F.R. § 8b.18(c), non-federal entities must adhere to the regulations, published by the U.S. Department of Justice, implementing Title II of the Americans with Disabilities Act (ADA) (28 C.F.R. part 35; 75 FR 56164, as amended by 76 FR 13285) and Title III of the ADA (28 C.F.R. part 36; 75 FR 56164, as amended by 76 FR 13286). The revised regulations adopted new enforceable accessibility standards called the “2010 ADA Standards for Accessible Design” (2010 Standards), which replace and supersede the former Uniform Federal Accessibility Standards for new construction and alteration projects;

5. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 *et seq.*), and DOC implementing regulations published at 15 C.F.R. Part 20 prohibiting discrimination on the basis of age in programs or activities receiving Federal financial assistance; and
6. Any other applicable non-discrimination law(s).

b. Other Provisions

1. Parts II and III of E.O. 11246 (Equal Employment Opportunity, 30 FR 12319),³ which requires Federally assisted construction contracts to include the nondiscrimination provisions of §§ 202 and 203 of E.O. 11246 and Department of Labor regulations implementing E.O. 11246 (41 C.F.R. § 60-1.4(b)).
2. E.O. 13166 (65 FR 50121, Improving Access to Services for Persons with Limited English Proficiency), requiring Federal agencies to examine the services provided, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have meaningful access to them. The DOC issued policy guidance on March 24, 2003 (68 FR 14180) to articulate the Title VI prohibition against national origin discrimination affecting LEP persons and to help ensure that non-Federal entities provide meaningful access to their LEP applicants and beneficiaries.
3. In accordance with E.O. 13798 and Office of Management and Budget, M-20-09 – Guidance Regarding Federal Grants, states or other public grantees may not condition sub-awards of Federal grant money in a manner that would disadvantage grant applicants based on their religious character.

³ As amended by E.O. 11375(32 FR 14303), E.O. 11478 (34 FR 12985), E.O. 12086 (43 FR 46501), E.O. 12107 (44 FR 1055), E.O. 13279 (F67 FR 77141), E.O. 13665 (79 FR 20749), and E.O. 13672 (79 FR 42971).

c. Title VII Exemption for Religious Organizations

Generally, Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.*, provides that it is an unlawful employment practice for an employer to discharge any individual or otherwise to discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin. However, Title VII, 42 U.S.C. § 2000e-1(a), expressly exempts from the prohibition against discrimination based on religion, "a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities."

.03 LOBBYING RESTRICTIONS

a. Statutory Provisions

Non-Federal entities must comply with 2 C.F.R. § 200.450 (Lobbying), which incorporates the provisions of 31 U.S.C. § 1352; and OMB guidance and notices on lobbying restrictions. In addition, non-Federal entities must comply with the DOC regulations published at 15 C.F.R. Part 28, which implement the New Restrictions on Lobbying. These provisions prohibit the use of Federal funds for lobbying the executive or legislative branches of the Federal Government in connection with the award and require the disclosure of the use of non-Federal funds for lobbying. Lobbying includes attempting to improperly influence, meaning any influence that induces or tends to induce a Federal employee or officer to give consideration or to act regarding a Federal award or regulatory matter on any basis other than the merits of the matter, either directly or indirectly. Costs incurred to improperly influence are unallowable. *See* 2 C.F.R. § 200.450(b) and (c).

b. Disclosure of Lobbying Activities

Any recipient that receives more than \$100,000 in Federal funding and conducts lobbying with non-federal funds relating to a covered Federal action must submit a completed Form SF-LLL (Disclosure of Lobbying Activities). The Form SF-LLL must be submitted within 30 calendar days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. The recipient must submit any required SF-LLL forms, including those received from subrecipients, contractors, and subcontractors, to the Grants Officer.

.04 Environmental Requirements

Environmental impacts must be considered by Federal decision makers in their decisions whether or not to approve: (1) a proposal for Federal assistance; (2) the proposal with mitigation; or (3) a different proposal having less adverse environmental impacts. Federal environmental laws require that the funding agency initiate an early planning process that considers potential impacts that projects funded with Federal assistance may have on the environment. Each non-Federal entity must comply with all environmental standards, to include those prescribed under

the following statutes and E.O.s and must identify to the awarding agency any impact the award may have on the environment. In some cases, award funds can be withheld by the Grants Officer under a specific award condition requiring the non-Federal entity to submit additional environmental compliance information sufficient to enable the DOC to make an assessment on any impacts that a project may have on the environment.

a. The National Environmental Policy Act (42 U.S.C. §§ 4321 *et seq.*)

The National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) implementing regulations (40 C.F.R. Parts 1500 through 1508) require that an environmental analysis be completed for all major Federal actions to determine whether they have significant impacts on the environment. NEPA applies to the actions of Federal agencies and may include a Federal agency's decision to fund non-Federal projects under grants and cooperative agreements when the award activities remain subject to Federal authority and control. Non-Federal entities are required to identify to the awarding agency any direct, indirect or cumulative impact an award will have on the quality of the human environment and assist the agency in complying with NEPA. Non-Federal entities may also be requested to assist DOC in drafting an environmental assessment or environmental impact statement if DOC determines such documentation is required, but DOC remains responsible for the sufficiency and approval of the final documentation. Until the appropriate NEPA documentation is complete and in the event that any additional information is required during the period of performance to assess project environmental impacts, funds can be withheld by the Grants Officer under a specific award condition requiring the non-Federal entity to submit the appropriate environmental information and NEPA documentation sufficient to enable DOC to make an assessment on any impacts that a project may have on the environment.

b. The National Historic Preservation Act (16 U.S.C. §§ 470 *et seq.*)

Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. § 470f) and the Advisory Council on Historic Preservation (ACHP) implementing regulations (36 C.F.R. Part 800) require that Federal agencies take into account the effects of their undertakings on historic properties and, when appropriate, provide the ACHP with a reasonable opportunity to comment. Historic properties include but are not necessarily limited to districts, buildings, structures, sites and objects. In this connection, archeological resources and sites that may be of traditional religious and cultural importance to Federally-recognized Indian Tribes, Alaskan Native Villages and Native Hawaiian Organizations may be considered historic properties. Non-Federal entities are required to identify to the awarding agency any effects the award may have on properties included on or eligible for inclusion on the National Register of Historic Places. Non-Federal entities may also be requested to assist DOC in consulting with State or Tribal Historic Preservation Officers, ACHPs or other applicable interested parties necessary to identify, assess, and resolve adverse effects to historic properties. Until such time as the appropriate NHPA consultations and documentation are complete and in the event that any additional information is required during the period of performance in order to assess project impacts on historic properties, funds can be withheld by the Grants Officer under a specific award condition requiring the non-Federal entity to

submit any information sufficient to enable DOC to make the requisite assessment under the NHPA.

Additionally, non-Federal entities are required to assist the DOC in assuring compliance with the Archeological and Historic Preservation Act of 1974 (54 U.S.C. § 312502 *et seq.*, formerly 16 U.S.C. § 469a-1 *et seq.*); Executive Order 11593 (Protection and Enhancement of the Cultural Environment, May 13, 1971); Executive Order 13006 (Locating Federal Facilities on Historic Properties in Our Nation’s Central Cities, May 21, 1996); and Executive Order 13007 (Indian Sacred Sites, May 24, 1996).

c. Executive Order 11988 (Floodplain Management) and Executive Order 11990 (Protection of Wetlands)

Non-Federal entities must identify proposed actions in Federally defined floodplains and wetlands to enable DOC to decide whether there is an alternative to minimize any potential harm.

d. Clean Air Act (42 U.S.C. §§ 7401 *et seq.*), Federal Water Pollution Control Act (33 U.S.C. §§ 1251 *et seq.*) (Clean Water Act), and Executive Order 11738 (“Providing for administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal contracts, grants or loans”)

Non-Federal entities must comply with the provisions of the Clean Air Act (42 U.S.C. §§ 7401 *et seq.*), Clean Water Act (33 U.S.C. §§ 1251 *et seq.*), and E.O. 11738 (38 FR 25161), and must not use a facility on the Excluded Parties List (EPL) (located on the System for Award Management (SAM) website, SAM.gov) in performing any award that is nonexempt under 2 C.F.R. § 1532, and must notify the Program Officer in writing if it intends to use a facility that is on the EPL or knows that the facility has been recommended to be placed on the EPL.

e. The Flood Disaster Protection Act (42 U.S.C. §§ 4002 *et seq.*)

Flood insurance, when available, is required for Federally assisted construction or acquisition in flood-prone areas. Per 2 C.F.R. § 200.447(a), the cost of required flood insurance is an allowable expense, if it is reflected in the approved project budget.

f. The Endangered Species Act (16 U.S.C. §§ 1531 *et seq.*)

Non-Federal entities must identify any impact or activities that may involve a threatened or endangered species. Federal agencies have the responsibility to ensure that no adverse effects to a protected species or habitat occur from actions under Federal assistance awards and conduct the reviews required under the Endangered Species Act, as applicable.

g. The Coastal Zone Management Act (16 U.S.C. §§ 1451 *et seq.*)

Funded projects must be consistent with a coastal State’s approved management program for the coastal zone.

h. The Coastal Barriers Resources Act (16 U.S.C. §§ 3501 *et seq.*)

Only in certain circumstances can Federal funding be provided for actions within a Coastal Barrier System.

i. The Wild and Scenic Rivers Act (16 U.S.C. §§ 1271 *et seq.*)

This Act applies to awards that may affect existing or proposed components of the National Wild and Scenic Rivers system.

j. The Safe Drinking Water Act of 1974, as amended, (42 U.S.C. §§ 300f *et seq.*)

This Act precludes Federal assistance for any project that the EPA determines may contaminate a sole source aquifer which threatens public health.

k. The Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 *et seq.*)

This Act regulates the generation, transportation, treatment, and disposal of hazardous wastes, and provides that non-Federal entities give preference in their procurement programs to the purchase of recycled products pursuant to EPA guidelines.

l. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly known as Superfund) (42 U.S.C. §§ 9601 *et seq.*) and the Community Environmental Response Facilitation Act (42 U.S.C. § 9601 note *et seq.*)

These requirements address responsibilities related to hazardous substance releases, threatened releases and environmental cleanup. There are also reporting and community involvement requirements designed to ensure disclosure of the release or disposal of regulated substances and cleanup of hazards to state and local emergency responders.

m. Executive Order 12898 (“Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations”)

Federal agencies are required to identify and address the disproportionately high and adverse human health or environmental effects of Federal programs, policies, and activities on low income and minority populations.

n. The Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1801 *et seq.*)

Non-Federal entities must identify to DOC any effects the award may have on essential fish habitat (EFH). Federal agencies which fund, permit, or carry out activities that may adversely impact EFH are required to consult with the National Marine Fisheries Service (NMFS) regarding the potential effects of their actions and respond in writing to NMFS recommendations. These recommendations may include measures to avoid, minimize, mitigate, or otherwise offset adverse effects on EFH. In addition, NMFS is required to comment on any state agency activities that would impact EFH. Provided the specifications outlined in the regulations are met, EFH consultations will be incorporated into interagency

procedures previously established under NEPA, the ESA, Clean Water Act, Fish and Wildlife Coordination Act, or other applicable statutes.

o. Clean Water Act (CWA) Section 404 (33 U.S.C. § 1344)

CWA Section 404 regulates the discharge of dredged or fill material into waters of the United States, including wetlands. Activities in waters of the United States regulated under this program include fill for development, water resource projects (such as levees and some coastal restoration activities), and infrastructure development (such as highways and airports). CWA Section 404 requires a permit from the U.S. Army Corps of Engineers before dredged or fill material may be discharged into waters of the United States, unless the activity is exempt from Section 404 regulation (e.g., certain farming and forestry activities).

p. Rivers and Harbors Act (33 U.S.C. § 407)

A permit may be required from the U.S. Army Corps of Engineers if the proposed activity involves any work in, over or under navigable waters of the United States. Recipients must identify any work (including structures) that will occur in, over or under navigable waters of the United States and obtain the appropriate permit, if applicable.

q. The Migratory Bird Treaty Act (16 U.S.C. §§ 703-712), Bald and Golden Eagle Protection Act (16 U.S.C. § 668 *et seq.*), and Executive Order 13186 (Responsibilities of Federal Agencies to Protect Migratory Birds, January 10, 2001)

Many prohibitions and limitations apply to projects that adversely impact migratory birds and bald and golden eagles. Executive Order 13186 directs Federal agencies to enter a Memorandum of Understanding with the U.S. Fish and Wildlife Service to promote conservation of migratory bird populations when a Federal action will have a measurable negative impact on migratory birds.

r. Executive Order 13112 (Invasive Species, February 3, 1999)

Federal agencies must identify actions that may affect the status of invasive species and use relevant programs and authorities to: (i) prevent the introduction of invasive species; (ii) detect and respond rapidly to and control populations of such species in a cost-effective and environmentally sound manner; (iii) monitor invasive species populations accurately and reliably; (iv) provide for restoration of native species and habitat conditions in ecosystems that have been invaded; (v) conduct research on invasive species and develop technologies to prevent introduction and provide for environmentally sound control of invasive species; and (vi) promote public education on invasive species and the means to address them. In addition, an agency may not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere.

s. Fish and Wildlife Coordination Act (16 U.S.C. § 661 *et seq.*)

During the planning of water resource development projects, agencies are required to give fish and wildlife resources equal consideration with other values. Additionally, the U.S.

Fish and Wildlife Service and fish and wildlife agencies of states must be consulted whenever waters of any stream or other body of water are “proposed or authorized, permitted or licensed to be impounded, diverted... or otherwise controlled or modified” by any agency under a Federal permit or license.

.05 OTHER NATIONAL POLICY REQUIREMENTS

a. Buy-American Preferences

Strengthening Buy-American Preferences for Infrastructure Projects. Recipients of covered programs (as defined in Executive Order 13858, 31 January 2019, and 2 C.F.R. §200.322 (Domestic preferences for procurements)) are hereby notified that they are encouraged to use, to the greatest extent practicable, iron and aluminum as well as steel, cement, and other manufactured products produced in the United States in every contract, subcontract, purchase order, or subaward that is chargeable under this Award.

b. Criminal and Prohibited Activities

1. The Program Fraud Civil Remedies Act (31 U.S.C. § 3801 *et seq.*), provides for the imposition of civil penalties against persons who make false, fictitious, or fraudulent claims to the Federal Government for money (including money representing grants, loans, or other benefits).
2. The False Claims Amendments Act of 1986 and the False Statements Accountability Act of 1996 (18 U.S.C. §§ 287 and 1001, respectively), provide that whoever makes or presents any false, fictitious, or fraudulent statement, representation, or claim against the United States must be subject to imprisonment of not more than five years and must be subject to a fine in the amount provided by 18 U.S.C. § 287.
3. The Civil False Claims Act (31 U.S.C. §§ 3729 - 3733), provides that suits can be brought by the government, or a person on behalf of the government, for false claims made under Federal assistance programs.
4. The Copeland Anti-Kickback Act (18 U.S.C. § 874), prohibits a person or organization engaged in a Federally supported project from enticing an employee working on the project from giving up a part of his compensation under an employment contract. The Copeland Anti-Kickback Act also applies to contractors and subcontractors pursuant to 40 U.S.C. § 3145.
5. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 *et seq.*) and implementing regulations issued at 15 C.F.R. Part 11, which provides for fair and equitable treatment of displaced persons or persons whose property is acquired as a result of Federal or Federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

6. The Hatch Act (5 U.S.C. §§ 1501-1508 and 7321-7326), which limits the political activities of employees or officers of state or local governments whose principal employment activities are funded in whole or in part with Federal funds.

7. To ensure compliance with Federal law pertaining to financial assistance awards, an authorized representative of a non-Federal entity may be required to periodically provide certain certifications to the DOC regarding Federal felony and Federal criminal tax convictions, unpaid federal tax assessments, delinquent Federal tax returns and such other certifications that may be required by Federal law.

c. Drug-Free Workplace

The non-Federal entity must comply with the provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. § 8102) and DOC implementing regulations published at 2 C.F.R. Part 1329 (Requirements for Drug-Free Workplace (Financial Assistance)), which require that the non-Federal entity take certain actions to provide a drug-free workplace.

d. Foreign Travel

1. Each non-Federal entity must comply with the provisions of the Fly America Act (49 U.S.C. § 40118). The implementing regulations of the Fly America Act are found at 41 C.F.R. §§ 301-10.131 through 301-10.143.

2. The Fly America Act requires that Federal travelers and others performing U.S. Government-financed air travel must use U.S. flag air carriers, to the extent that service by such carriers is available. Foreign air carriers may be used only in specific instances, such as when a U.S. flag air carrier is unavailable or use of U.S. flag air carrier service will not accomplish the agency's mission.

3. One exception to the requirement to fly U.S. flag carriers is transportation provided under a bilateral or multilateral air transport agreement, to which the United States Government and the government of a foreign country are parties, and which the Department of Transportation has determined meets the requirements of the Fly America Act pursuant to 49 U.S.C. § 40118(b). The United States Government has entered into bilateral/multilateral "Open Skies Agreements" (U.S. Government Procured Transportation) that allow federal funded transportation services for travel and cargo movements to use foreign air carriers under certain circumstances. There are multiple "Open Skies Agreements" currently in effect. For more information about the current bilateral and multilateral agreements, visit the GSA [website](#). Information on the Open Skies agreements (U.S. Government Procured Transportation) and other specific country agreements may be accessed via the Department of State's [website](#).

4. If a foreign air carrier is anticipated to be used for any portion of travel under a DOC financial assistance award, the non-Federal entity must receive prior approval from the Grants Officer. When requesting such approval, the non-Federal entity must provide a justification in accordance with guidance provided by 41 C.F.R. § 301-10.142, which requires the non-Federal entity to provide the Grants Officer with the following: name; dates

of travel; origin and destination of travel; detailed itinerary of travel; name of the air carrier and flight number for each leg of the trip; and a statement explaining why the non-Federal entity meets one of the exceptions to the regulations. If the use of a foreign air carrier is pursuant to a bilateral agreement, the non-Federal entity must provide the Grants Officer with a copy of the agreement or a citation to the official agreement available on the GSA website. The Grants Officer must make the final determination and notify the non-Federal entity in writing (which may be done through the recipient in the case of subrecipient travel). Failure to adhere to the provisions of the Fly America Act will result in the non-Federal entity not being reimbursed for any transportation costs for which any non-Federal entity improperly used a foreign air carrier.

Note: When using code-sharing flights (two or more airlines having flight numbers assigned to the same flight) involving U.S. flag carriers and non-U.S. flag carriers, the airline symbol and flight number of the U.S. flag carrier must be used on the ticket to qualify as a U.S. flag carrier (e.g. "*Delta Airlines Flight XXXX, operated by KLM*"). Conversely, if the ticket shows "[*Foreign Air Carrier*] *XXX, operated by Delta*," that travel is using a foreign air carrier and is subject to the Fly America Act and must receive prior approval from the Grants Officer as outlined in paragraph G.05.d.4.

e. Increasing Seat Belt Use in the United States

Pursuant to E.O. 13043 (62 FR 19217), non-Federal entities should encourage employees and contractors to enforce on-the-job seat belt policies and programs when operating company-owned, rented, or personally owned vehicles.

f. Federal Employee Expenses and Subawards or Contracts Issued to Federal Employees or Agencies

1. Use of award funds (Federal or non-Federal) or the non-Federal entity's provision of in-kind goods or services for the purposes of transportation, travel, or any other expenses for any Federal employee may raise appropriation augmentation issues. In addition, DOC policy may prohibit the acceptance of gifts, including travel payments for federal employees, from non-Federal entities regardless of the source. Therefore, before award funds may be used by Federal employees, non-Federal entities must submit requests for approval of such action to the Federal Program Officer who must review and make a recommendation to the Grants Officer. The Grants Officer will notify the non-Federal entity in writing (generally through the recipient) of the final determination.

2. A non-Federal entity or its contractor may not issue a subaward, contract or subcontract of any part of a DOC award to any agency or employee of DOC or to other Federal employee, department, agency, or instrumentality, without the advance prior written approval of the DOC Grants Officer.

g. Minority Serving Institutions Initiative

Pursuant to E.O.s 13555 (White House Initiative on Educational Excellence for Hispanics) (75 FR 65417), 13592 (Improving American Indian and Alaska Native

Educational Opportunities and Strengthening Tribal Colleges and Universities) (76 FR 76603), and 13779 (White House Initiative to Promote Excellence and Innovation at Historically Black Colleges and Universities) (82 FR 12499), DOC is strongly committed to broadening the participation of minority serving institutions (MSIs) in its financial assistance programs. DOC's goals include achieving full participation of MSIs to advance the development of human potential, strengthen the Nation's capacity to provide high-quality education, and increase opportunities for MSIs to participate in and benefit from Federal financial assistance programs. DOC encourages all applicants and non-Federal entities to include meaningful participation of MSIs. Institutions eligible to be considered MSIs are listed on the Department of Education website.

h. Research Misconduct

The DOC adopts, and applies to financial assistance awards for research, the Federal Policy on Research Misconduct (Federal Policy) issued by the Executive Office of the President's Office of Science and Technology Policy on December 6, 2000 (65 FR 76260). As provided for in the Federal Policy, research misconduct refers to the fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include honest errors or differences of opinion. Non-Federal entities that conduct extramural research funded by DOC must foster an atmosphere conducive to the responsible conduct of sponsored research by safeguarding against and resolving allegations of research misconduct. Non-Federal entities also have the primary responsibility to prevent, detect, and investigate allegations of research misconduct and, for this purpose, may rely on their internal policies and procedures, as appropriate, to do so. Non-Federal entities must notify the Grants Officer of any allegation that meets the definition of research misconduct and detail the entity's inquiry to determine whether there is sufficient evidence to proceed with an investigation, as well as the results of any investigation. The DOC may take appropriate administrative or enforcement action at any time under the award, up to and including award termination and possible suspension or debarment, and referral to the Commerce OIG, the U.S. Department of Justice, or other appropriate investigative body.

i. Research Involving Human Subjects

1. All proposed research involving human subjects must be conducted in accordance with 15 C.F.R. Part 27 (Protection of Human Subjects). No research involving human subjects is permitted under this award unless expressly authorized by specific award condition, or otherwise in writing by the Grants Officer.
2. Federal policy defines a human subject as a living individual about whom an investigator (whether professional or student) conducting research (1) Obtains information or biospecimens through intervention or interaction with the individual, and uses, studies, or analyzes the information or biospecimens; or (2) Obtains, uses, studies, analyzes, or generates identifiable private information or identifiable biospecimens. Research means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge.

3. DOC regulations at 15 C.F.R. Part 27 require that non-Federal entities maintain appropriate policies and procedures for the protection of human subjects. In the event it becomes evident that human subjects may be involved in this project, the non-Federal entity (generally through the recipient) must submit appropriate documentation to the Federal Program Officer for approval by the appropriate DOC officials. As applicable, this documentation must include:

- i. Documentation establishing approval of an activity in the project by an Institutional Review Board (IRB) under a Federal wide Assurance issued by Department of Health and Human Services or other Federal agency guidelines (*see also* 15 C.F.R. § 27.103);
- ii. Documentation to support an exemption for an activity in the project under 15 C.F.R. § 27.104(d);
- iii. Documentation of IRB approval of any modification to a prior approved protocol or to an informed consent form;
- iv. Documentation of an IRB approval of continuing review approved prior to the expiration date of the previous IRB determination; and
- v. Documentation of any reportable events, such as serious adverse events, unanticipated problems resulting in risk to subjects or others, and instances of noncompliance.

4. No work involving human subjects may be undertaken, conducted, or costs incurred and/or charged for human subjects research, until the appropriate documentation is approved in writing by the Grants Officer. In accordance with 15 C.F.R. § 27.118, if research involving human subjects is proposed after an award is made, the non-Federal entity must contact the Federal Program Officer and provide required documentation. Notwithstanding this prohibition, work may be initiated or costs incurred and/or charged to the project for protocol or instrument development related to human subjects research.

j. Care and Use of Live Vertebrate Animals

Non-Federal entities must comply with the Laboratory Animal Welfare Act of 1966, as amended, (Pub. L. No. 89-544, 7 U.S.C. §§ 2131 *et seq.*) (animal acquisition, transport, care, handling, and use in projects), and implementing regulations (9 C.F.R. Parts 1, 2, and 3); the Endangered Species Act (16 U.S.C. §§ 1531 *et seq.*); Marine Mammal Protection Act (16 U.S.C. §§ 1361 *et seq.*) (taking possession, transport, purchase, sale, export or import of wildlife and plants); the Nonindigenous Aquatic Nuisance Prevention and Control Act (16 U.S.C. §§ 4701 *et seq.*) (ensure preventive measures are taken or that probable harm of using species is minimal if there is an escape or release); and all other applicable statutes pertaining to the care, handling, and treatment of warm-blooded animals held for research, teaching, or other activities supported by Federal financial assistance. No research involving vertebrate animals is permitted under any DOC financial assistance award unless authorized by the Grants Officer.

k. Management and Access to Data and Publications

1. In General. The recipient acknowledges and understands that information and data contained in applications for financial assistance, as well as information and data contained in financial, performance and other reports submitted by recipients, may be used by the DOC in conducting reviews and evaluations of its financial assistance programs. For this purpose, recipient information and data may be accessed, reviewed and evaluated by DOC employees, other Federal employees, Federal agents and contractors, and/or by non-Federal personnel, all of who enter into appropriate or are otherwise subject to confidentiality and nondisclosure agreements covering the use of such information. Recipients are expected to support program reviews and evaluations by submitting required financial and performance information and data in an accurate and timely manner, and by cooperating with DOC and external program evaluators. In accordance with 2 C.F.R. § 200.303(e), recipients are reminded that they must take reasonable measures to safeguard protected personally identifiable information and other confidential or sensitive personal or business information created or obtained relating to a DOC financial assistance award.

2. Scientific Data. Non-Federal entities must comply with the data management and access to data requirements established by the DOC funding agency as set forth in the applicable Notice of Funding Opportunity and/or in Specific Award Conditions.

3. Publications, Videos, and Acknowledgment of Sponsorship.

i. Publication of results or findings in appropriate professional journals and production of video or other media is encouraged as an important method of recording, reporting and otherwise disseminating information and expanding public access to federally-funded projects (e.g., scientific research). Non-Federal entities must comply with the data management and access to data requirements established by the DOC funding agency as set forth in the applicable Notice of Funding Opportunity and/or in Specific Award Conditions.

ii. Non-Federal entities may be required to submit a copy of any publication materials, including but not limited to print, recorded, or Internet materials, to the funding agency.

iii. When releasing information related to a funded project, non-Federal entities must include a statement that the project or effort undertaken was or is sponsored by DOC and must also include the applicable financial assistance award number.

iv. Non-Federal entities are responsible for assuring that every publication of material based on, developed under, or otherwise produced pursuant to a DOC financial assistance award contains the following disclaimer or other disclaimer approved by the Grants Officer:

This [report/video/etc.] was prepared by [recipient name] using Federal funds under award [number] from [name of operating unit], U.S. Department of Commerce. The statements, findings, conclusions, and recommendations are those of the author(s) and do

not necessarily reflect the views of the [name of operating unit] or the U.S. Department of Commerce.

I. Homeland Security Presidential Directive

If the performance of this DOC financial assistance award requires non-Federal entity personnel to have routine access to Federally-controlled facilities and/or Federally-controlled information systems (for purpose of this term “routine access” is defined as more than 180 calendar days), such personnel must undergo the personal identity verification credential process. In the case of foreign nationals, the DOC will conduct a check with U.S. Citizenship and Immigration Services’ (USCIS) Verification Division, a component of the Department of Homeland Security (DHS), to ensure the individual is in a lawful immigration status and that he or she is eligible for employment within the United States. Any items or services delivered under a financial assistance award must comply with DOC personal identity verification procedures that implement Homeland Security Presidential Directive 12 (Policy for a Common Identification Standard for Federal Employees and Contractors), Federal Information Processing Standard (FIPS) PUB 201, and OMB Memorandum M-05-24. The recipient must ensure that its subrecipients and contractors (at all tiers) performing work under this award comply with the requirements contained in this term. The Grants Officer may delay final payment under an award if the subrecipient or contractor fails to comply with the requirements listed in the term below. The recipient must insert the following term in all subawards and contracts when the subaward recipient or contractor is required to have routine physical access to a Federally-controlled facility or routine access to a Federally-controlled information system:

The subrecipient or contractor must comply with DOC personal identity verification procedures identified in the subaward or contract that implement Homeland Security Presidential Directive 12 (HSPD-12), Office of Management and Budget (OMB) Guidance M-05-24, as amended, and Federal Information Processing Standards Publication (FIPS PUB) Number 201, as amended, for all employees under this subaward or contract who require routine physical access to a Federally-controlled facility or routine access to a Federally-controlled information system.

The subrecipient or contractor must account for all forms of Government-provided identification issued to the subrecipient or contractor employees in connection with performance under this subaward or contract. The subrecipient or contractor must return such identification to the issuing agency at the earliest of any of the following, unless otherwise determined by DOC: (1) When no longer needed for subaward or contract performance; (2) Upon completion of the subrecipient or contractor employee’s employment; (3) Upon subaward or contract completion or termination.

m. Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations

1. This clause applies to the extent that this financial assistance award encompasses activities that involve export-controlled items.

2. In performing this financial assistance award, a non-Federal entity may participate in activities involving items subject to export control (export-controlled items) under the Export Administration Regulations (EAR). The non-Federal entity is responsible for compliance with all applicable laws and regulations regarding export-controlled items, including the EAR's deemed exports and re-exports provisions. The non-Federal entity must establish and maintain effective export compliance procedures at DOC and non-DOC facilities, including facilities located abroad, throughout performance of the financial assistance award. At a minimum, these export compliance procedures must include adequate restrictions on export-controlled items, to guard against any unauthorized exports, including in the form of releases or transfers to foreign nationals. Such releases or transfers may occur through visual inspection, including technology transmitted electronically, and oral or written communications.
3. Definitions
 - i. Export-controlled items. Items (commodities, software, or technology), that are subject to the EAR (15 C.F.R. §§ 730-774), implemented by the DOC's Bureau of Industry and Security. These are generally known as "dual-use" items, items with a military and commercial application. The export (shipment, transmission, or release/transfer) of export-controlled items may require a license from DOC.
 - ii. Deemed Export/Re-export. The EAR defines a deemed export as a release or transfer of export-controlled items (specifically, technology or source code) to a foreign person (foreign national) in the U.S. Such release is "deemed" to be an export to the foreign person's most recent country of citizenship or permanent residency (*see* 15 C.F.R. § 734.13(a)(2) & (b)). A release may take the form of visual inspection or oral or written exchange of information. *See* 15 C.F.R. § 734.15(a). If such a release or transfer is made abroad to a foreign person of a country other than the country where the release occurs, it is considered a deemed re-export to the foreign person's most recent country of citizenship or permanent residency. *See* 15 C.F.R. § 734.14(a)(2). Licenses from DOC may be required for deemed exports or re-exports. An act causing the release of export-controlled items to a foreign person (e.g., providing or using an access key or code) may require authorization from DOC to the same extent that an export or re-export of such items to the foreign person would. *See* 15 C.F.R. § 734.15(b).
4. The non-Federal entity must secure all export-controlled items that it possesses or that comes into its possession in performance of this financial assistance award, to ensure that the export of such items, including in the form of release or transfer to foreign persons, is prevented, or licensed, as required by applicable Federal laws, E.O.s, and/or regulations, including the EAR.
5. As applicable, non-Federal entity personnel and associates at DOC sites will be informed of any procedures to identify and protect export-controlled items from unauthorized export.

6. To the extent the non-Federal entity wishes to release or transfer export-controlled items to foreign persons, the non-Federal entity will be responsible for obtaining any necessary licenses, including licenses required under the EAR for deemed exports or deemed re-exports. Failure to obtain any export licenses required under the EAR may subject the non-Federal entity to administrative or criminal enforcement. See 15 C.F.R. part 764.
7. Nothing in the terms of this financial assistance award is intended to change, supersede, or waive the requirements of applicable Federal laws, E.O.s or regulations.
8. Compliance with this term will not satisfy any legal obligations the non-Federal entity may have regarding items that may be subject to export controls administered by other agencies such as the Department of State, which has jurisdiction over exports and re-exports of defense articles and services subject to the International Traffic in Arms Regulations (ITAR) (22 C.F.R. §§ 120-130), including the release of defense articles to foreign persons in the United States and abroad.
9. The non-Federal entity must include the provisions contained in this term in all lower tier transactions (subawards, contracts, and subcontracts) under this financial assistance award that may involve research or other activities that implicate export-controlled items.

n. The Trafficking Victims Protection Act of 2000 (22 U.S.C. § 7104(g)), as amended, and the implementing regulations at 2 C.F.R. Part 175

The Trafficking Victims Protection Act of 2000 authorizes termination of financial assistance provided to a private entity, without penalty to the Federal Government, if any non-Federal entity engages in certain activities related to trafficking in persons. The DOC hereby incorporates the following award term required by 2 C.F.R. § 175.15(b):

Trafficking in persons.

a. Provisions applicable to a recipient that is a private entity.

1. *You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—*
 - i. *Engage in severe forms of trafficking in persons during the period of time that the award is in effect;*
 - ii. *Procure a commercial sex act during the period of time that the award is in effect; or*
 - iii. *Use forced labor in the performance of the award or subawards under the award.*

2. *We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —*

- i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or*
- ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either— (A) Associated with performance under this award; or (B) Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. Part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension – Nonprocurement), as implemented by DOC at 2 C.F.R. Part 1326 (Nonprocurement Debarment and Suspension).*

b. Provision applicable to a recipient other than a private entity. *We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—*

- 1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or*
- 2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—*
 - i. Associated with performance under this award; or*
 - ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. Part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension – Nonprocurement), as implemented by DOC at 2 C.F.R. Part 1326, (Nonprocurement Debarment and Suspension).*

c. Provisions applicable to any recipient.

- 1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.*
- 2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:*
 - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and*
 - ii. Is in addition to all other remedies for noncompliance that are available to us under this award.*

3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

d. Definitions. For purposes of this award term:

1. “Employee” means either:

i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or

ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

2. “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

3. “Private entity”:

i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 C.F.R. § 175.25;

ii. Includes: (A) A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 C.F.R. § 175.25(b); and (B) A for-profit organization.

4. “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. § 7102).

o. The Federal Funding Accountability and Transparency Act (FFATA) (31 U.S.C. § 6101 note)

1. **Reporting Subawards and Executive Compensation.** Under FFATA, recipients of financial assistance awards of \$30,000 or more are required to report periodically on executive compensation and subawards, as described in the following term from 2 C.F.R. Part 170, Appendix A, which is incorporated into this award:

Reporting Subawards and Executive Compensation

a. Reporting of first-tier subawards.

1. **Applicability.** Unless you are exempt as provided in paragraph d. of this award term, you must report each action that equals or exceeds \$30,000 in Federal funds for a subaward

to a non-Federal entity or Federal agency (see definitions in paragraph e. of this award term).

2. *Where and when to report.*

i. *You must report each obligating action described in paragraph a.1. of this award term to <http://www.fsrs.gov>.*

ii. *For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)*

3. *What to report. You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.*

b. Reporting Total Compensation of Recipient Executives for non-Federal entities.

1. *Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—*

i. *the total Federal funding authorized to date under this Federal award equals or exceeds \$30,000 as defined in 2 C.F.R. § 170.320;*

ii. *in the preceding fiscal year, you received—*

(A) *80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. § 170.320 (and subawards), and*

(B) *\$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. § 170.320 (and subawards); and,*

iii. *The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)*

2. *Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:*

i. *As part of your registration profile found at the System for Award Management (SAM) website located at <https://www.sam.gov>.*

ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. *Applicability and what to report.* Unless you are exempt as provided in paragraph d. of this award term, for each first-tier non-Federal entity subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—

i. in the subrecipient's preceding fiscal year, the subrecipient received—

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. § 170.320 (and subawards) and,

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

See also 2 C.F.R. § 200.300(b).

2. *Where and when to report.* You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

i. To the recipient.

ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions. If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report: i. Subawards, and ii. The total compensation of the five most highly compensated executives of any subrecipient.

e. **Definitions.** For purposes of this award term:

1. *Federal Agency means a Federal agency as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f).*
2. *Non-Federal entity means all of the following, as defined in 2 C.F.R. Part 25:*
 - i. *A Governmental organization, which is a State, local government, or Indian tribe;*
 - ii. *A foreign public entity;*
 - iii. *A domestic or foreign nonprofit organization; and,*
 - iv. *A domestic or foreign for-profit organization.*
3. *Executive means officers, managing partners, or any other employees in management positions.*
4. *Subaward:*
 - i. *This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.*
 - ii. *The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see 2 C.F.R § 200.331).*
 - iii. *A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.*
5. *Subrecipient means a non-Federal entity or Federal agency that:*
 - i. *Receives a subaward from you (the recipient) under this award; and*
 - ii. *Is accountable to you for the use of the Federal funds provided by the subaward.*
6. *Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 C.F.R. § 229.402(c)(2)):*
 - i. *Salary and bonus.*
 - ii. *Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.*

- iii. *Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.*
- iv. *Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.*
- v. *Above-market earnings on deferred compensation which is not tax-qualified.*
- vi. *Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.*

2. **System for Award Management (SAM) and Universal Identifier Requirements** -- as described in 2 C.F.R. Part 25, Appendix A, which is incorporated into this award:

System for Award Management (SAM) and Universal Identifier Requirements

a. ***Requirement for System for Award Management.*** *Unless you are exempted from this requirement under 2 C.F.R. § 25.110, you as the recipient must maintain current information in the SAM. This includes information on your immediate and highest level owner and subsidiaries, as well as on all of your predecessors that have been awarded a Federal contract or Federal financial assistance within the last three years, if applicable, until you submit the final financial report required under this Federal award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another Federal award term.*

b. ***Requirement for Unique Entity Identifier.*** *If you are authorized to make subawards under this Federal award, you:*

- 1. *Must notify potential subrecipients that no entity (see definition in paragraph c of this award term) may receive a subaward from you until the entity has provided its Unique Entity Identifier to you.*
- 2. *May not make a subaward to an entity unless the entity has provided its Unique Entity Identifier to you. Subrecipients are not required to obtain an active SAM registration, but must obtain a Unique Entity Identifier.*

c. ***Definitions for purposes of this term:***

- 1. *SAM means the Federal repository into which a recipient must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM Internet site (currently at <https://www.SAM.gov>).*

2. *Unique Entity Identifier means the identifier assigned by SAM to uniquely identify business entities.*
3. *Entity includes non-Federal entities as defined at 2 C.F.R. § 200.1 and also includes all of the following, for purposes of this part:*
 - i. *A foreign organization;*
 - ii. *A foreign public entity;*
 - iii. *A domestic for-profit organization; and*
 - iv. *A Federal agency.*
4. *Subaward has the meaning given in 2 C.F.R § 200.1.*
5. *Subrecipient has the meaning given in 2 C.F.R § 200.1.*

See also 2 C.F.R. § 200.300(b).

p. Recipient Integrity and Performance Matters (Appendix XII to 2 C.F.R. Part 200)

Reporting of Matters Related to Recipient Integrity and Performance

1. **General Reporting Requirement.** If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.
2. **Proceedings About Which You Must Report.** Submit the information required about each proceeding that:
 - i. Is relating to the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;
 - ii. Reached its final disposition during the most recent five-year period; and

iii. Is one of the following:

- (A) A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;
- (B) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
- (C) An administrative proceeding, as defined in paragraph 5 of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
- (D) Any other criminal, civil, or administrative proceeding if:
 - I. It could have led to an outcome described in paragraph 2.c.(1), (2), or (3) of this award term and condition;
 - II. It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
 - III. The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

3. Reporting Procedures. Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and ___ condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

4. Reporting Frequency. During any period when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five-year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

5. Definitions. For purposes of this award term and condition:

- i. Administrative proceeding means a non-judicial process that is adjudicatory in nature to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.

ii. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

iii. Total value of currently active grants, cooperative agreements, and procurement contracts includes:

(A) Only the Federal share of the funding under any Federal award with a recipient cost share or match; and

(B) The value of all expected funding increments under a Federal award and options, even if not yet exercised.

q. Never Contract with the Enemy (2 C.F.R Part 183; 2 C.F.R. § 200.215)

Under 2 C.F.R. § 200.215 (Never contract with the enemy) Federal awarding agencies and recipients are subject to the regulations implementing Never Contract with the Enemy in 2 C.F.R. Part 183. These regulations affect covered contracts, grants and cooperative agreements that are expected to exceed \$50,000 within the period of performance, are performed outside the United States and its territories, and are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

1. **Applicability.** This term applies only to recipients of covered grants or cooperative agreements, as defined in 2 C.F.R. § 183.35 Definitions.

2. **Requirements.** As applicable, recipients must fulfill the requirements as described in the following terms from 2 C.F.R. Part 183, Appendix A, which is incorporated into this award:

a. Term 1. Prohibition on Providing Funds to the Enemy.

1. *The recipient must—*

i. *Exercise due diligence to ensure that none of the funds, including supplies and services, received under this grant or cooperative agreement are provided directly or indirectly (including through subawards or contracts) to a person or entity who is actively opposing the United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities, which must be completed through 2 CFR Part 180.300 prior to issuing a subaward or contract and;*

ii. *Terminate or void in whole or in part any subaward or contract with a person or entity listed in SAM as a prohibited or restricted source pursuant to subtitle E of Title VIII of the NDAA for FY 2015, unless the Federal awarding agency provides written approval to continue the subaward or contract.*

2. *The recipient may include the substance of this clause, including this paragraph (1), in subawards under this grant or cooperative agreement that have an estimated value over \$50,000 and will be performed outside the United States, including its outlying areas.*

3. *The Federal awarding agency has the authority to terminate or void this grant or cooperative agreement, in whole or in part, if the Federal awarding agency becomes aware that the recipient failed to exercise due diligence as required by paragraph (1) of this clause or if the Federal awarding agency becomes aware that any funds received under this grant or cooperative agreement have been provided directly or indirectly to a person or entity who is actively opposing coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities*

b. Term 2. Additional Access to Recipient Records.

1. *In addition to any other existing examination-of-records authority, the Federal Government is authorized to examine any records of the recipient and its subawards or contracts to the extent necessary to ensure that funds, including supplies and services, available under this grant or cooperative agreement are not provided, directly or indirectly, to a person or entity that is actively opposing United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities, except for awards awarded by the Department of Defense on or before Dec 19, 2017 that will be performed in the United States Central Command (USCENTCOM) theater of operations*

2. *The substance of this clause, including this paragraph (2), is required to be included in subawards or contracts under this grant or cooperative agreement that have an estimated value over \$50,000 and will be performed outside the United States, including its outlying areas.*

r. Prohibition on certain telecommunications and video surveillance services or equipment (Public Law 115-232, section 889; 2 C.F.R. § 200.216)

(a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

- (1) Procure or obtain,
- (2) Extend or renew a contract to procure or obtain, or
- (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

- (i). For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- (ii). Telecommunications or video surveillance services provided by such entities or using such equipment.
- (iii). Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

(c) See Public Law 115-232, section 889 for additional information.

(d) See also §200.471.

s. Federal Financial Assistance Planning During a Funding Hiatus or Government Shutdown

This term sets forth initial guidance that will be implemented for Federal assistance awards in the event of a lapse in appropriations, or a government shutdown. The Grants Officer may issue further guidance prior to an anticipated shutdown.

1. Unless there is an actual rescission of funds for specific grant or cooperative agreement obligations, non-Federal entities under Federal financial assistance awards for which funds have been obligated generally will be able to continue to perform and incur allowable expenses under the award during a funding hiatus. Non-Federal entities are advised that ongoing activities by Federal employees involved in grant or cooperative agreement administration (including payment processing) or similar operational and administrative work cannot continue when there is a funding lapse. Therefore, there may be delays, including payment processing delays, in the event of a shutdown.

2. All award actions will be delayed during a government shutdown; if it appears that a non-Federal entity's performance under a grant or cooperative agreement will require agency involvement, direction, or clearance during the period of a possible government shutdown, the Program Officer or Grants Officer, as appropriate, may attempt to provide such involvement, direction, or clearance prior to the shutdown or advise non-Federal entities that such involvement, direction, or clearance will not be forthcoming during the shutdown. Accordingly, non-Federal entities whose ability to withdraw funds is subject to prior agency approval, which in general are non-Federal entities that have been designated high risk, non-Federal entities under construction awards, or are otherwise limited to reimbursements or subject to agency review, will be able to draw funds down from the relevant Automatic Standard Application for Payment (ASAP) account only if agency approval is given and coded into ASAP prior to any government shutdown or closure. This limitation may not be lifted during a government shutdown. Non-Federal entities should plan to work with the Grants Officer to request prior approvals in advance of a shutdown wherever possible. Non-Federal entities whose authority to draw down award funds is restricted may decide to suspend work until the government reopens.

3. The ASAP system should remain operational during a government shutdown. Non-Federal entities that do not require any Grants Officer or agency approval to draw down advance funds from their ASAP accounts should be able to do so during a shutdown. The 30-day limitation on the drawdown of advance funds will still apply notwithstanding a government shutdown (see section B.02.b.1 of these terms).

Specific Award Conditions

Award Number: NA23NMF4630089

Amendment Number: 0

1) Part 1 - Required Use of American Iron, Steel, Manufactured Products, and Construction Materials

Pursuant to the Infrastructure Investment and Jobs Act (“IIJA”), Pub.L. No. 117-58, which includes the Build American, Buy American (BABA) Act, Pub. L. No. 117-58, §§ 70901-52 and OMB M-22-11, recipients of an award of Federal financial assistance from the Department of Commerce (DOC) are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

- 1) all iron and steel used in the project are produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- 2) all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
- 3) all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

To help federal agencies and recipients meet BABA requirements, the U.S. Department of Commerce, National Institute for Standards and Technology (NIST), Hollings Manufacturing Extension Partnership (MEP) National Network™ provides a service to connect stakeholders, including recipients, to U.S. manufacturers that have relevant production capabilities and capacities to help fulfill current market and supply chain needs. Recipients considering a BABA nonavailability waiver are strongly encouraged to contact the NIST/MEP for assistance with supplier scouting services prior to seeking a BABA nonavailability waiver. Further information on the NIST/MEP supplier scouting services is available at: <https://www.nist.gov/mep/supplier-scouting>.

2) Part 2 - Required Use of American Iron, Steel, Manufactured Products, and Construction Materials

WAIVERS

When necessary, recipients may apply for, and DOC may grant, a waiver from these requirements. DOC will notify the

recipient for information on the process for requesting a waiver from these requirements.

1) When DOC has made a determination that one of the following exceptions applies, the awarding official may waive the application of the domestic content procurement preference in any case in which DOC determines that:

- a. applying the domestic content procurement preference would be inconsistent with the public interest;
- b. the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
- c. the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

A request to waive the application of the domestic content procurement preference must be in writing. DOC will provide instructions on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Made in America Office.

There may be instances where an award qualifies, in whole or in part, for an existing waiver described at whitehouse.gov/omb/management/made-in-america.

DEFINITIONS

“Construction materials” includes an article, material, or supply — other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives² — that is or consists primarily of: non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber; or drywall.

“Domestic content procurement preference” means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

"Infrastructure" includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy.

"Project" means the construction, alteration, maintenance, or repair of infrastructure in the United States

--

1 Excludes cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.

2 IIJA, § 70917(c)(1).

3) New Award SAC

This award number NA23NMF4630089, to Town of Wellfleet Town Hall, supports the work described in the Recipient's proposal entitled "Herring River Restoration Project, Phase 1" dated 09/01/2022, and revisions dated 03/06/2023, 05/08/2023, and 05/09/2023, which are incorporated into the award by reference. Where the terms of the award and proposal differ, the terms of the award shall prevail.

4) Implementation of Domestic Sourcing Requirements

Prior to initiation of any construction that may arise in this award, the Recipient is required to inform the NOAA Grants Officer and the Federal Program Officer whether it is using iron, steel, manufactured products, or construction materials as described in the Specific Award Condition in this award on Required Use of American Iron, Steel, Manufactured Products, and Construction Materials. In addition, the Recipient is required to inform the NOAA Grants Officer and the Federal Program Officer whether those materials are produced or manufactured in the United States, or alternatively, it is requesting one or more waivers, as described in the award condition. The Recipient is required to coordinate with NOAA regarding its compliance with this term.

5) Pre-Award Costs – 90 Days

Pre-award costs incurred within 90 days prior to the award start day are allowable only to the extent of their reasonableness and relationship to the proposed activities of this award. The approved pre-award costs are a portion of, not in addition to, the approved total budget.

6) TBD Contracts/Subawards

Project includes funding for contracts/subawards that have not been identified at the time of the award. Per 2 CFR 200.308(c)(6), recipients must request pre-approvals from the awarding Federal agency for subawarding, transferring or contracting out of any work under a Federal award, with the exception of the acquisition of supplies, material, equipment, or general support services. When contractors have been selected, the recipient is required to submit an Award Action Request "Subaward, transfer or contract out work under the award..." and provide the following documentation for each contract/subaward: method of selection (competitive or non-competitive); scope of work and budget for each contract/subaward award; and a justification if the subcontract was chosen noncompetitively.

7) Matching Requirement

Since this award requires the Recipient to provide \$1,475,000.00 in project-related costs from non-Federal sources, the

Recipient must maintain in its official accounting records an accounting of \$16,165,000.00.

8) Cooperative Agreement

This award is a cooperative agreement as described in 2 C.F.R. Sec. 200.1, meaning that NOAA is “substantially involved” in the project. NOAA Fisheries’ participation will be crucial to ensuring the timely implementation of the most beneficial habitat restoration project. NOAA may participate in one or more of the following ways:

- collaboration on the scope of work through participation in meetings and review of documents;
- providing assistance with technical aspects of the habitat restoration project such as assistance with permitting or development of detailed work plans and monitoring plans;
- review and comment on design plans at the beginning of the award, at various stages throughout any portion of the design process that occurs during the award (e.g. conceptual, 30%, 60%, and 90% completion), and at the final completion stage;
- review of procurement materials to the extent authorized by 2 C.F.R. Sec. 200.325;
- tracking the progression of the restoration from planning through implementation and post-construction monitoring, with particular emphasis on tracking Recipient achievement of targets for major milestones and performance metrics and sharing results;
- other involvement consistent with Office of Management and Budget Guidance on Substantial Involvement. See 43 Federal Register 36860 (Aug. 18, 1978).

9) Performance Progress Reports

Reporting requirements are described in 2 C.F.R. Sec. 200.328-.330, and 200.300(b); Department of Commerce Financial Assistance Standard Terms and Conditions Sec. A.01, C.03, and G.05; and Bureau-Specific NOAA Administrative Standard Award Conditions, with the following supplement.

Progress reports must be submitted using the NOAA Community-based Restoration Program's Performance Progress Report (PPR) reporting form approved by OMB under control number 0648-0718, or a successor form. The NOAA Federal Program Officer will provide this form to the Recipient. Interim semi-annual progress reports are due no later than 30 days after the semiannual reporting periods ending March 31 and September 30 for the entire duration of the award. These follow the same frequency and have the same due dates (April 30 and October 30, respectively) as the SF-425 Federal Financial Reports, which also must be submitted as a condition of this award.

A comprehensive final report covering all activities during the award period is required and must be received by the NOAA Program Officer within 120 days after the end date of this award, but a final semi-annual report is not required.

10) Contact Information

Contact information for NOAA and the Recipient is maintained in the NOAA Grants Online award management system. In addition: the Federal Program Officer for this award is: Janine Harris; 301-427-8635; janine.harris@noaa.gov and the Technical Monitor for this award is: Erika Ammann; 323-372-3249; erika.ammann@noaa.gov.

11) Project Milestones

To ensure adequate and timely progress towards project completion, NOAA and the Recipient have cooperatively identified several milestones as outlined in the proposal narrative on pages 14-15. Project progress will be evaluated throughout the award with particular emphasis on meeting these milestones. NOAA reserves the right to pursue enforcement action for the award under 2 C.F.R. 200.339-.343 at any time throughout the award period should NOAA determine that a Recipient is not meeting project milestones as outlined in the application submitted to the NOAA Grants Management Division for funding.

12) Signs at Restoration Sites

The recipient is responsible for constructing, erecting, and maintaining in good condition throughout the construction period a sign(s) satisfactory to NOAA that identifies the project and indicates that the project is Federally funded by the Bi-Partisan Infrastructure Law. NOAA may require that the recipient maintain a permanent plaque or sign at the project site with the same or similar information. The temporary and permanent proposed signage implementation plans must be submitted to and approved by NOAA prior to installation.

13) Outreach and Communications

Department of Commerce Financial Assistance Standard Term and Condition G.05.k.3. is supplemented as follows consistent with NOAA's collaboration on this project. The Recipient will coordinate with NOAA on outreach plans, events, products, and media coverage associated with the project. Please coordinate with the Federal Program Officer listed under the Contact Information award condition. Grantees will provide copies of final outreach products, website mentions, press materials, photos, etc. via the standard progress reports to NOAA, or when available throughout the award period. Grantees will provide NOAA with high-resolution before, during, and post-implementation photos of the project. Photos of the site prior to construction and during project implementation should be submitted with progress reports or as requested by NOAA.

14) Acknowledgement of Project Contributors

The Recipient must display, where appropriate and practical, publicly visible signs indicating that the project has received funding from the NOAA Restoration Center. These signs should also identify other contributing partners. These contributions should also be acknowledged in all communications with the media and the public and in all outreach related to the projects, consistent with Department of Commerce Financial Assistance Standard Term and Condition G.05.k.3.

15) Project Safety

The Recipient must have a written safety plan for management of the project, which should specifically address safety of project personnel, associates, visitors, and volunteers. The Recipient must conduct a safety briefing for volunteers immediately prior to their participation in hands-on restoration activities under this award.

In addition, for any Self-Contained Underwater Breathing Apparatus (SCUBA) diving activities in a project, it is the responsibility of the Recipient to ensure that SCUBA divers are certified to a level commensurate with the type and conditions of the diving activity being undertaken. Furthermore, it is the responsibility of the Recipient to ensure that any SCUBA diving activities under this award meet, at a minimum, all applicable Federal, State, and local laws and regulations pertaining to the type of SCUBA diving being undertaken.

16) Compliance with Applicable Laws, Obtaining Permits, and Consultation Requirements

The Recipient is required to comply with national policy requirements consistent with 2 C.F.R. Sec. 200.300 and Department of Commerce Financial Assistance Standard Terms and Conditions, Section G. The Recipient will ensure that implementation of the project will meet all Federal laws and regulations by obtaining all Federal, state, and local permits and consultations applicable to the project prior to expenditure of award funds for those activities requiring permits and consultations. This includes, but is not restricted to, consultations required under the Endangered Species Act, Magnuson-Stevens Fishery Conservation and Management Act (Essential Fish Habitat), National Historic Preservation Act, and Coastal Zone Management Act. The Recipient will be cognizant of all conditions and restrictions required by their permits and consultations, and will immediately halt activities and contact their NOAA Technical Monitor if events occur that threaten to violate the conditions or restrictions required by their permits and consultations.

17) Verification of Permits and Consultations

Verification of permits and regulatory compliance related to this project must be presented to the NOAA Technical Monitor prior to project implementation. The Recipient should provide a list of Federal, tribal, state, and local permits acquired for this project by email or letter to the NOAA Technical Monitor.

18) Project Files

The Recipient must maintain project files for all restoration activities taking place under this agreement consistent with 2 C.F.R. Sec. 200.334. These files must contain, at a minimum, project work plans and copies of all federal and state permits/consultations associated with project implementation.



NOAA FISHERIES

Office of Habitat
Conservation

The NOAA Restoration Center, housed within the Office of Habitat Conservation in NOAA Fisheries, invests in habitat restoration across the country where our fisheries need it most.

With our national network of partners, we leverage funding and develop high-quality restoration projects to:

- *Recover threatened and endangered species*
- *Sustain our nation's fisheries*
- *Reverse damage caused by oil spills and toxic releases*
- *Strengthen the resilience of coastal communities and ecosystems.*

Communications Guidance for Community-based Restoration Program Grantees

About the Community-based Restoration Program

NOAA's Community-based Restoration Program provides technical and financial assistance for restoration projects that ensure fish have access to high-quality habitat. Our staff work with partners from across the country on projects that recover and sustain fisheries—particularly species managed by NOAA Fisheries, or those listed as endangered or threatened under the Endangered Species Act. The Community-based Restoration Program is administered by the NOAA Restoration Center, which is a division of the Office of Habitat Conservation in NOAA Fisheries.

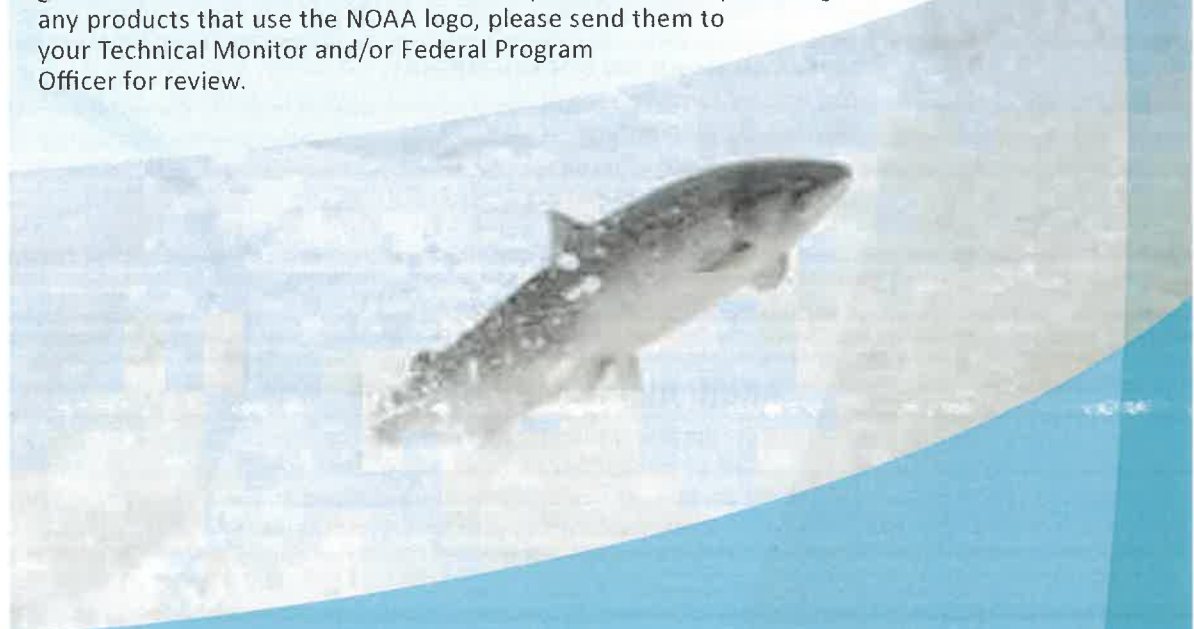
Communicating About Your Award or Project

HOW SHOULD I REFER TO NOAA IN MY COMMUNICATIONS PRODUCT?

For most uses, you can refer to us as the "National Oceanic and Atmospheric Administration (NOAA)," or simply "NOAA." You may also refer to our specific division as the "NOAA Restoration Center." For the funding program, refer to it as "NOAA's Community-based Restoration Program."

CAN I USE THE NOAA LOGO IN MY COMMUNICATIONS PRODUCT?

Yes, provided the content is appropriate. Your Technical Monitor and/or Federal Program Officer will provide you with a high-resolution NOAA logo for use in grant-related communications and outreach products. Before publishing any products that use the NOAA logo, please send them to your Technical Monitor and/or Federal Program Officer for review.



WHO SHOULD I NOTIFY ABOUT MY COMMUNICATIONS PRODUCT?

Please notify your Technical Monitor and/or Federal Program Officer about any grant-related communications or outreach elements you are planning, including signage, press releases, events, videos, and more. We may connect you with additional NOAA staff for assistance or to provide review.

DOES ANYONE FROM NOAA NEED TO REVIEW MY COMMUNICATIONS PRODUCT?

It depends. Products such as signage and any uses of the NOAA logo should be shared with us to ensure the content is appropriate and meets any compliance requirements. Please allow **up to two weeks** for this review.

Products that do not use the NOAA logo—such as web articles or social media posts—do not require a formal review, but we encourage you to notify your Technical Monitor and/or Federal Program Officer about them so we can assist with coordination and amplification.

WILL NOAA SHARE THE PRODUCT I CREATED?

Possibly. As a federal agency, we are limited in the content we can share and websites we can link to. However, we may be able to link to or share a web page, story map, or other product you created. We encourage you to discuss your specific product with your Technical Monitor and/or Federal Program Officer as soon as possible, so they can help coordinate on potential options for sharing.

CAN I SHARE PHOTOS AND VIDEOS RELATED TO MY PROJECT WITH NOAA?

Yes, please do! We love to see your restoration work in action. Please send photos or video clips to your Technical Monitor and/or Federal Program Officer. Be sure to note whether NOAA can reshare them, and who we should credit if we do.

IF I PRODUCE A VIDEO ABOUT MY PROJECT, WILL YOU POST IT ON A NOAA WEBSITE?

Potentially, if you involve us early in the process. Any video embedded on the NOAA Fisheries website or featuring NOAA Fisheries branding must meet several requirements, including (but not limited to) being less than five minutes and incorporating captions to meet federal accessibility guidelines. Videos must also go through a multi-level NOAA review process, which can take **up to a month**.

Let your Technical Monitor and/or Federal Program Officer know as soon as possible if you are planning a video product that you want NOAA to embed on our site, so we can coordinate with you on the necessary elements.

CAN I INCLUDE A NOAA QUOTE IN MY PRESS RELEASE?

Quotes from NOAA leadership may be available for press releases or other products with **at least two weeks** advanced notice. Contact your Technical Monitor and/or Federal Program Officer if you are interested in a NOAA quote for your press release.

CAN I TAG NOAA ON SOCIAL MEDIA?

Yes, and we hope you do! Relevant social media accounts to tag and mention include:

- Twitter: @NOAAHabitat
- Facebook: NOAA Fisheries Service
- Instagram: @NOAAFisheries

You can also link to our website at: www.fisheries.noaa.gov/habitat-conservation

Additional Questions?

Your Technical Monitor and Federal Program Officer can answer additional questions you may have surrounding communications and outreach related to your award, or they can connect you with other NOAA staff who will be able to help.



Restoration Center Performance Progress Report Terms and Definitions

A: Project Activities:

Grant Administration:

Explain progress on the administrative activities required to adhere to Department of Commerce (DOC) and NOAA Terms and Conditions. These administrative activities include: submitting Award Action Requests, participating in the audit process, maintaining all project files including at a minimum: project work plans; copies of all federal and state permits/consultations associated with project implementation; and documentation of onsite construction supervision/project management (ie. performing oversight of sub-recipients and sub-contractors, etc.)

Data Management Plan:

The Data Management Plan is a required component of the application, and the plan is typically finalized during award negotiations. Please enter the date of acceptance for the plan. If revisions are required during the course of the award, please indicate. If your project generates environmental data under this award, please include the website address where the data will be shared. Guidelines for creating Data Management Plans can be found here:

<https://www.fisheries.noaa.gov/webdam/download/57228743>.

FFATA Reporting Requirement:

The Federal Funding Accountability and Transparency Act (FFATA) requires Recipients to report on sub-awards greater than \$25K within the FFATA Subaward Reporting System (<https://www.frs.gov/>). For more information, review your DOC Terms and Conditions.

Selection of Sub-awards and/or Sub-contracts:

Note if /when the project is in the bidding phase (in progress), and when a contractor is selected (complete).

Photo Submission:

Provide high-resolution photos of before, during, and post-implementation phases of the project. Photos of the site prior to construction and during project implementation should be submitted with progress reports, or as requested by NOAA. Further guidance can be found in your Specific Award Conditions.

Partner Coordination:

Note the progress of coordination with necessary partners to complete the planned project, and indicate whether any problems have been encountered.

Landowner Coordination:

Note the progress of coordination with the landowner of the project site or adjacent properties (for example, right-of-way negotiations). If the Recipient is also the landowner, please indicate in the Explanation of Progress column.

Engineering and Design:

Document the progress on engineering and design drawings, if applicable. The percent design plan can be noted in the Explanation of Progress column.

Permitting and Compliance:

Ensure that implementation of the project will meet all permitting requirements as outlined in your Specific Award Conditions. Provide a list of Federal, tribal, state, and/or local permits acquired for this project, by email or letter to the NOAA Technical Monitor.

Construction:

Indicate the date that construction is anticipated to begin, and when it is anticipated to be complete. Use the Explanation of Progress column to provide details about the construction process.

Monitoring Activities:

Describe the status of pre- and post-implementation monitoring activities (i.e., not started, in progress, complete).

Adaptive Management or Maintenance Activities:

Describe any adaptive management or maintenance activities that were completed or are planned for the future, as applicable. For example, were activities modified to meet project goals? Were there additional activities completed to maintain the project and enhance its sustainability?

Outreach and Education and Volunteer Coordination:

Provide copies of final outreach products, website mentions, press materials, photos, etc. Otherwise, indicate if outreach projects or events are planned and provide details. Further outreach and education guidance can be found in your Specific Award Conditions.

Acknowledgement of Project Contributors:

State whether a publicly visible sign is planned and developed, that indicates the project has received funding from the NOAA Restoration Center. Further guidance is described in your Specific Award Conditions.

Safety Plan and Briefing on Site:

Indicate whether a written safety plan is on file, as stated in your Specific Award Conditions.

Monitoring Plan and Monitoring Report:

Indicate the date of completion for the Monitoring Plan. If a standalone Monitoring Report will be submitted to NOAA, please indicate the date of submission. If monitoring results will be described within the progress report narrative rather than as a standalone report, please indicate the status.

Improve Public Safety/ Removal of Pre-existing Safety Hazards:

Please consult with your award's Technical Monitor related to the specific Tier 1 Monitoring Guidance for your specific project type (as applicable).

Community Enhancement:

Please consult with your award's Technical Monitor related to the specific Tier 1 Monitoring Guidance for your specific project type (as applicable).

B. Performance Measures:

Habitat Restored: (# acres)

Record the target and actual acres of habitat restored. *Please consult with your award's Technical Monitor for more information.*

Stream Habitat Made Available or Restored: (# miles)

Record the target and actual number of stream miles opened for fish passage. For in-stream projects (e.g., large wood placement, side-channel habitat, reconnection or re-meander): to calculate the acres of habitat for large wood placement projects, consider the extent to which placement has resulted in maximum biological function. For projects that return a stream to its original channel (e.g., channel reconnection or re-meander): calculate in-stream acreage as length of modified channel by bankfull width, and if the reconnected floodplain will be used by target species, please include the impacted floodplain as freshwater wetland or riparian acres. *Please consult with your award's Technical Monitor for more information.*

Volunteer Involvement (hours): (#)

Record the target and actual number of hours that volunteers provided to the project.

Volunteer Involvement (participants): (#)

Record the target and actual number of individual volunteers that participated on the project.

The project activities listed below are options to be included in a progress report form based on the scope of project activities. The Federal Program Officer, the Technical Monitor, and the grantee will determine which metrics are appropriate.

Generic Performance Measures

Implementation Metrics:

Provide the metrics collected for the implementation. Please note which metrics were used.

Basic Effectiveness Metrics: (E.g. fish presence/absence)

What type of monitoring was conducted to show the project was effective at meeting its stated goals? Add comments if the project was not implemented as designed.

ESA Recovery Plan Actions Addressed: (#)

How many ESA Recovery Plan actions are addressed through this project? In the comments, please identify the name of the Recovery Plan and the action(s) the project activities contribute to or address.

Fishery Management Plan Actions Addressed: (Y/N)

Is a Management Plan action addressed? In the comments, please identify which action(s).

Budget Justification (6 page limit)

Budget Overview:

The estimated cost to implement Phase 1 of the Herring River Restoration Project (Project) includes \$62,951,000 in construction costs and \$7,500,000 in adaptive management costs, for a total of \$70,455,000 (Table 1). Construction costs include all water control infrastructure necessary for full tidal restoration of 890 acres, as well as property impact prevention measures needed for Phase 1 tidal restoration of 570 acres. While most restoration acreage is located within the National Park Service/Cape Cod National Seashore (NPS/Seashore), most of the water control infrastructure is located on land owned by the Town of Wellfleet (Town). The Town and co-proponent, NPS/Seashore, have obtained all environmental permits necessary to begin construction and implementation. To date, the Town has executed grant agreements for a total of \$49,870,000 in funding from the Commonwealth of Massachusetts (\$22,670,000) and US Department of Agriculture Natural Resources Conservation Service (NRCS) (\$27,200,000) for construction and implementation.

Table 1. Herring River Restoration Project Budget Overview

Project Element	Cost (2022\$)
Chequessett Neck Road Bridge and Water Access Facility	\$31,000,000
Mill Creek Water Control Structure	\$5,700,000
Elevate Low Lying Roads & Culverts	\$11,000,000
Low Lying Property Impact Prevention	\$7,055,000
Project Management	\$8,200,000
Adaptive Management	\$7,500,000
Total	70,455,000

Summary of Funding Request:

The Town is requesting a NOAA grant of \$14,690,000 for construction, project management, permit compliance and non-construction implementation support activities. The NOAA grant will provide the final funding needed to construct all water control infrastructure located outside of the Cape Cod National Seashore that is necessary for full tidal restoration of the Herring River estuary, and all property impact prevention measures necessary to begin implementation of Phase 1 tidal restoration. This grant request builds on NOAA’s previous investments in planning, design and permitting of the restoration project amounting to more than \$5 million over the past nine years.

The investment of NOAA resilience funds in this Project will ensure the return of tidal flow into the Herring River estuary and the restoration of 570 acres of salt marsh and other tidal wetland habitat by the end of Phase 1, and 890 acres by the end of full tidal restoration. Additionally, Phase 1 will restore approximately 10 miles of tidal creek, including approximately 6 miles of mainstem tidal creek, for use

NOAA FY22 Transformational Habitat Restoration and Coastal Resilience Grants
 Town of Wellfleet, MA
 Herring River Restoration Project, Phase 1

by resident, migratory and diadromous species, providing access to 160 acres of pond habitat for spawning. Additional tidal creek river miles are expected in subsequent stages of restoration. Water quality improvements will enhance shellfish habitat. Over time, approximately 90 acres of harvestable shellfish area downstream of the dike now closed due to bacterial contamination are expected to be re-opened for harvesting. Longer term, close to 110 acres of additional shellfish habitat in Lower Herring River may be harvestable.

The Town will pledge non-federal match in the amount of \$1,475,000, or 10% of the grant amount. The source of non-federal match funding is a grant to the Town from the Commonwealth of Massachusetts, Department of Fish and Game, Division of Ecological Restoration (MA DER), in the amount of \$22,670,000. The state grant is for construction and implementation activities.

Table 2 provides a summary of grant request and match by task. The vast majority of funds (\$10,995,218) would be used for activities in the Contractual object class. Additional detail on the tasks and associated grant requests and match is provided below. Construction costs for Tasks 1-2 are based on opinions provided by the design engineers after completing plans and developing specifications. The cost estimates, which are consistent with the *Build America, Buy America Act*, are included in PDF 3. Also under the Contractual object class, project management expenses (\$900,000) are based on existing and anticipated engineering services contracts. Under the Other object class, another portion of the request (\$2,665,000) would fund a fourth task, Sub-award. Two sub-awards are anticipated. The largest subaward is for (\$2,315,000) to a commercial Mill Creek property owner for acquisition and movement of fill to elevate low-lying portions of the property, and to move fill offsite for future elevation of low-lying road segments. A second sub-award (\$350,000) is for permit compliance and non-construction implementation support activities to be undertaken by Friends of Herring River under an agreement with the Town of Wellfleet. Indirect expenses of \$1,029,782 are requested, accounting for 10% of contractual funding and \$25,000 per sub-award.

Table 2. Summary of Grant Request and Match

TASK		FY23	FY24	FY25	Total
Contractual					
1. Chequessett Neck Road Bridge & Water Access	NOAA	\$485,109	\$485,109	\$0	\$970,218
	Match	\$1,000,000	\$0	\$0	\$1,000,000
2. Elevate Low Lying Roads & Culverts	NOAA	\$9,125,000	\$0	\$0	\$9,125,000
	Match	\$375,000	\$0	\$0	\$375,000
3. Project Management	NOAA	\$300,000	\$300,000	\$300,000	\$900,000
	Match	\$0	\$0	\$0	\$0
Contractual Total	NOAA	\$9,910,109	\$785,109	\$300,000	\$10,995,218
	Match	\$1,375,000	\$0	\$0	\$1,375,000
Other					
4. Sub-award (Other Total)	NOAA	\$2,565,000	\$100,000	\$0	\$2,665,000
	Match	\$100,000	\$0	\$0	\$100,000
5. Indirect	NOAA	\$924,271	\$78,511	\$27,000	\$1,029,782

NOAA FY22 Transformational Habitat Restoration and Coastal Resilience Grants
 Town of Wellfleet, MA
 Herring River Restoration Project, Phase 1

It is proposed that \$13,399,380 of requested funding be provided in year one (FY2023), \$963,620 in year 2 (FY2024), and \$327,000 in year 3 (FY2025). Table 2 shows the allocation of grant funding and match to project task. These are estimates subject to change.

In addition to the non-federal match of \$1,475,000, the Project will provide a total of \$34,354,000 in federal and non-federal leverage, amounting to 230% of the requested grant amount. Of this amount, \$24,200,000 is federal leverage in the form of a grant from the US Department of Agriculture, Natural Resource Conservation Service, and \$7,154,000 is state funding contributed to tasks 1 through 4 that is not otherwise pledged as non-federal match. This does not include additional in-kind contributions of time and technical support from Town, state, and federal agency partners and the non-profit Friends of Herring River.

Table 3. Summary of Task, Grant Request, Match and Leverage

Task	Task Name	Task Total	NOAA Request	Match Non-federal	Leverage		
					Non-federal	Federal	Total
1	Chequessett Neck Road Bridge and Water Access Facility	\$31,000,000	\$970,218	\$1,000,000	\$2,439,000	\$19,500,000	\$21,939,000
2	Elevate Low Lying Roads & Culverts	\$11,000,000	\$9,125,000	\$375,000	\$2,375,000	\$1,500,000	\$3,875,000
3	Project Management	\$8,200,000	\$900,000	\$0	\$2,340,000	\$3,200,000	\$5,540,000
4	Sub-awards	\$7,055,000	\$2,665,000	\$100,000	\$0	\$0	\$0
5	Indirect		\$1,029,782	NA	NA	NA	\$1,029,782
	Totals	57,255,000	14,690,000	\$1,475,000	\$7,154,000	\$24,200,000	\$31,354,000

OBJECT CLASS BREAKDOWN

1. CONTRACTUAL

Contractual (Federal Share): \$10,995,218

The Town will hire qualified construction contractors, engineers, project managers and technical experts to undertake the construction (Tasks 1-2) and project management (Task 3) tasks outlined below.

Contractual (Non-Federal Share): Total: \$1,375,000

All matching funds are from a grant to the Town from MA DER. A letter from MA DER confirming state funding and the use of state funds as match is enclosed in PDF 2, Budget Narrative.

Contractual Task Descriptions

Construction of the Chequessett Neck Road Bridge and Water Access Facility

Estimated Cost (Federal Share): \$970,218

Estimated Cost (Non-Fed. Share): \$1,000,000
Object Class: Contractual

Description: The existing dike at Chequessett Neck Road is the major tidal restriction in the Herring River estuary and the most significant obstacle on the diadromous fish run. The Project will remove a portion of the dike and, in its place, construct a new 165-foot bridge with controllable sluice gates and removable panels to allow tidal flow to be re-introduced gradually. This Project element includes construction of an ADA-accessible Water Access Facility to allow public access to the water for viewing and recreation. A temporary bypass bridge will be installed to allow vehicular and pedestrian passage during construction of the permanent bridge structure. Throughout construction, stream flow and fish passage will be maintained, as shown on construction sequence drawings. Construction costs for this task are based on opinions provided by the design engineers after completing construction-level plans and developing specifications.

Deliverables: Completion of temporary bypass bridge and permanent bridge, sluice gates and water access facility as shown and specified in the [Project Manual for Chequessett Neck Road Bridge and Water Access Facility Construction](#).

Sub-contractor: The Town selected MIG Corporation to serve as contractor for the Chequessett Neck Road Bridge and Water Access Facility. MIG Corporation was the lowest qualified bidder selected following a public bidding process conducted in accordance with Massachusetts General Laws.

Task 2: Elevation of Low-Lying Roads, Culvert Replacements and Causeway Removal

Estimated Cost (Federal Share): \$9,125,000
Estimated Cost (Non-Federal Share): \$375,000
Object Class: Contractual

Description: Approximately two miles of non-contiguous roadway segments along the following roads would be vulnerable to high tide water levels with restored tidal flow: Pole Dike Road, Old County Road; Bound Brook Island Road and High Toss Road. The low-lying road segments will be elevated a minimum of six inches above the modeled storm of record during full tidal restoration. Seven undersized culverts within the low segments to be elevated will be replaced with enlarged structures. Of these, two box culverts will have natural stream channel substrates to enhance fish habitat and passage. A third box culvert, at Pole Dike crossing, will include a tide gate to control tidal flow into the Upper Pole Dike Creek sub-basin; during Phase 1, the tide gate will be configured for drainage only and will improve existing drainage without increasing water levels in the sub-basin. A portion of High Toss Road that crosses the Herring River marsh as a causeway will be removed, eliminating the severe hydrologic restriction caused by an existing undersized culvert and allowing restoration of the river channel and adjacent salt marsh. Construction costs for this task are based on opinions provided by the design engineers after completing construction-level plans and developing specifications.

Deliverables: Completion of work as shown on construction drawings for (1) Elevation of Bound Brook Island, Old County and Pole Dike Roads and Culvert Replacements, and (2) High Toss Road - Travelway Elevation and Causeway Removal, as specified in the [Project Manual for Low-Lying Roadways and Associated Elements Construction](#). Fill required for the low road elevations will be acquired (see task 3).

Subcontractor: The Town will select a qualified contractor based on a competitive bid process. The bid advertisement is scheduled to occur in 2023.

Task 3: Project Management

Estimated Cost (Federal): \$900,000

Estimated Cost (Non-Federal): \$0

Object Class: Contractual

Description: Project management costs encompass oversight and quality control for construction of multiple project elements on Town-owned and private property, as well as contracted grant administration tasks. The Town has hired an Owners Project Representative (OPR) through a competitive process. The OPR will provide onsite construction oversight and administrative support to the Town of Wellfleet Department of Public Works. The Town is also soliciting proposals for resident engineering services from Fuss & O’Neill for the Chequessett Neck Road Bridge and Water Access Facility, and from WSP for low road elevations, culvert replacements and low-lying property impact prevention. The resident engineers will work with the contractors, the Town and the Town’s OPR to ensure that construction work is undertaken in accordance with permitted and approved design plans.

Deliverables: Contract for Owner’s Project Representative services; contracts for resident design engineering services for Chequessett Neck Road Bridge and Water Access Facility construction (Fuss & O’Neill) and for Low-Lying Roadways and Associated Elements Construction and property impact prevention (WSP).

Subcontractor: The Town’s competitively selected Owners Project Representative is Environmental Partners. The Town is also soliciting proposals for resident engineering services directly from the engineers who designed the respective infrastructure elements (as allowed under MA procurement law). The firms are Fuss & O’Neill and WSP as designers of the Chequessett Neck Road Bridge and low road elevation and culvert replacements, respectively. Each of these three contracts will be executed on an annual basis with the option for renewal. The year one contract amounts are as follows: Environmental Partners – \$320,000; and Fuss & O’Neill – \$651,000; and WSP – \$350,000 (estimate). NOAA funds would be used to pay a portion of these annual costs as follows: In FY2023: \$100,000 toward Environmental Partners; \$200,000 toward Fuss & O’Neill. In FY2024, \$100,000 toward Environmental Partners and \$200,000 toward WSP. In FY2025, \$100,000 toward Environmental Partners, and \$200,000 toward WSP. It is anticipated that Environmental Partners contract could be renewed for the duration of Phase 1 construction (5 years), and that design engineers would serve in that capacity for the duration of the construction of the respective project element, approximately 2.5 years for Fuss & O’Neill and approximately 2 years for WSP. Financial services will be needed for the grant term, through 2026.

2. OTHER

(Federal Share): \$2,665,000

(Non-Federal Share): Total: \$100,000

Other Task Descriptions

Task 4. Sub-awards

Subaward 1: Chequessett Club: Low-lying Property Mitigation

Estimated Cost (Federal): \$2,315,000

Personnel: \$0

Fringe: \$0

Contractual: \$2,315,000
Estimated Cost (Non-federal): \$100,000
Object Class: Other

Description: Portions of a commercial property in the Mill Creek sub-basin owned by the Chequessett Club must be elevated to mitigate potential flooding from tidal restoration. The sub-award will be used to acquire and place the fill to achieve the required land elevation for mitigation of low areas of the commercial property; and a portion of the fill acquired will be transported to a town facility for later use to elevate low-lying road segments.

Deliverables: Acquisition and transport of approximately 250,000 cubic yards of fill. Of this amount, 180,000 cubic yards will be used on the Mill Creek commercial property, and approximately 70,000 cubic yards will be transported offsite to a town facility for later use in the project.

Sub-contractor: Chequessett Club, owner of the commercial property. The Club has unique locational advantages that make it a more cost-effective source of fill needed for onsite and offsite elevation of low-lying property.

Subaward 2: Friends of Herring River: Permit Compliance and Non-construction Implementation Support

Estimated Cost (Federal): \$350,000

Personnel: \$62,500 (50% Assistant Project Manager (annual salary \$70,000) -\$35,000; 25%

Executive Director (annual salary \$110,000) -\$27,500

Fringe: \$21,875 (at 35%)

Contractual: \$265,625

Estimated Cost (Non-Federal): \$0

Object Class: Other

Description: The Town of Wellfleet will enter into a sub-award agreement with Friends of Herring River authorizing the Friends to oversee permit compliance and associated data collection, modeling and analysis necessary for permit compliance. Friends of Herring River will also assist with external communications in support of project implementation, project documentation, data management and data sharing, and archiving of plans, studies, permits and other records in support project implementation and data sharing. The Town does not otherwise have the staff or consultant capacity to undertake these tasks. Friends of Herring River is uniquely positioned to oversee these tasks due to its prior work with the technical team to develop and administer permit applications, stature in the community, oversight of engineering design plans, established relationships with project partners and unmatched familiarity with all aspects of the project.

Deliverables: Permit compliance records and reports; a data management and sharing system; communications materials; and project documentation materials.

Sub-contractor: The activities will be undertaken by Friends of Herring River staff as well as contractors to the Friends, including but not limited to Ridley & Associates, Oxbow Associates, Charybdis, Center for Coastal Studies, Woods Hole Group, PAL, and communications sub-contractors to be selected using best business practices.

3. INDIRECT COSTS

Estimated Cost (Federal): \$1,029,782

Estimated Cost (Non-federal): \$0

*NOAA FY22 Transformational Habitat Restoration and Coastal Resilience Grants
Town of Wellfleet, MA
Herring River Restoration Project, Phase 1*

Description: The Town has never had a negotiated indirect cost rate with NOAA. Therefore, the *de minimus* rate of 10% on the Modified Total Direct Costs (all tasks in the Contractual object class (\$10,995,218S), in addition to the allowable \$25,000 per sub-ward in the Other object class (\$50,000), \$11,045,218 in total) will be applied. We request slightly less than the 10% (\$1,104,522) of the Modified Total Direct Costs. We request a total indirect of \$1,029,782 with Year 1 indirect costs calculated at \$924,271 year 2 calculated at \$78,511 and year 3 Indirect costs calculated at \$27,000. The Town is under contract with Unibank Fiscal Advisory Services for support administering any project-related short-term borrowing. In addition, the Town proposes to use best business practices to engage a financial services firm to provide grants management support and has received a proposal from Clifton Larson Allen.

Project Summary.

- 1) Applicant Organization. Town of Wellfleet, MA
- 2) Project Title. Herring River Restoration Project, Phase 1
- 3) Site Location. Wellfleet and Truro, Barnstable County (Cape Cod), MA
Geographic coordinates provided in Table S-2 in PDF 4

4) Brief Project Description.

The transformative Herring River Restoration Project (Project) is the largest salt marsh restoration project in the Northeast United States. Upon completion of full restoration, the Project will permanently restore the health and productivity of 890 acres of degraded tidal wetlands and reconnect a functioning estuary to Cape Cod Bay and Gulf of Maine. Table S-1 found in PDF 4 provides a summary of Project phases, construction elements and habitat restoration benefits.

The Project will foster regionally important habitat restoration. Historically, the Herring River estuary was a rich herring run and shellfishing area. In 1909, a 900-foot earthen dike was constructed on Chequessett Neck Road (CNR) near the mouth of the river in attempt to control nuisance mosquitos. The dike failed to address the mosquito problem and had other dire consequences. The dike was a barrier to anadromous fish migration. The annual herring harvest, estimated at 200,000 before the dike was constructed¹, is estimated today to be roughly 10% of that amount.² In addition to loss of herring and eel migration, prolonged tidal restriction caused severe habitat degradation and nearly complete loss of native tidal wetland habitat. Impacts over time include oxygen- starved waters with high concentrations of sulfides, loss of shellfish habitat, decay of and subsidence of salt marsh, stagnant waters in sub-basins, and invasion of freshwater wetland species, including *Phragmites*. As a consequence, Herring River is listed as an “Impaired Water” in violation of several federal Clean Water Act standards. The CNR dike is a state-designated point source for bacterial contamination responsible for closure of downstream shellfish areas.

The Town of Wellfleet (Town) and the National Park Service/Cape Cod National Seashore (NPS/Seashore) have entered into a series of Memorandum of Understanding to implement the Herring River Restoration Project to re-establish tidal exchange to the Herring River estuary and thereby remediate degraded conditions and restore native wetland habitats and coastal marsh resilience. Land in Wellfleet owned by NPS encompasses 80% of the total Project restoration area. The Town owns most of the primary tide control infrastructure for the Project. NPS will oversee activities and own structures on federal land. Phase 1 will build all tidal control infrastructure needed for full restoration of Herring River. Phase 1 will open the CNR bridge sluice gates to restore 570 acres of former tidal marsh, restore approximately 11.5 miles of mainstem tidal creek for use by resident, migratory and anadromous species, and provide access to 160 acres of pond habitat for spawning. Phase 1 includes property impact prevention measures designed for full tidal restoration conditions. Full restoration of 890 acres will require additional property impact prevention measures, but no additional water control infrastructure.

If awarded, the NOAA grant will provide the final increment of funding needed to construct all water control infrastructure located outside of the Seashore that is necessary for full tidal restoration of the Herring River estuary, and all property impact prevention measures necessary to begin implementation of Phase 1 tidal restoration.

¹ Wellfleet Town Reports, 1889, 1890

² Association to Preserve Cape Cod

NOAA funds will be used to complete the following Project elements: 1) removal of the CNR dike and construction of the new bridge and sluice gates, 2) low-lying road work including the elevation of 2 miles of roadway, replacement of 7 culverts and removal of a portion of High Toss Road where it crosses the Herring River fish run and recreating a natural channel; 4) property impact prevention measures on private property, and 5) Project management and permit compliance activities. Project elements on Cape Cod National Seashore property to be funded by other sources include: 5) construction of the Mill Creek water control structure; and 6) vegetation and marsh management.

The Project will sustain productive fisheries and strengthen eco-system resilience. Tidal flow will be restored incrementally, using a carefully calibrated adaptive management approach that will balance ecological goals with water level control measures, to achieve desired conditions for native estuarine habitats.

The Project will significantly improve water quality and habitat for fish, shellfish and rare species. Shorebird habitat, including for Plover and Salt Marsh Sparrow, will be restored over time. Shellfish areas closed due to bacterial concentrations could reopen to harvesting. Removal of barriers to migratory fish passage will reinvigorate the herring run and benefit Gulf of Maine fisheries. By re-establishing natural sediment processes, areas of degraded and subsided marsh will be allowed to regain elevation to help keep pace with sea level rise.

Community resilience to climate hazards will be enhanced by the installation a new bridge and sluiceways at in place of the existing Chequessett Neck Road dike, elevation of two miles of roadway and enlargement of seven culverts. The Project will also restore the flood absorption and storm attenuation functions of healthy salt marsh. Pondered methane emitting wetlands will be replaced with salt marsh and other tidal grasses that sequester carbon, thereby significantly reducing greenhouse gas emissions.

5) Timeline.

The Project has all [permits](#) in hand and is “shovel ready”.

- CNR bridge and sluice gate construction to start fall 2022 through 2025
- Low-Lying Roadways and Associated Elements construction to start winter 2023/24 through 2025
- Low Property Impact Prevention construction to start late 2023 through 2025
- Project Management to occur throughout grant performance period.

6) Funding Request.

The Town is seeking \$14,690,000 for construction and Project management activities. Non-federal match of \$1,475,000 (10% of grant amount) is provided, along with leverage of \$31,354,000 (210% of grant amount). This grant request builds on NOAA’s previous investments in planning, design and permitting of the restoration project amounting to more than \$5 million over the past nine years.

Project Narrative.

1. Importance / Relevance and Applicability of Proposal to the Program Goals.

(a) Fostering Regionally Important Habitat Restoration

The Herring River Restoration Project will foster regionally important habitat restoration.

In its historic natural state, the Herring River was the largest tidal estuary on Outer Cape Cod, with approximately 1,100 acres of salt marsh, intertidal flats, and open-water habitats. This once vibrant estuarine ecosystem supported a large and productive diadromous fish run that supported a local herring industry, and served as a nursery and food source for offshore waters. The Herring River system was dramatically altered in 1909 when the Town of Wellfleet constructed a dike on Chequessett Neck Road (CNR) near the mouth of the river with the goal of reducing the presence of salt marsh mosquitoes. The dike failed to address the mosquito problem and had other dire consequences. The dike was a barrier to anadromous fish migration. The annual herring harvest, estimated at 200,000 before the dike was constructed³, is estimated today to be roughly 10% of that amount. Table N-1 from the FEIS shows estimates of fish density above and below the CNR Dike.

Table N-1. Estimates of Finfish Density in Herring River Derived from Raposa (1998) and Gwilliam (2005) Surveys

Common Name	Scientific Name	1998 ^{a,b}		2005 ^c	
		Density (number/m ²) ^d		Density (number/m ²) ^d	
		Upstream of Dike	Downstream of Dike	Upstream of Dike	Downstream of Dike
Alewife	<i>Alosa pseudoharengus</i>	0.05	0.02	-	-
American eel	<i>Anguilla rostrata</i>	0.59	0.03	0.26	0.02
Atlantic menhaden	<i>Brevoortia tyrannus</i>	-	0.15	3.10	0.25
Atlantic silverside	<i>Menidia menidia</i>	0.10	0.15	0.09	0.20
Eastern shiner species	<i>Astropotteri</i> sp. sp.	2.21	-	-	-
Four-spine stickleback	<i>Apeltes quadracus</i>	2.18	-	1.65	-
Hogchoker	<i>Trinectes maculatus</i>	0.02	-	0.02	-
Inland silverside	<i>Menidia beryllina</i>	0.14	-	-	-
Mummichog	<i>Fundulus heteroclitus</i>	3.24	7.32	1.12	8.43
Northern agefish	<i>Syngnathus fuscus</i>	0.01	0.03	0.06	0.02
Greenhead minnow	<i>Cyprinodon variegatus</i>	-	-	0.09	-
Striped killifish	<i>Fundulus majalis</i>	0.04	1.00	0.06	0.95
Sunfish species	<i>Lepomis</i> sp. sp.	0.01	-	-	-
Winter flounder	<i>Paralichthys americanus</i>	-	-	-	0.02
Total Fish Density		8.39	8.72	6.79	9.90

^a Raposa 1998 unpublished data as reported in Roman and James Pirri 2011.
^b Only includes August through October data to be comparable to Gwilliam data.
^c Gwilliam 2005 unpublished data as reported in Roman and James Pirri 2011.
^d Densities derived from catch per unit effort (i.e., number of individuals caught in each 1 m² throw trap sample).

The dike has diminished the river’s function as a finfish nursery fueling ocean waters. A total of 14 species of fish were identified in recent Herring River surveys (Table N-1). The relative abundance of non-migratory estuarine species such as mummichogs, striped killifish, and Atlantic silversides is greater downstream of the dike than upstream of the dike. Wellfleet Harbor is an open embayment entering

³ Wellfleet Town Reports, 1889, 1890

Cape Cod Bay and Gulf of Maine, is the receiving waters for Herring River, which provides the only appreciable amount of freshwater into the harbor (Curley et al. 1972). The harbor serves as a nursery area for juveniles of many sport and commercial finfish, with Atlantic menhaden being by far the most abundant, numbering in the tens of thousands in the summer months (Curley et al. 1972; Town of Wellfleet 1995). Juveniles of other species found using the area as a nursery include winter flounder, windowpane flounder, northern kingfish, tautog, bluefish, and mackerel. Locally abundant forage species include Atlantic silverside, four-spine stickleback, common killifish, striped killifish, tidewater silverside, alewife, blueback herring, and white perch (Curley et al. 1972). These fish form the forage base for larger transitory fish visiting the area such as striped bass, bluefish, and Atlantic mackerel.⁴

The dike reduced the tide range from approximately 10 feet downstream to about two feet upstream, resulting in immediate and devastating effects on the tidal system and estuarine wetlands. Circulation of salt water was essentially eliminated. By the 1970s, much of the original Herring River wetlands had been converted from tidal marsh to forest and shrublands dominated by upland species. Elimination of salinity and tidal flooding also allowed growth of invasive *Phragmites*. This transformation of the marsh over time caused toxic water quality that resulted in fish kills from acidic leaching, closure of downstream shellfish beds, sinking of the marsh by two to three feet, and loss of function as a nursery for commercial and recreational fisheries. In 2003, water quality problems caused the Massachusetts Department of Environmental Protection to list Herring River as “impaired” under the Federal Clean Water Act (CWA) Section 303(d) for low pH and high metal concentrations. The Massachusetts Division of Marine Fisheries has designated the Chequessett Neck Road Dike as a point source of bacterial contamination, resulting in closure of shellfish beds upstream and downstream of the dike. Without restoration, conditions in the marsh will continue to worsen.

Replacement of the dike with a new bridge and tidal control structures, combined with removal of other barriers to fish passage and tidal exchange, will restore water quality and habitat connectivity in the entire estuary complex. The Herring River Restoration Project, when completed, will permanently restore marine and coastal habitats.

The Project aligns with numerous regional habitat protection plans.

- The Project is consistent with the management objectives of the Atlantic States Marine Fisheries Council (ASMFC) Interstate Fishery Management Plan for Shad and River Herring; and the ASMFC River Herring Stock Assessment Update Volume II: State - Specific Report for Massachusetts.
- The Project will provide habitat conservation for a variety of declining wetland habitat types that will meet different life cycle requirements for numerous birds and other wildlife species. MA Natural Heritage & Endangered Species Program has delineated Core Habitats, which, if protected, would conserve the most viable populations of rare species and the best examples of natural communities over the long term. Core Habitats include Saline/Brackish Flats and Marine Intertidal: Flats Natural Communities, all of which will be restored and protected as part of this proposal.
- The Project is within a National Priority Wetland Area designated by the NAWMP, U.S. Shorebird Conservation Plan, Partners in Flight Priority Area, and the North American Waterbird Conservation Plan, and is recognized to support critical species and habitat identified in the 2015 MA State Wildlife Action Plan.
- The Project is located in Bird Conservation Region (BCR) 30 of the Atlantic Coast Joint Venture (ACJV) and includes the ACJV Inner Cape Cod Waterfowl Focus Area and the ACJV Cape Cod –

⁴ Herring River Restoration Project FEIS

Outer Shorebird Focus Area and the restoration will meet the goals of the ACJV Salt Marsh Plan (2019) and Saltmarsh Sparrow Conservation Plan (2020).

- The Project is a priority salt marsh restoration in the Cape Cod Water Resources Restoration Project Watershed Plan prepared by the Cape Cod Conservation District for the USDA, Natural Resource Conservation Service;
- The Project is consistent with the objectives of the state-designated Wellfleet Harbor Area of Critical Environmental Concern, and with the priority actions to improve community resilience as outlined in the Town's Municipal Vulnerability Preparedness Action Plan.

(b) Sustaining Productive Fisheries and Strengthening Ecosystem Resilience.

Predicted Changes to Wetland Habitats Resulting from Restored Tidal Flow

Re-introduction of tidal flows to the Herring River floodplain will result in the widespread restoration of degraded coastal wetlands to estuarine sub-tidal and intertidal habitats. This will improve water quality and habitat for a wide range of fish and shellfish, and will allow hundreds of acres of marsh that is currently subsided up to three feet to regain elevation and keep pace with sea level rise.

Based on the [Herring River Hydrodynamic Modeling Final Comprehensive Report](#) (Woods Hole Group, 2012), salinity within restored intertidal habitat will range from near full-strength seawater (approximately 30 ppt) in the lower portions closer to Wellfleet Harbor to freshwater (<5 ppt) in the upper reaches. Mid-range salinities (5 to 18 ppt) will occur predominantly in the middle portions of the floodplain. High salinity (generally 18 ppt and higher) will kill salt-intolerant plants that have become established on the former salt marsh floodplain and support the re-colonization of native salt marsh plants. In areas further upstream where low to mid-range salinities will be present, a mix of brackish and freshwater hydrophytes is expected to persist.⁵ The uppermost reaches of the floodplain will likely show little to no change in the existing plant community.

Increased tidal exchange resulting from implementation of Phase 1 of the Project will have a profound effect on the Herring River ecosystem. The majority of the floodplain is comprised of former tidally-dependent salt marshes that are now dominated by invasive common reed (*Phragmites australis*), emergent freshwater plants and upland tree and shrub species. Restoring tidal flow will largely displace these plant communities with the polyhaline inter-tidal habitats that naturally occurred prior to construction of the CNR dike in 1909. The Project used the Sea Level Affecting Marshes Model (SLAMM) to develop predictions of wetland habitat change under each of the seven tide gate management policies incorporated into the adaptive management plan at several time steps over Project implementation time spans ranging from 5 to 25 years.

Summary of Habitat Changes:

Restoration will lead to significant transitions in habitat types system-wide, from freshwater to salt-tolerant wetland types, particularly salt marsh. At the end of Phase 1, salt marsh is expected to increase from 64 acres to approximately 350 acres, with the balance of wetlands comprised of coastal beach, land under water and bordering vegetated wetlands. Phase 1 will also remove physical barriers to migratory fish passage and restore approximately 10 miles of tidal creek, including approximately 6 miles of mainstem tidal creek, for use by resident, migratory and diadromous species, providing access to 160 acres of pond habitat for spawning. Restoration of additional miles of tidal creek is anticipated with subsequent restoration. Water quality improvements will enhance shellfish habitat. Over time,

⁵ [Herring River Restoration Project Final Environmental Impact Statement/Environmental Impact Report](#) (Final EIS/EIR), Cape Cod National Seashore and Herring River Restoration Committee, May 2016, Section 4.5

approximately 90 acres of harvestable shellfish area downstream of the dike now closed due to bacterial contamination are expected to be re-opened for harvesting. Longer term, close to 110 acres of shellfish habitat in Lower Herring River may be harvestable.

The Project will restore degraded wetlands and improve natural wetland functions, restore native vegetation, and enhance natural coastal processes, function, and sediment movement. By restoring native tidal habitat to large portions of the Herring River estuary, the Project will:

- To the extent practicable, re-establish the natural tidal range, salinity distribution, and sedimentation patterns of the former 1,100-acre estuary;
- Improve estuarine water quality for resident estuarine and migratory animals including fish, shellfish, and water birds;
- Protect and enhance harvestable shellfish resources both within the estuary and in receiving waters of Wellfleet Harbor;
- Restore the estuary's functions as a nursery for marine animals and a source of organic matter for export to near-shore waters;
- Remove physical impediments to migratory fish passage to restore 11.5 miles of mainstem tidal creek for use by resident, migratory and anadromous species, providing access to 160 acres of pond habitat for spawning;
- Restore normal sediment accumulation on the wetland surface and the accumulation of below ground organic material (peat) to counter subsidence of the former saltmarsh and to allow the Herring River marshes to accrete in the face of sea-level rise;
- Re-establish the natural control of nuisance mosquitoes by restoring tidal range and flushing, water quality, and predatory fish access;
- Improve opportunities for fin fishing, shellfishing, canoeing, kayaking, and wildlife viewing.

Benefits to Fish and Shellfish

In terms of the number and diversity of species, estuaries rank along with coral reefs and tropical rain forests as the most productive ecosystems on earth. They serve as a nursery for forage species and help support the food chain for a sustainable fishery. However, as noted in Table N-1 above, the loss of tidal flow and resulting changes in salinity have profoundly influenced the diversity of estuarine species in Herring River

The design of the new CNR bridge and replacement culverts will dramatically improve passage for species such as river herring (alewives and blueback herring), hickory shad, white perch, American eels, and possibly sea run brook trout. Several species of shellfish that rely on saline conditions will be able to recolonize tidal creek habitat upstream of the new bridge and tide gate structure. The restoration of tidal exchange to the Herring River system will result in permanent increases (when compared to existing conditions) in spawning and nursery habitat for fish species and estuarine macroinvertebrates. Consequently, the Project is expected to lead to corresponding increases in abundance and will constitute a significant beneficial impact for those aquatic species. For shellfish and resident estuarine fish these beneficial impacts will be local and limited to the estuary. For diadromous fish, the benefits will be regional. The receiving water of Herring River is Wellfleet Harbor, which is an open embayment entering Cape Cod Bay and the Gulf of Maine. Restoring the health, abundance and migratory passage for diadromous species will restore the River's role as a spawning, nursery and/or foraging area for migratory and resident finfish species.

An impact analysis on aquatic species is briefly summarized below.

- **Estuarine fish:** Compared to conditions prior to the construction of the CNR dike, existing conditions in the Herring River estuary provide greatly reduced habitats for spawning, nursery, and feeding for many young and adult fish and shellfish species. Phase 1 will remove physical barriers to migratory fish passage and restore approximately 10 miles of tidal creek, including approximately 6 miles of mainstem tidal creek, for use by resident, migratory and diadromous species, providing access to 160 acres of pond habitat for spawning. Restoration of additional miles of tidal creek is anticipated with subsequent stages of restoration. This, combined with improved water quality and access to the headwaters of the river, will likely enhance the size of the run of river herring and allow for the possible reintroduction of sea-run brook trout into the Herring River estuary. Common estuarine fish that currently use the lower Herring River are shown in Table N-1.
- **Shellfish and Other Macroinvertebrates:** Oysters (*Crassostrea virginica*), quahogs (*Mercenaria mercenaria*), and softshell clams (*Mya arenaria*) constitute the most common shellfish in Wellfleet Harbor and Herring River downstream of the dike, with oyster and quahog being the two most abundant and economically important species. No softshell clams were found in Herring River upstream of the CNR dike in a 1984 survey. Other species, including blue mussels, razor clams, surf clams, and bay scallops are found downstream of the CNR dike (Town of Wellfleet, 1995). Due to degraded habitat conditions, harvesting of shellfish in Herring River is prohibited. DMF has designated the CNR dike as a point source for bacterial contamination and closed shellfish beds downstream of the CNR dike to harvesting due to high bacteria concentrations in the water. Water quality improvements resulting from restoration will enhance shellfish habitat. By greatly increasing the flow of clean saline water from Cape Cod Bay into the Herring River, the restoration is expected to reduce bacterial concentrations, which cause the current closure of the shellfishery, to levels that are safe for shellfish harvesting. Over time, approximately 90 acres of harvestable shellfish area downstream of the dike now closed due to bacterial contamination are expected to be re-opened for harvesting. Ultimately, the restoration is expected to improve water quality in Wellfleet Harbor by reducing bacterial concentrations, and likely will increase the area in the Harbor where shellfish could be harvested. The restoration of hundreds of acres of productive tidal marsh will also greatly increase the flow of nutrients which should benefit shellfish growth in Wellfleet Harbor. Longer term, close to 110 acres of shellfish habitat in Lower Herring River may be harvestable.
- **Anadromous/catadromous fish:** Historically, the annual river herring harvest was estimated to be 200,000⁶ (the total run would have been much larger). More recently, annual herring counters using Massachusetts DMF sample-census methodology have estimated the river herring run to be less than 10% of that amount. The headwater ponds of the Herring River provide approximately 160 acres of spawning habitat for river herring. However, the current CNR dike and High Toss Road causeway are barriers on the Herring River fish run, making it more difficult for fish to reach spawning areas. Phase 1 will remove these two major barriers and restore fish passage and access to spawning pond habitat for resident and migratory finfish. Six migratory fish including five anadromous species – alewife (*Alosa pseudoharengus*), blueback herring (*Alosa aestivalis*), hickory shad (*Alosa mediocris*), white perch (*Morone americana*), and striped bass (*Morone saxatilis*), and one catadromous species – American eel (*Anguilla rostrata*) – are found in the Herring River.

⁶ Wellfleet Town Report

Benefits to Rare Species and Rare Species Habitat

To date, four federally threatened or endangered species have been identified as potentially utilizing portions of the Project area seasonally. This includes the rufa red knot (*Calidris canutus rufa*), northern long-eared bat (*Myotis septentrionalis*), roseate tern (*Sterna dougallii dougallii*) and piping plover (*Charadrius melodus*). Additionally, the saltmarsh sparrow (*Ammospiza caudacuta*) is currently being considered for federal listing with a determination scheduled for 2024. However, the species is not currently afforded federal protections under the Endangered Species Act, so we have included them as a species of concern in Massachusetts.

- **Rufa red knot:** In general, the habitat changes associated with restoration will benefit red knot in that there will be more extensive and higher quality foraging habitat. An Intra-Service Section 7 Biological Evaluation Form (November 10, 2021) concluded that the Project is not likely to adversely affect the Red Knot.
- **Northern long-eared bat:** Habitat changes from restoration will reduce the forest and shrubland acreage that is currently suitable for northern long-eared bats foraging and roosting. However, this impact is mitigated because the habitat types are currently degraded, will transition slowly over many years, and are common in other parts of Cape Cod. A letter (November 4, 2021) issued under the January 5, 2016, Programmatic Biological Opinion on Final 4(d) Rule for the Northern Long-eared Bat verified the Project's responsibilities under ESA Section 7(a)(2) with respect to the northern long-eared bat were satisfied.
- **Roseate tern:** The Project will not impact any habitat that is utilized by roseate tern for nesting. There is the potential for limited displacement from foraging or roosting sites in the lower herring river estuary during construction if there are activities between April and September but any effects would be minimal. Construction activities during Oct –April would have no effect. We anticipate that the Project will improve habitat for river herring, which in turn will provide additional forage resources for roseate tern. An Intra-Service Section 7 Biological Evaluation Form (November 10, 2021) concluded that the Project is not likely to adversely affect the Roseate Tern.
- **Piping plover:** The Project will not impact any habitat that is utilized by piping plover for nesting. There is the potential for limited displacement from foraging or roosting sites in the lower herring river estuary during construction if there is activity between April and September but any effects would be limited in scope. Construction activities that occur between October and April would have no effect. We expect that habitat change over time will be beneficial to plovers in that there will be more extensive and higher quality foraging habitat.
- **Saltmarsh sparrow:** The Project has the potential to have short term impacts to nesting habitat but is expected to provide additional foraging habitat for this species. We have yet to determine if suitable nesting habitat will also be created as part of this project, or what the time frame will be for recovery of that habitat but we expect the Project will benefit this species over the long term.

(c) Enhancing Community Resilience to Climate Hazards and Providing Other Co-benefits.

Enhancing Community Resiliency: The replacement of degraded, outdated infrastructure, including the existing CNR dike and tide gates and elevation of approximately 2 miles of roadways and replacement of 7 culverts, will improve ecosystem and community resiliency to climate change and rising sea levels. All Project tide control elements and mitigation measures have been designed to accommodate sea level

rise. The freeboard incorporated into the Project's infrastructure designs will prevent surface water impacts to structures and infrastructure for at least the next 50 years under the most severe sea level rise scenario analyzed. All measures intended to protect structures from the potential effects of tidal restoration are designed to protect the subject structures under full tidal restoration conditions. Improved storm water management will be built into the CNR bridge and road improvements, to improve storm drainage and avoid negative impacts to wetlands and water quality. Additional infrastructure protection will occur with undergrounding of utilities in designated areas. The Project will also result in the removal of three structures from the floodplain, including two single-family residences, including sub-surface septic systems, and the portion of High Toss Road constructed across the marsh plain will be removed to restore tidal flow. Improved drainage associated with tidal restoration will also allow floodwaters from coastal storms to recede more quickly.

The Project contributes to the reduction of greenhouse gas emissions that contribute to climate change. Historically, the Herring River salt marshes absorbed large volumes of carbon in peat soils, which accumulated year after year as sea level slowly increased. However, decades of artificial tidal restriction have led to massive release of carbon by altering sediment deposition and tidal circulation patterns. Blockage of tidal flow, and accompanying carbon-laden sediment, has allowed carbon to remain suspended in the water column where portions of it are released to the atmosphere as carbon dioxide. In addition, conversion of hundreds of acres of salt marsh to freshwater marsh has increased methane emissions, adding further to greenhouse gas emissions associated with the degraded Herring River floodplain. Taking into account the removal of methane emissions and restoration of carbon storage, the restoration of the entire Herring River floodplain could result in greenhouse gas emissions reductions of 2,500 metric tons of CO₂ equivalent annually, or 125,000 metric tons of CO₂ equivalent over fifty years.⁷

The Project will serve as a valuable case study for monitoring and assessing how estuarine and freshwater wetlands respond to rapid rates of sea level rise. It will also evaluate the effectiveness of various management actions to help facilitate the successful transition of wetlands from non-tidal to tidal. The data and findings from this work will be of great interest and utility to scientists and managers in temperate coastal zones. By mimicking at an accelerated pace the effects of projected sea level rise, it will inform future coastal wetland management actions that can maximize the healthy functioning of wetlands as they transition to tidal influence, which will be playing out in vast areas of coastal wetlands around the globe over the coming decades.

Climate Vulnerabilities Addressed: As discussed, tidal restriction has degraded the marsh and compromised many of its critical resilience functions. First, the marsh has lost the ability to absorb carbon and, instead, areas of former salt marsh that have become ponded freshwater wetlands and a source of methane emissions. Second, the marsh has lost the sediment source needed to maintain elevation against sea level rise. Due to the loss of sediment flow and the deterioration of peat soils, several hundred acres of the marsh have subsided up to three feet, thus eliminating the ability for the marsh to function as a buffer against storm surge or absorb flood waters, a condition that could worsen with increasing sea level rise.

The subsidence and degradation of the salt marsh resulting from decreased tidal flow has created large, low-lying areas vulnerable to sea level rise and associated storm surge. There are approximately 300 private residential properties and a small number of commercial businesses located in the Herring River

⁷ Rebecca Sanders-DeMott, et al. Impoundment increases methane emissions in *Phragmites*-invaded coastal wetlands. *Global Change Biology*. John Wiley & Sons, Ltd. November 2021

floodplain. FEMA has designated the estuary as a “Special Flood Hazard Area.” Working with the regional planning agency Cape Cod Commission, the towns of Wellfleet and Truro considered major environmental and infrastructure threats to the region due to sea level rise, severe weather and associated storm surge. Participants, including local officials, community stakeholders and regional resiliency planners, found that “Addressing climate change impacts is an urgent matter for these neighboring Outer Cape communities . . . the towns are vulnerable to storm surges, coastal erosion, and sea level rise that threatens the built environment, drinking water aquifer, biodiversity and natural resources.” Restoration of salt marsh was designated as the top recommendation to improve resilience; the top priority action identified was to pursue funding for culvert replacement and salt marsh restoration.

The Project is aligned with the Town of Wellfleet’s Municipal Vulnerability Preparedness Plan, which identifies salt marsh restoration as the highest priority resilience project. In terms of mitigating specific risk to the neighboring coastal communities, the subsidence and degradation of the salt marsh resulting from decreased tidal flow has created a large, low-lying areas vulnerable to sea level rise and associated storm surge. FEMA has designated the estuary as a “Special Flood Hazard Area.” The regional planning agency, the Cape Cod Commission, has created a mapping tool to assess risk and vulnerability, as well as visualizations that show potential impacts of hurricanes and sea level rise. Building on that information, and in view of concerns over severe winter storms and coastal flooding in 2018, the towns of Wellfleet and Truro and the Cape Cod Commission held a Municipal Vulnerability Preparedness stakeholder workshop in March 2019. The workshop considered major environmental and infrastructure threats to the region due to sea level rise, severe weather and associated storm surge. Workshop participants, including local officials, community stakeholders and regional resiliency planners, found that “Addressing climate change impacts is an urgent matter for these neighboring Outer Cape communities . . . the towns are vulnerable to storm surges, coastal erosion, and sea level rise that threatens the built environment, drinking water aquifer, biodiversity and natural resources.” The workshop designated restoration of salt marsh as the top recommendation to improve resilience.

The Town views restoring tidal wetlands and installing modern tidal control infrastructure as advancing resiliency on several fronts. A primary objective of the Project is to restore natural sedimentation processes upstream, allowing the marsh to accrete and maintain elevation with rising sea level. The restored salt marsh will, in turn, enhance coastal resilience as a natural buffer to storms and wave action to reduce erosion. Tidal restoration will also allow floodwaters from coastal storms to recede more quickly, which will help to protect roadways, wells, and other infrastructure. Additional infrastructure protection will occur with undergrounding of utilities in designated areas. The restoration will also replace existing methane-emitting freshwater wetlands with carbon-absorbing saltwater wetlands, thereby contributing to a reduction of greenhouse gases.

Extensive Community Co-benefits: In addition to the resilience benefits of restoration, the Project will result in significant ecological and community co-benefits

- Reconnecting the Herring River estuary to Cape Cod Bay and the Gulf of Maine to recover the estuary’s functions as: (1) a nursery for marine animals, and (2) a source of organic matter for export to near-shore waters.
- Restoring the natural coastal food web to support numerous fish and bird species and other wildlife that depend on healthy coastal marsh habitats and processes for their migration and survival.

- Reopening waterways to improve migration and spawning for a variety of fish species including River Herring, American Eel, Striped Bass and Winter Flounder, as well as Diamond-back Terrapin.
- Enhancing habitat to increase local fish production and remove physical impediments to migratory fish passage to restore once-abundant river herring and eel runs.
- Protecting and enhancing harvestable shellfish resources both within the estuary and in receiving waters of Wellfleet Harbor. Re-opening and expanding shellfish beds will benefit the local economy; in 2018, the shellfish harvest in Wellfleet was valued at \$7.2 million. Shellfish habitat restoration will also help to sustain local shellfishing jobs, which are estimated to number 400.⁸
- Re-establishing the estuarine gradient of native salt, brackish, and freshwater marsh habitats in place of the invasive non-native and upland plants that have colonized most parts of the degraded floodplain.
- Enhancing opportunities for canoeing, kayaking, and wildlife viewing over a diversity of restored wetland and open-water habitats, including 6 miles of waterways for recreation and tourism. Tourism accounts for nearly \$11 million annually to the local community and supports jobs.
- Generating approximately \$624 million in local and regional economic benefits over the life of the Project based on economic studies of other coastal restoration projects.

(d) Providing Benefit to Underserved Communities, Including Through Partnerships with Tribes.

The Project vicinity was formerly inhabited by the Wampanoag tribe, also known as the *People of the First Light*, who fostered an age-old respect for nature and for using the bounty of land and sea. The Project team has engaged with the Mashpee Wampanoag through Friends of Herring River (FHR), a local NGO working to support the Project. FHR coordinated two outreach and education events during *Celebrate Herring River* month. "Wampanoag Waterways: The Herring are Here" featured Annawon Weeden, an enrolled member of Mashpee Wampanoag Tribe and founder of First Light Foundation, addressing the importance of herring to the Wampanoag Community; discussion focused on the crucial link between Indigenous culture and the fish that sustained them for thousands of summers when they lived by the Cape's rivers and streams. A field trip was held with members from the [Wampanoag Natural Resource Department](#) and the Tribal Youth Program. The group received information about the restoration and a dialog has been established between the Tribe and FHR, and FHR was invited to submit an editable version of our acknowledgement statement. Next steps include a visit to Mashpee to connect with and educate a broader group.

A Regulatory Oversight Group will assist in the preparation and review of the Project's adaptive management plan, and will review implementation progress on an ongoing basis. The Regulatory Oversight Group is called for under the Commonwealth of Massachusetts Environmental Policy Act Certificate and includes representatives of local, regional, state and federal agencies, and the Mashpee Wampanoag Tribe.

2. Technical / Scientific Merit.

(a) Project Methodology.

⁸ Civetta, Nancy. Wellfleet Shellfish Department. Presentation to Herring River Stakeholder Group. November 6, 2019.

Project design has been guided by the best available science. The extensive environmental assessments and modeling described above were the basis for assessment of restoration alternatives, selection of a preferred restoration alternative, and design of water control infrastructure and property impact prevention measures that would achieve the environmental and community benefits of tidal restoration with the minimum impact on natural resources.

Similarly, as described below, Project implementation will be guided by a rigorous adaptive management process designed to achieve the Project's fundamental objectives: restore hydrography; restore ecological function/integrity; minimize adverse impacts; maximize ecosystem services; and minimize costs. For each fundamental objective, multiple sub-objectives have been identified, each with a performance metric and monitoring protocol. The tracking and balancing of performance metrics to maximize the achievement of restoration objectives will occur through the adaptive management process. Adaptive management is an inclusive and formal iterative process of making predictions regarding outcomes of management, monitoring the system after management actions are implemented, comparing the predicted outcomes to the observed outcomes, and using the result to formally update our understanding of the system response to our actions.

Adaptive management is an extension of the general principles of structured decision-making (SDM). The [Herring River Adaptive Management Plan](#) was developed with input from U.S. Geological Survey (USGS) scientists and modeling experts from Woods Hole Group, working collaboratively with the Herring River Technical Team (HRTT)⁹, Friends of Herring River (FHR) and stakeholders. A USGS decision support tool will be used to evaluate the expected performance and trade-offs of various management strategies. The trade-off analysis will help identify which implementation policies are most advantageous for achieving restoration objectives. The decision support tool produces numeric scoring of available management strategies, but it will be up to the Herring River Executive Council (HREC) and Project team to evaluate the results, along with input from the Herring River Stakeholder Group (HRSG) and other sources to make informed and transparent decisions about the most appropriate actions at any given point in the Project implementation timeline.

Scientific Basis for Resilience Impacts

The scientific basis for the Project was largely drawn from a series of studies conducted by NPS researchers and others, beginning in the 1980s and summarized in the [Herring River Conceptual Restoration Plan](#) in 2007. A two-dimensional hydrodynamic model was developed that established the feasibility of tidal restoration and analyzed the effects of restoring tidal flow to different parts of the estuary. This included three different scenarios for sea level rise over the next 50 years and analysis of numerous combined storm events. The model was also used to develop and analyze restoration alternatives based on balancing degrees of tidal restoration with necessary flood prevention.

The Project will increase community resilience to sea level rise by (1) providing new infrastructure with tide gates that will allow flexibility in managing the level of tidal flow through the entrance to the Herring River system at CNR; and (2) providing mitigation to protect upstream properties under extreme storm surge conditions. However, it is important to note that the Project is not intended nor designed to prevent or mitigate extreme coastal storm surges which would overtop the proposed new CNR bridge

⁹ The HRTT is a multi-agency ad hoc advisory group formed under the 4th Memorandum of Understanding between the Town and the Seashore to provide expert scientific advice and input to the Project's decision-making body, the Herring River Executive Council (HREC). The HRTT is comprised of experts from the Town, the Seashore, MA Department of Fish and Game - Division of Ecological Restoration (MassDER), U.S. Fish and Wildlife Service (USFWS), National Oceanic and Atmospheric Agency (NOAA) - Restoration Center, and U.S. Department of Agriculture - Natural Resources Conservation Service (NRCS).

and water control structure, which could occur with the existing dike in place. Designing the new CNR structure as a FEMA flood control structure would be ineffective, in part because water would still enter the system under extreme storm surge conditions by overtopping dunes elsewhere.

The Town and Seashore propose an innovative nature-based approach to restore the natural resilience functions of the Herring River estuary that have been lost due to tidal restriction.

Enhanced Flood Protection: Replacement of degraded, outdated infrastructure will enhance flood protection and also allow floodwaters from coastal storms to recede more quickly. The following Project outcomes are directly related to resilience:

- Restoration of 570 acres salt marsh and tidal wetlands during Phase 1 will enhance natural storm attenuation and flood storage. Phase 1 includes construction of all water control infrastructure needed for full restoration of 890 acres of salt marsh and tidal wetlands.
- Measurable increases in the elevation of the now-subsided marsh plain through natural accretion of sediments and possibly thin layer deposition.
- During Phase 1, Pole Dike Creek tide gates will be closed to allow drainage only, and will improve drainage following storm events. It is anticipated that tide gates will be opened and Pole Dike Creek restored in Phase 2.
- CNR and Mill Creek water control structures and upgraded roadway culverts will allow for quicker drainage of sub-basins following heavy precipitation and storm events.
- Improved storm water management will be built into the CNR bridge and road improvements, to improve storm drainage and avoid negative impacts to wetlands and water quality.

Improved Public Health: Tidal restoration will improve public health by remediating bacterial contamination in the water column and by reducing nuisance mosquitoes that may bear viruses. Currently, the CNR dike is designated as a point source of bacterial contamination by the Massachusetts Division of Marine Fisheries, which has led to closure of hundreds of acres of downstream shellfish beds. Persistent bacterial contamination is a threat to human health through inadvertent consumption of shellfish taken from prohibited areas. Recent reports suggest that worsening bacterial contamination flowing out of Herring River toward Wellfleet Harbor also could pose a threat to downstream oyster aquaculture grants. Increased tidal flushing will dilute concentrations of fecal coliform bacteria and by reducing water temperature and increasing salinity, will reduce the life span of bacteria.

Another unfortunate consequence of the 1909 diking of Herring River has been the increase in freshwater swamp habitat suitable for mosquito species more likely to carry viruses. Due to an overwash at Duck Harbor that was unable to drain, the summer of 2021 was a [particularly bad year for nuisance mosquitoes](#). Restoration of tides and salt water will replace much of this habitat that is conducive to virus-bearing freshwater mosquitoes with healthy salt marshes. Restoration will also improve drainage increasing access for fish that prey on mosquito larvae.

Increase natural hazard resilience: As described above, the Project will enhance coastal resiliency by restoring normal sediment deposition needed to allow the marsh plain to gain elevation and mitigate impacts of sea level rise, and by constructing state-of-the-art tidal control infrastructure to protect low-lying roads and other public and private structures. All Project tide control elements and mitigation measures have been designed to protect structures from the potential effects of full tidal restoration conditions and accommodate sea level rise. The freeboard incorporated into the Project's infrastructure designs will prevent surface water impacts to structures and infrastructure for at least the next 50 years under the most severe sea level rise scenario analyzed.

Carbon sequestration: Tidal restoration will displace methane emitting ponded wetlands with carbon sequestering salt marsh. Taking into account the removal of methane emissions and restoration of carbon storage, the restoration of the entire Herring River floodplain could result in greenhouse gas emissions reductions of 2,500 metric tons of CO₂ equivalent annually, or 125,000 metric tons of CO₂ equivalent over fifty years.¹⁰

(b) Project Detail.

Timeline and Key Milestones:

FEIS complete: The Project completed review under the National Environmental Policy Act, led by NPS with NOAA as a cooperating agency. NPS issued a [Record of Decision](#) in September 2016, and the Project received its [Certificate of Compliance](#) in July 2016 for concurrent review under the Massachusetts Environmental Policy Act (MEPA).

Permitting: The Project is shovel ready and all [environmental permits](#) required of the Town for construction are in hand.

Construction: [Construction-level design plans](#), specifications, current cost estimates consistent with the *Build America, Buy America Act*, and bid/contract manuals have been finalized for all elements for which NOAA funds will be used.

The Project is on track to start construction of the CNR bridge at the end of 2022. An invitation to bid has been advertised and bids will be opened on September 15, 2022. It is anticipated that a construction contract will be executed by mid-November, with site mobilization in December 2022.

Construction of low-lying roadways and culvert replacements, including removal of High Toss Road causeway, will begin late 2023 or early 2024, through 2025. Low property impact prevention will be coordinated with the road and culvert construction.

Construction management planning included analysis of construction sequencing options; factors for consideration included anticipated duration of construction, traffic management, the availability of fill and other materials, and time of year restrictions (TOY) imposed to protect habitats and ensure fish passage. Essential Fish Habitat conservation recommendations from the National Marine Fisheries Service (NMFS) include a restriction on in-water work from February 1 through June 30 of any year to minimize impacts to winter flounder habitat and anadromous fish migrating toward their spawning grounds; TOYs recommended by Massachusetts Division of Marine Fisheries (MDMF) include a similar restriction on in-water work. The Project team undertook a detailed review of existing degraded conditions with MDMF that led to a revised TOY from March 15 through June 30; a similar re-assessment of TOY by NMFS is being pursued.

Construction activity will be managed by the Town through the Wellfleet Department of Public Works (DPW). The DPW Director has extensive experience with road and bridge projects and management of public construction projects. To support the DPW, the Town has advertised an Owner's Project Representative (OPR) position to oversee all construction-phase activities and the Project element design firms to serve as resident engineers. The OPR will report to the DPW Director. The OPR contract will be awarded prior to the start of construction. Town will engage Resident Engineer contracts with the design engineers for the bridge (Fuss & O'Neill) and the low road elevation and culvert replacements

¹⁰ Rebecca Sanders-DeMott, et al. Impoundment increases methane emissions in *Phragmites*-invaded coastal wetlands. *Global Change Biology*. John Wiley & Sons, Ltd. November 2021

and low property impact prevention (WSP). Resident Engineers will work with contractors to make sure construction is undertaken in accordance with permitting and approved design plans.

Non-construction project management will be provided FHR. A Project Coordinator, Ridley & Associates, is under contract with FHR to manage non-construction Project activity. Ridley & Associates has extensive experience successfully managing multi-agency restoration projects. Permit compliance is among the non-construction tasks to be undertaken by FHR through a sub-award from the Town of Wellfleet. Other non-construction tasks to be undertaken include, without limitation, coordination with landowners; outreach and education; interagency coordination; permitting support; and grant administration and contract management.

First Three Years of Restoration: The configuration of sluice gates at the proposed Chequessett Neck Road bridge and water control structure is the primary means of regulating the amount of tidal exchange in Herring River and, therefore, the pace of habitat restoration. Relying on data and analysis generated through the Adaptive Management Structured Decision Making framework, the HREC selected the tide gate management policy to govern the first three years of tidal restoration. Accordingly, the mean high tide elevation in Lower Herring River will be incrementally increased over the first year, from 0.4 feet to 1.8 feet by the end of year 1. (All elevations are NAVD88). This is a critical water level threshold where tides overflow stream/creek banks and begin to flood marsh surfaces, allowing a significant amount of restoration to be achieved in a relatively short time, while concurrent monitoring is undertaken. Monitoring data collected will be used to improve future modeled predictions. The high tide level of 1.8 feet will be maintained during years 2 and 3, while the system response is monitored.

This conservative approach allows opportunities for data collection and model updates to inform policies for longer-term restoration. The high tide elevation of 1.8 feet is equivalent to having five of the sluice gates opened at Chequessett Neck Road Bridge to a height of two feet. At this high tide elevation, the corresponding spring high tide would be 2.5 feet and the storm of record elevation would be 3.0 feet, which is more than one foot lower than the current elevation of the lowest structure and roads in the Phase 1 restoration area. The restored intertidal area under this scenario is approximately 218 acres, compared with 570 acres to be achieved at the end of Phase 1.

A significant benefit of the initial tide gate management policy is that it maximizes the value of monitoring and data analyses, which will provide a real time assessment of system responses to the reintroduction of tidal flows. The data will be incorporated into modeling to enhance its predictive value in selecting tide gate management policies to govern beyond year three.

(c) Implementation Monitoring and Evaluation.

The [Herring River Adaptive Management Plan](#) establishes a rigorous, data-based framework for decision making on the rate of tidal restoration and other implementation actions. The Project team will use the adaptive management framework to evaluate the expected restoration outcomes and trade-offs associated with various management strategies. Trade-offs will be evaluated, monitoring data will be reviewed and management options will be identified for advancing the Project objectives.

The collection, analysis, and application of credible monitoring data to compare with predictions from modeling are the primary means in adaptive management to assess progress towards meeting Project objectives. Equally important is the ability to predict the variation of expected outcomes across a range of alternative management actions that are under consideration. As previously described, in adaptive management output data from models and other predictive methods are used to conduct trade-off analyses so that predictions of how management actions influence objectives can be compared. After

management actions are implemented, monitoring data are used to determine real outcomes, evaluate how models performed, and refine model predictions about the outcomes of future actions.

The framework incorporates all elements of NOAA's Tier 1 restoration monitoring guidance: it assesses structural changes, identifies targeted restoration outcomes, assess basic functional parameters associated with each targeted outcome (hydrology, water level elevation, sedimentation, sediment sampling, vegetation monitoring transect/plots, water quality parameters, benthic sampling, bacterial sampling, larval counts, etc.) and establishes quantitative target values for success, and uses standardized data reporting and progress reports.

The [Herring River Restoration Project Habitat Restoration and Monitoring Plan](#) (HRMP, February 2022) was developed with advice and guidance from the HRTT to set forth the framework and strategy for restoring habitat functions in specific portions of the overall Project area.

It describes the intended timeframes and specific methods that are coordinated with incremental changes to tidal flow. The plan also summarizes how ecological and socioeconomic monitoring data will be collected and integrated into the Project's comprehensive approach to decision-analysis and adaptive management. HRMP includes direction and guidance for project managers, decision-makers, regulatory agencies, funding groups, and other stakeholders for how tidal flow will be managed and estuarine habitats restored and monitored after the physical elements of the Project are constructed.

Restoration of the Herring River estuary will be a long-term process, with active restoration management and monitoring lasting at least ten years and ecosystem changes persisting for a long period. Some habitat changes are more difficult to envision than others. This makes it difficult to foresee and plan for restoration activities over the full Project area and implementation timeline. Accordingly, the HREC has adopted an initial policy which will guide management for the first three years after the CNR Bridge and tide gates are constructed, and tidal restoration begins.

Monitoring the changes resulting from restored tidal flow and salinity is an integral component of the Herring River project. Similar to many other ecological restoration projects, monitoring will be used in a general sense to track the expected response of the ecosystem as tidal flow is reintroduced. However, for the Herring River, monitoring will also be used in a more specific and deliberate manner to guide the adaptive management of the Project and to inform future decisions about managing tide gates and other restoration activities. Since the monitoring plan is tied to decision-making and an adaptive management planning process that is reliant on community and stakeholder input, monitoring elements include both the ecological variables one would expect to be part of a coastal wetland restoration project and a set of socioeconomic factors that reflect community attitudes and perceptions toward the Project.

Use of the Herring River by diadromous fish has been documented by a detailed study completed by the University of Massachusetts and USGS (Alcott, Goerig, Rillahan, He, & Castro-Santos, 2021) and on-going volunteer herring counts conducted by FHR in accordance with MA Division of Marine Fisheries protocols. Volunteer herring counts conducted over the duration of the Project should provide a semi-quantitative comparison of pre- and post- restoration utilization of the river by herring species, adequate for generating order-of-magnitude estimates of year-to-year population and usage trends. Detailed post-restoration studies employing the methods of Alcott & Castro-Santos that provide electronic counts of herring passing through each culvert and stream reach will be pursued as future funding and budgets allow.

(d) Socioeconomic Performance Measures.

Completion of this Project will reconnect the Herring River to Cape Cod Bay and the Gulf of Maine and restore the natural coastal food web that numerous finfish, shellfish, birds and other wildlife depend on for their survival. Restoring the estuary is an important step to increase fish populations and enhance the region's commercial and recreational finfisheries and shellfisheries. The Project will result in significant improvements in water quality, rare species habitat, fisheries, and recreational opportunities throughout the Herring River floodplain, while improving community resilience and ability to adapt to the effects of climate change. The Project includes measures to prevent flooding of low-lying properties and roads. These measures include measures to avoid flooding of structures on private property, increasing the elevation of several segments of low-lying roads, and increasing the elevation and regrading of a golf course built on former salt marsh in the estuary.

Business Opportunities: The Project will generate considerable engineering, construction, monitoring and related spending that will support jobs and increase economic activity in the region. Estimates of construction spending for the Project range from \$40 million to \$50 million. Massachusetts Division of Ecological Restoration (MADER, 2012) estimates that for every \$1 million spent on restoration in Massachusetts, 12.5 jobs are generated, and \$1.75 million in economic output is generated.

The changes in landscape resulting from tidal restoration are also expected to increase property values. An analysis was undertaken by MADER of 1,400 properties that are projected to increase in value after tidal wetlands are restored. While most increases are modest on a per parcel scale, the total effect of tidal restoration is an increase of \$10.4 million in property values in Wellfleet and Truro.¹¹

The Project is expected to provide long-term benefits to shellfish populations and potentially provide increased opportunities for commercial shellfish harvest. Water quality improvements are expected to result in the re-opening of 90 acres of once productive shellfish habitat downstream of the dike that have been closed due to bacterial contamination from outflowing Herring River water; other areas of Wellfleet Harbor that are conditionally open to harvesting could be opened year-round providing enhanced opportunities to harvest of oysters, quahogs and softshell clams. Shellfishing is Wellfleet's largest year-round industry supporting approximately 465 local shellfishing jobs. According to preliminary state reports, Wellfleet was first in the Commonwealth for value of shellfish landings. Wellfleet's oyster harvest was worth approximately \$7 million in 2018.

Recreational Opportunities: Restoration will improve opportunities for public recreational activities, such as canoeing/kayaking, fishing, and wildlife viewing. A canoe/kayak portage is incorporated into the design of the new bridge, increasing safe access between the Herring River and Wellfleet Harbor. A fishing platform, additional parking and handicapped access will also be provided at the new bridge. Recreational boating access will improve along the main stem of the river, on tributaries, and in upper sub-basins that are now too thickly vegetated to pass in a canoe/kayak. Closed recreational shellfish beds may be re-opened due to water quality improvements downstream and potentially upstream of the new bridge. As tidal conditions are restored, recreational finfishing opportunities for highly sought-after game fish, e.g. striped bass, bluefish, winter flounder, and summer flounder, will likely occur in areas upstream of the new bridge.

Public Safety: The replacement of degraded, outdated infrastructure, including the existing dike and non-functional tide gates, will greatly improve public safety and community resilience. Construction of the bridge, elevation of two miles of roadway and replacement of seven culverts will greatly increase the safety and resilience of infrastructure. Alternatively, the Town would have to fund the redesign and replacement of this infrastructure at great cost and over a longer time period. The DPW has estimated

¹¹[Estimates of Eco-system Service Values from Restoration Projects in Massachusetts](#). MA Division of Ecological Restoration, 2014.

that the roadwork alone will save the Town millions of dollars.

The non-functioning tide gates at the CNR dike are a hazard to kayakers and canoers. The new bridge will include signage to identify potential hazards such as high velocity flows. Safe, ADA accessible viewing platforms and kayak portage will be provided for kayakers to connect from Wellfleet Harbor to Herring River.

The proposed road elevations will improve public safety. The existing roadway has an average width of 10.5 feet. For safety purposes, the proposed travel lane width was increased to 11 feet. The proposed alignment is based upon two 11-foot paved travel ways and two 3-foot unpaved shoulders. The existing roadways have limited guardrails along the alignment. The design includes approximately 11,900 linear feet of guardrail. The existing roadways are unposted and are located in an uncongested area. Based on input received from the local police departments, the existing speed limit will be reduced from 40 MPH to 35 MPH.

3. Overall Qualification of Applicant.

(a) Restoration and Conservation Qualifications.

The Herring River Technical Team (HRTT) has provided long-term technical support to the Town and Cape Cod National Seashore during Project planning and permitting, and will continue this role during construction, helping to bring the Project to successful completion. Current participants in the HRTT include the Town of Wellfleet, National Park Service, U.S. Fish and Wildlife Service, National Oceanic and Atmospheric Administration, USDA/Natural Resources Conservation Service, and Massachusetts Department of Fish and Game - Division of Ecological Restoration.

The Project is the result of more than three decades of scientific study and a decade of collaboration with technical experts at agencies and consulting firms. Since the 1970s, the Seashore has collected most of the research and monitoring data in the Herring River. Much of this work has been done as part of the NPS [Northeast Coastal and Barrier Network Inventory & Monitoring Program](#) and the Seashore's [Cape Cod Ecosystem Monitoring Program](#), which has included both long-term monitoring and focused research projects. USGS, in cooperation with NPS and USFWS, prepared [A Decision Framework to Analyze Tide-Gate Options for Restoration of the Herring River Estuary, Massachusetts](#) (2020) that was integral to selection of the initial tide gate management policy. USGS, along with numerous university- and NGO-based study groups, will continue to populate the broad database of pre-restoration monitoring data; USGS posts provisional data instantaneously, accessible via the [Groundwater and Surface-Water Monitoring in the Mill Creek Watershed, Wellfleet, Massachusetts - Web Map](#)

(b) Management Capacity.

Construction management: All construction activity will be overseen by the Town of Wellfleet Department of Public Works. Jay Norton, Director, has extensive project oversight experience. The Town has advertised an Owners Project Representative position to work under the supervision of the Director of Public Works to oversee construction activities, manage construction-phase grants and contracts, and serve as a liaison between the Town and construction contractors. The Town will also supplement its capacity by hiring the construction element design firms, Fuss and O'Neill and WSP, to serve as resident engineers on the respective Project elements.

Grants management: The Town has successfully applied for and received more than \$50 million in construction grants. The Town will apply for and manage grants and hold contracts for construction-phase activities. The Town Finance Department is developing a chart of accounts system to track

invoicing and grant and match spending and to provide data required for grant reporting.

Additional Project support: The Town and the National Park Service (NPS) established a Herring River Executive Council (HREC) consisting of three members from Wellfleet and two from the Seashore to oversee implementation of the Herring River Restoration Project and approve all major Project decisions and activities. The Town and NPS also established the HRTT to provide technical input for Project-related decisions to the HREC as necessary or appropriate. As noted above, HRTT participants include technical staff from the Town, NPS, USFWS, NOAA, NRCS and MassDER.

Additional support is provided by FHR, a non-profit organization formed in 2008 to promote education, research and public awareness of the Herring River estuary. FHR will continue to assist with non-construction Project management, coordination and outreach, and will provide technical support as needed for permit compliance coordination. FHR staff have more than two decades of experience in permitting, resource protection and large-scale public infrastructure construction; and several FHR Board members have directly relevant technical expertise. FHR has contracted with a Project Coordinator, Carole Ridley, who has more than two decades of environmental management experience and has successfully coordinated multiple multi-partner restoration and resource management projects.

4. Project Costs.

Project costs are described in PDF 2. Budget Narrative and Supplemental Budget Narrative Documents.

5. Outreach and Education.

(a) Stakeholder Support.

The Project is the product of extensive stakeholder involvement and public discussions with local leadership. The conscientious and careful effort to involve and inform the community has established public trust and a broad base of support. This has resulted in repeated votes of approval at Wellfleet Annual Town Meeting as well as on-going regional and state support.

The broad-based support of the Project stems from the extensive ecological and community resilience benefits that the return of tidal flow to the Herring River system will provide. PDF 5 includes letters of support from local, regional, state and national stakeholders. Local stakeholders include municipal committees, area business owners, shellfish interests, property owners, and local and regional environmental and civic groups.

The Coalition to Restore Herring River Estuary was formed in 2020 to help communicate the vital need and extensive benefits of this Project to prospective funders and agency reviewers. The Coalition also serves as a network for sharing information about restoration science for education, stewardship and advocacy on behalf of Herring River and other coastal restoration initiatives. The Coalition includes The Nature Conservancy; Restore America's Estuaries; Mass Audubon; Ducks Unlimited, Inc.; National Park Conservation Association; Association to Preserve Cape Cod; Cape Cod Conservation District; The Compact of Cape Cod Conservation Trusts; and many others. Letters of support from Coalition members are included in PDF 4.

Property owner consent: All property owners that will have work occurring on their property have provided [signed letters of consent](#).

(b) Inclusive Engagement.

A strong commitment to local engagement is reflected in many facets of the Project. A robust public engagement program has shaped the Project as it has evolved over more than a decade of feasibility study and environmental assessment; highlights of over a decade of community engagement include:

Project planning and evaluation:

- 50+ public meetings and presentations with community stakeholders
- 100+ one-on-one meetings with property owners to discuss their questions and concerns
- 150+ technical meetings with technical staff from the towns, CCNS, MA DER, NOAA, USFWS and NRCS to review technical studies and Project
- Project plans and environmental reports are available to the public.

Adaptive Management Plan: Approximately 290 residents participated in a community survey designed to gauge public opinion about different potential restoration outcomes, including public safety, views, odors, and public access. The community survey results will be combined with other inputs to help assess the public's satisfaction with potential alternative restoration management scenarios such as the size and timing of sluice gates openings to enable tidal flow to return.

Governance structure: The Herring River Executive Council consists of three members appointed by the Wellfleet Selectboard and two members appointed by the Seashore Superintendent. The HREC is responsible for oversight of Project implementation and is a public body that meets in open public session. In addition, the HREC has appointed a 19-member Herring River Stakeholder Group (HRSRG) to provide advisory input on implementation matters. HRSRG is a public body and its members represent property owners, businesses, conservation, shellfishing, open space protection, scientific community, recreation, and mosquito control.

(c) Community Outreach and Education.

Public outreach has been a cornerstone in the development of the restoration project. From the beginning, an institutional framework was established to ensure that the Project partners would benefit from the involvement of a broad array of community stakeholders.

The Town will continue to coordinate with FHR on outreach activities. Public outreach and engagement activities, as listed below, will continue during the NOAA grant period:

- One-on-one meetings with property owners and interested citizens upon request.
- Project plans, fact sheets, brochures, newsletters and educational posters in print and electronic formats and on the [FHR website](#).
- Informational videos (closed-captioned) are available on the [FHR website](#).
- Regular e-newsletters featuring Project updates, emailed to a distribution list of 800, and available on the [FHR website](#).
- Meetings and presentations with Town committees and commissions to discuss the Project in open public meetings that are recorded and accessible via the [Town website](#).
- Presentations and displays at community events, where information about the Project is shared and interested citizens can ask questions.
- Periodic sponsorship of cultural, educational and special events and programs in collaboration with community organizations.
- Outreach to local print/radio media to provide Project updates publicize meetings and hearings.
- Managed use of social media ([Facebook](#), [Instagram](#)) to provide community updates, publicize events and engage community members.



SELECTBOARD

AGENDA ACTION REQUEST
Meeting Date: June 20, 2023

X

BUSINESS

~ C ~

REQUESTED BY:	Dan Robbins, GEI; Dredging Task Force Members, Will Sullivan, Harbor Master
DESIRED ACTION:	The review and approve the mitigation plan
PROPOSED MOTION:	I move to approve the Wellfleet Mitigation Plan as drafted.
SUMMARY:	
ACTION TAKEN:	Moved By: _____ Seconded By: _____ Condition(s):
VOTED:	Yea _____ Nay _____ Abstain _____



Consulting
Engineers and
Scientists

June 14, 2023
Project 2004486

VIA EMAIL: richard.waldo@wellfleet-ma.gov

Mr. Richard Waldo
Town Administrator
Town of Wellfleet
300 Main Street
Wellfleet, MA 02667

Dear Mr. Waldo:

Re: 2023 Wellfleet Harbor Dredging – Area II Bid Review

This letter provides a review of the bids received by the Town of Wellfleet for the 2023 Wellfleet Harbor Dredging – Area II. The bids were opened on May 25, 2023 at 11:00 am at Wellfleet Town Hall located at 300 Main Street, Wellfleet MA 02667.

1. The table below shows a summary of the three received bids.

	Burnham Associates, Inc.	Jay Cashman, Inc.	Coastline Consulting + Development, LLC
<i>Total Base Bid Price</i>	<i>\$3,505,000.00</i>	<i>\$3,617,700.00</i>	<i>\$5,635,275.00</i>
<i>Total Add Alt 1 Bid Price</i>	<i>\$743,800.00</i>	<i>\$875,300.00</i>	<i>\$1,135,283.75</i>
Total Cumulative Bid Price	\$4,248,800.00	\$4,493,000.00	\$6,770,558.75

2. The apparent low bidder is Burnham Associates, Inc.
3. MassDOT provided a final list of prequalified bidders on May 25, 2023 prior to bid opening. All bidders were included in the prequalified contractor list.
4. Burnham Associates, Inc. is MassDOT Prequalified in the class of Dredging. The MassDOT Prequalification Team reviewed the apparent three lowest bids and confirmed prequalification status.
5. The bids have multiple payment items which can be seen on the following bid canvas. Arithmetic errors were identified within Coastline Consulting + Developments bid. The values have been corrected in the tables presented within this letter.

	Burnham Associates, Inc.	Jay Cashman, Inc.	Coastline Consulting + Development, LLC
BASE BID			
Item 1. Mobilization (1 LS)	\$525,000.00	\$487,700.00	\$1,066,900.00
Item 2. Dredge and Disposal (100,000 CY)	\$2,975,000.00	\$3,100,000.00	\$4,540,000.00
Item 3. Debris (100 Tons)	\$5,000.00	\$30,000.00	\$28,375.00
<i>Total Base Bid Price</i>	<i>\$3,505,000.00</i>	<i>\$3,617,700.00</i>	<i>\$5,635,275.00</i>
ADD ALTERNATIVE 1			
Add Alt Item 1. Dredge and Disposal (25,000 CY)	\$743,750.00	\$875,000.00	\$1,135,000.00
Add Alt Item 2. Debris (1 Ton)	\$50.00	\$300.00	\$283.75
<i>Total Add Alt 1 Bid Price</i>	<i>\$743,800.00</i>	<i>\$875,300.00</i>	<i>\$1,135,283.75</i>
Total Cumulative Bid Price			
	\$4,248,800.00	\$4,493,000.00	\$6,770,558.75

6. All bidders acknowledged receipt of Addendum No. 1.
7. All bidders provided bid forms, certifications of equal employment opportunity, compliance with tax laws, non-collusion, corporate signatory authorization as applicable, bid bond, equipment lists, and project approach descriptions. Only Burnham Associates provided an estimate of the quantity of CY that could be removed for a project value of \$5,000,000.

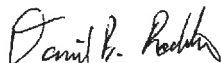
The Bid provided by Burnham Associates, Inc. represents a highly advantageous value to the Town of Wellfleet and is within available funding budgets including grants. Burnham has completed multiple dredging projects of similar size including previous work in Wellfleet. Burnham Associates has proposed to team up with AGM Marine to complete the dredging work within the allowed time of year for dredging and disposal operations. This provides additional equipment and resources to achieve the project yardage and represents a team that successfully performed dredging operations together on prior work for the Town.

Based on the information received and response from references we recommend that the contract be awarded to Burnham Associates, Inc.

If you have any questions, please feel free to contact me at 781-721-4017.

Sincerely,

GEI CONSULTANTS, INC.



Daniel Robbins, P.E. (NH)
Senior Project Manager



Blake Peters
Senior Waterfront Engineer

Wellfleet Harbor Dredge Mitigation Plan

Wellfleet, Massachusetts
Submitted to:
US Army Corps of Engineers
New England Division
Regulatory Division
696 Virginia Road
Concord, MA 01742

Submitted by:
Town of Wellfleet
300 Main Street
Wellfleet, MA 02667

GEI Consultants, Inc.
124 Grove St, Suite 300
Franklin, MA

June 20, 2023
Project No. 2004486

Mitigation Plan 33CFR 332(c) (2) though (14)

A. Goals and Objectives:

The Town of Wellfleet has proposed the dredging of 23.8 acres of tidal mudflats along with sub and intertidal resource areas as Area 2 in project plans. It is well understood that intertidal mudflat habitat is beneficial for many reasons. Mudflats can provide nursery habitat and food supplies for larger fisheries, support bird populations and protection of coastlines through the absorption and lessening of storm forces. There are however factors that influence the functionality of a mud flat.

The compensatory mitigation plan is submitted to offset the dredging work in Wellfleet Harbor Area 2, South Mooring Field. The mitigation plan consists of enhancing a 14-acre site of intertidal land in the Herring River, until the primary restoration area is accessible. The primary restoration site is a 28-acre parcel in Blackfish Creek. The Herring River area is currently designated as “conditional” by the shellfish regulatory authority, the Commonwealth of Massachusetts, while Blackfish Creek is designated in the “open” status, year-round by the state. This mitigation plan is separate from the Herring River Restoration Project (HRRP) and therefore is independent of the implementation, details, and effects of the HRRP. The mitigation plan will be implemented in two phases, each phase being defined by the location of its acreage. The designated areas will be restored initially by cultching, followed by shellfish propagation which will lead to improved water quality, and increased biodiversity resulting in the successful restoration of what was formerly a very productive shellfish habitat, and will provide protection of tidal mudflat habitat.

Objective enhancement would be measured using oyster density levels of twenty-five (25) individuals/m² throughout a 28-acre area (an areal density identified in the Chesapeake Bay Oyster Metrics Workgroup). It is important to note that the Massachusetts’ Division of Marine Fisheries uses a metric of approximately six (6) oysters per square meter as an indicator of “significant oyster resource”. Over a five-year period, our efforts will be to enhance this area so as to enhance oyster density with a target goal of 25 oysters/m². An increase in oyster density has been shown, though prior work in Wellfleet, to lead to a dramatic increase in biodiversity and water quality. Water quality success would be measured in relation to the EPA’s definition of “excellent” water quality designation. Biodiversity success would be measured through density and diversity of species as indicated in the attached performance standard. It is anticipated that the area would also become a resource for local shore birds, turtles, a wide variety of marine species and juvenile fish protection.

B. Site Selection:

The proposed mitigation sites are also classified as mudflat habitat and have also been influenced by human interaction. The proposed mitigation sites are in areas that had previously been degraded for a variety of reasons including ice damage, harvest pressure, disease, and other human influences. The proposed enhancement will positively affect areas outside of the proposed mitigation areas. Restoration of shellfish populations, water quality and increased biodiversity in the restored areas will have wide ranging benefits for the Wellfleet Harbor system.

Each of the mitigation sites were carefully selected, based on its location and more importantly, for its restorative capabilities to return the designated area to its former habitat - a highly productive tidal mudflat with rich shellfish beds, naturally symbiotic flora and fauna, reduction in nuisance sedimentation and increased water quality and clarity. Each of these characteristics has been declining in the Wellfleet Harbor system over the last several decades. These factors combined with the proposed additional enhancement through cultching and protection of oyster habitat, will lead to a restoration and enhancement of 28 acres of mudflat habitat to the overall benefit of an enhanced Harbor ecosystem, benefitting all users.

Herring River (HR) Site 1 is the initial planned mitigation site; it is located in the Herring River in an area marked as conditional for shellfishing. HR 1 Site will be relinquished after the Blackfish Creek 1 Site workplan has been initiated. Refer to Appendix A, Figure 1 for location details. Blackfish Creek (BFC) Site 1 is the primary mitigation site; it is located in Blackfish Creek. Refer to Appendix A Figure 2 for location details.

C. Site Protection Instrument:

The proposed mitigation areas, along with all shellfishing areas in Wellfleet, are governed by MA GL Chapter 130. Shellfishing habitat in these areas is regulated through the Municipal Propagation Permit as granted to the Town by the State and regulated under MA DMF Shellfish Planting Guidelines. With respect to activities in the National Seashore (which is where the Phase 1 14-acre parcel is located), The Act of August 7, 1961, authorizing the establishment of Cape Cod National Seashore (75Stat. 284) says that “The Secretary may adopt regulations concerning hunting and fishing, subject to consultation with the Commonwealth and towns and the stipulation that all aspects of the propagation and taking of shellfish shall be left to the towns” (Cape Cod National Seashore Masterplan 10/7/1970).

The mitigation area in Blackfish Creek is designated as protected by the MA ACEC program (see Figure 2). This area is therefore subjected to closer scrutiny to avoid or minimize adverse environmental impacts by local and state agencies (<https://www.mass.gov/service-details/acec-program-overview>). The area will be indicated as a resource protection area on official shellfish maps, with local signage and routine patrol 364 days a year at each low tide during daylight.

The Town further agrees not to disturb the mitigation area through addition of a mooring basin, piers, community docks or other such development. The mitigation area will be marked on Town shellfish maps. Uses of the mitigation area would be reserved for shellfishing and other secondary uses as listed in the Longterm Mitigation Plan (Appendix C). Due to Division of Marine Fisheries regulations the area cannot be closed to harvest for longer than a three-consecutive year period. The Town of Wellfleet Shellfish Department will open the area for harvest in such a way as to ensure minimum density of oyster populations.

D. Baseline Conditions:

A pristine mudflat in an area of little human development, lower impact to the sediment, little or no point source pollution, and no harvest pressure would be considered a pristine mudflat habitat with high functionality and value to the ecosystem.

The mudflat at Wellfleet Harbor and Shirt Tail Point has been consistently influenced by human use since 1644. The first modern era occurrence established the existing mooring field in 1955, although the area was used as a harbor previous to that time.

The area around the harbor is well developed with housing surrounding much of the coastline, especially to the north, east and south. This leads to significant sources of run off and non-point source pollution as well as other point source contaminants that may occur less frequently. Equally as significant is the location of the Town mooring docks, boat ramp, refueling station and other commercial buildings all located immediately to the north of the Area 2 dredge site. This area served as the major docking and refueling station for the Town prior to 1985. While there has not been a significant spill or leak in this time it is expected that the higher rate of human occupation of these areas contributes to the degradation of the mud flat habitat. State records dating from 1937 show the constant use of this area with over 25 completed projects including shoreline protection, establishment of the channel and mooring field, improvements, and expansions of the fueling docks and parking lots and establishment of docks and piers adjacent to the Area 2 mooring basin and a large jetty protecting the Harbor Basin. The mooring basin itself is not an undisturbed mudflat and the sediments are not like mudflat but have been characterized as “black custard” and not capable of supporting shellfish. Since 1957, approximately 340 ground tackle and mooring lines/buoys have been cored into the bottom in the spring and dragged through the sediments to the shore each fall to be recovered. This activity completely disturbs the area each year. Recently, due to a lack of dredging approximately 80 moorings have been lost due to an inability to access them due to a lack of water at low tide or so restricted a tidal window as to make them undesirable. This has resulted in a loss of approximately \$80,000/year in marina related revenue based on data from Wellfleet Marine Corporation.

The proposed compensatory mitigation project sites are considered mudflat habitat and have been mapped by MA Mapper as shellfish suitability area for American Oysters (*Crassostrea virginica*).

The proposed Phase 1 restoration would take place in the conditional shellfish growing area of the Herring River, and once a chapter 91 permit for cultching the Phase 2 area in Blackfish Creek has been obtained, the Phase 2 restoration would begin. This area is in the Open status year-round as part of the Commonwealth of Massachusetts’ shellfish growing area classification.

These areas have been historically productive mudflat used consistently for shellfishing. However, in the last few decades Herring River has degraded largely due to fecal coliform from wildlife run-off, requiring a downgrade in harvest classification to conditional in the lower region and prohibited in the region near and above the Herring River Dyke. The western area of Blackfish Creek, many decades ago, was highly productive but in more recent decades was so reduced in oyster population and productivity that it qualified for licensing private shellfish grants (less than six oysters per square meter). In addition, the area immediately west of the proposed mitigation area was highly productive and was a major stop on the Shellfish Department’s daily patrols during the early to mid-2000’s, but in more recent years, shellfish populations have decreased there. It appears that this reduction in productivity was due to consecutive large ice events and the Shellfish Department’s cultch program alone has not been able to bring it back. More recently, in the eastern regions of the proposed mitigation area, extremely low shellfish populations remain, and the Shellfish Department has observed very little shellfishing due to a lack of resources. Areas to be cultched currently have nitrogen reduction targets which could be improved with increased oyster populations and the in-migration of other organisms.

A baseline biological survey was conducted on May 10, 2023 at the HR mitigation

site. Twelve samples were taken for sediment characterization and biodiversity measurements. This information can be found in Appendix B.

A biological survey will be conducted in Spring / Early Summer of 2024 (pre-restoration) to determine the baseline for the Blackfish Creek mitigation site. Performance metrics to be measured are included in the attached table.

E. Determination of Credits:

The plan for restoration and enhancement of 28 acres of equivalent mudflat habitat will generate the required 7.16 mitigation credits and offset the impacts of the dredging of the Wellfleet Harbor Area 2, South Mooring Field.

F. Mitigation Work Plan:

The mitigation work plan proposes a phased approach to enhancement of mudflat habitat in the Wellfleet Harbor system. The initial phase will be to enhance a 14-acre parcel of mudflat in the Herring River system to the southwest of the Chequessett Neck Road dike (see Fig 1). This area is currently conditionally approved for shellfish propagation and harvest. There is also a portion of the proposed area that is currently permitted through a MA DEP Chapter 91 license for cultching. Cultch has been used for over 100 years in Wellfleet Harbor to provide substrate for larval oysters (spat) to attach. Without oysters, shell or suitable substrate, natural set, which is uniquely abundant in Wellfleet Harbor, would otherwise die. Replacement of substrate through cultching is well established for maintaining and restoring oyster populations. The addition of cultch and subsequent sets of oysters that can grow there will improve the water quality of the area through the natural filter feeding. The cultch strips also improve biodiversity through providing substrate for other organisms to use for food or refuge.

Phase 1 enhancement of the Herring River parcel would begin in summer of 2023. These areas would be enhanced with cultch (sea clam shell) and oyster seed from locally available resources. Cultch will be trucked from a whole sea clam processing plant to the Town Transfer Station and supplemented with oyster shell from recycling programs with restaurants and the general public. This material is properly aged then loaded by front-end loader and delivered to a custom-built cultch barge. The barge has a hopper which delivers a strip of shells approximately 4'x100' with about 6 inches of relief on the bottom. Cultch has been shown to be the ideal material for "catching a natural set" of oyster spat due to Wellfleet's significant locally spawning oyster population without using "spat on-shell" or extensive seeding which is necessary in areas where there is not a local "set". It is anticipated that the enhancement through cultching in the Herring River would be completed in one year, and then the Town would request the relinquishment of this site for mitigation use and transfer the mitigation to a 28-acre contiguous parcel in South Wellfleet.

A 28-acre parcel of mudflat habitat has been identified in Blackfish Creek (BFC), east and south of Pleasant Point (see Fig 2). This area is currently approved for shellfish propagation and harvest. A baseline biological survey will be performed in BFC in the spring or early summer of 2024 that will identify water quality metrics, current substrate, density of oysters and other biodiversity. In summer of 2024, provided the proper MA DEP permits are in place, it is expected that all restoration focus will shift to BFC. Cultching will be conducted as described above. It is expected that restoration efforts of cultching and seed placement will take approximately 5 years to reach the desired levels of oyster density, biodiversity, and water quality improvement.

Basic yearly timelines would be as follows:

Herring River 2023

The area will be marked with additional signage and buoys, communication will be sent to all shellfishermen establishing the temporary mitigation area

Eight cultch strips would be placed in the first 2 weeks of June 2023

Areas to be cultched will be determined by Wellfleet Shellfish Department staff after walking the bottom of the area to be cultched. Staff will mark the approximate beginning and end of the cultch strips with buoys and then run the cultch barge at high tide between the two buoys.

Blackfish Creek 2023 (- 2029)

June 2023 - local oyster seed will be purchased and raised on the Shellfish Department's farm.

Early Summer (2023) – shell bags will be placed in Chipman's Cove for spat settlement. Spat on shell will subsequently be deployed in Fall 2023 to Blackfish Creek.

Fall 2023 28-acre mitigation area in Blackfish Creek will be marked with signage and buoys, communication will be sent to all shellfishermen establishing the mitigation area.

Fall of 2023 Spat on shell will be added moved from Chipman's Cove to Blackish Creek

May 2024 quahog (*Mercenaria mercenaria*) relay will take place from the Taunton River into the Blackfish Creek mitigation area. (see Figure 4)

June 2024, the oyster seed from the Shellfish Department's farm will be deployed in Blackfish Creek. June 2024 during the first two weeks of June, 10 strips of cultch will be laid in Blackfish Creek.

Areas to be cultched will be determined by Wellfleet Shellfish Department staff after walking the bottom of the area to be cultched. Staff will mark the approximate beginning and end of the cultch strips with buoys and then run the cultch barge at high tide between the two buoys. June 2024 oyster seed from local sources will be purchased and raised on the Shellfish Department's farm.

Sept / Oct 2024 large oyster seed will be placed adjacent to the cultch strips.

When quahog relay placement begins in 2024 it will start the three-year closure for the area.

After three years the shellfish department will evaluate the oyster density and propose an opening of a portion of the area for harvest as per MA DMF regulations that will not adversely affect the stated performance metrics.

Past season(s) enhancement will be evaluated to make adjustments before the next season (through year 4)

After year 5, if performance metrics have been met, the USACE will issue a Certificate of Compliance and the site will move into a monitoring plan only, with no active enhancement of resources. Ongoing harvest opportunities will be decided by the Shellfish Department in such a way as to ensure minimum density of oyster populations and restoration/harvest management that supports other restoration metrics.

G. Maintenance Plan:

The mitigation plan is predicated on increasing the oyster populations through cultching and seed placement. Over a five-year period, we expect to place approximately 125-200 tons of cultch in MA DEP Chapter 91 approved area for this purpose. Cultching

and seeding the entire 28-acre area in one season is not planned as there are many factors that could negatively influence the restoration efforts. Placing all of the cultch strips and seed would leave the area susceptible to negative environmental and biological impacts. Storms or disease could spread quickly through an area that has all been recently enhanced. By enhancing smaller areas over a longer five-year time period, evaluations can be made as to the success of the enhancement, and adjustments can be made to maximize the enhancement of the mudflat habitat allowing the Town to adjust maintenance in real time, over the first 5 years.

H. Performance Standards:

This project will measure water quality, biodiversity, and oyster density to indicate enhancement success. Enhancement success for the following attributes is defined below for each standard.

Water quality: Upon construction of the project, water quality will increase on the site during the 5-year monitoring. Successful water quality is defined as an increase in targeted metrics year over year for the 5 years. Ultimately the site will exceed the metrics established in the baseline and is envisioned to meet EPA's definition of "excellent" water quality designation.

Oyster density: Success for the site is defined as surviving oyster density on the total acres of the site at 25 oysters / m². This will be measured at baseline, with a linear progression expected over the 5 years.

Biodiversity: Success for this attribute is defined as increase over the baseline, particularly in the first few years, and then leveling off. Given the transient nature of some of the species to be measured, it is understood that not all species will be found or increase year after year. Biodiversity success will be measured by overall species richness.

The performance standards will be recorded utilizing these metrics:

Wellfleet Mitigation Performance Metrics Black Fish Creek Location						
Seasonal Average based upon a statistically significant sample	Baseline	Year 1	Year 2	Year 3	Year 4	Year 5
Oyster Density/m2		6	12	15	20	25
Water Quality						
Temperature °C						
Salinity						
Dissolved Oxygen mg/L						
Chlorophyll ug/L						
Pheophytin ug/L						
Turbidity NTU						
Nitrate Nitrite uM						
Ammonium uM						
Orthophosphate uM						
Silicate uM						
Particulate Organic Nitrogen uM						
Particulate Organic Carbon uM						
Total Dissolved Nitrogen uM						
Total Dissolved Phosphorus uM						
Total Nitrogen uM						
Total Phosphorus uM						
Total Nitrogen TDN PON						
Coliform (Total Fecal Coliform)						
Biodiversity						
Amphipod (various sp)						
Anemone (various sp)						
Asian Shore Crab (<i>Hemigrapsus sanguineus</i>)						
Barnacle (various sp)						
Hard Clam (Quahog) (<i>Mercenaria mercenaria</i>)						
Mites (various sp)						
Mud Snail (<i>Ilyanassa obsoleta</i>)						
Oyster (<i>Crassostrea virginica</i>)						
Oyster Drill (<i>Urosalpinx cinerea</i>)						
Polychaete (various sp)						
Ribbed Mussel (<i>Geukensia demissa</i>)						
Whelk (various sp)						
Hermit Crabs (<i>Pagurus sp.</i>)						

Performance standards will be measured according to the above table. Metrics will include water quality indicators as well as oyster density and biodiversity. The basic conclusion is that an oyster density of 25 oysters/m² (Restoration Goals, Quantitative Metrics and Assessment Protocols for Evaluating Success on Restored Oyster Reef Sanctuaries Report of the Oyster Metrics Workgroup Submitted to the Sustainable Fisheries Goal Implementation Team of the Chesapeake Bay Program, December 2011) is considered a successful restoration and is expected to be self-sustaining. MA DMF regulations require that areas be open for a minimum of a day every three years in order to be in compliance with Massachusetts law. For the initial five years of enhancement, monitoring and reporting will take place yearly. This will include an evaluation of substrate health, including bottom relief, increased bottom structure and distribution relative to other performance goals such as biodiversity and water quality. On-going monitoring will determine if recruitment is self-sustaining. After the initial five year work plan has achieved a target goal of 25/m², we will evaluate future harvest opportunities and timing in order to ensure healthy oyster resources and habitat, in the context of continuing to meet our restoration goals. Harvest, productivity, disease, weather events, ice mortality and other previously unforeseen impacts will be closely monitored in relation to impacts on performance standards.

I. Monitoring Requirements:

The mitigation areas will be monitored by a set of third-party organizations mutually agreed upon by the Town and the USACE. Reports will be compiled by the Town and submitted yearly to the USACE for review. Any potential adjustments to the work plan will be made at that time in consultation with the USACE. Water quality monitoring is conducted by the Center for Coastal Studies as part of the larger Wellfleet Harbor monitoring that is already underway.

1) Phase I Herring River

The Herring River mitigation site will be monitored for water quality, biodiversity and oyster density following the 2023 season. Oyster density will be measured primarily in the areas that have been cultched. Density measurements shall include oysters of all sizes, including spat. A baseline biodiversity and sediment characterization survey was performed on May 10, 2023. A monitoring survey will be performed in September of 2023 at the locations marked on the attached maps (see Appendix B). Water quality data will be received through the Center for Coastal Studies monitoring program. A comprehensive monitoring report will be submitted to the USACE for the Herring River site in December of 2023.

2) Phase II Black Fish Creek

An additional water quality monitoring point will be added in the Blackfish Creek mitigation area to better capture the Water Quality metrics listed above. This monitoring occurs once in February and twice a month from April – September as conducted by the Center for Coastal Studies. An improvement in water quality will be tracked through the changes in this data over the five-year work period.

Oyster density is the second measure of mitigation success. Oyster density is expected to increase yearly with the laying of cultch. The laying of cultch is expected to recruit natural oyster spat within the Wellfleet Harbor system. The addition of seed oysters will also increase the density of the oyster population. The five-year goal of the project is

a density of 25 oysters / m² as calculated across the entire mitigation area. Density will be measured in the early summer and in the late fall in areas where recruitment has occurred and averaged across the entire site. Density measurements shall include oysters of all sizes, including spat. This data will be reported to the USACE yearly.

Biodiversity will be measured twice yearly in the spring and fall at the stations marked on the attached map (see Figure 2). This data will be included in the yearly reporting to the USACE as shown in the above table. It is expected that the largest increase in biodiversity will be seen in the areas that have been cultched where oyster reefs are established.

J. Long-Term Management Plan:

The Long-Term Management Plan will be managed by The Long-Term Steward of the site, which is the Town of Wellfleet. The detailed Long Term Maintenance Plan can be found in Appendix C. This Plan will be enforced to protect the environmental enhancement. In the event of a Force Majeure event leading to death of all the oysters, the Town's responsibility will be to jump start the shellfish population by using Year Two activities as listed in the work plan shown above. Oyster density will be reported to the USACE in accordance with Mitigation Plan Scenarios Table (Appendix D)

The mitigation area in Blackfish Creek is designated as protected by the MA ACEC program (see Figure 2), therefore subjected to closer scrutiny to avoid or minimize adverse environmental impacts by local and state agencies (<https://www.mass.gov/service-details/acec-program-overview>). The area will be indicated as a resource protection area on official shellfish maps, with local signage and routine patrol 364 days a year at each low tide during daylight. For the first five years, annual quadrat assessment by an academic or governmental institution or creditable nonprofit organization will be performed to assure compliance unless or until such time as USACE determines this is no longer necessary for another approach the Town may offer and to which USACE agrees.

The Town agrees not to disturb the mitigation area through a mooring basin, piers or other such development. The mitigation area will be marked on Town shellfish maps. Uses of the mitigation area would be reserved for shellfishing and other secondary uses as listed in the Longterm Mitigation Plan (Appendix C). Due to Division of Marine Fisheries regulations the area cannot be closed to harvest for longer than a three consecutive year period. The Town of Wellfleet Shellfish Department will open the area for harvest in such a way as to ensure minimum density of oyster populations, ensuring continued overall productivity of the mitigation area.

K. Adaptive Management Plan:

As with any biological system, there are numerous unknowns that can affect results. The main tenants of the adaptive management plan revolve around field performance and initial performance metrics for years one through five. Beyond five years, please see the Long-Term Management Plan. We believe, based upon experience and best available science that a self-sustaining population can be achieved that meets protection of fish species, bio-diversity and water quality improvement goals. However, as noted above, the initial targets of 25 oysters/m² are based on data that is not from Wellfleet Harbor.

The variables that may lead to implementing changes to the mitigation plan include:

Weather

Recruitment

Cultch volumes
Survival rates
Bottom condition
Disease
Predator Pressure
Growth rate
Poaching
Water Quality
Ice mortality

Each of these variables may require different management responses. Those responses could include increased or decreased need for cultch or spawning stock. Increased or decreased allowance for harvest. Changes in how harvest can be conducted to protect other ecosystem functions. Other potential measures to ensure successful ecosystem restoration could include seeding the area with additional brood stock or “spat on shell” stock from other productive areas. It is likely that as conditions and influences on the mitigation area change, a combination of these approaches will be necessary to meet our performance goals. Oyster density of 25/m² is a proxy for overall enhancement of the mitigation site and is expected to lead to improvements in water quality and biodiversity. Therefore, if water quality and biodiversity are improving, an oyster density below 25/m² may be sufficient to show enhancement. Any proposed modifications to the work plan will be sent to the Corps for approval prior to implementation.

Long-term and adaptive management will be conducted by the Wellfleet Shellfish Department. Consistent with other shellfish designations such as conditional, prohibited, seasonal closures and rotations, and the required harvest openings, this area will be managed to achieve a density of 25 oysters/m² with the goal for it to become self-sustaining and providing enhanced ecoservices with a contingency buffer against disease, ice mortality or other resource destruction.

In addition, there may be compelling reasons, based on local conditions, to decrease any of the metrics such as oyster density, biodiversity or water quality. Based on monitoring data, the Town will have a meeting with the USACE mitigation team after one year to assess progress to date and determine whether any substantive changes are required. Based on monitoring results, this may result in adjustments to performance goals. The Town may alter the workplan to include additional cultch, location of cultch, additional seed or additional input of other shellfish. Additionally, there may be a need to reassess the location of the mitigation.

The Town will be judged to be in compliance with the mitigation agreement so long as the agreed upon work plan is being executed. After five years of implementation and monitoring, if performance standards have been achieved, the USACE will issue a Certificate of Compliance.

Due to the vagaries of natural resource habitats specific achievement of any performance standard may require changes to the work plan but would not constitute noncompliance. Please see Appendix D for potential adaptive and long-term management scenarios.

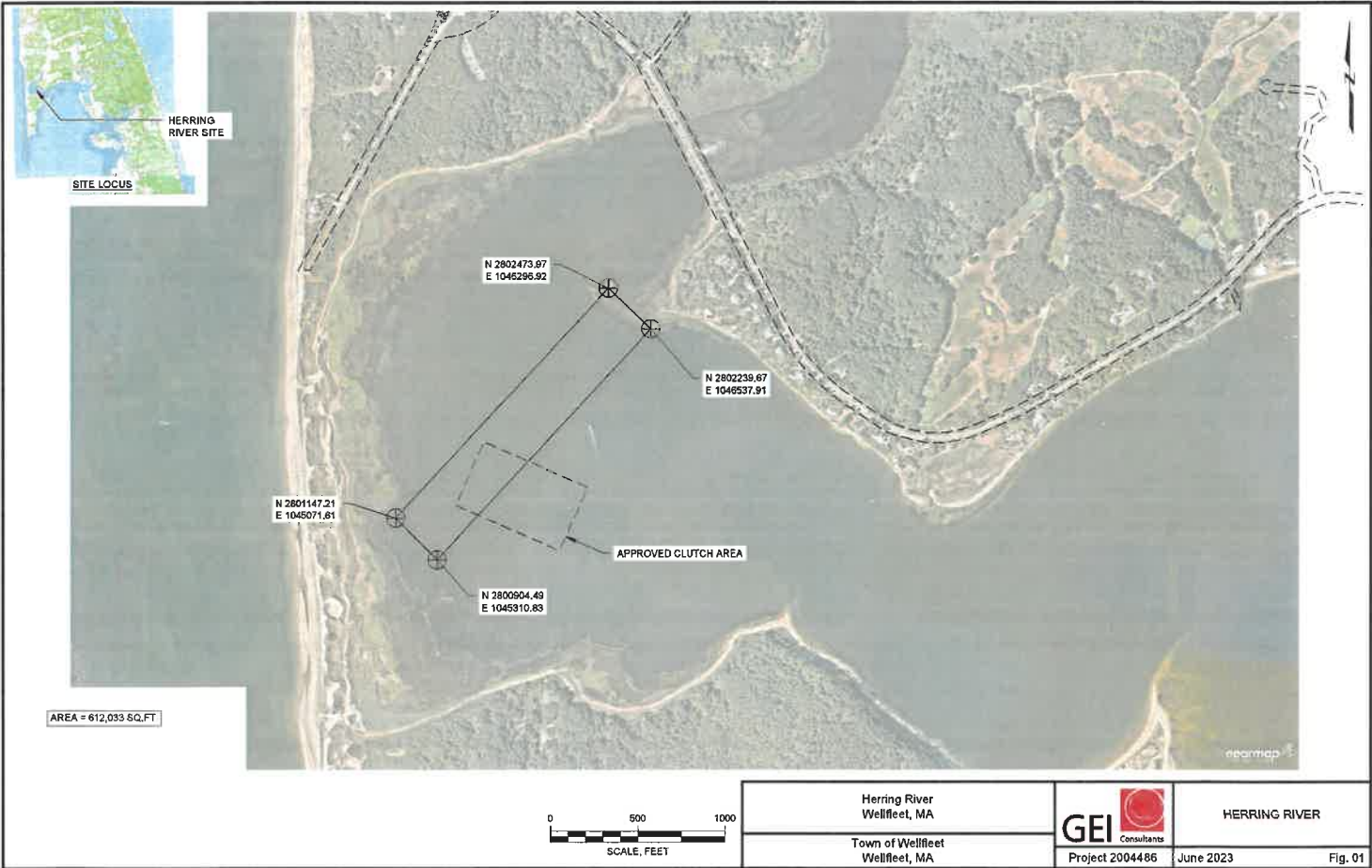
L. Financial Assurances:

The Town of Wellfleet will purchase a \$50,000 performance bond that totals the first-year

objectives and project implementation for Blackfish Creek. The Town of Wellfleet will request release of the performance bond after a post construction report has been submitted to the Corps and the Corps approves release.

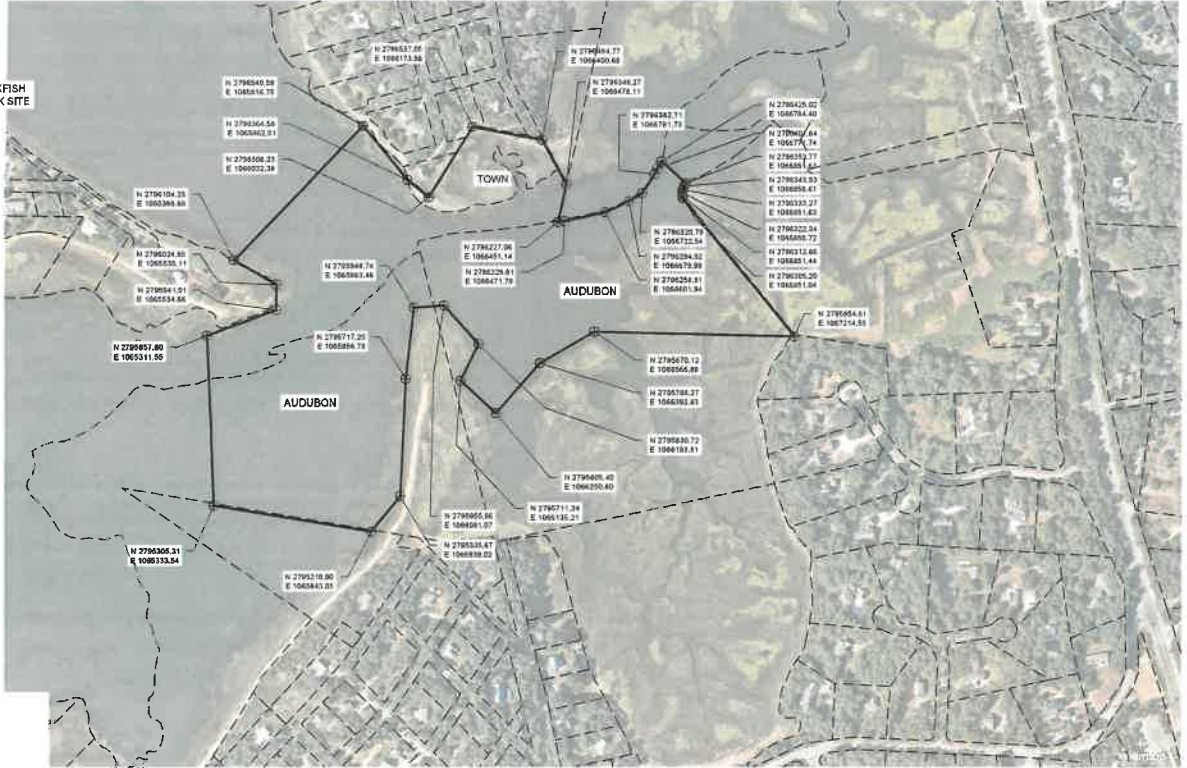
FY 2024				FY 2025			
Item	amount	price	total	amount	price	total	
Racks	55	\$100.00	\$5,500.00				
4mm bags	100	\$7.75	\$775.00				
9mm bags	333	\$7.75	\$2,580.75				
Bag Assembly	433	\$2.00	\$866.00				
Zipties	1332	\$8.60	\$120.40				
Condos - 8 bay	13	\$240.00	\$3,120.00				
Candy Striped Poles	5	\$10.00	\$50.00				
Buoys	10	\$22.00	\$220.00				
Poly Line Roll	1	\$150.00	\$150.00				
Cultch	2.5	\$1,250.00	\$3,125.00	2.5	\$1,250.00	\$3,125.00	
Fuel (cultching and relay)	96	\$5.29	\$507.84	96	\$5.29	\$507.84	
Oil (cultching and relay)	4	\$30.00	\$120.00	4	\$30.00	\$120.00	
Oyster Seed R6-8 Hatchery (100K/price is per 1,000)	100	\$37.85	\$3,785.00	100	\$37.85	\$3,785.00	
Quahog Relay	0	0	0	70	\$27.25	\$1,907.50	
JM OT (cultching/relay)	20	\$53.27	\$1,065.47	20	\$53.27	\$1,065.47	
CM OT (cultching/relay)	20	\$47.69	\$953.75	20	\$47.69	\$953.75	
WSD labor planting and farm ops	IN KIND			IN KIND			
Baseline Survey			\$4000		\$7500		
Chapter 91 Permit Amendment			\$40,000				
Monitoring Survey(s)			\$20,000			\$20,000.00	
			\$86,939.21			\$31,464.56	
				<i>*same for five years but we need to expect increases in prices</i>			

Appendix A – Figures and Site Photos

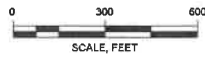




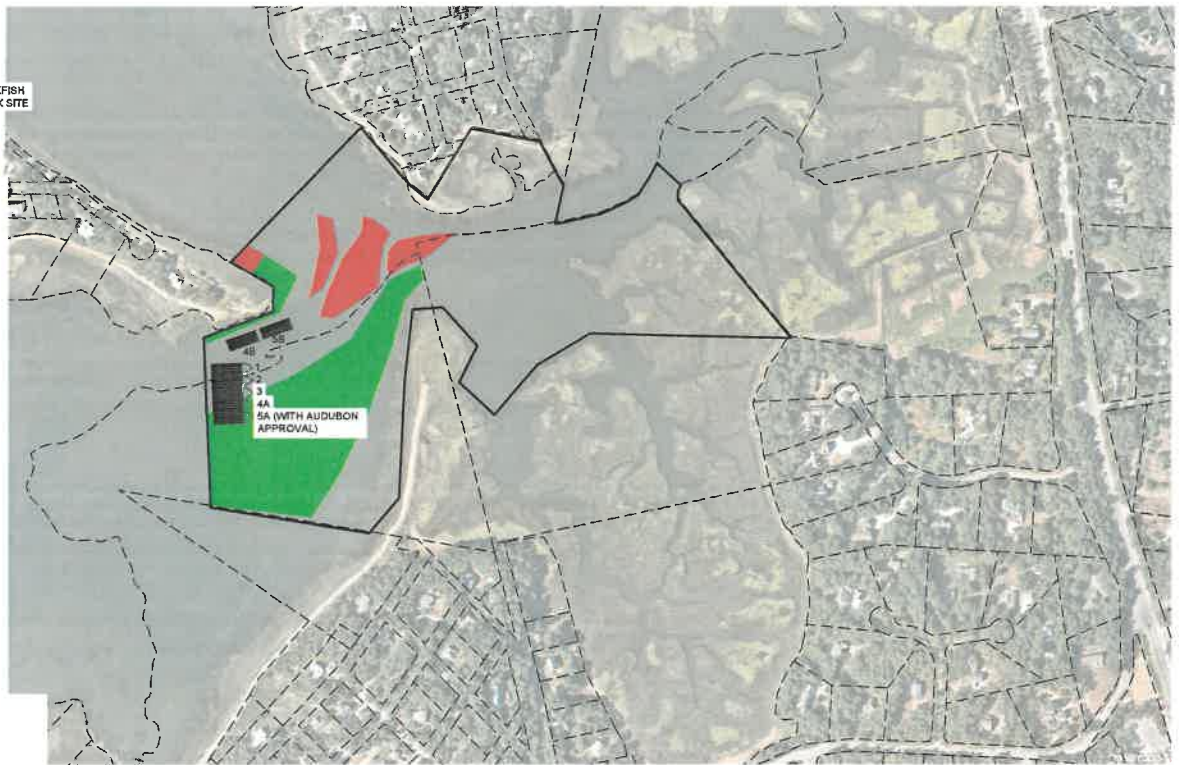
FITZGERALD, JAMISON B \Working\WELLFLEET MA, TOWN\CF\0004486 Wellfleet Dredging Design\00_CAD\Figures\FIG.01 & FIG.02 GROUND TRUTHING.dwg - 6/14/2023



AREA = 1,219,400 SQ.FT



Blackfish Creek Wellfleet, MA	 GEI Consultants	BLACKFISH CREEK
Town of Wellfleet Wellfleet, MA		Project 2004486 June 2023 Fig. 03



LEGEND

-  - CLUTCH STRIPS
-  - QUAHOG RELAY
-  - SPAT ON SHELL AND OYSTER SEED



Blackfish Creek Wellfleet, MA		BLACKFISH CREEK
Town of Wellfleet Wellfleet, MA	Project 2004486	June 2023 Fig. 04



Figure 5: Location of cultch strips placed in the HR mitigation area, June 2023

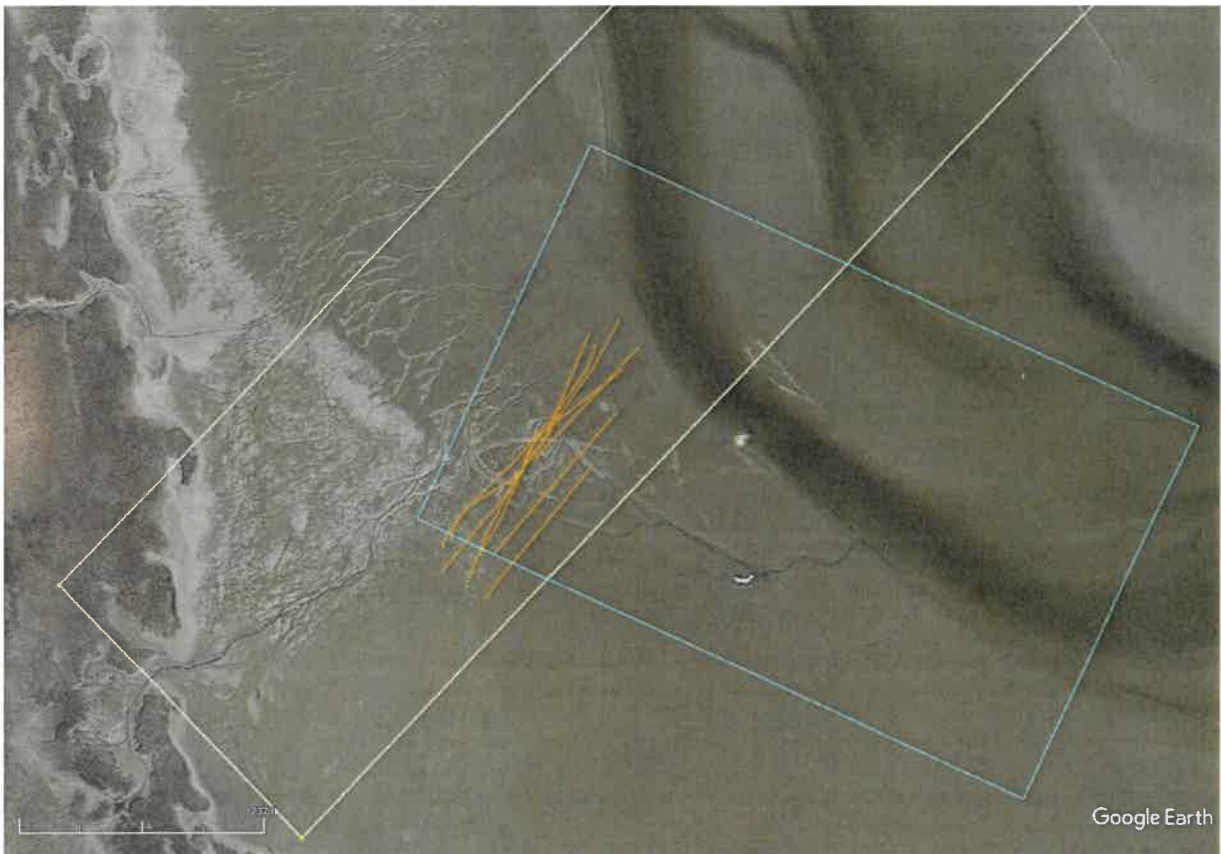


Figure 6: Location of cultch strips placed in the HR mitigation area, June 2023 (zoomed in)

Appendix C – Long Term Management Plan

LONG TERM MANAGEMENT PLAN TEMPLATE

MANAGEMENT PLAN

for

Wellfleet Harbor Shellfish Habitat Restoration Plan

June 2023

Town of Wellfleet, MA

GEI Consultants, Inc.

June 2023

Note: Maps are required. Maps may be put into an Appendix or interspersed throughout the document. Maps showing the following are required, as outlined in the text that follows:

- General vicinity of the parcel showing other conservation lands;
- Parcel boundaries, on a topo or aerial photo;
- Road map showing how to get to property, with parking and trailhead information, if applicable;
- Man-made features on the property including structures, trails, roads, etc.;
- Aquatic resources including wetlands, streams and other resources related to the aquatic environment;
- Biological and other natural resources and communities of note;
- Soils and Geology;
- Hydrology and Topography;
- Threats such as locations of invasive species infestations and trash or trespass locations.

Maps of similar content may be combined as long as the information they are to convey is clear and well-defined.

Table of Contents **Page**

I.	Geographic Information	L-2
II.	Introduction	L-2
III.	Property Description	L-2
IV.	Natural Resources	L-5
V.	Management Vision & Goals	L-6
VI.	Management Actions	L-7
VII.	Funding & Task Prioritization	L-9

I. Geographic Information

Site Name: Wellfleet Harbor Moorings – Area 2
Town/County: Wellfleet, Barnstable County, Massachusetts
Total Site Size: 28 acres

Type of Ownership: Municipal
Date Acquired: circa 1763

II. Introduction

A. Purpose of Management Plan

The purpose of this management plan is to ensure that the property is enhanced, managed and maintained in the Mitigation Plan referenced in Corps Permit Number NAE-2015-1414.

B. Long-Term Steward and Responsibilities

The Long-Term Steward of the site is the Town of Wellfleet. The Town of Wellfleet and subsequent Long-Term Stewards if the property is transferred, shall implement this management plan, managing and monitoring the property to preserve its habitat and conservation values. Before any action is taken to void or modify the deed (or easement), management plan, or long-term protection mechanism, including transfer of title to, or establishment of any other legal claims over the site, 60-day advance notification must be given to the U.S. Army Corps of Engineers district engineer.

C. Management Plan Review

The management plan will be reviewed at a minimum once every 5 years by the Long-Term Steward. The plan may be revised or supplemented with additional information and management recommendations. Any revisions other than edits that change the management actions beyond standard maintenance activities will be reviewed with the U.S. Army Corps of Engineers.

III. Property Description

A. Setting and Location

The compensatory property HR 1 is located in the vicinity of the Herring River Dike. Refer to Figure 1.

The property is intertidal mudflats, and contains no forest, field, upland, wetland, streams, etc. Phase I Site, HR 1, is adjacent to upland private owners and the National Park Service (Cape Cod National Seashore).

The compensatory property BFC 1 is located in Blackfish Creek. The property is intertidal mudflats, and contains no forest, field, upland, wetland, streams, etc.

Phase II Site, BFC 1, is adjacent to Town property, Wellfleet Conservation Trust property, Massachusetts Audubon property, and upland private owners.

B. Directions and Access

Phase 1 Site – HR 1(41.92646934301982, -70.06651732083378):

Proceed East on US Highway 6 to Wellfleet. Turn left at the traffic light for Main St. Wellfleet. Continue approximately .2 mile and take the first left (at the boat) onto Commercial Street. Follow Commercial St. (past Mid-Cape, past Mac’s Shack, past Holden Inn) to the pier area. The road makes a turn to the right and becomes Kendrick Rd. Follow Kendrick Rd. (past the Bookstore Restaurant) as it follows along the Wellfleet Harbor shoreline. Kendrick takes a turn to the right – proceed another ¼ mile to the Y intersection where Kendrick joins Chequessett Neck Rd. Take the left turn onto Chequessett Neck Rd. and proceed 2 miles to the Herring River dike. The designated site is located downstream (left of the dike).

Phase 2 Site – BFC 1 (41.91052210420094, -69.99373781217896):

To view: From the intersection of Highway 6 and Main Street, Wellfleet proceed west on Highway 6 (actual compass heading is south) for 2.6 miles, passing LeCount Hollow Road on the left. In another .2-mile, Blackfish Creek is visible on the right.

To visit:

Continue on Highway 6 for .2 mile and turn right on Old Wharf Road. Proceed .7 mile to a small one car parking space on the right, with split rail fence and a No Vehicles but Walkers Welcome sign. Follow the path to the right, along the shoreline. It leads to a point between BCDMA 13 and BCDMA 14.

C. History and Land Use of Property

1. Acquisition History

Acquisition of the site, or more specifically authority for the site, is derived by MA GL Chapter 130 and the MA DMF Shellfish Planting Guidelines. Shellfishing habitat in these areas is regulated through the Municipal Propagation Permit as granted to the Town by the State.

2. Land Use

Phase 1 HR 1 Site:

The previous use of the intertidal land was as a highly productive herring run and shellfish area. In 1909 a dike was placed across the Herring River North of the proposed location. This resulted in a salt marsh die-off contributing to acidified water unsuitable for larval shellfish survival and increasing levels of coliform bacteria limiting shellfish harvest to specific months each year when water quality passes state total fecal coliform standards. “Improvement in Shellfish Harvesting Areas from Stormwater BMPs and Tidal Restoration: Results of the USDA-Natural Resources Conservation Service’s Cape Cod Water Resources Restoration Project”. https://www.friendsofherringriver.org/Files/Herring_River_FEIR_May_2016.pdf

It is currently usable at high tide for kayaking and boating.

Phase 2 BFC 1 Site:

This site is intertidal but is not in proximity to the Herring River dike. It does not have the water quality and coliform issues associated with HR 1. Currently, there is some shellfish harvesting in BFC 1, but it is not a very productive area.

There are no existing man-made features on the property – no roads, no trails, no buildings, no walls, no fencing, no structures of any kind, no boat launches, no historic areas. In the Herring River area, there is a dike which will be replaced with 8 adjustable gates to restore tidal flow. It is anticipated that this will quickly reduce acidity and lower coliform levels in the project area within 1-2 years based on estimates from the project’s environmental permit.

3. Historic or Archaeological Sites

There are no known historic features or archaeological sites in the proposed intertidal mitigation sites, HR 1 and BFC 1.

4. Existing Easements or Other Restrictions

There are no existing easements, rights-of-ways, or leases held by others.

5. Legal Documents Appendix

The areas, along with all shellfishing areas in Wellfleet, are protected by MA GL Chapter 130. Shellfishing habitat in these areas is regulated through the Municipal Propagation Permit as granted to the Town by the State and regulated under MA DMF Shellfish Planting Guidelines. With respect to activities in the National Seashore (which is where the placeholder 14-acre parcel is located for Phase 1), The Act of August 7, 1961, authorizing the establishment of Cape Cod National Seashore (75Stat. 284) says that “The Secretary may adopt regulations concerning hunting and fishing, subject to consultation with the Commonwealth and towns and the stipulation that all aspects of the propagation and taking of shellfish shall be left to the towns” (Cape Cod National Seashore Masterplan 10/7/1970). The areas will be marked as mitigation areas on shellfish maps. Secondary uses would be limited to shellfishing, no mooring fields, municipal docks, or dredging shall be conducted in the mitigation area.

D. Adjacent Land Uses

The properties adjacent to the sites and their current uses are:

Phase 1 – HR 1

- Herring River – shellfish harvesting, fin fishing, water activities, including boating and kayaking.
- Cape Cod National Seashore – preserved land, including walking trails, some unpaved roads.
- Private Residence(s) - upland of intertidal site.

Phase 2 – BFC 1

- Blackfish Creek – shellfish harvesting, water activities, including swimming, boating and kayaking.
- Audubon Land
- Town of Wellfleet Land
- Wellfleet Conservation Trust Land
- Private Residence(s) - upland of intertidal site.

IV. Natural Resources

A. Aquatic Resources

Both mitigation sites are intertidal mudflats that are walkable at low tide. Both sites are historic shellfish growing areas that have had limited productivity in recent years for various reasons.

B. Baseline Description of Biological Resources

1. Biological Species and Communities

The Herring River baseline survey indicated the presence of a small number of oysters and quahogs along with an abundance of mud snails and a few other invertebrate species. (see Appendix B for a complete report).

The Baseline survey for the BFC1 site will be conducted in Spring of 2024.

2. Endangered, Threatened and Rare Species, and Species of Special Concern

Red Knot, Roseate Tern

C. Soils & Geology

The HR1 site is primarily silt / sand with XXX %.

BFC is of similar sediment make up but will be fully characterized in the Spring of 2024.

D. Hydrology and Topography

Wellfleet Harbor, where the HR and BFC sites are located, has an average tidal exchange of 10 feet.

E. Summary of Restored or Enhanced Resources

This project will measure water quality, biodiversity, and oyster density to indicate enhancement success. Enhancement success for the following attributes is defined below for each standard.

Water quality: Upon construction of the project, water quality will increase on the site during the 5-year monitoring. Successful water quality is defined as an increase in targeted metrics year over year for the 5 years. Ultimately the site will exceed the metrics established in the baseline and exceed EPA’s definition of “excellent” water quality designation.

Oyster density: Success for the site is defined as surviving oyster density on the total acres of the site at 25 oysters / m². This will be measured at baseline, with a linear progression over the 5 years.

Biodiversity: Success for this attribute is defined as increase over the baseline progressively for the 5 years. Each year biodiversity will increase, and at a minimum will not decrease. Given the transient nature of some of the species to be measured, it is understood that not all species will be found or increase year after year. Biodiversity success will be measured by overall species richness.

F. Threats (existing or potential)

There has not been motor vehicle activity on the proposed intertidal compensatory sites, nor will future vehicle activity be allowed.

1. *Waste Disposal (such as dumping of trash or debris)*

There has not been any dumping of trash or debris on the proposed intertidal compensatory sites, nor will such activity be allowed in the future.

2. *Invasive Species, Pests and Pathogens*

The project does not involve the introduction or removal of invasive species.

3. *Vandalism and Encroachment (such as destruction of signs or other property, boundary encroachments, etc.)*

There has been no vandalism or encroachment on the proposed intertidal compensatory site. The very nature of the site, i.e., intertidal with no physical structures located thereon, precludes vandalism from being a future concern. There may be shellfish signage installed in the future, similar to the shellfish signage elsewhere in Town. Historically, such signage has been respected and free of vandalism.

V. Management Vision & Goals

Maintain the property to support the propagation of a sustainable shellfish population.

A. Permitted Uses:

Shellfish harvesting consistent with the terms of the Mitigation Plan and subject to the guidelines and regulations established by the Commonwealth of Massachusetts and Town of Wellfleet and enforced by the Wellfleet Shellfish Department.

Due to Division of Marine Fisheries regulations the area cannot be closed to harvest for longer than a three consecutive year period. The Town of Wellfleet Shellfish Department will open the area for harvest in such a way as to ensure minimum density of oyster populations, ensuring continued overall productivity of the mitigation area. Consistent with other shellfish designations such as conditional, prohibited, seasonal closures and rotations, and the required harvest openings, this area will be managed to achieve a density of 25 oysters/m² with the goal for it to become self-sustaining and providing enhanced ecoservices with a contingency buffer against disease, ice

mortality or other resource destruction.

Consistent with enhancement goals and achieving appropriate oyster density, the work plan for shall include the following activities performed by the Shellfish Department:

- Late fall each year, conduct site visits to ascertain spat recruitment on the cultch strips and to evaluate presence of legal-sized oysters in the area.
- Conduct rudimentary counts of legal-sized oyster populations and determine which cultch strips or areas can support harvest and for how long.
- Take into consideration the presence of quahogs and other shellfish, such as soft shell clams.
- Consider impacts of both recreational and commercial harvest openings.
- Develop a harvest plan with proposed opening dates and buoy placement to delineate the open area.
- Bring the plan to the Shellfish Advisory Board and solicit community feedback. Revise the harvest plan, as deemed appropriate, with shellfishermen's feedback.
- Present the final harvest plan to the Selectboard to keep them informed.

B. Prohibited Uses:

- No dogs; no pets.
- No off-road motorized vehicles.
- No camping.
- No fires.
- No cutting or removal of vegetation

C. Public Use Guidelines:

- Passive visual enjoyment.
- Respect abutting/upland private property.
- Boating and kayaking
- Fishing
- Shellfish harvesting, subject to state and town regulations.

VI. Management Actions

A. Natural Resources

1. Management of wetlands, streams and other natural resources

Objectives: Monitor, conserve and maintain the site's natural resources. Limit any impacts to resources from human use, vehicular travel, invasive species or other adverse impacts

- *Action: At least one annual walk-through survey will be conducted to qualitatively monitor the general condition of these habitats. General topographic conditions, hydrology, general vegetation cover and composition, invasive species, erosion, will be noted, evaluated and mapped during a site examination. Notes to be made will include observations of species encountered, water quality, general extent of wetlands and streams, and any occurrences of erosion, structure failure, or invasive or non-native species establishment.*

Special attention should be paid to any area adjacent to or draining into the property from off-site lands. Streams and wetlands should be observed near bank boundaries to observe if increased sediment deposition has occurred. The monitoring report should provide a discussion of any recent changes in the watershed (i.e., subdivision being developed upstream of stream bank).

2. *Ecological Monitoring for Threatened/Endangered/Rare/Special Concern Species (If applicable).* *The methodology used may vary for different plant and animal species as determined in consultation with the appropriate agencies.*

Objectives: *Monitor population status and trends. Manage to maintain habitat for A oyster population density of 25 oysters/ m².*

- Action: Monitor status every year by conducting population assessment surveys. The annual survey dates will be selected during the appropriate period as identified by the applicable agencies and will generally occur in May and October of each year. Occupied habitat will be mapped and numbered to allow repeatable data collection over subsequent survey years.
- Action: Visually observe for changes to occupied habitat, such as changed hydrology or vegetation composition. Record any observed changes. Size of population (1 acre, etc.).
- Action: Implement other actions that enhance or monitor habitat characteristics to maintain oyster densities at 25 oysters / m².

3. *Invasive Species, Pests and Pathogens*

The project does not involve the introduction or removal of invasive species.

4. *Forest/Vegetation Management (if approved)*

The intertidal habitat precludes the need for Forest/Vegetation Management.

B. Infrastructure and Facilities, Security and Public Access

1. *Gates, Parking, Fences, Signage, and Property Boundaries*

The intertidal habitat precludes the creation of trails. There are some limited areas where there is public parking and access. This area will be accessed primarily by boat, skiff, and kayak.

Signage will be installed indicating it is a closed area for shellfish restoration. When quahogs from the Taunton River are planted there will also be signs up for “No Shellfishing Contaminated Area”.

2. *Trash and Trespass*

Trash and trespass issues will be monitored and enforced by the Shellfish Department.

VII. Funding and Task Prioritization

- A. The funds for this project will be coming out of the Town’s dredging fund. When monies in that fund

need to be replenished, the Dredging Task Force and/or Harbormaster will create a funding article for approval by voters at the Annual Town Meeting.

VIII. Literature Cited

Report of the Oyster Metrics Workgroup, “Restoration Goals, Quantitative Metrics and Assessment Protocols for Evaluating Success on Restored Oyster Reef Sanctuaries” Submitted to the Sustainable Fisheries Goal Implementation Team of the Chesapeake Bay Program, December 2011, [Restoration Goals, Quantitative Metrics and Assessment Protocols \(oyster-restoration.org\)](http://oyster-restoration.org)

Dissanayake, N. et. al, “Ecological functioning of mudflats: global analysis reveals both regional differences and widespread conservation of functioning” *Mar Ecol Prog Ser.*, Vol. 604, pp. 1 – 20, October 4 2018

Water Quality Data from Center for Coastal Studies can be accessed at:
Herring River 2022 <http://www.capecodbay-monitor.org/stations/105>

Appendix D– Table of Potential Adaptive and Long Term Management Scenarios

MITIGATION PLAN SCENARIOS

PRIOR TO ISSUANCE OF CERTIFICATE OF COMPLIANCE		
Scenario	Applicable Document	Required Action
Year Five - oyster population has not reached 25/square meter.	Adaptive Management Plan	<p>Continue the cultch and seed for additional years and/or implement additional actions to increase the population.</p> <p>However, if the oyster population has steadily increased in prior years (but not reached 25/square meter) and the other metrics (biodiversity and water quality) have improved, USACE may issue a Certificate of Compliance.</p>
Years One through Five - severe weather event(s) destroys, or disease decimates the oyster population.	Adaptive Management Plan	<p>Year Two or similar effort, and continue with the Plan, thus adding additional years to the mitigation plan timeline. Jump start the enhancement by following Year Two cultch / seed protocol or similar actions as proposed by the Shellfish Department and reviewed with the USACE. (Year Two protocol includes 10 lines of cultch and 80,000 to 100,000 seed)</p>
During the Workplan period (i.e., after Year Five but before a Certificate of Compliance has been issued) - severe weather or disease destroys the oyster population.	Adaptive Management Plan	<p>Viewed as if this event had occurred after having already received a Certificate of Compliance. Jumpstart by implementing the Year Two components outlined in the Mitigation Work Plan, Section F with respect to the placement of cultch and seed. Alternate actions proposed by the Shellfish Department may be substituted if approved by USACE.</p> <p>The number of restarts or Year Two initiatives will not exceed five (5) attempts over the life of the Mitigation Plan, after which no further action is required.</p>

MITIGATION PLAN SCENARIOS

AFTER ISSUANCE OF CERTIFICATE OF COMPLIANCE		
Scenario	Applicable Document	Required Action
Years 1 - 10, AFTER issuance of Certificate of Compliance - oyster population falls below 25 /square meter.	Long Term Management Plan	<p>The Shellfish Department will close the area (consistent with MA DMF regulations) to allow the population to naturally increase.</p> <p>If populations do not recover (after one year) or continue to fail, there would be a jump start by implementing the Year 2 components outlined in the Mitigation Work Plan, Section F with respect to the placement of cultch and seed. Alternate actions proposed by the Shellfish Department may be substituted if approved by USACE.</p>
Years 1- 10, AFTER issuance of Certificate of Compliance - severe weather event or disease destroys the oyster population	Long Term Management Plan	<p>Jump start by implementing the Year 2 components outlined in the Mitigation Work Plan, Section F with respect to the placement of cultch and seed. Alternate actions proposed by the Shellfish Department may be substituted if approved by USACE.</p>
Years 10 and beyond, AFTER issuance of Certificate of Compliance - severe weather event or disease destroys the oyster population	Long Term Management Plan	<p>Jump start by implementing the Year 2 components outlined in the Mitigation Work Plan, Section F with respect to the placement of cultch and seed. Alternate actions proposed by the Shellfish Department may be substituted if approved by USACE.</p>
Years 10 THROUGH 15 AFTER Issuance of Certificate of Compliance - oyster population falls below 25 /square meter.	Long Term Management Plan	<p>Jump start by implementing the Year 2 components outlined in the Mitigation Work Plan, Section F with respect to the placement of cultch and seed. Alternate actions proposed by the Shellfish Department may be substituted if approved by USACE.</p>

MITIGATION PLAN SCENARIOS

Years 16 and beyond, AFTER Issuance of Certificate of Compliance - oyster population falls below 25 /square meter.	Long Term Management Plan	Jump start by implementing the Year 2 components outlined in the Mitigation Work Plan, Section F with respect to the placement of cultch and seed. Alternate actions proposed by the Shellfish Department may be substituted if approved by USACE.
--	---------------------------	--

MITIGATION PLAN SCENARIOS

ANYTIME PRIOR TO OR AFTER ISSUANCE OF CERTIFICATE OF COMPLIANCE		
Scenario	Applicable Document	Required Action
Town desires to opt out of the mitigation Plan	Opt Out Clause	<p>The opt Out Clause can be invoked by the Town at any time throughout the life of the Mitigation Plan.</p> <p>Pay a permit fee for the required 7.16 mitigation credits (or fewer credits if mitigation plan results at that time has resulted in a reduction to required credits). The amount of the Fee will be based on the MA In Lieu Fee (ILF) Program, then pertaining.</p>

MITIGATION PLAN SCENARIOS

REPORTING REQUIREMENTS		
Self-Verification Definition	Self-verification shall include information on oyster density in the reporting year; dates that the Blackfish Creek site has been opened for harvest, and the extent of harvest (commercial, recreational, etc.) for each year since the previous report.	
Scenario	Applicable Document	Required Action
Years 1 through 10 AFTER Issuance of Certificate of Compliance.	Self-verification shall be provided every two years. With the first report being two years after issued certificate of compliance.	Continued reporting maintains the status of the self-reporting requirements and as such satisfies the permit requirement for all future dredging in Area 2, South Mooring Field, regardless of the time since the previous dredging. Continued success of the blackfish mitigation site offsets any future potential dredging impacts in the footprint of Area 2.
Years 11 through 15 AFTER Issuance of Certificate of Compliance.	Self-verification shall be provided every five years.	Continued reporting maintains the status of the mitigation plan and as such satisfies the permit requirement for all future dredging in Area 2, South Mooring Field, regardless of the time since the previous dredging. Continued success of the blackfish mitigation site offsets any future potential dredging impacts in the footprint of Area 2.
Years 16 AFTER Issuance of Certificate of Compliance.	Self-verification shall be provided every five years	Continued reporting maintains the status of the mitigation plan and as such satisfies the permit requirement for all future dredging in Area 2, South Mooring Field, regardless of the time since the previous dredging. Continued success of the blackfish mitigation site offsets any future potential dredging impacts in the footprint of Area 2.

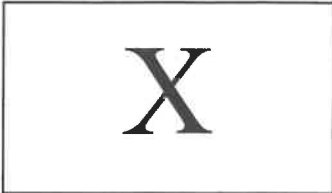
MITIGATION PLAN SCENARIOS

After Year15 following Issuance of Certificate of Compliance.	Permit Modification Request	The Town can request to modify the permit to submit self-verification every 10 years or so, or relinquish monitoring reports at 15 years post certification.
---	-----------------------------	--



SELECTBOARD

AGENDA ACTION REQUEST
Meeting Date: June 20, 2023



BUSINESS

~ D ~

REQUESTED BY:	Rebecca Roughley ~ Assistant Town Administrator, Will Sullivan ~ Harbormaster
DESIRED ACTION:	To award the dredging contract to Burnham Associates
PROPOSED MOTION:	I move to approve the award for Wellfleet Dredging to Burnham Associates, Inc.
ACTION TAKEN:	Moved By: _____ Seconded By: _____ Condition(s):
VOTED:	Yea _____ Nay _____ Abstain _____

Copy

Burnham Associates, Inc.

Wellfleet Area II Dredging

Proposed Work Plan & Estimated Removed Quantity to Maximize Funding

To accomplish this project within the applicable environmental permits, BAI intends to subcontract AGM Marine to perform dredging of the South Anchorage concurrently with BAI's crew, following the arrangement utilized to successfully complete dredging of Area 1 in 2021.

BAI and AGM assets would mobilize to the project area in late September to allow dredging the 6' anchorage to commence upon the opening of the dredge season on October 1. Dredges would work from the existing federal anchorage by making east-west cuts, from north to south, with AGM responsible for one half of the anchorage and BAI responsible for the other half of the South Anchorage following a division line bisecting the anchorage in a north-south direction. The tug SITKA would be chartered from 41 North to tow loaded scows to and from the CCBDS as required. If the SITKA becomes unavailable, BAI's tug AEGEAN SEA would perform towing duties. Dredging would continue until the contract area is completed or permit time runs out. Dependent on the final volume of material awarded under the contract for removal, BAI and AGM would run 1 or 2 shifts if required.

Based upon the bid constraints to the contractor regarding development of unit pricing in order to be deemed a responsive bid, BAI would be able to remove approximately 150,250 CY of material for the maximum project funding amount of \$5,000,000.



Maura Healey, Governor
 Kimberley Driscoll, Lieutenant Governor
 Gina Fiandaca, Secretary & CEO
 Jonathan L. Gulliver, Highway Administrator



BURNHAM ASSOCIATES INC
 26 DEARBORN STREET
 SALEM, MA 01970

April 05, 2023
Prequalification Certificate No B128-22

Dear Contractor:

In accordance with the Regulations Governing Prequalification of Contractors, as approved by the Massachusetts Department of Transportation Prequalification Committee, you are hereby notified that the following class(es) of work and Single Contract Limits (if applicable) have been assigned to you as of the date of this letter. If in the opinion of the Committee you failed to submit proper documentation or have not demonstrated the ability to perform all classes of work requested then you were denied Prequalification Status for that class(es) of work.

Qualified Class of Work	Limit Amount	Qualified Class of Work	Limit Amount
Dredging	\$11,400,000.00	Marine Construction	\$3,600,000.00

Bonding Capacity \$40,000,000.00 **Bond Single Limit** \$20,000,000.00 **Expiration Date** 4/30/2024

The class(es) of work, Single Contract Limits and Aggregate Bonding Capacity set forth will continue in effect until April 30, 2024 unless previously modified or rescinded in accordance with the Regulations, or by law. In order to be continuously eligible to bid on projects to be undertaken for this Department, your next Prequalification Statement should be submitted at least 30 days prior to expiration of this Certificate. If there are any questions or concerns, contact the Prequalification Department at prequal.r109@dot.state.ma.us.

Sincerely,

THE PREQUALIFICATION COMMITTEE

Theresa Ward Digitally signed by Theresa Ward
Date: 2023.04.05 11:19:53 -04'00'

Office of Construction Prequalification

Copy

SECTION 00 58 00
CORPORATE SIGNATORY AUTHORIZATION

IF APPLICABLE, SUBMIT WITH BID FORM

If the Bidder is a corporation, complete the following certification: At a
duly authorized meeting of the Board of Directors of the

Burnham Associates, Inc. held on 5/22/2023
(Name of Corporation) (Date)

at which all the Directors were present or waived notice, it was

VOTED that, Craig Burnham President
(Name) (Officer)

of this company is authorized to execute contracts and bonds in the name and
behalf of said company, and affix its corporate seal thereto, and such
execution of any contract or obligation in this company's name on its behalf

by such Craig Burnham, President of the
(Officer)
company, shall be valid and binding upon this company.

I hereby certify that I am the Clerk of the Burnham Associates, Inc.

that Craig Burnham is the duly elected President
(Officer)

of said company, and that the above vote has not been amended or rescinded and remains in full
force and effect as of the date of the Contract.

A true copy,

Attest Cindy Burnham Cindy Burnham, Treasurer, Secretary, Clerk
(Clerk)

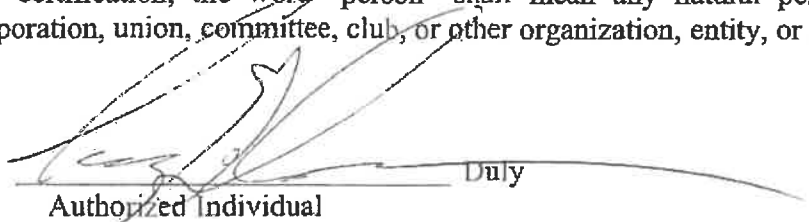
Place of Business Burnham Associates, Inc. _____
(Corporate Seal)

Copy

SECTION 00 57 00
CERTIFICATE OF NON-COLLUSION

MUST BE SUBMITTED WITH BID FORM

The undersigned certifies under penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

By:  Duly
Authorized Individual

Burnham Associates, Inc.
Name of Business

14 Franklin St. Salem, MA 01970
Address

5/24/2023
Date

--- END OF SECTION ---

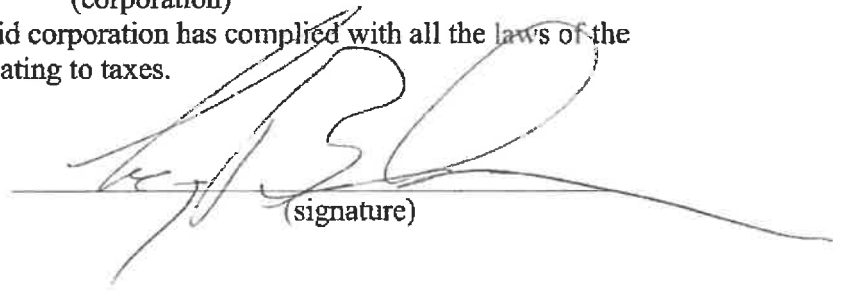
Copy

**SECTION 00 56 00
CERTIFICATE OF COMPLIANCE WITH TAX LAWS**

MUST BE SUBMITTED WITH BID FORM

I, Craig Burnham of Burnham Associates, Inc., certify under
(principal) (corporation)
pains and penalties of perjury that said corporation has complied with all the laws of the
Commonwealth of Massachusetts relating to taxes.

5/24/2023
(date)


(signature)

President
(title)

042904308
Federal Tax Identification Number

--- END OF SECTION ---

Copy

SECTION 00 55 00
CERTIFICATION OF BIDDER REGARDING EQUAL EMPLOYMENT OPPORTUNITY
MUST BE SUBMITTED WITH BID FORM

Instructions:

This certificate is required pursuant to Executive Order 11246 (30 F.R. 12319-25). The implementing rules and regulations provide that any bidder or prospective CONTRACTOR, or any of their proposed SUBCONTRACTORS, shall state as an initial part of the bid or negotiations of the contract whether it has participated in any previous contract or subcontract subject to the equal opportunity clause, and if so, whether it has filed all compliance report within seven calendar days after bid opening. No contract shall be awarded unless such report is submitted.

Certification by Bidder

Name and Address of Bidder (include zip code)

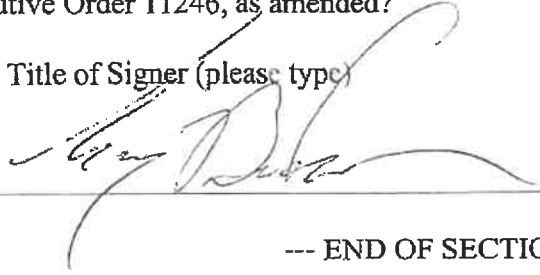
BURNHAM ASSOCIATES, INC.

14 FRANKLIN STREET
SALEM, MA 01970

- 1. Bidder has participated in a previous contract or subcontract subject to the Equal Opportunity Clause. Yes No
- 2. Compliance reports were required to be filed in connection with such contract or subcontract. Yes No CB
- 3. Bidder has filed all compliance reports due under applicable instructions, including Monthly Employment Utilization Report (257). Yes No
- 4. Have you ever been or are you being considered for sanction due to violation of Executive Order 11246, as amended? Yes No

Name and Title of Signer (please type)

Signature



Date

5/24/2023

--- END OF SECTION ---

Copy

Project/Amount	Description	Contact	Completion Date
4. Cheesequake Creek Dredging	Dredging shoaled sand and silt from between the breakwaters of the Cheesequake Creek Channel to -7' +1'. Due to the proximity to a Superfund site, material was unsuitable for offshore disposal. BAI developed a work plan which involved testing spoils disposed of at North American Aggregates to ensure spoils met the Remediation Standard of <19 PPM arsenic. All material removed from the dredge prism met the RDCSRS standard and was beneficially reused at North American Aggregates' facility, a major contributor to the project's success. The project commenced Aug. 2020 and was completed by Oct. 2020	Mike Oseback 917-790-8536	9/30/2020
5. Plymouth Harbor Maintenance Dredging	Dredging Plymouth Harbor to a depth of -15' + 2' and create an extension and turning basin in the harbor and dredging federal anchorage to a depth of -8' +1'. BAI secured subcontracts with AGM and Cashman Dredging to remove 300,000 CY over two dredge seasons from the anchorage and channel, which included re-dredging shoaled areas and creating a new channel extension and turning basin. Project was completed on schedule by February 2020	Tim Rezendes 978-318-8229	2/1/2020

--- END OF SECTION ---

Copy

BIDDER'S QUALIFICATION

The Bidder is required to state below work he/she has done of a character similar to that of the work included in the proposed contract and to give references that will enable the Owner to judge his/her experience and skills to successfully undertake this project.

Project/Amount	Description	Contact	Completion Date
1. Chebeague Island Improvement Dredging	Dredging approximately 35,000 CY of maintenance and new work material from Great Chebeague Island, Maine to an elevation of -10'+1'. Improvement dredging was also required with a final depth of -8' MLLW. BAI successfully removed 30,500 CY from the project area by the end of the environmental window on April 15, 2022. BAI maintained a production rate that exceeded 21,000 CY per month.	Nick Skianes 978-318-8260	4/15/2022
2. Wellfleet Area 1 Maintenance Dredging	Dredging approximately 130,000 CY of maintenance material to a finished depth of -6'+1'. BAI's dredge SAMSON III and the AGM dredge TRITON worked to complete the dredging by the December 31 2021. Project was cleared as substantially complete by the project engineer, GEI, just prior to the environmental deadline. Associated timber pile replacement work was completed by AGM during the month of January 2022 to the Town's satisfaction.	Dan Robbins 603-833-0609	1/31/2022
3. Dredging Block Island Harbor of Refuge	Dredging to remove 50,000 Cubic Yards of maintenance material including sand and organic silt to -15'+2'. Sandy material was placed at Crescent Beach while silt was disposed of at the RISDS. Glacial rocks ranging from 5-10 tons were encountered that could not be removed by standard equipment. Cashman's backhoe dredge Captain AJ Fournier was hired to remove these glacial boulders in order to meet project depth requirements. Project completed by February 15	Tim Rezendes 508-294-9858	2/28/2021

Copy

Note: If the bidder is a corporation, indicate State of incorporation; if a partnership, give full names and addresses of all partners; and if an individual, give residential address if different from business address. Incorporated in what State: Massachusetts

President: Craig Burnham
Treasurer: Cindy Burnham
Secretary: Cindy Burnham

If a Partnership: (Name all Partners)

Name of Partner: _____
Residence: _____
Name of Partner: _____
Residence: _____

If an Individual:

Name: _____
Residence: _____

If an Individual doing business under a firm name:

Name of Firm: _____
Name of Individual: _____
Business Address: _____
Residence: _____

The bidder will give below the name and address of the Surety Company who will sign the bonds.

Berkley Insurance Company
475 Steamboat Road, Greenwich, CT 06830

Copy

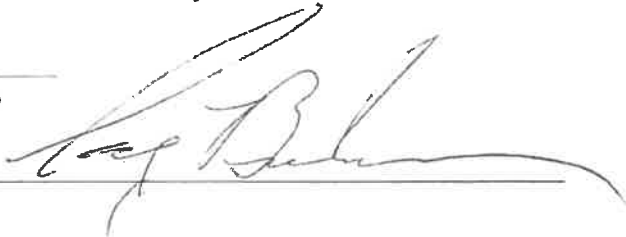
BASIS OF CONTRACT AWARD:

If the Contract is to be awarded, Owner shall award the Contract to the "lowest responsible and eligible bidder" pursuant to General Laws Chapter 30, Section 39M, as amended, offering the lowest price for the Base Bid, or Base Bid plus Alternates at the Owner's option, and whose Bid is in the best interests of the Project or Owner. Unit pricing for Alternatives must be the same as used in the Base Bid for the same items of work. Such a bidder shall possess the skill, ability, and integrity necessary for the faithful performance of the work, shall be able to furnish labor that can work in harmony with all other elements of labor employed, or to be employed, in the work, and shall otherwise comply with all applicable provisions of law. Contract award shall be subject to availability of an appropriation for funding.

The Town of Wellfleet, MA reserves the right to add additional funding to the project should it be in its best interest for maximizing the construction for the available funding.

- A. The undersigned agrees that, if he/she is selected as Contractor, he/she will within five (5) calendar days, after presentation thereof by the Owner, execute the Contract in accordance with the terms of this bid and furnish a performance bond and a payment bond for the full amount of the Contract Price, each with a Surety company qualified to do business under the laws of the Commonwealth and satisfactory to the Owner, the premiums for which are to be paid by the Contractor and are included in the Contract Price.
- B. The bidder hereby certifies that in the event he/she is awarded the Contract he/she shall comply with the minority manpower ratio and all specific action steps contained in the State of Massachusetts Equal Employment Opportunity Anti-Discrimination and Affirmative Action Programs.
- C. The undersigned hereby certifies that he/she is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on this work.
- D. The undersigned further certifies under penalties of perjury that this bid is in all respects bona fide, fair, and made without collusion or fraud with any other person. As used in this subsection, the word "person" shall mean any natural person, joint venture, partnership, corporation, or other business or legal entity.
- E. I hereby certify that I have been informed that this project is sales tax exempt. I further certify that the bid prices contained herein do not include any calculations for sales tax.

Date: 5/25/2023 Burnham Associates, Inc.
(Name of General Bidder)

By 

Craig Burnham
(Print Name as Signed Above)

President
(Title)

14 Franklin St. Salem, MA 01970
(Business Address)

Copy

C. ADD ALTERNATIVE 1 - ADDITIONAL DREDGING

The Bidder agrees to perform all the Work described in the Contract Documents for Additional Dredging at the presented unit prices.

D. ADD ALTERNATIVE 1 BID SCHEDULE

Brief Description of Item	Est. Quant.	Unit	Unit Price in Words	Unit Price in Figures	Total Amount in Figures
1. Dredging and Disposal (Add Alt Item 1)	25,000	CY	Twenty Nine dollars and Seventy Five cents	\$ 29.75	\$ 743,750.00
2. Debris (Add Alt Item 2)	1	Tons	fifty dollars and zero cents	\$ 50.00	\$ 50.00
TOTAL ADD ALTERNATIVE I BID PRICE:					\$ 743,800.00

TOTAL ADD ALTERNATIVE I BID PRICE WRITTEN IN WORDS:

Seven Hundred Forty Three Thousand, Eight Hundred Dollars _____ DOLLARS

Zero _____ CENTS

BID PROPOSAL INCLUDES ADDENDA NUMBER(S) 1

DESCRIPTION OF PAY ITEMS

Refer to Technical Specifications Section 01 20 00 – Price and Payment Procedures for descriptions of the work involved for each pay item.

PROJECT FUNDING

For performing or causing the performance of all services described in this IFB and the resulting contract, the respondent shall be paid an amount not to exceed Five Million Dollars (\$5,000,000); the maximum amount. This maximum amount shall include all fees, expenses, overhead, general administrative costs, profit, and applicable taxes, if any, for all the respondent’s charges arising under the resulting contract.

Copy

THE OWNER SOLICITS THE FOLLOWING BIDS:

A. BASE BID

The Bidder agrees to perform all the Work described in the Contract Documents for the following prices:

B. BASE BID SCHEDULE

Brief Description of Item	Est. Quant.	Unit	Unit Price in Words	Unit Price in Figures	Total Amount in Figures
1. Mobilization (Item 1)	1	LS	Five Hundred twenty five thousand dollars and zero cents	----	\$ 525,000.00
2. Dredging and Disposal (Item 2)	100,000	CY	Twenty Nine dollars and Seventy Five cents	\$ 29.75	\$ \$2,975,000.00
3. Debris (Item 3)	100	Tons	Fifty dollars and Zero cents	\$ 50.00	\$ 5,000.00
TOTAL BASE BID PRICE:					\$ 3,505,000.00

TOTAL BASE BID PRICE WRITTEN IN WORDS:

Three Million, Five Hundred & Five Thousand _____ DOLLARS

Zero _____ CENTS

**SECTION 00 30 00
BID FORM**

Copy

The undersigned hereby declares to have carefully examined the annexed form of Contract, Specifications, and Drawings therein referred to and also the site upon which the projected work is to be performed. Also, included in the Bid Form is a table requiring information on the Bidder's qualifications.

- A. The undersigned proposes to furnish all labor and materials required for the "2023 Wellfleet Harbor Dredging – Area II" in accordance with the Drawings and Specifications prepared by GEI Consultants, Inc., 124 Grove Street, Franklin, Massachusetts 02038, for the Contract Price specified below, subject to additions and deductions according to the terms of the Specifications.

Accompanying this Proposal is a bid deposit in the amount of 5% of the value of the Base Bid, which shall become the property of the Town of Wellfleet, MA (Owner) if, in case this Proposal shall be accepted by the said Owner, the undersigned shall fail to comply with the statutes as herein before specified, if it is a foreign corporation, or in any event fails to execute the Contract with, and give a bond to, said Owner, according to the requirements of the Notice to Contractor in the form annexed to said form of Contract, within the time hereinafter specified.

The undersigned also hereby declares to be the only person interested in this Proposal; that it is made without any connection with any other person making any bid for the same work; that no person acting for, or employed by the Owner is directly or indirectly interested in this Proposal, or in any Contract which may be made under it, or in expected profits to arise therefrom; and it is made without directly or indirectly influencing or attempting to influence any other person or corporation to bid or to refrain from bidding or to influence the amount of the bid of any other person or corporation; and that this Proposal is made in good faith, without collusion or connection with any other person bidding for the same work; and that this Proposal is made with distinct reference and relation to the Bid Documents prepared for this case, and herein mentioned.

- B. This bid will include any Addenda issued during the bid period.
- C. The bid prices are presented in the following schedule. The Bidder shall provide Unit and Total Prices for the project as follows.

Please **verify the authenticity** of the instrument attached to this power by:

Toll-Free Telephone: (866) 768-3534; or

Electronic Mail: BSGInquiry@berkleysurety.com

Any written notices, inquiries, claims or demands to the Surety on the bond attached to this power should be directed to:

Berkley Surety Group
412 Mount Kemble Ave.
Suite 310N
Morristown, NJ 07960
Attention: Surety Claims Department

Or

Email: BSGClaim@berkleysurety.com

Please include with all communications the bond number and the name of the principal on the bond. Where a claim is being asserted, please set forth generally the basis of the claim. In the case of a payment or performance bond please also identify the project to which the bond pertains.

Berkley Surety Group is an operating unit of W. R. Berkley Corporation that underwrites surety business on behalf of Berkley Insurance Company and Berkley Regional Insurance Company

Document A310™ – 2010

Conforms with The American Institute of Architects AIA Document 310

Bid Bond

T2305034

CONTRACTOR:

(Name, legal status and address)
Burnham Associates, Inc.

14 Franklin St.
Salem, MA 01970

SURETY:

Berkley Insurance Company
475 Steamboat Road
Greenwich, CT 06830

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

OWNER:

(Name, legal status and address)
Town of Wellfleet, MA

300 Main Street
Wellfleet MA 02667

BOND AMOUNT: Five Percent (5%) of the attached bid

PROJECT:

(Name, location or address, and Project number, if any)

2023 Wellfleet Harbor Dredging - Area II
Wellfleet, MA

The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond sixty (60) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

Signed and sealed this 19th day of May, 2023

Witness



Witness



Principal

Kristin Erickson, Attorney-in-Fact

Burnham Associates, Inc.

(Seal)

Berkley Insurance Company



Copy

Burnham Associates, Inc.

Wellfleet Area II Dredging

Proposed Equipment Listing (Including Subcontractor Equipment)

Burnham Associates, Inc. Proposed Equipment Listing

- 105' X 50' X 8' mechanical dredge SAMSON III with Bucyrus-Erie 88B crane with 12CY environmental Cable-Arm bucket and 6 CY heavy digging clamshell bucket
- 3,000 CY Split-hull scow THOMAS DESMOND
- 400 hp pushboat STRIDER
- 24' X 10' 300 HP open crew boat

AGM Marine Proposed Equipment Listing

- Dredge "TRITON": 130' x 50' x 8' with Liebherr HS 885 HD and 9 CY Cable-Arm environmental bucket
- Dump scow "TELSIAI": 200' x 44' x 16' x 2,000 CY capacity
- Dump scow "KAUNAS": 171' x 43' x 16' x 1,800 CY capacity
- Push boat "GRIZZLY": 26' x 14' x 660 HP
- Tugboat "SITKA": 88' x 27' x 1,700 HP
- Skiff "STIPRUMAS": 20' x 6' x 150 HP

Additional Equipment available for use should it be required during the project:

- 140' X 38' X 8' mechanical dredge TRINITY with Link-Belt LS308 and 6 CY closed environmental bucket
- 78' X 24' 2,400 HP Twin-screw tug AEGEAN SEA
- (2) 2,000 CY 6-pocket scows SE-103 & SE-104

**BID DOCUMENTS
AND
TECHNICAL SPECIFICATIONS**

FOR

**2023 WELLFLEET HARBOR DREDGING
AREA II**

**TOWN OF WELLFLEET,
MASSACHUSETTS**

**Prepared by
GEI Consultants, Inc.
124 Grove St., Suite 300
Franklin, MA 02038**

April 2023

TABLE OF CONTENTS

FRONT END SPECIFICATIONS

Division 00 Bidding and Contract Requirements

Section 00 01 00	Invitation for Bid
Section 00 04 00	Information for Bidders
Section 00 30 00	Bid Form
Section 00 50 00	Agreement
Section 00 55 00	Certificate of Bidder Regarding Equal Employment Opportunity
Section 00 56 00	Certificate of Compliance with Tax Laws
Section 00 57 00	Certificate of Non-Collusion
Section 00 58 00	Corporate Signatory Authorization
Section 00 61 00	Construction Performance Bond
Section 00 62 00	Construction Payment Bond
Section 00 65 00	Certificate of Insurance
Section 00 70 00	General Conditions
Section 00 80 00	Special Conditions

TECHNICAL SPECIFICATIONS

Division 01 General Requirements

<u>Section No.</u>	<u>Description</u>
Section 01 11 00	Summary of Work
Section 01 14 00	Work Restrictions
Section 01 18 00	Utility Protection
Section 01 20 00	Price and Payment Procedures
Section 01 30 00	Administrative Requirements
Section 01 33 00	Submittal Procedures
Section 01 35 00	Health and Safety Requirements
Section 01 41 00	Regulatory Requirements - Permits
Section 01 50 00	Temporary Facilities and Controls
Section 01 77 00	Closeout Procedures

Division 35 Waterway and Marine Construction

<u>Section No.</u>	<u>Description</u>
Section 35 12 13	Marine Signaling Equipment
Section 35 20 23	Dredging by Mechanical Method
Section 35 20 23.13	National Dredge Quality Management Program Scow – Monitoring Profile

ATTACHMENTS

Attachment .
Attachment A
Attachment B
Attachment C

Description

Drawings

Prevailing Wage Rates

Regulatory Permits

- Expanded Environmental Notification Form Certificate
- Order of Conditions
- MESA Conservation Management Permit (CMP)
- MESA CMP Amendment
- MassDEP Combined Chapter 91/401 WQC
- CZM Federal Consistency Review
- MEPA Final Record of Decision
- Suitability Determination
- US Army Corps of Engineers (Pending)
 - Area 1 ACOE Permit attached for reference

**SECTION 00 01 00
INVITATION FOR BID**

**TOWN OF WELLFLEET
WELLFLEET, MASSACHUSETTS
2023 WELLFLEET HARBOR DREDGING – AREA II**

INVITATION FOR BIDS

Sealed Bids for the Dredging of Wellfleet Harbor – Area II will be received by the Town of Wellfleet at Wellfleet Town Hall, 300 Main Street, Wellfleet, MA 02667 until 2:00PM local time on Friday, May 19, 2023 at which time the Bids received will be publicly opened and read. Such Bids shall be addressed to the Town Administrator and endorsed "BID FOR 2023 WELLFLEET HARBOR DREDGING – AREA II". The project consists of dredging sediment from the area known as Area II or South Mooring Field within Wellfleet Harbor adjacent to the Federal Channel. Dredged sediment will be disposed of at the Cape Cod Bay Disposal Site.

All dredging work must be completed within the time of year restrictions established for the project of October 1 to December 31 of a given calendar year.

Bids will be received for a single prime Contract. Bids shall be on a lump sum and unit price basis, with bid items as indicated in the Bid Form.

The project is subject to MA Prevailing Wage Rates.

The project is partially funded by the Commonwealth of Massachusetts and subject to MassDOT prequalification. Class of Work – Dredging.

The Issuing Office for the Bidding Documents is: the Town of Wellfleet, MA, 300 Main Street, Wellfleet, MA 02667. Prospective Bidders may obtain copies of the Bidding Documents from the Issuing Office as described below.

Bidding Documents will be available starting on Wednesday April 26, 2023, and may be ordered electronically by registering with the Issuing Office at <https://www.wellfleet-ma.gov/bid-invitations>. Following registration, complete sets of Bidding Documents may be downloaded from the Issuing Office's website as "zipped" portable document format (PDF) files. The date that the Bidding Documents are transmitted by the Issuing Office will be considered the Bidder's date of receipt of the Bidding Documents. Partial sets of the Bidding Documents will not be available from the Issuing Office.

A non-mandatory pre-bid conference will be held at 11:00AM local time on Wednesday May 3, 2023 at the Wellfleet Harbormaster's Office, 255 Commercial Street, Wellfleet, MA. The project site is accessible and can be viewed at any time.

All questions by prospective bidders as to any information contained within this bid package must be submitted by email to Daniel Robbins at [drobbins@geiconsultants.com](mailto:d Robbins@geiconsultants.com), by 12:00PM local time on Monday May 8, 2023.

No oral interpretations will be made to any potential respondent as to the meaning of any requirements specified within this Invitation for Bids. In preparing its proposal, the Contractor shall rely only on what has been communicated in writing, and no oral communication shall become the basis for any subsequent protest of the selection process. No questions, written or emailed, will be answered after the deadline indicated.

If any changes are made to this invitation for bids, an addendum will be issued. Addenda will be emailed to all bidders on record as having picked up the invitation for bids package from the issuing office.

The Town reserves the right to waive any informalities and to reject any or all bids if it be in the public interest to do so in accordance with G.L. c. 30, §39M(b).

All bid prices submitted in response to this invitation for bids must remain firm for sixty-five (65) calendar days following the bid opening. The award and notice to proceed is subject to availability of sufficient funding and receipt of permits. It is anticipated that award will be made by June 30th, 2023 unless otherwise agreed with the successful general bidder.

All bids for this project shall be made in good faith, and without collusion or fraud, and are subject to the provisions of Massachusetts General Laws, Chapter 30B, as amended.

--- END OF SECTION ---

SECTION 00 04 00
INFORMATION FOR BIDDERS

1.0 RECEIPT AND OPENING OF BIDS:

- 1.1 The Town of Wellfleet, MA, herein called the Awarding Authority or Owner, will receive sealed Bids for the dredging of Area II, disposal of dredged material, and all associated work.
- 1.2 Such Bids, addressed to the Town Administrator and endorsed "BID FOR 2023 WELLFLEET HARBOR DREDGING-AREA II" will be received at Wellfleet Town Hall, located at 300 Main Street, Wellfleet, Massachusetts 02667 until **2:00 PM on Friday, May 19th, 2023.**
- 1.3 No bids received after the time and date established herein for the opening of bids shall be accepted or considered, regardless of the cause for delay in the receipt of such bids. Said bids will be returned to the bidder, unopened at the time of receipt.
- 1.4 No bids received in which the Contractor is not listed on the Mass DOT Prequalification or Waiver List provided on the day of bid opening will be accepted or considered. Said bids will be returned to the bidder, unopened at the time of receipt.

2.0 BID FORM:

- 2.1 Each Bid shall be submitted on the required BID FORM. The BID FORM shall be removed and submitted separately. All blank spaces for BID PRICES must be filled in with the lump sum or unit price for which the Bid is made.
- 2.2 Bid Forms must be completed in ink or by typewriter. The Bid Price for each item on the form shall be stated in words and figures. Discrepancies between the words and figures will be resolved in favor of the words. Discrepancies between the indicated sum of any column and the correct sum of any column will be resolved in favor of the correct sum.
- 2.3 Each Bidder must complete and submit the form, "Certification of Bidder Regarding Equal Employment Opportunity" with their bid.
- 2.4 A Bid which includes a Bid Price for any item which is either abnormally low or high may be rejected as unbalanced.

3.0 BID DEPOSIT:

- 3.1 A bid deposit of each Bid submitted by bidders filing bids in accordance with the required procedure shall be accompanied by a bid deposit in the form of a bid bond, or cash, or a certified check, or a treasurer's or cashier's check issued by a bank or trust company for the amount of 5 percent based on the Base Bid and.

- 3.2 All bid deposits except those of the three lowest responsible and eligible bidders shall be returned within five (5) days, Saturday, Sunday, and Legal Holidays excluded, after the opening of Bids. The three deposits held shall be returned upon execution and delivery of the general contract; except that if the selected general bidder fails to execute a contract and furnish the required bonds and insurance certificates, the bidders deposit shall become the property of the Awarding Authority as liquidated damages in an amount not to exceed the difference between the bidder's bid price of the next lowest responsible bidder.
- 3.3 In case of death, disability, or other unforeseen circumstances affecting the bidder, such bid deposit may be returned.
- 3.4 After execution of the Contract and acceptance of the bonds by the Owner, the bid deposit accompanying the proposal of the successful bidder will be returned.
- 3.5 All bid deposits will be returned on the execution of a Contract, or if no award is made within sixty-five (65) days after the date of opening thereof, unless forfeited under the conditions stipulated above.

4.0 COMPARISON OF BIDS:

- 4.1 Bids will be compared on the basis of the quantity, unit, and lump sum prices stated on the Bid Form, including all alternates and options. Award will be made based on the quantity, cost, and schedule that is most beneficial to the Town and is within the available funding for the work.
- 4.2 In the event of a discrepancy between the written and numerical figures in the lump sum prices, the written figures shall govern.
- 4.3 In the event of a tie for lowest bid, the Town reserves the right to go to a "Second Heat" procedure between the tied lowest bidders as suggested by the State Inspector General's Office.

5.0 WITHDRAWAL OF BIDS:

Any bid may be withdrawn prior to the opening of bids. However, bidders may not withdraw or modify their bids for a period of sixty-five (65) calendar days, following the opening of bids.

6.0 ADDENDA AND INTERPRETATIONS:

All questions by prospective bidders as to any information contained within this bid package must be submitted by email to Daniel Robbins at drobbins@geiconsultants.com by 12:00pm local time on Monday May 8, 2023.

No oral interpretations will be made to any potential respondent as to the meaning of any requirements specified within this Request for Bids. In preparing its proposal, the Contractor shall rely only on what has been communicated in writing, and no oral communication shall become the basis for any subsequent protest of the selection process. No questions, written or emailed, will be

answered after the deadline indicated.

7.0 DELETIONS FROM CONTRACT:

The Awarding Authority reserves the right, prior to award of contract, to delete any portion of the Contractor's work and to adjust the quantities of work at any time.

8.0 EXAMINATION:

By submitting a bid, the bidder warrants that they have thoroughly examined the specifications and are fully acquainted with all conditions and restrictions pertaining to the bid items. No claim for any extra work or extension of time will be allowed for failure to observe this requirement. Conditional bids will not be accepted.

9.0 CONTRACT TIME:

All work of the Contract, excluding final payment only, must be completed within the time frame indicated in the contract specifications. Failure to complete the work in that time period will result in the assessment of liquidated damages in the amount specified therein.

10.0 PAYMENT BOND, PERFORMANCE BOND, AND INSURANCE:

10.1 The payment bond shall be for the full contract price and shall be furnished by the company awarded the contract. The payment bond shall be issued by a surety qualified to do business under the laws of the Commonwealth of Massachusetts and satisfactory to the Awarding Authority.

10.2 The selected bidder shall provide a Performance Bond to be for the full contract price at the time of execution of the contract.

10.3 The selected bidder shall maintain such insurance as will protect it from claims under the workmen's compensation acts and claims for bodily injury, death, or property damage which may arise from the performance of its service under this project. The bidder shall maintain proper liability insurance coverage in the amounts specified within Article VI of Section 00 70 00, GENERAL REQUIREMENTS. The Town may request the bidder to furnish evidence of any or all insurance coverage at the award of contract or at any time through the contract period.

11.0 ABILITY AND EXPERIENCE:

11.1 The Awarding Authority will not award a contract to any bidder who cannot furnish satisfactory evidence of their ability and experience in this type of work and that they have sufficient manpower to enable them to execute and complete the work within the given time period.

11.2 The bidder shall submit an experience list of similar size and type of projects with the bid, including Owner's name and contact information.

11.3 The Awarding Authority may make such investigations as it deems necessary to determine the above and a bidder shall furnish any information requested in this regard and shall furnish the same under oath if required.

12.0 RIGHTS OF THE AWARDING AUTHORITY

12.1 The Awarding Authority may reject, as informal, bids that are incomplete, conditional, or obscure or that contain additions or erasures that are not initialed or other irregularities.

12.2 The Awarding Authority reserves the right to reject any and all bids as may be in the best interest of the Town of Wellfleet, MA.

13.0 EXECUTION OF THE AGREEMENT:

13.1 Within fifteen (15) days of the receipt of agreement signed by the successful bidder and receipt of acceptable bonds, the Awarding Authority shall sign the Agreement and return a duplicate of the executed Agreement to the Contractor.

13.2 A Notice to Proceed shall be issued by September 10th, 2022. This time may be extended by mutual agreement by the Awarding Authority and the Contractor.

14.0 NON-DISCRIMINATION IN EMPLOYMENT:

14.1 A contract for work under this proposal shall obligate the Contractor or subcontractor not to discriminate in employment practices.

14.2 Bidders must, if requested, submit compliance reports concerning their employment practices and policies in order to maintain their ability to receive award of contract. Bidders must, if requested, submit a list of all subcontractors who will perform work on this contract together with a signed "Certification of Bidder Regarding Equal Employment Opportunity".

15.0 CONTRACTORS RECORDS

The Contractor shall retain their records for at least six (6) years after final payment. During this six (6) year period, the Owner, the Inspector General or any authorized representative of the grantor agency, if applicable, shall have the right to inspect these records.

16.0 CONFLICT BETWEEN SPECIFICATIONS:

Wherever a conflict exists between this specification and Commonwealth of Massachusetts laws, rules, or regulations, the laws or rules or regulations of the Commonwealth of Massachusetts prevail.

17.0 LAWS AND REGULATIONS:

The Bidders attention is directed to the fact that all applicable Federal, State, and municipal laws, regulations and ordinances shall apply to the contract as though they were written out in full.

INFORMATION FOR BIDDERS

00 04 00-4

18.0 METHOD OF AWARD:

18.1 If the Contract is to be awarded, Owner shall award the Contract to the “lowest responsible and eligible bidder” pursuant to General Laws Chapter 30, Section 39M, as amended, offering the lowest price for the Base Bid, or Base Bid plus Alternates at the Owner’s option, and whose Bid is in the best interests of the Project or Owner. Unit pricing for Alternatives must be the same as used in the Base Bid for the same items of work. Such a bidder shall possess the skill, ability, and integrity necessary for the faithful performance of the work, shall be able to furnish labor that can work in harmony with all other elements of labor employed, or to be employed, in the work, and shall otherwise comply with all applicable provisions of law. Contract award shall be subject to availability of an appropriation for funding.

18.2 If the lowest Bidder exceeds the amount of available funds, The Town reserves the right to negotiate with the lowest qualified bidder.

18.3 The Town reserves the right to add additional funding to the project should it be in its best interest for maximizing the construction for the available funding.

19.0 SEVERABILITY:

If any provision of this Agreement or portion of such provision or application thereof to any person, entity, or circumstances is held invalid, the remainder of the Agreement (or remainder of such provision) and the application of other persons, entities or circumstances shall not be affected thereby so long as such remaining or modified provisions reflect the intent of the parties.

20.0 MINORITY PROCUREMENT GOALS:

Under Massachusetts Executive Order 237, it is the policy of the Commonwealth to promote to the fullest participation of all citizens in resources provided by municipal government. Therefore, the Town invites the participation of Minority and Woman-owned business in any and all parts of this Contract.

21.0 REFERENCES

Bidders must submit at least 5 references for which the bidder has performed a comparable service over the past 10 years, and any municipal references for which the bidder has performed comparable work over the past 10 years. A bid may be rejected on the basis of one or more references reporting poor past performance.

22.0 REQUIREMENTS

22.1 Bidder shall submit a detailed description of how they will approach dredging for Area II.

22.2 Bidder shall indicate estimated quantity of cubic yards of dredging and disposal that can be completed to maximize project funding of \$5,000,000 within project description and approach.

INFORMATION FOR BIDDERS

00 04 00-5

- 22.3 Bidder shall submit a detailed equipment list with bid.
- 22.4 Project contains the use of State issued funds. Bidder shall provide proof they are pre-qualified in the appropriate class by Massachusetts DOT. Note: Final official prequalification and waiver lists will be provided to the Awarding Authority by the Mass DOT Prequalification Team prior to bid opening.

--- END OF SECTION ---

SECTION 00 30 00
BID FORM

The undersigned hereby declares to have carefully examined the annexed form of Contract, Specifications, and Drawings therein referred to and also the site upon which the projected work is to be performed. Also, included in the Bid Form is a table requiring information on the Bidder's qualifications.

- A. The undersigned proposes to furnish all labor and materials required for the “2023 Wellfleet Harbor Dredging – Area II” in accordance with the Drawings and Specifications prepared by GEI Consultants, Inc., 124 Grove Street, Franklin, Massachusetts 02038, for the Contract Price specified below, subject to additions and deductions according to the terms of the Specifications.

Accompanying this Proposal is a bid deposit in the amount of 5% of the value of the Base Bid, which shall become the property of the Town of Wellfleet, MA (Owner) if, in case this Proposal shall be accepted by the said Owner, the undersigned shall fail to comply with the statutes as herein before specified, if it is a foreign corporation, or in any event fails to execute the Contract with, and give a bond to, said Owner, according to the requirements of the Notice to Contractor in the form annexed to said form of Contract, within the time hereinafter specified.

The undersigned also hereby declares to be the only person interested in this Proposal; that it is made without any connection with any other person making any bid for the same work; that no person acting for, or employed by the Owner is directly or indirectly interested in this Proposal, or in any Contract which may be made under it, or in expected profits to arise therefrom; and it is made without directly or indirectly influencing or attempting to influence any other person or corporation to bid or to refrain from bidding or to influence the amount of the bid of any other person or corporation; and that this Proposal is made in good faith, without collusion or connection with any other person bidding for the same work; and that this Proposal is made with distinct reference and relation to the Bid Documents prepared for this case, and herein mentioned.

- B. This bid will include any Addenda issued during the bid period.
- C. The bid prices are presented in the following schedule. The Bidder shall provide Unit and Total Prices for the project as follows.

THE OWNER SOLICITS THE FOLLOWING BIDS:

A. BASE BID

The Bidder agrees to perform all the Work described in the Contract Documents for the following prices:

B. BASE BID SCHEDULE

Brief Description of Item	Est. Quant.	Unit	Unit Price in Words	Unit Price in Figures	Total Amount in Figures
1. Mobilization (Item 1)	1	LS	_____dollars and_____cents	----	\$ _____
2. Dredging and Disposal (Item 2)	100,000	CY	_____dollars and_____cents	\$ _____	\$ _____
3. Debris (Item 3)	100	Tons	_____dollars and_____cents	\$ _____	\$ _____
TOTAL BASE BID PRICE:					\$ _____

TOTAL BASE BID PRICE WRITTEN IN WORDS:

_____ DOLLARS

_____ CENTS

C. ADD ALTERNATIVE 1 - ADDITIONAL DREDGING

The Bidder agrees to perform all the Work described in the Contract Documents for Additional Dredging at the presented unit prices.

D. ADD ALTERNATIVE 1 BID SCHEDULE

Brief Description of Item	Est. Quant.	Unit	Unit Price in Words	Unit Price in Figures	Total Amount in Figures
1. Dredging and Disposal (Add Alt Item 1)	25,000	CY	_____dollars and_____cents	\$	\$
2. Debris (Add Alt Item 2)	1	Tons	_____dollars and_____cents	\$	\$
TOTAL ADD ALTERNATIVE I BID PRICE:					\$

TOTAL ADD ALTERNATIVE I BID PRICE WRITTEN IN WORDS:

_____ DOLLARS
 _____ CENTS

BID PROPOSAL INCLUDES ADDENDA NUMBER(S) _____

DESCRIPTION OF PAY ITEMS

Refer to Technical Specifications Section 01 20 00 – Price and Payment Procedures for descriptions of the work involved for each pay item.

PROJECT FUNDING

For performing or causing the performance of all services described in this IFB and the resulting contract, the respondent shall be paid an amount not to exceed Five Million Dollars (\$5,000,000); the maximum amount. This maximum amount shall include all fees, expenses, overhead, general administrative costs, profit, and applicable taxes, if any, for all the respondent’s charges arising under the resulting contract.

BASIS OF CONTRACT AWARD:

If the Contract is to be awarded, Owner shall award the Contract to the “lowest responsible and eligible bidder” pursuant to General Laws Chapter 30, Section 39M, as amended, offering the lowest price for the Base Bid, or Base Bid plus Alternates at the Owner’s option, and whose Bid is in the best interests of the Project or Owner. Unit pricing for Alternatives must be the same as used in the Base Bid for the same items of work. Such a bidder shall possess the skill, ability, and integrity necessary for the faithful performance of the work, shall be able to furnish labor that can work in harmony with all other elements of labor employed, or to be employed, in the work, and shall otherwise comply with all applicable provisions of law. Contract award shall be subject to availability of an appropriation for funding.

The Town of Wellfleet, MA reserves the right to add additional funding to the project should it be in its best interest for maximizing the construction for the available funding.

- A. The undersigned agrees that, if he/she is selected as Contractor, he/she will within five (5) calendar days, after presentation thereof by the Owner, execute the Contract in accordance with the terms of this bid and furnish a performance bond and a payment bond for the full amount of the Contract Price, each with a Surety company qualified to do business under the laws of the Commonwealth and satisfactory to the Owner, the premiums for which are to be paid by the Contractor and are included in the Contract Price.
- B. The bidder hereby certifies that in the event he/she is awarded the Contract he/she shall comply with the minority manpower ratio and all specific action steps contained in the State of Massachusetts Equal Employment Opportunity Anti-Discrimination and Affirmative Action Programs.
- C. The undersigned hereby certifies that he/she is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on this work.
- D. The undersigned further certifies under penalties of perjury that this bid is in all respects bona fide, fair, and made without collusion or fraud with any other person. As used in this subsection, the word "person" shall mean any natural person, joint venture, partnership, corporation, or other business or legal entity.
- E. I hereby certify that I have been informed that this project is sales tax exempt. I further certify that the bid prices contained herein do not include any calculations for sales tax.

Date: _____
(Name of General Bidder)

By _____

(Print Name as Signed Above)

(Title)

(Business Address)

Note: If the bidder is a corporation, indicate State of incorporation; if a partnership, give full names and addresses of all partners; and if an individual, give residential address if different from business address. Incorporated in what State: _____

President:

Treasurer:

Secretary

If a Partnership: (Name all Partners)

Name of Partner:

Residence:

Name of Partner:

Residence:

If an Individual:

Name:

Residence:

If an Individual doing business under a firm name:

Name of Firm:

Name of Individual:

Business Address:

Residence:

The bidder will give below the name and address of the Surety Company who will sign the bonds.

BIDDER'S QUALIFICATION

The Bidder is required to state below work he/she has done of a character similar to that of the work included in the proposed contract and to give references that will enable the Owner to judge his/her experience and skills to successfully undertake this project.

Project/Amount	Description	Contact	Completion Date
1.			
2.			
3.			

Project/Amount	Description	Contact	Completion Date
4.			
5.			

--- END OF SECTION ---

SECTION 00 50 00
AGREEMENT

THIS AGREEMENT made as of the ____ day of _____ in the year 2023 by and between the Town of Wellfleet, Massachusetts hereinafter called OWNER, and _____ with legal address and principal place of business at _____, hereinafter called CONTRACTOR. OWNER and CONTRACTOR in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1. WORK

1.1 CONTRACTOR shall perform the Work as specified or indicated in the Contract Documents.

ARTICLE 2. ENGINEER

2.1 The Project has been designed by GEI Consultants, Inc., 124 Grove Street Suite 300, Franklin, MA 02038 who will act as ENGINEER in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 3. CONTRACT TIME

3.1 The Contract Time shall be until no later than March 31, 2024 for completion of all work. Work shall commence within TEN (10) CALENDAR DAYS following the effective date of this Agreement. In water work shall commence October 1, 2023 or as designated by regulatory authorizations.

3.2 CONTRACTOR agrees that the Work shall be prosecuted regularly, diligently, and uninterruptedly and at such a rate of progress as will ensure full completion thereof within the Contract time stated above. It is expressly understood and agreed, by and between CONTRACTOR and OWNER, that the Contract Time is reasonable for the completion of the Work, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.

ARTICLE 4. CONTRACT PRICE

4.1 OWNER will pay CONTRACTOR for performance of the Work, in accordance with the Contract Documents in current funds at the Bid Price agreed upon in the CONTRACTOR's Bid Form attached to this Agreement.

4.2 The CONTRACTOR agrees to perform all extra work resulting in change orders at a Direct Labor Cost percentage as defined herein, or by mutually agreed lump sum basis.

ARTICLE 5. APPLICATIONS FOR PAYMENT

5.1 CONTRACTOR shall submit Applications for Payment in accordance with the Schedule

indicated by the agreed Bid Form.

ARTICLE 6. PROGRESS AND FINAL PAYMENTS

- 6.1 OWNER will make progress and final payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by ENGINEER and approved by the OWNER, monthly during construction.

ARTICLE 7. LIQUIDATED DAMAGES

- 7.1 OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss and inconvenience if the Work is not completed within the Contract Time specified in Article 3 above, plus any extensions thereof allowed in accordance with the General Conditions. They also recognize the delays, expense and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER \$0.00 per day for each calendar day of delay until the Work is completed.

ARTICLE 8. ASSURANCE

- 8.1 CONTRACTOR has familiarized themselves with the nature and extent of the Contract Documents, Work, locality, and with all local conditions and Federal, State and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work.
- 8.2 CONTRACTOR has studied carefully all reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress or performance of the Work which were relied upon by ENGINEER in the preparation of the Drawings and Specifications.
- 8.3 CONTRACTOR has made or caused to be made examinations, investigations and tests and studies of such reports and related data in addition to those referred to in the above paragraph as he deems necessary for the performance of the Work at the Contract Price within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, reports, or similar data are or will be required by him for such purposes.
- 8.4 CONTRACTOR has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents.
- 8.5 CONTRACTOR has given ENGINEER written notice of any conflict, error or discrepancy that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

AGREEMENT

00 50 00-2

- 8.6 CONTRACTOR agrees that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance of the work.
- 8.7 Contractor agrees that all disputes occurring outside of the terms herein shall be determined in accordance with the “Standard General Conditions of the Construction Contract”, prepared by Engineers Joint Contract Documents Committee and issued and published jointly by the National Society of Professional Engineers and the Construction Specifications Institute, and endorsed by The Associated General Contractors of America.

ARTICLE 9. CONTRACT DOCUMENTS

- 9.1 The Contract Documents which comprise the Contract between OWNER and CONTRACTOR are attached hereto and made a part hereof and consist of the following:
- 9.1.1 Notice to Bidders.
 - 9.1.2 Information for Bidders
 - 9.1.3 Bid Form.
 - 9.1.4 This Agreement.
 - 9.1.5 Certificate of Bidder Regarding Equal Employment Opportunity
 - 9.1.6 Certification of Compliance with Tax Laws
 - 9.1.7 Certificate of Non-Collusion
 - 9.1.8 Corporate Signatory Authorization
 - 9.1.9 Construction Performance Bond, and Construction Payment Bond, and any other required Bonds.
 - 9.1.10 Certificate of Insurance.
 - 9.1.11 Specifications (as listed in Table of Contents).
 - 9.1.12 Drawing numbered SHEETS 1 of 5 through 5 of 5, inclusive.
 - 9.1.13 Addenda numbers _____ to _____, inclusive.
 - 9.1.14 Any modification, including Change Orders, duly delivered after execution of Agreement.

ARTICLE 10. MISCELLANEOUS

- 10.1 Neither OWNER nor CONTRACTOR shall, without the prior written consent of the other, assign or sublet in whole or in part his interest under any of the Contract Documents; and, specifically but without limitation, CONTRACTOR shall not assign any monies due or to become due without the prior written consent of OWNER. In case the Contractor assigns all or any part of any monies due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due to the Contractor shall be subject to prior claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in this Contract.
- 10.2 OWNER and CONTRACTOR each binds himself, his partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
- 10.3 The Contract Documents constitute the entire agreement between OWNER and CONTRACTOR and may only be altered, amended or repealed by a Modification.
- 10.4 Any conflicts between the duties, authority and responsibilities of the Engineer as stated in this Agreement and the Engineering Agreement shall be governed by the Engineering Agreement.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement in sextuple. Four copies each have been delivered to OWNER, and one copy each to CONTRACTOR and ENGINEER. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or by ENGINEER on their behalf.

This Agreement shall become effective on _____, 2023.

OWNER

CONTRACTOR

BY

BY

(CORPORATE SEAL)

(CORPORATE SEAL)

Attest

Attest

Address for giving notices

Address for giving notices

As required by Chapter 693 of the Acts of 1964 (M.G.L. Chapter 44 Section 31c), this is to certify that the Town of Wellfleet has an appropriation which is adequate to cover the cost of this contract and that the Officer executing the contract on behalf of the Town is authorized to do so.

Date

Signed

Date

Signed

Note: If CONTRACTOR is a corporation, a current and valid certificate of corporate vote must be supplied when the Contract is signed indicating that the person signing same has the authority to do so, holds the office identified and a further certification by the clerk that said vote has not been rescinded, changed or modified if the vote is not current as of the date of signing.

--- END OF SECTION ---

AGREEMENT

00 50 00-5

SECTION 00 55 00
CERTIFICATION OF BIDDER REGARDING EQUAL EMPLOYMENT OPPORTUNITY

MUST BE SUBMITTED WITH BID FORM

Instructions:

This certificate is required pursuant to Executive Order 11246 (30 F.R. 12319-25). The implementing rules and regulations provide that any bidder or prospective CONTRACTOR, or any of their proposed SUBCONTRACTORS, shall state as an initial part of the bid or negotiations of the contract whether it has participated in any previous contract or subcontract subject to the equal opportunity clause, and if so, whether it has filed all compliance report within seven calendar days after bid opening. No contract shall be awarded unless such report is submitted.

Certification by Bidder

Name and Address of Bidder (include zip code)

1. Bidder has participated in a previous contract or subcontract subject to the Equal Opportunity Clause. Yes___No___
2. Compliance reports were required to be filed in connection with such contract or subcontract. Yes___No___
3. Bidder has filed all compliance reports due under applicable instructions, including Monthly Employment Utilization Report (257). Yes___No___
4. Have you ever been or are you being considered for sanction due to violation of Executive Order 11246, as amended? Yes___No___

Name and Title of Signer (please type)

Signature_____Date_____

--- END OF SECTION ---

**SECTION 00 57 00
CERTIFICATE OF NON-COLLUSION**

MUST BE SUBMITTED WITH BID FORM

The undersigned certifies under penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

By: _____ Duly
Authorized Individual

Name of Business

Address

Date

--- END OF SECTION ---

**SECTION 00 58 00
CORPORATE SIGNATORY AUTHORIZATION**

IF APPLICABLE, SUBMIT WITH BID FORM

If the Bidder is a corporation, complete the following certification: At a
duly authorized meeting of the Board of Directors of the

_____ held on _____
(Name of Corporation) (Date)

at which all the Directors were present or waived notice, it was

VOTED that, _____
(Name) (Officer)

of this company is authorized to execute contracts and bonds in the name and
behalf of said company, and affix its corporate seal thereto, and such
execution of any contract or obligation in this company's name on its behalf
by such _____ of the
(Officer)
company, shall be valid and binding upon this company.

I hereby certify that I am the Clerk of the _____

that _____ is the duly elected _____
(Officer)

of said company, and that the above vote has not been amended or rescinded and remains in full
force and effect as of the date of the Contract.

A true copy,

Attest _____
(Clerk)

Place of Business _____
(Corporate Seal)

**SECTION 00 61 00
CONSTRUCTION PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS: That we _____

_____ a _____
(Name of Contractor) (Corporation, Partnership, Joint Venture or Individual)

hereinafter called "Principal" and _____
(Surety)

of _____ hereinafter
(Address) (City, State, Zip Code)

called the "Surety" and licensed by the State Division of Insurance to do business under the laws of the Commonwealth of Massachusetts, are held and firmly bound to the Town of Wellfleet, Massachusetts, hereinafter called "Owner", in the penal sum of

_____ Dollars
(\$ _____) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that Whereas, the Principal entered into a certain contract with the Owner, dated the _____ day of _____, 2023, a copy of which is hereto attached and made a part hereof for the construction described as follows:

2023 Wellfleet Harbor Dredging – Area II

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the Owner, with or without notice to the Surety, and if he shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the Owner from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the Owner all outlay and expense which the Owner may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of this contract or to the work or to the specifications.

PROVIDED, FURTHER, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in six (6) counterparts, each one of which shall be deemed an original, this the _____ day of _____, 2023.

ATTEST:

Principal

(Principal Secretary)

By _____

(Address-Zip Code)

(SEAL)
Witness as to Principal

(Address-Zip Code)

ATTEST:

Surety

By _____
(Attorney-in-Fact)

(Address-Zip Code)

(SEAL)
Witness as to Surety

(Address-Zip Code)

NOTE: Date of Bond must not be prior to date of Contract. If Contractor is a Partnership, all partners should execute Bond.

--- END OF SECTION ---

**PERFORMANCE BOND
SECTION 00 61 00-2**

**SECTION 00 62 00
CONSTRUCTION PAYMENT BOND**

KNOW ALL MEN BY THESE PRESENTS: That we _____
(Name of Contractor)

a _____, hereinafter called "Principal" and
(Corporation, Partnership, Joint Venture or Individual)

_____ of _____,
(Surety) (City/Town) (State)

called the "Surety" and licensed by the State Division of Insurance to do business under the laws of the Commonwealth of Massachusetts, are held and firmly bound to the Town of Wellfleet, Massachusetts, hereinafter called "Owner", in the penal sum of

_____ Dollars (\$ _____) in lawful
(In Words)
money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that Whereas, the Principal entered Into a certain contract with the Owner, dated the ____ day of _____, 2023, a copy of which is hereto attached and made a part hereof for the construction described as follows:

**Wellfleet Harbor Dredging – Area II
Wellfleet, Massachusetts**

NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the prosecution of the work provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, diesel fuel, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such work, and all insurance premiums on said work, and for all labor, performed in such work whether by subcontractor or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of this contract or to the work or to the specifications.

PROVIDED, FURTHER, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in six (6) counterparts, each one of which shall be deemed an original, this the _____ 2023.

day of _____,

ATTEST:

Principal

(Principal Secretary)

By _____

(Address-Zip Code)

(SEAL)
Witness as to Principal

(Address-Zip Code)

ATTEST:

Surety

By _____

(Attorney-in-Fact)

(Address-Zip Code)

(SEAL)
Witness as to Surety

(Address-Zip Code)

NOTE: If Contractor is a Partnership, all partners should execute Bond.

--- END OF SECTION ---

**PAYMENT BOND
SECTION 00 62 00-2**

SECTION 00 65 00
CERTIFICATE OF INSURANCE

This is to certify that the _____(Company) has issued the policies listed below, that these policies are written in accordance with the Company's standard policies and endorsements, except as indicated below or as noted in the attachments hereto, which policies and endorsements will be made available to OWNER upon request, that they provide coverage and limits of liability shown with respect to the insurance indicated, that they are in force on this date, that all deductible amounts are indicated below, and that this Certificate is furnished in accordance with and for the purpose of satisfying the requirements of OWNER in connection with the award and performance of a contract or agreement between the Town of Wellfleet, MA (OWNER) and

1. Name of Insured _____
2. Address of Insured _____
3. Location and Description of Work _____

Project Contract No.

Coverage and Limits of Liability
(at least as shown below)

_____ Bodily Injury Liability	_____ Property Damage Liability
-------------------------------------	---------------------------------------

Policy No.	Effective Date	Expiration Date	Each Occurrence	Aggregate

INSURANCE REQUIREMENTS

- A. The General Contractor shall purchase and maintain such insurance as will protect him from claims under worker's compensation acts and from claims for damages because of bodily injury, including death, and property damage which might arise from and during operations under this contract, whether such operations be by himself or by a Subcontractor or anyone directly or indirectly employed by either of them.

- B. Contractor shall not commence work under this Contract until he has obtained all insurance required herein nor until such insurance has been approved by the Owner. Contractor shall not allow any Subcontractor to commence work until the insurance required of the Subcontractor has been obtained and approved.

- C. Subcontracts: Contractor shall either (1) require each Subcontractor to procure and to maintain during the life of his Subcontract, Subcontractor General Liability and Property Damage Insurance of same type and in such manner as specified herein, or (2) Insure activities of his Subcontractors on his own policy.
- D. All insurance required by this Document shall be provided by a Best “A+ VIII” rated company, or companies, authorized to do business in the Commonwealth of Massachusetts and satisfactory to the owner and shall be written for not less than any limits of liability specified herein, or required by law, whichever is greater.
- E. Certificates: Certificates of Insurance acceptable to the Owner shall be submitted in triplicate to the Owner simultaneously with the execution of the Contract. Certificates shall indicate that broad form Contractual Liability coverage is in force, as well as deletions of the XCU exclusions. Certificates shall contain a provision that the insurance company will notify the Owner by registered mail at least (60) calendar days in advance of any cancellation, non-renewal, change or expiration of the policies. Certificates shall include description of coverage, effective dates and expiration dates of policies and shall clearly indicate all exclusions (other than standard policy form exclusions contained in the basic policy) which will be added to the policies provided.
- F. Deductibles: In the event of paid claims, Contractor shall bear costs of any amounts deductible.
- G. The Owner shall be named as additional insured under all policies.
- H. Before any blasting is done, Contractor shall present evidence that blasting damage is included in his insurance coverage.

COVERAGE AND LIMITS

A. Workers’ Compensation Insurance:

The Contractor shall maintain and cause all subcontractors and lower tier contractors to maintain Workers Compensation and Employers Liability Insurance in accordance with the law and regulations of the Commonwealth of Massachusetts. The limits of liability provided shall be as follows:

Coverage A:	Statutory
Coverage B:	\$500,000/\$500,000/\$500,000

B. Contractor's Liability Insurance

The Contractor shall purchase and maintain Commercial General Liability Insurance and cause all subcontractors and lower tier contractors to maintain the same throughout the term of the Work. Commercial General Liability Insurance must comply with all applicable broad form endorsements. Such insurance shall be on the 1986 standard insurance Service Office occurrence coverage form (or any later amendments or revisions thereto).

Limits of liability to be provided shall be as follows:

Bodily Injury and Property Damages	\$1,000,000
Personal Injury and Advertising Injury	\$1,000,000
General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Medical Payments	\$ 10,000

Coverage shall specifically include blanket contractual liability covering Contractor's indemnity obligations as contained in this Document. The Town of Wellfleet, MA must be added as an additional Insured as their interest may appear.

C. Business Automobile Liability:

The Contractor shall maintain and cause all subcontractors and lower tier contractors to maintain business automobile liability insurance covering all owned, non-owned, leased, rented and hired automobiles (symbol 1). The limits of liability shall be as follows:

Bodily Injury and Property Damage: \$1,000,000 per occurrence

Automobile physical damage coverage shall be at the option of the Contractor, all subcontractors and lower tier contractors. The Owner shall not be liable for physical loss or damage to any owned, non-owned, leased, rented or hired automobile.

The Town of Wellfleet, MA must be added as an additional insured as their interest may appear.

D. Umbrella or Excess Liability

Umbrella or Excess Liability shall be provided in excess of the primary limits of liability required above. Coverage shall be at least as broad as provided in the primary coverage required. The limits of liability to be provided shall be as follows:

\$2,000,000 per occurrence Bodily Injury and Property Damage
\$2,000,000 per occurrence Personal Injury and Advertising Injury
\$2,000,000 General Aggregate
\$2,000,000 Products and Completed Operations Aggregate

Coverage shall specifically include blanket contractual liability covering Contractor's indemnity obligations as contained in this Document. The Town of Wellfleet, MA must be added as an additional Insured as their interest may appear.

INDEMNIFICATION

The Contractor shall take responsibility for the work and take all precautions for preventing injuries to persons and property in or about the work and shall bear all losses resulting to it on account of amount or character of the work. The Contractor shall pay or cause payment to be made for all labor performed or furnished and for all materials used or employed in carrying out the Contract. The Contractor shall assume the defense of, and indemnify and save harmless, the Engineer, the Owner, and their officers and agents from all claims relating to labor performed or furnished and materials used or employed for the work: to inventions, patents and patent rights used in and in doing the work unless injuries to any person or corporation received or sustained by or from the Contractor and its employees, and subcontractors and employees, in doing the work, or in consequence of any improper materials, implements or labor used or employed therein; and to any act, omission or neglect of the Contractor and its employees therein.

PERFORMANCE AND PAYMENT BONDS

The Contractor shall provide the Owner with a performance bond and a labor and materials or payment bond executed by a surety company licensed by the Commonwealth of Massachusetts.

--- END OF SECTION ---

SECTION 00 70 00
GENERAL CONDITIONS

Index

ARTICLE I	-	GENERAL
ARTICLE II	-	DEFINITIONS
ARTICLE III	-	INTERPRETATION OF CONTRACT
ARTICLE IV	-	DRAWINGS AND SPECIFICATIONS
ARTICLE V	-	NOT TO SUBLET OR ASSIGN
ARTICLE VI	-	INSURANCE REQUIREMENTS
ARTICLE VII	-	ALTERATIONS OF WORK
ARTICLE VIII	-	EXTRA WORK
ARTICLE IX	-	PAYMENTS
ARTICLE X	-	GUARANTEE
ARTICLE XI	-	RIGHT OF THE OWNER TO TERMINATE CONTRACT
ARTICLE XII	-	DISPUTED WORK, DETERMINATION OR ORDER
ARTICLE XIII	-	MINORITY PROCUREMENT GOALS
ARTICLE XIV	-	OSHA 10 TRAINING

SECTION 00 70 00
GENERAL CONDITIONS

ARTICLE I - GENERAL

- A. Every provision of this Contract shall have the same force and effect as if included and repeated in every division or subdivision of the Contract under which it may apply.
- B. Headings, letterings, and numbers of the various divisions and subdivisions of and in the Contract are intended for convenience of reference only and have no force or effect whatever on the intent of the Contract.

ARTICLE II - DEFINITIONS

Wherever the words defined in this Article or pronouns used in their stead occur in this Contract, they shall have the meanings here given.

- A. The words "Contract Documents" and "the Contract" shall mean this Contract and shall include Notice to Bidders, Information for Bidders, Proposal, Bid Bond, Agreement, Performance and Payment Bond, General Conditions, Special Conditions, Construction Specifications, Drawings, Addenda, Notice of Award, Notice to Proceed, the Change Orders. The Contract Documents represent the entire and integrated agreement between the Owner and the Contractor. The Contract shall not be construed to create any contractual relationship of any kind between the Engineer and the Contractor, but the Engineer shall be entitled to performance of obligations intended for his benefit and to enforcement thereof. Nothing in the Contract Documents shall create any contractual relationship between the Owner or the Engineer and any Subcontractor.
- B. The word "Owner" or "Project Sponsor" or "Awarding Authority," shall mean the Town of Wellfleet, MA.
- C. The word "State" shall mean the Commonwealth of Massachusetts.
- D. The word "Commonwealth" shall mean the Commonwealth of Massachusetts.
- E. The words "Approval of the Owner" or "Approved by the Owner," "Approval of the Engineer" or "Approved by the Engineer," shall mean approval in writing.
- F. The word "Contractor" shall mean the party termed as such by the Agreement, his/her heirs, executors, administrators, successors, or assigns as regards the obligations of the Contract.
- G. "Subcontractor." A person, firm, or corporation supplying labor and materials, or only labor, for work at the site of the project under separate Contract or agreement with the Contractor.

- H. The word "Contract Drawings" or words of like effect shall mean the Drawings listed by that number and title herein.
- I. The words "as permitted," "as required," or words of like effect shall mean that the permission or requirement of the Engineer is intended; the words "approved," "acceptable," "satisfactory," or words of like import shall mean approved by, or acceptable to, or satisfactory to the Engineer - and the words "necessary," "suitable," "equal," or words of like import shall mean necessary, suitable, or equal in the opinion of the Engineer.
- J. The Owner is treated as if it were of singular number and neuter gender and the Contractor and the Engineer are treated as if each were of the singular number and masculine gender.
- K. The words "Notice to Proceed" shall mean a written notice to the Contractor of the date on which he is to begin the prosecution of the work for which he has contracted.
- L. Any communication to the Owner shall be addressed to the Town of Wellfleet, MA.
- M. The word "work" shall mean all performance, including the furnishing of materials, labor, tools, equipment, and incidentals required of the Contractor under the terms of this Contract, including the transportation of the materials and supplies to or from the location of the project by employees of the Contractor and any subcontractor.

ARTICLE III - INTERPRETATION OF CONTRACT

The Contractor shall at his own proper cost and expense provide and do everything necessary to prepare for and perform everything required under the conditions and requirements of the Contract, and he hereby agrees that the Engineer shall in the first instance be the interpreter of the Contract Documents, and all the work contemplated and described therein shall be so done as to satisfy him that its intent is fulfilled. The Engineer shall promptly render impartial decision on all claims of either party against the other and on all other matters governed by this intent, including questions as to the execution and progress of the work, the quality and types of materials and workmanship, the suitability of methods, and costs and values. The determination and decision of the Engineer shall be final and binding on both parties and shall be a condition precedent to the right of the Contractor to receive any money hereunder, except as to those areas of disputed work covered under ARTICLE XII - DISPUTED WORK, DETERMINATION OR ORDER.

ARTICLE IV - DRAWINGS AND SPECIFICATIONS

The Owner will furnish to the Contractor, at no charge electronic copies of the Contract Drawings, and Contract Specifications. Hard copies of the Contract Drawings and Contract Specifications shall be provided at the Contractor's expense.

The Plans, Drawings, Specifications and other data and documents prepared for use in connection with this Contract are intended to be complementary to each other, but should any discrepancy appear or any misunderstanding arise as to the import of anything contained in them or any of them, except to those areas of disputed work covered by ARTICLE XII - DISPUTED WORK, DETERMINATION OR ORDER the explanation or decisions of the Engineer shall be final and binding on the parties hereto.

Any errors or omissions in Plans, Drawings or Specifications or in other data or documents may be corrected by the Engineer when such correction is necessary for the proper fulfillment of their intention as construed by him, such correction to govern only from the time that the Engineer gives notice in writing thereof to the Contractor.

The Contractor shall not take any advantage or make any claim for damages on account of any omission, discrepancy or error in any soundings, borings, estimates, schedules, specifications, drawings, plans, or other data or documents furnished him, but shall report same to the Engineer as soon as it comes to his knowledge.

ARTICLE V - NOT TO SUBLET OR ASSIGN

The Contractor shall keep the Contract under his control; and shall not assign, by power of attorney or otherwise, any portion of said work, or any moneys payable under the Contract or his claim thereto, unless by the previous approval of the Owner and the Surety. No part of this work shall be sublet except to parties skilled in and equipped properly for the same and satisfactory to the Engineer and approved by the Owner.

ARTICLE VI - INSURANCE REQUIREMENTS

- A. The General Contractor shall purchase and maintain such insurance as will protect him from claims under worker's compensation acts and from claims for damages because of bodily injury, including death, and property damage which might arise from and during operations under this contract, whether such operations be by himself or by a Subcontractor or anyone directly or indirectly employed by either of them.
- B. Contractor shall not commence work under this Contract until he has obtained all insurance required herein nor until such insurance has been approved by the Owner. Contractor shall not allow any Subcontractor to commence work until the insurance required of the Subcontractor has been obtained and approved.
- C. Subcontracts: Contractor shall either (1) require each Subcontractor to procure and to maintain during the life of his Subcontract, Subcontractor General Liability and Property Damage Insurance of same type and in such manner as specified herein, or (2) Insure activities of his Subcontractors on his own policy.

- D. All insurance required by this Document shall be provided by a Best “A+ VIII” rated company, or companies, authorized to do business in the Commonwealth of Massachusetts and satisfactory to the owner and shall be written for not less than any limits of liability specified herein, or required by law, whichever is greater.
- E. Certificates: Certificates of Insurance acceptable to the Owner shall be submitted in triplicate to the Owner simultaneously with the execution of the Contract. Certificates shall indicate that broad form Contractual Liability coverage is in force, as well as deletions of the XCU exclusions. Certificates shall contain a provision that the insurance company will notify the Owner by registered mail at least (60) calendar days in advance of any cancellation, non-renewal, change or expiration of the policies. Certificates shall include description of coverage, effective dates and expiration dates of policies and shall clearly indicate all exclusions (other than standard policy form exclusions contained in the basic policy) which will be added to the policies provided.
- F. Deductibles: In the event of paid claims, Contractor shall bear costs of any amounts deductible.
- G. The Owner shall be named as additional insured under all policies.
- H. Before any blasting is done, Contractor shall present evidence that blasting damage is included in his insurance coverage.

COVERAGE AND LIMITS

A. Workers’ Compensation Insurance:

The Contractor shall maintain and cause all subcontractors and lower tier contractors to maintain Workers Compensation and Employers Liability Insurance in accordance with the law and regulations of the Commonwealth of Massachusetts. The limits of liability provided shall be as follows:

Coverage A:	Statutory
Coverage B:	\$500,000/\$500,000/\$500,000

B. Contractor’s Liability Insurance

The Contractor shall purchase and maintain Commercial General Liability Insurance and cause all subcontractors and lower tier contractors to maintain the same throughout the term of the Work. Commercial General Liability Insurance must comply with all applicable broad form endorsements. Such insurance shall be on the 1986 standard insurance Service Office occurrence coverage form (or any later amendments or revisions thereto).

Limits of liability to be provided shall be as follows:

Bodily Injury and Property Damages	\$1,000,000
Personal Injury and Advertising Injury	\$1,000,000
General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Medical Payments	\$ 10,000

Coverage shall specifically include blanket contractual liability covering Contractor's indemnity obligations as contained in this Document. The Town of Wellfleet, MA must be added as an additional Insured as their interest may appear.

C. Business Automobile Liability:

The Contractor shall maintain and cause all subcontractors and lower tier contractors to maintain business automobile liability insurance covering all owned, non-owned, leased, rented and hired automobiles (symbol 1). The limits of liability shall be as follows:

Bodily Injury and Property Damage: \$1,000,000 per occurrence

Automobile physical damage coverage shall be at the option of the Contractor, all subcontractors and lower tier contractors. The Owner shall not be liable for physical loss or damage to any owned, non-owned, leased, rented or hired automobile.

The Town of Wellfleet, MA must be added as an additional insured as their interest may appear.

D. Umbrella or Excess Liability

Umbrella or Excess Liability shall be provided in excess of the primary limits of liability required above. Coverage shall be at least as broad as provided in the primary coverage required. The limits of liability to be provided shall be as follows:

\$2,000,000 per occurrence Bodily Injury and Property Damage
\$2,000,000 per occurrence Personal Injury and Advertising Injury
\$2,000,000 General Aggregate
\$2,000,000 Products and Completed Operations Aggregate

Coverage shall specifically include blanket contractual liability covering Contractor's indemnity obligations as contained in this Document. The Town of Wellfleet, MA must be added as an additional Insured as their interest may appear.

INDEMNIFICATION

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.
- B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of Contractor under Paragraph A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

PERFORMANCE AND PAYMENT BONDS

The Contractor shall provide the Owner with a performance bond and a labor and materials or payment bond executed by a surety company licensed by the Commonwealth of Massachusetts.

ARTICLE VII - ALTERATIONS OF WORK

- A. The Owner may make alterations in the form or character of any of the work done, or to be done, and in the requirements of the Contract Documents, and the Engineer may order in writing such alterations to be made. Such order shall be by means of a written Change Order, supplemented with drawings when in the opinion of the Engineer it is necessary, which shall include a description of the change with revised specifications, estimated quantities, and prices of the work involved in the alterations made. Each Change Order shall make provisions for revising the time of completion of all work to be done under this Contract or shall state that no revision of time is necessary. All such Change Orders shall be approved in writing by the Owner's Chief Procurement Officer (Town Administrator) and accepted in writing by the Contractor before they become effective. If the Owner and Contractor do not agree on the revised prices of the work involved in the alterations, the work shall be paid for on the cost-plus basis as provided for Extra Work in ARTICLE VIII - EXTRA WORK.
- B. All work involved in the alterations shall be made under the terms and as a part of this Contract, and the security for the performance of the Contract shall in no ways be invalidated but shall be held to secure in like manner the performance of the work involved in the alterations made under the Contract.

ARTICLE VIII - EXTRA WORK

- A. For the purpose of this Contract all Change Orders which include extra work shall be referred to as Extra Work Orders.
- B. The Contractor shall do any work in addition to the obligations required under the Contract in the original form of its Contract Documents and not herein otherwise provided for as ordered in writing by the Engineer. Such work shall be termed Extra Work. All orders for Extra Work shall contain particular reference to this Article. Before any work is commenced under any Extra Work Order, the order shall be approved by the Owner's Chief Procurement Officer (Town Administrator) in writing and accepted in writing by the Contractor. It is understood that the Owner may, at its option, have other parties do work in connection with the work to be done under this Contract, which is not within the limits or is not an integral part of the work herein specified, in lieu of having such work done as Extra Work under this Contract.
- C. All requirements of this Contract and its documents shall be applicable to Extra Work. The Contractor shall not receive any compensation for Extra Work, regardless of its nature, unless the work was ordered done in the manner prescribed above. The Contractor waives all rights to claim any compensation for any work done except (a) that provided for payment as stated in the Proposal, (b) alterations of the work as provided for in

GENERAL CONDITIONS

00 70 00-7

ARTICLE VII ALTERATIONS OF WORK, and (c) that provided for as Extra Work ordered done as described in this Article.

- D. All written orders for Extra Work issued by the Engineer shall be accompanied by drawings, if in the opinion of the Engineer drawings are necessary: all orders shall describe the work to be done, shall make provisions for revising the time of completion of all work to be done under this Contract or shall state no revision of time is necessary, and shall prescribe unit prices or the total cost of the Extra Work agreed to by the Owner and Contractor for the work to be done. If the Owner and the Contractor do not agree on unit prices or the total cost of the Extra Work to be done, the orders for Extra Work shall provide for the work to be done on a cost-plus basis, so that the Contractor will receive for full compensation for providing and doing everything required to prepare for and perform everything included in the Extra Work Order the actual cost to him of the following items applicable to the Extra Work Order:
1. All labor directly on the Contractor's payroll at specified rates;
 2. Salaries of Contractor's employees stationed at the field office, engaged at shops or on the road in expediting the production or transportation of material;
 3. Fees for licenses and permits required particularly for the extra work involved and not required for the work as planned in the original Contract;
 4. Minor expenses, such as telephone service, express, and similar petty cash items;
 5. Cost of hand tools not owned by the workmen consumed in the prosecution of the work, and depreciation of such tools used but not consumed and which shall remain the property of the Contractor;
 6. Cost of moving equipment from and to the Contractor's yard; and
 7. Cost of Bonds
- E. To the cost of items 1 to 7, inclusive, there shall be added a fixed fee to be agreed upon but not to exceed 15 percent of the total of items 1 to 7, inclusive. The fee shall be compensation to cover the cost of general supervision, overhead, profit, and other general expenses.
- F. If the work is done by a subcontractor, and the cost is determined on the actual cost basis, there shall be added an additional fixed fee to be agreed upon but not to exceed 5 percent of the total of item 1 to 7, inclusive. This additional fee shall be compensation to cover the General Contractor. In no case shall the combined overhead and profit allowed to the Subcontractor and General Contractor exceed 20 percent.
- G. The Contractor shall furnish to the Engineer an itemized statement of all costs incurred in Extra Work during any calendar month on or about the first of the next following month. All quantities (labor, equipment, etc.) shall be agreed upon on daily basis, in writing, by the Contractor and Engineer.

- H. Unless otherwise specifically provided for in the Extra Work Orders, the compensation agreed to, whether unit prices, total cost or the cost-plus basis as described above, includes payment for any damages or expense caused the Contractor by any delays to other work to be done under the Contract resulting from or on account of Extra Work, and the Contractor waives all rights to any compensation for such damage or expense except as may be provided for in the Extra Work Orders.

ARTICLE IX - PAYMENTS

- A. The Owner shall pay and the Contractor shall receive as full compensation for providing and doing everything required to prepare for and perform everything called for by this Contract, and as full compensation also for all loss or damage arising out of the nature of the work under the Contract, or from the action of the elements, or from fire, or from any unforeseen obstructions or difficulties which may be encountered in the prosecution of the said work; also for all expenses incurred by, or in consequence of, the suspension or discontinuance of said work in accordance with the Contract, including all work incidental thereto, the prices stated in the bid Schedule of Prices, or the prices revised, if such are revised as provided for in ARTICLE VII ALTERATIONS OF WORK, and also the cost of Extra Work authorized under ARTICLE VIII EXTRA WORK.
- B. It is understood and agreed that the Contractor shall receive payment in accordance with the Schedule indicated under the lump sum item.
- C. A retainage of 5 percent of the total amount of work invoiced shall be retained by the Town until the construction work has been completed to the approval of the Engineer. The full Contract price shall be paid to the Contractor only after completion of all work to be done and final acceptance has been given by the Owner and Engineer in writing.

ARTICLE X - GUARANTEE

- A. The Contractor guarantees that the work and services to be performed under the Contract, and all workmanship, materials and equipment performed, furnished, used, or installed in the construction of the same, shall be free from defects and flaws, and shall be performed and furnished in strict accordance with the Drawings, Specifications and other Contract Documents, until notice of substantial completion following acceptance of the post dredge survey. Said guarantees are in addition to any other guarantees provided by law or otherwise.
- B. If at any time within the said period of guarantee any part of the work requires repairing, correction or replacement, the Owner may notify the Contractor in writing to make the required repairs, corrections, or replacements. If the Contractor neglects to commence making such repairs, corrections, or replacements to the satisfaction of the Owner within seven (7) days from the date of receipt of such notice or having commenced failed to prosecute such work with diligence, the Owner may employ other persons to make the same, and all direct and indirect costs of making said repairs, corrections or replacements, including compensation for additional professional services, shall be paid by the Contractor.

ARTICLE XI - RIGHT OF THE OWNER TO TERMINATE CONTRACT

- A. If the Contractor shall be adjudged bankrupt or if he shall make a general assignment for the benefit of his creditors, or if a receiver shall be appointed of his property, or if the work to be done under this Contract shall be abandoned, or if this Contract or any part thereof shall be sublet without the previous written consent of the Owner, or if the Contract or any claim thereunder shall be assigned by the Contractor otherwise than as herein specified, or if at any time the Engineer shall certify in writing to the Owner that the rate of progress of the work or any part thereof is unsatisfactory or that the work or any part thereof is unnecessarily or unreasonably delayed, or that the Contractor has violated any of the provisions of this Contract, the Owner may notify the Contractor to discontinue all work or any part thereof; and thereupon, the Contractor shall discontinue such work or such part thereof as the Owner may designate and charge the entire expense of so completing the work or part thereof to the Contractor; and for such completion, the Owner for itself or its contractors may take possession of and use or cause to be used in the completion of the work or part thereof any of such materials, machinery, implements and tools of every description as may be found upon the site of the Contractor's operations. The Owner may at its option require the surety or sureties to complete the Contract.
- B. All expenses charged under this Article shall be deducted and paid by the Owner out of any money then due or to become due the Contractor under this Contract or any part thereof; and in such accounting, the Owner shall not be held to obtain the lowest figures for the work of completing the Contract or any part thereof, or for insuring its proper completion, but all sums actually paid therefore shall be charged to the Contractor. In case the expenses so charged are less than the sum which would have been payable under this Contract if the same had been completed by the Contractor, the Contractor shall be entitled to receive the difference, but only for work actually completed by the Contractor. If such expenses shall exceed the said sum, the Contractor shall pay the amount of the excess to the Owner upon completion of the work without further demand being made therefor.

ARTICLE XII - DISPUTED WORK, DETERMINATION OR ORDER

- A. If the Contractor is of the opinion that any work ordered to be done as Contract work by the Engineer is in fact Extra Work and not Contract work, or that any determination or order of the Engineer violates the provisions of this Contract, he must promptly, and before proceeding with such work or complying with the determination or order, notify the Owner and Engineer in writing of his contentions with respect thereto and request a final determination thereon.
- B. If the Owner determines that the work is Contract work and not Extra Work, or that the determination or order complained of is proper, it will direct the Engineer to order the Contractor to proceed and the Contractor must promptly comply. However, in order to reserve the right to claim compensation for such work or damages resulting from such compliance, the Contractor must, within five days after receiving notice of the Owner's determination, notify the Owner and Engineer in writing that the work is being performed or that the determination is being complied with under protest.

- C. If the Contractor fails to so appeal to the Owner and Engineer, or having appealed, should the Contractor fail to notify the Owner and Engineer in writing of his doing the work under protest, the Contractor shall be deemed to have waived any claim for extra compensation or damages. No oral appeals or oral protests shall be deemed as compliance with the provisions of this Article.

ARTICLE XIII – MINORITY PROCUREMENT GOALS

- A. Under Massachusetts Executive Order 237, it is the policy of the Commonwealth to promote the fullest participation of all citizens in resources provided by municipal government. Therefore, the Town of Wellfleet, MA invites the participation of minority and women owned businesses in any and all parts of the contract.
- B. The Town of Wellfleet, MA invites all qualified women and minority owned business firms to respond to bid invitations.

ARTICLE XIV – OSHA 10 TRAINING

All employers must certify at the time of the bid that all employees to be employed at the jobsite have successfully taken an OSHA 10-hour course. Documentation of successful course completion for each employee must be submitted with the first certified payroll report (CPR) on which the employee's name appears. Employers shall attach copies of the OSHA 10-hour cards to the first certified payroll report.

--- END OF SECTION ---

SECTION 00 80 00
SPECIAL CONDITIONS

Index

<u>NUMBER</u>	<u>TITLE</u>
1.	COMMENCEMENT AND COMPLETION
2.	LIQUIDATED DAMAGES
3.	SHOP DRAWINGS AND CERTIFICATES
4.	PROTECTION OF WORK AND MATERIALS
5.	CHANGED CONDITIONS
6.	SUPERINTENDENCE, SKILLED LABOR, AND EMPLOYEES
7.	PROTECTION OF UTILITIES
8.	FIRE PROTECTION
9.	USE OF PORTIONS BEFORE ENTIRE COMPLETION OF WORK
10.	MASSACHUSETTS SALES TAX EXEMPTION
11.	ANTI-DISCRIMINATION CLAUSE
12.	MISPLACED MATERIALS
13.	WAGE RATES
14.	CONTRACT AND REFERENCE DRAWINGS

**SECTION 00 80 00
SPECIAL CONDITIONS**

1. COMMENCEMENT AND COMPLETION

- a. The Contractor shall commence work within ten (10) calendar days after the dates specified in the Notice to Proceed and shall fully complete the work as herein prescribed no later than **December 31, 2023, unless otherwise approved in writing between the Town and Contractor.**
- b. It is specifically understood that "Fully Complete" as used herein shall mean full and complete dredging and disposal of dredge material and any other additional work by incorporation of Add Alternatives and/or change order including, without limitation, all incidentals. Substantial performance is not completion within the meaning of the contract.

2. LIQUIDATED DAMAGES

- a. Contractor agrees to pay as liquidated damages, the sum of \$0.00 for each consecutive calendar day that the Contractor is in default of completing the work.
- b. It is hereby understood and mutually agreed by and between the Contractor and the Owner that the date of beginning and the time for completion are ESSENTIAL CONDITIONS of this Contract; and it is further mutually understood and agreed that the work embraced in this Contract shall be commenced as stated in the Contract Documents.

3. SHOP DRAWINGS AND CERTIFICATES

- a. The Contractor shall submit so as to avoid delay in its work, or that of any Subcontractor, five copies or electronic files of all shop, detail or working drawings and samples, and certificates required for the work and the Engineer shall review them noting comments. If required, the Contractor shall make corrections and resubmit electronic files or five corrected copies or samples for final review and furnish such other copies as may be needed.
- b. The Engineer's review of such Drawings and/or certificates shall not relieve the Contractor from responsibility/for deviations from the Contract Drawings or Specifications, unless it had in writing called the Engineer's attention to such deviations at the time of submission, and unless the Engineer shall have issued a written waiver of the pertinent Specification, nor shall it relieve him from responsibility for errors of any sort in Shop Drawings.

4. PROTECTION OF WORK AND MATERIALS

The Contractor shall protect all work, equipment and materials from deterioration and damage. All work of whatever kind, which during its progress or before the final acceptance of the work as established by the Engineer's Certificate of Completion may have become

SPECIAL CONDITIONS

00 80 00-2

damaged from any cause, shall be removed, and replaced by good and satisfactory work, and at no additional cost to the Owner, both for labor and materials.

5. CHANGED CONDITIONS

- a. If, during the progress of the work, the Contractor or the Owner discovers that the actual sub-surface or latent physical conditions encountered at the site differ substantially or materially from those shown on the plans or indicated in the Contract Documents either the Contractor or the Owner may request an equitable adjustment in the Contract Price of the Contract applying to work affected by the differing site conditions. A request for such an adjustment shall be in writing and shall be delivered by the party making such claim to each other party as soon as possible after such conditions are discovered. Upon receipt of such a claim from a Contractor, or upon its own initiative, the Owner will make an investigation of such physical conditions, and, if they differ substantially or materially from those shown on the plan or indicated in the Contract Documents and are of such a nature as to cause an increase or decrease in the cost of performance of the work or a change in the construction methods required for the performance of the work which results in an increase or decrease in the cost of the work, the Owner will make an equitable adjustment in the Contract Price and the Contract will be modified in writing accordingly.
- b. Any adjustment in compensation and/or any adjustment in Contract time because of any changes resulting from one or more of the conditions described in the foregoing paragraph will be made in accordance with the provisions of ARTICLE VII - ALTERATIONS OF WORK contained within the General Conditions.

6. SUPERINTENDENCE, SKILLED LABOR, AND EMPLOYEES

- a. The Contractor shall employ qualified personnel for scheduling all materials and equipment to be used in the Project and for preparation of suitable working drawings. The Contractor shall employ a suitable superintendent and foremen to represent him at all the several parts of the work and they shall be present at all times while the work entrusted to them is in progress and shall be informed thoroughly regarding it. The foremen, workers, and others employed by the Contractor shall be skilled and experienced in the particular work which is given them to do.

7. PROTECTION OF UTILITIES

Location and depth of existing utilities are estimated and should not be relied upon by the Contractor. The Contractor shall check and verify the location of all existing utilities, both underground (by test pits or other approved means) and overhead before proceeding to begin the work or to order materials. Excavation, if any, shall be in accordance with Chapter 502 of the Acts of 1980 entitled, "An Act Further Regulating Excavation in Public Ways," which became effective in the Commonwealth of Massachusetts on October 12, 1980, including any amendments thereto, and all other statutes, by-laws,

SPECIAL CONDITIONS

00 80 00-3

rules and regulations of any city, state or federal agency that may be applicable. Any damage to the existing utilities and any other costs arising out of said excavation or by reason thereof shall be the Contractor's sole responsibility.

8. FIRE PROTECTION

The Contractor shall take all necessary precautions to prevent fires adjacent to the work and its buildings and it shall prevent the spread of fires to areas outside the limits of the work. It shall provide adequate facilities for extinguishing fires.

9. USE OF PORTIONS BEFORE ENTIRE COMPLETION OF WORK

The Owner and its duly authorized representative may enter upon and use any portions of the work for the Owner's benefit before final completion of the whole work to be done under this Contract, without any claim by the Contractor for payment for said use, or for any damage for delay caused by such use.

10. MASSACHUSETTS SALES TAX EXEMPTION

Materials for use in the work under this Contract are exempt from the Massachusetts Sales Tax. The Tax Exemption number shall be provided.

11. ANTI-DISCRIMINATION CLAUSE

In connection with the performance of work under this Contract, the Contractor agrees not to discriminate against any employee or applicant for employment because of race, color, religious creed, national origin, age, or ancestry. The aforesaid provision shall include but not be limited to the following: employment upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; conditions or privileges of employment; and selection for training, including apprenticeship. The Contractor agrees to post hereafter in conspicuous places available for employees and applicants for employment, notices to be provided by the Massachusetts Commission Against Discrimination setting forth the provisions of the fair employment practice law of the Commonwealth. The aforesaid provision shall be binding upon all subcontractors, except subcontractors for standard commercial supplies or raw materials.

12. MISPLACED MATERIALS

Should the Contractor during the progress of the work, lose, dump, sink, or misplace any material, plant, machinery, or appliance, which in the opinion of the Engineer or Owner is unsatisfactory, the Contractor shall recover and remove the same with the utmost dispatch. If such material must be removed by the Owner, the cost of such removal may be deducted from any money due the Contractor or may be recovered under its bond.

13. WAGE RATES

All construction work will be governed by the prevailing Minimum Wage Rates

SPECIAL CONDITIONS

00 80 00-4

established for this project as determined by the commissioner of the Massachusetts Department of Labor and Industries pursuant to M.G.L.C. 149, Sections 26 and 27, as attached to this Section.

14. CONTRACT AND REFERENCE DRAWINGS

The work shall conform to contract drawings.

--- END OF SECTION ---

SECTION 01 11 00
SUMMARY OF WORK

PART 1 GENERAL

1.1. SCOPE OF WORK

- A. Perform all activities and furnish all labor, materials, equipment, Subcontractor services, and incidentals to implement the Work in accordance with the Contract between the Town of Wellfleet, MA (Town) and the Contractor. The Wellfleet Harbor Dredging Project consists of the dredging, removal, and off-site disposal of sediment from the areas known as Area II or South Mooring Field, adjacent to Federal Channel.
- B. The Town will remove and reinstall all moorings within the dredge footprint.
- C. The Town has retained GEI Consultants, Inc. (GEI) to serve as the engineer of record for the Project (Engineer). GEI will provide input on the review of submittals and Requests for Information (RFIs), and other ancillary services as may be requested by the Town.
- D. All tasks, requirements, deliverables, etc. contained in the Contract Documents are the sole responsibility of the Contractor unless specifically assigned to Others. Project Work to be performed by the Contractor includes, but is not limited to, the following:
 - 1. Prepare and implement a Contractor Health and Safety Plan.
 - 2. Install, operate, and maintain temporary facilities and controls, including:
 - a. Worker health and safety measures.
 - b. Vessel based sanitary facilities.
 - c. Sedimentation controls.
 - 3. Establishing additional survey control points, as necessary.
 - 4. Obtaining all construction-related permits and clearances as required for completion of the Work.
 - 5. Read, understand, and abide by the provisions of all permits and provide coordination and adequate notice as may be required by the regulatory agencies.
 - 6. Perform the Work:
 - a. Identify, temporarily relocate, or protect existing utilities and Site features to remain after the Project is complete.
 - b. Perform monitoring, surveys, and testing as required by the Contract Documents
 - c. Install, maintain, and remove turbidity controls around the work area.
 - d. Site mobilization and demobilization.
 - e. Dredge by mechanical method using an environmental bucket and remove sediment to the limits shown on the contract drawings.

- f. Removal, segregation, and disposal of debris found within the dredge limits shown. Rock is not considered debris.
 - g. Place sediments into scow and transport to the Cape Cod Bay Disposal Site. Certifications, monitoring, and reporting through Dredge Quality Management (DQM) system.
 - h. Reinstall all Site features and appurtenances that are damaged or relocated by the Contractor during the performance of the Work.
- 7. Demobilize and promptly remove all contractor supplies, equipment, and tools from the Site after completion of the Work. Restore, repair, or replace utilities, and other features that were removed, damaged, destroyed, or disrupted during construction.
 - 8. Provide and perform any other equipment, Work, or submittals required to facilitate items 1 through 7 above and the Work shown on the Contract Drawings.

1.2. PROJECT CONDITIONS

- A. Information regarding Site conditions is intended to assist the Contractor in preparing their Bid. The Town and GEI guarantee neither the accuracy of this information nor that this information is necessarily indicative of all conditions that may be encountered, therefore the Contractor agrees that it shall neither have nor assert against the Town or GEI any claim for damages by reasons of inaccuracy, inadequacy, incompleteness, or other deficiency of the information provided. The Contractor shall satisfy/verify for himself all existing conditions, including understanding the site data presented in the Bid Documents, affecting his Work by personal investigation. Failure by the Contractor to understand and verify all existing site conditions shall not result in additional charges to the Town. Also, neither the information provided by GEI, the Town, or their agents or employees, shall act to relieve Contractor of any responsibility hereunder from fulfilling all the terms and requirements of the Contract Documents.

1.3. CONTRACT DOCUMENTS

- A. The Contract Documents include all Specifications, Contract Drawings, figures, and conditions included or referenced in the Request for Proposal package, and any subsequently approved Change Orders.
- B. The organization and division of Work contained within the Contract does not make GEI or the Town representative an arbitrator to establish contract limits between the Contractor and any Subcontractor.

1.4. ORDER OF PRECEDENCE

- A. In the event of a conflict between any of the Contract Documents, the following order of precedence will be applied to determine which document will govern (first document listed being of highest precedence):
 - 1. Agreement.
 - 2. Contract Supplemental Conditions issued by the Town.

- 3. Contract Drawings.
- 4. Specifications.
- 5. MassDOT Standard Specifications.

B. Any conflicts discovered within the Contract Documents should be immediately brought to the attention of the Town.

1.5. CONTRACTOR REQUIREMENTS

- A. Perform the scope of Work contained in the Contract Documents.
- B. Comply with the requirements of the Contractor Health and Safety Plan. Take precautions as necessary to protect the public and work force personnel from potential hazards.
- C. For any Work performed in close proximity to residential or commercial properties, utilities, or any other third-party property, take appropriate precautions to protect the property, utility lines, fences, and other structures and/or related appurtenances from damage.
- D. Repair any damage caused directly or indirectly by the Contractor outside the Project limits, as directed by the Town, at no additional cost to the Town.
- E. Comply with all applicable OSHA safety regulations during the performance of the Work.

1.6. CONTRACT DRAWINGS AND SPECIFICATIONS

- A. Maintain at the Site, two (2) copies of all Contract Drawings, Specifications, Addenda, approved Shop Drawings, Change Orders, schedules, and instructions, in good order. Mark one set to record all changes made during construction and keep one set clean of all markings. Make both sets readily available for review by the Harbormaster or other designated agent.
- B. The Contract Drawings include notes. Refer to the Contract Drawings in conjunction with the Specifications.

1.7. WORK BY OTHERS

- A. The Town will perform a pre-dredge bathymetric survey prior to work commencing and will perform a post-dredge bathymetric survey at the conclusion of the Work. These surveys will be used for verification of the pre and post dredge surfaces and to determine the final volume, for the purposes of measurement and payment.

PART 2 PRODUCTS

(Not Applicable)

PART 3 EXECUTION

(Not Applicable)

---END OF SECTION 01 11 00---

SECTION 01 14 00
WORK RESTRICTIONS

PART 1 GENERAL

1.1. SUMMARY

- A. This section contains general restrictions to be followed during the performance of the Work. Other sections of the specification may contain additional requirements/restrictions for the performance of their specific subject matter.

1.2. WORK HOURS

- A. Work activities can be conducted 24 hours per day 7 days per a week.

1.3. SCHEDULE

- A. All dredging work must be completed within the time of year restrictions established by the project permits.
- B. Copies of the Project permits have been included as an appendix to the Bid Documents. Example Army Corps of Engineers permit is provided for bidding purposes. Actual permit approval is pending and will be provided as an amendment.
- C. The Work must be completed before the end of the time of year restrictions established in the Project permits.

1.4. MARINE MAMMEL/TURTLE OBSERVER

- A. A marine mammal/turtle observer must be provided when performing parts of the Work. Refer to the regulatory approval conditions that have been included in Attachment C for additional details.

1.5. SITE ACCESS

- A. All sediments/debris must be removed from the site via barge.
- B. Debris must be segregated and disposed of at an approved upland facility.
- C. All Work must be performed from the water.
- D. The Contractor may dock a launch at a Town owned facility. Town provided docking space is provided for the convenience of the Contractor only, the Town is not responsible for any delays or injuries incurred via the use of Town owned facilities.
- E. Public parking is available on-site, coordinate location with Harbormaster.

1.6. COMMUNICATION WITH THIRD PARTIES

- A. Representatives of regulatory agencies from the Town, USACE, and other local civic organizations may be on-Site to observe and inspect the Work.
 - 1. Maintain a supply of additional Level D Personal Protective Equipment (except for safety boots) on-Site to provide to regulatory agency personnel, if needed.
- B. Direct any communications received from regulatory agency personnel to the Town.

- C. Do not communicate with the media/press, Project stakeholders, public, etc. regarding the Work. Refer all external questions and comments to the designated Town representative.

1.7. LAY DOWN AND STORAGE AREA

- A. The Town will permit the contractor to have a laydown area and temporary facilities by the Contractor on the Town pier for use during construction. The location and size of this area shall be approved by the town. The contractor shall assume a laydown area of approximately 10,000 SF will be available.

1.8. SANITARY FACILITIES

- A. Provide sanitary facilities on-board the dredging barge for use by the Contractor personnel, Subcontractors, and visiting agency representatives during the performance of the Work.

1.9. NOISE CONTROL

- A. Comply with all noise ordinances for the Town of Wellfleet during the performance of the Work.
- B. Equip motorized equipment with appropriate noise control devices to maintain noise levels that conform to current OSHA standards and State and local regulations. Take immediate steps to correct any deficiencies noticed, or as directed by the Town.
- C. Properly maintain all mufflers and noise control devices and replace when necessary. Operate all construction equipment in the manner that it was intended. Excessive amount of noise and vibration due to the improper use of equipment, is prohibited.
- D. All equipment that is required to operate beyond standard work hours will, to the maximum extent possible be, electrically driven.

1.10. EQUIPMENT LEFT ON-SITE

- A. Secure all equipment left on-Site outside of standard work hours and remove ignition keys from all equipment.
- B. Ensure that all equipment, where feasible, is de-energized when left on-Site and not in use to prevent electrical/fire/explosive hazards. The Contractor is responsible for the security, operation, and maintenance of any systems that require such services outside standard work hours. If systems are operational outside the standard work hours, provide oversight at all times when equipment is in operation, or provide an electronic monitoring system with a remote communication feature to alert the appropriate personnel of a system failure. Repair system failures in a timely manner such that the Project schedule is not affected.
- C. Any generators running on-Site overnight must be enclosed and/or baffled such that their noise producing levels do not exceed applicable State and local regulations.

PART 2 PRODUCTS

(Not Applicable)

PART 3 EXECUTION

3.1. ENVIRONMENTAL PROTECTION

- A. For the purposes of this specification, environmental protection is defined as the retention of the environment in its natural state to the greatest extent possible during construction. Comply with all applicable or relevant and appropriate, Federal, State, local laws, and permit conditions to provide for the abatement and control of any potential environmental impacts arising from the performance of the Work.
- B. Comply with all project permits and provide notices and other submittals as required by the project permits.
- C. The Town will notify the Contractor of any instances of non-compliance with Federal, State, local laws, or permit conditions and identify corrective actions to be taken. State or local agencies may also provide notification of non-compliance with state or local requirements. After receipt of any notice of non-compliance, the Contractor shall immediately inform the Town of the proposed corrective action and take such actions once they are approved by the Town. Failure or refusal to promptly comply may result in the Town issuing an order suspending or halting all or parts of the Work until satisfactory corrective action has been taken. Claims for extensions of time or for excess costs or damages due to the stop Work order described above, will be denied.
- D. Do not pollute any stream, river, waterway, roadway, or soil with fuel, oil, grease, lubricant, hydraulic fluid, bitumen, calcium chloride, acid, base, or other harmful materials. Comply with the appropriate Federal, State, and local regulations and guidelines for the handling and disposal of any encountered contaminated materials.
- E. Properly dispose of any debris resulting from the performance of the Work. Disposing of any contaminated soil, water, effluent, byproduct, waste, trash, chemical, fuel, oil, grease, lubricant, bitumen, calcium chloride, acid, base, or other harmful material etc., in or adjacent to the Project area is not acceptable. Remove any unauthorized dumped materials and restore the area as directed by the Town. If necessary, areas contaminated because of unauthorized activity, failure of environmental controls, or dumping by the Contractor will be remediated at no additional cost to the Town.
- F. If encountered, dispose of all contaminated materials (debris, soil, water, effluent, by-product, waste, trash, chemical, fuel, oil, grease, lubricant, bitumen, calcium chloride, acid, base, used erosion controls, or other harmful material, etc.) resulting from the Work in accordance with all applicable, or relevant and appropriate, Federal and State laws at a Town approved disposal facility prior to completion of the Work.

---END OF SECTION 01 14 00---

SECTION 01 18 00
UTILITY PROTECTION

PART 1 GENERAL

1.1. SUMMARY

- A. This specification contains the requirements for the location and protection of utilities that could potentially be affected by the performance of the Work.

1.2. UTILITY COORDINATION

- A. The Contractor is solely responsible for any and all required notifications to utility companies prior to commencing the Work, and for response to any emergencies that may arise during the Work. Certain active and inactive utilities may currently be present at the Site. The exact location and type of utility is to be determined by the Contractor without reliance on information provided by the Town or GEI.

1.3. PROTECTION OF EXISTING UTILITIES

- A. Comply with the requirements of all applicable utility protection laws or regulations.
- B. Contact and cooperate with utility companies to locate all utilities (including pipelines, cables, and other structures) on the Site prior to beginning the Work.
- C. Protect all utilities from damage during construction, unless otherwise indicated to be removed or abandoned. If damaged, repair the utilities as required by the utility's owner at the Contractor's expense.
- D. If a utility is encountered that is not shown on the Contract Drawings, or otherwise not made known to the Contractor prior to beginning the Work, promptly take the necessary steps to assure that the utility is not damaged and notify the Town of the presence of the utility. The Town will review the conditions and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence of the utility.
- E. Immediately notify the Town of any incident involving a utility.

1.4. SUBMITTALS

- A. If a utility, either known or unknown, is damaged during the performance of the Work submit a written description of the incident to the Town within 48 hours of the incident.

PART 2 PRODUCTS

(Not Applicable)

PART 3 EXECUTION

(Not Applicable)

---END OF SECTION 01 18 00---

SECTION 01 20 00
PRICE AND PAYMENT PROCEDURES

PART 1 GENERAL

1.1. SUMMARY

- A. This specification contains the requirements for measurement for payment of the Work and descriptions of the pay items.

1.2. PAYMENT TERMS

- A. Payment will not be made unless the proper supporting documentation has been submitted and approved by the Town.
- B. Payment includes full compensation for all required labor, products, tools, equipment, transportation, services, permits, surveys, supervision, testing, incidentals, erection, application, supply, or installation for completion of an item of the Work, including overhead and profit.
- C. Payment will not be made for any of the following:
 - 1. Products wasted or disposed of in a manner that is not acceptable.
 - 2. Products determined unacceptable before or after work.
 - 3. Products not completely unloaded from the transporting vehicle.
 - 4. Products placed or removed beyond the lines and levels of the required Work.
 - 5. Any rejected work.
 - 6. Loading, hauling, and disposing of rejected materials.
 - 7. Products remaining on hand after completion of Work.
 - 8. Additional Work undertaken to expedite Contractor's operations.
 - 9. Repair or replacement of property located within or adjacent to the Work area.
- D. Payment will be made for all Work actually performed during a particular payment period. Payments for lump sum items will be made based on the percent completion of the pay item, upon approval by the Town.

1.3. SUBMITTALS

- A. Submit a Town supplied Project Price Schedule with the Bid that has been signed by a company officer who is authorized to contractually bind the company.
- B. Submit monthly invoices in a format that is acceptable to the Town.

1.4. QUANTITY ESTIMATES

- A. For all unit price Work, the Contract price will include an amount equal to the sum of the unit price for each pay item times the estimated quantity of each item as indicated in the Project Price Schedule. The estimated quantities shown on the Project Bid Proposal are

- not guaranteed and are solely for the purpose of comparison of bids and determining an initial Contract price. Quantities and measurements supplied or placed in the Work in accordance with the Specifications and Contract Drawings, and verified by the Town, will determine payment.
- B. The Town will verify the quantities and classifications of unit price Work invoiced by the Contractor. The Town will review their preliminary determination with the Contractor before rendering a decision on an application for payment.
 - C. If the actual Work requires more or fewer units than the estimated units indicated on the Bid Proposal, provide the required units at the contracted unit price. Under no circumstances may the Contractor exceed estimated quantities without prior written approval from the Town in the form of a Change Order.
 - D. The Town reserves the right to increase (via a Change Order) or decrease any pay item quantity, or to eliminate any pay item, as a result of the actual conditions encountered during the performance of the Work.

1.5. MEASUREMENT OF QUANTITIES

- A. Measurement by Weight:
 - 1. Weigh Scales: Certified in accordance with applicable laws and regulations for the state in which the scales are located. Certification must be within a period of not more than one year prior to the date of use.
 - 2. The term “ton” will mean the short ton consisting of 2,000 pounds.
 - 3. For shipments to off-Site disposal facilities, trucks will be weighed at the receiving facility for the purpose of measuring the quantity of Work for payment.
- B. Measurement by Volume:
 - 1. All volume will be measured as in-place and determined by survey.
 - 2. Material dredged and disposed by mechanical method and disposed of at the Cape Cod Bay Disposal Site shall be measured by computing the volume between the bottom surface shown by sounding of the last Owner survey made before dredging and the bottom surface shown by sounding of the final Owner survey made within one week, or as otherwise practicable, after the Work has been completed. No measurement will be made for material dredged from outside the payment limits indicated on the Contract Drawings.
 - 3. For applications for progress payments (if made), retain the services of an independent surveyor that is licensed in the State of Massachusetts. To compute in-place volumes, use the surface comparison function in the surveying software program, or other methods acceptable to the Town.
 - 4. Unless stipulated otherwise, all pay items that refer to being measured for payment by volume will be interpreted to mean in-place volume.

- C. Measurement by Time:
 - 1. Measure by the actual time, rounded to the nearest time unit, and verified by the Harbormaster.
- D. The Town reserves the right to reject measurements for progress payments provided by the Contractors licensed surveyor and have the units re-measured for payment at their own expense by a licensed surveyor under separate Contract to the Town.

1.6. ASSESSMENT OF NON-CONFORMING WORK

- A. Replace Work, or portions of the Work, that do not conform to the requirements of the Specifications and Contract Drawings, as assessed by the Town.
- B. If, in the opinion of the Town, it is not practical to remove and replace the non-conforming Work, the Town will direct one of the following remedies:
 - 1. The non-conforming Work may remain, but the price will be adjusted to a new price at the discretion of the Town.
 - 2. Partially repair non-conforming Work to the instructions of the Town, and the price will be adjusted to a new price at the discretion of the Town.
- C. The individual Specification sections specific to the Work in question may modify these options or may identify a specific formula or percentage price reduction.
- D. The authority of the Town representative to assess non-conforming Work, and identify payment adjustment, is final.

1.7. ELIMINATED ITEMS

- A. If any items contained in the Contract Drawings or Specifications are found unnecessary for the proper completion of the Work, the Town may, upon written order to the Contractor, eliminate such items from the Work, and such action will in no way invalidate the Contract.
- B. The Contractor will be paid for all Work performed and all documented costs incurred, including the mobilization of materials, prior to the elimination of such items.

1.8. MEASUREMENT AND PAYMENT OF BID ITEMS

- A. The Project Bid Proposal lists the pay items for the Work.
- B. At the direction of the Town, the Contractor may be asked to perform additional Work. The unit rate schedule included in the Contractor's proposal will be the basis for measurement and payment of equipment and labor for any additional Work. Include overhead and profit on the Contractor unit rate schedule for all additional Work.
- C. For all pay items, payment to the Contractor for completed Work will constitute full compensation for all labor, supervision, submittal preparation, materials, equipment, incidentals and all other costs necessary to complete the pertinent pay item.
- D. The following paragraphs specify measurement and payment of the pay items listed on the Project Bid Proposal:

Item 1 Mobilization

- A. Mobilization shall be measured by the Contract Price LUMP SUM (LS) and shall be measured once only for the entire Contract. Lump sum shall not exceed the lesser of 15% of total Base Bid price or \$750,000.
- B. Payment to complete Mobilization shall include, but is not limited to:
 - 1. Movement of personnel, equipment, and materials to the Site, if such movement is not included in any other bid item.
 - 2. Participating in preconstruction coordination meetings.
 - 3. Preparation, submittal, and revision (if required) of all pre-mobilization submittals described in Specification Section 01 33 00 - Submittal Procedures.
 - 4. Relocation of equipment and remobilization to suit vessel operations.
 - 5. Provide Project management oversite.
 - 6. All office and field engineering and survey support, surveys, supervision, notifications, coordination, reports, and compliance.
 - 7. Participation in preconstruction and periodic project coordination meetings.
 - 8. Preparation, submittals, and revisions (if required) of all submittals.
 - 9. Implement the health and safety requirements specified in the Contract health and safety plan.
 - 10. Install and maintain temporary facilities and controls unless specifically identified as being provided by Others.
 - 11. Site preparation and project clean up.
 - 12. Take any required correction action, as may be directed by the Town, to remediate conditions associated with a failure of the turbidity controls.
 - 13. Installation, operations, maintenance, and removal of the marine signaling equipment.
 - 14. Compliance with all applicable U.S. Coast Guard regulations for the use of temporary signaling equipment, including any required coordination, during the performance of the Work.
 - 15. Demobilization of all personnel, equipment, and materials used to complete the work that is not already included in any other bid item.
 - 16. Restoration of any features or structures that were removed or damaged during the performance of the Work.
 - 17. Removal and lawful disposal of all environmental controls used during the performance of the Work.

18. All other costs for work or activities not included in another pay item, or specifically identified as being the responsibility of Others, not specifically identified but required to complete the work specified.
19. Mobilization will be paid Sixty Percent (60%) of the lump sum price upon completion of mobilization to the work site. An additional twenty-five percent (25%) will be paid to the Contractor upon the acceptance of his verification survey. The final fifteen percent (15%) will be paid only after the Contractor has received the written notice from the Town to proceed with final demobilization and has successfully demobilized to the satisfaction of the Town.

Item 2 Dredging & Disposal – Cape Cod Bay Disposal Site

- A. Materials dredged by mechanical methods shall be measured by the CUBIC YARD (CY) of the material dredged by computing the volume between the bottom surface shown by sounding of dredge survey. Progress payment, if desired, will require intermediate dredge surveys.
- B. No measurement or payment will be made for materials dredged beyond the payment limit indicated in the Contract Drawings.
- C. No separate measurement or payment will be made for costs in connection with transportation of dredge spoils to the designated offshore disposal site.
- D. Work required to complete Dredging & Disposal – Cape Cod Bay Disposal Site includes, but is not limited to:
 1. The removal of sediments and debris to the lines and grades shown on the Contract Drawings.
 2. The loading of sediments and debris onto barges.
 3. Segregating debris from sediments as needed to meet the requirements for use of the approved offshore disposal site.
 4. Changeout of dredge buckets, as needed, to remove any debris encountered during the performance of the Work.
 5. Transportation of sediment to the approved offshore disposal site.
 6. The lawful offloading and disposal of sediment at the Cape Cod Bay Disposal Site
 7. All required permits and submittals.
- E. Dredging and Disposal Work will be measured for payment on an in place cubic yard basis, as verified by surveys.

Item 3 – Transportation and Disposal – Debris

- A. Transportation and Disposal – Debris will be measured on a per TON (TON) basis, as documented by disposal facility scale weight tickets.

- A. Work required to complete the Transportation and Disposal – Debris pay item includes, but is not limited to:
 - 1. All labor, equipment, dumpsters, and work associated with the segregation, shipping/hauling of the debris from the project site to the disposal facility
 - 2. Transportation and disposal of debris dredged from the Project Site to a Town-approved disposal facility.
- B. Transportation and Disposal – Debris will be measured for payment on a per ton basis, as documented by disposal facility scale weight tickets.

PART 2 PRODUCTS

(Not Applicable)

PART 3 EXECUTION

(Not Applicable)

---END OF SECTION 01 20 00---

SECTION 01 30 00
ADMINISTRATIVE REQUIREMENTS

PART 1 GENERAL

1.1. SUMMARY

- A. This Section describes Project administrative requirements; the minimum level of coordination and meetings required to execute the Work and required pre-mobilization submittals.

1.2. ON-SITE CONSTRUCTION PERSONNEL

- A. The Contractor is to maintain a full-time on-Site Superintendent, who will be responsible for quality assurance, Contractor health and safety, and competent person(s) for the duration of the Work. The Superintendent will be responsible for the supervision and/or coordination of all Contractor employees, Subcontractors, manufacturers, fabricators, suppliers, distributors, installers, and testing agencies whose services, materials or equipment are required to ensure the completion of the Work. The Superintendent will have sufficient qualifications, experience, and authority to act as a single point of contact for the on-Site staff, and to make adjustments to the means and methods as needed and as requested by the Town.
- B. The Engineer will make periodic visits to the Site to observe the Work. The Engineer will not direct the Contractor with regard to their means and methods of construction but may identify areas of non-conformance with the Specifications that require redress by the Contractor.

1.3. MEETINGS

- A. Attend all Project meetings as deemed necessary by the Town during the term of the Contract.
- B. A pre-construction meeting will be held at the Site prior to the start of the Work. At a minimum, the Contractor's project manager and Superintendent for the Project will attend the meeting. It is recommended that the Contractor assemble input from primary Subcontractors prior to this meeting.
 - 1. This meeting is intended to make certain that the Work is properly scheduled, responsibilities are coordinated among Subcontractors and suppliers, and that those responsibilities are reflected on the Contractor submittals. Questions concerning any other aspect of the Project may also be addressed.
- C. Beginning with the mobilization to the Site, at a location designated by the Town, the Contractor will facilitate weekly on-site construction meetings among contractor, GEI, Harbormaster and Town Representative for the duration of the Work. Present a progress update at weekly construction meetings that includes tasks completed from the prior week, currently active tasks, and tasks/activities planned for the next two weeks along with an updated Project schedule. The format of the two-week look ahead must be submitted and approved prior to use.

- D. The standard day and time for the weekly construction meeting will be established based on mutual agreement between all regular participants.
- E. Individuals authorized to discuss and make decisions on behalf of the Contractor, relative to the meeting agenda, must participate in all weekly construction meetings.
- F. All expenses associated with attending the meetings, except those that are incurred by the Town, their representatives, or consultants, are to be borne by the Contractor.

1.4. REQUESTS FOR INFORMATION, CLARIFICATIONS, AND CHANGES

- A. All requests for Project information, clarifications, or changes in the requirements of the Contract Documents must be made in writing to the Town.
- B. Written requests must be provided regardless of any preceding conversations and preliminary decisions regarding the subject matter(s).
- C. At the discretion of the Town, e-mail communications may qualify as “requests made in writing” for the purposes of this provision.
- D. The Town will provide written responses to each request.
- E. The Town may also issue clarifications and/or amendments based on their own assessment of Project needs.
- F. Any potential increases or decreases in Contractor compensation due to amendments will be in accordance with the provisions of the Supplemental Conditions.
- G. If latent or unforeseen conditions require modifications to the Contract, the Contractor must propose changes in the Work by submitting a detailed request to include labor rates, equipment rates, material costs, etc. for a change to the Town.

1.5. RECORDS

- A. Maintain copies on-site of all Project correspondence and Project documents generated during the Work.

1.6. PRE-MOBILIZATION SUBMITTALS

- A. All submittals are subject to review and approval by the Town and/or the Engineer. Provide all submittals to the Town who will then forward them onto the appropriate party for review. Submittals will not be approved until the reviewing party has determined that they meet the minimum requirements of these specifications. Claims for lost time or requests for extensions based on rejected pre-mobilization submittals will be denied.
- B. Contractor Health and Safety Plan:
 - 1. Prepare and submit a site-specific Contractor Health and Safety Plan.
 - 2. Refer to Specification Section 01 35 00 for details on what must be included in the Contractor Health and Safety Plan.

C. Project Schedule:

1. Prepare a Critical Path Method (CPM) or bar chart project schedule and provide it to the Town at the first post-award meeting. Update and disseminate the schedule on a weekly basis.
2. Contractor must achieve a minimum of 30,000 Cubic Yards per calendar month. If the contractor fails to achieve the specified production rate in any month, the contractor shall implement remedial action immediately and shall submit a written recovery plan within 2 days. The Recovery Plan shall add sufficient resources, equipment, etc. such that the contractor achieves the prescribed cumulative production by end of that month.

D. Pre-Construction Condition Documentation:

1. Perform a pre-construction condition documentation of the site to 50 feet beyond the Project limits under the supervision of the Town.
 - a. Submit the findings of the pre-construction condition documentation to the Town prior to mobilization.
 - b. Include video/photographic documentation of the existing conditions of the Site and surrounding structures, including rip rap slopes, floating docks, piers, and building or other structures in-place at the harbor.
 - c. Claims determined to be resulting from pre-existing structural and/or cosmetic damage, not identified during the pre-construction survey, will be the sole responsibility of the Contractor to remedy to the satisfaction of the applicable owner(s).

E. Dredging Plan:

1. Refer to Specification Section 35 20 23 – Dredging by Mechanical Methods for details on the information required to be included in the Contractor supplied Dredging Plan.

F. Turbidity Control Plan:

1. Contractor shall establish the following minimum turbidity controls and monitoring procedures.
 - a. Monitoring shall be completed utilizing a turbidity meter, at a depth of four feet (4') below the water surface and down current from where dredging operations are occurring.
 - b. Prior to dredging commencing each day, background baseline measurements shall be taken and utilized for control. Three background measurements shall be taken and averaged each day dredging is occurring. Measurements shall be taken at a location seven hundred fifty (750') feet up current of where dredging will be occurring that specific day.

- c. During dredging, measurements must be taken every hour. Measurements shall be taken at a distance twenty (200') feet down current from the dredge area and four feet (4') below the water's surface.
 - d. In the event of a turbidity exceedance warning the Contractor shall implement corrective measures to reduce turbidity such as slowing bucket operations. A turbidity exceedance warning shall constitute a reading that is 30 NTUs greater than baseline.
 - e. In the event of a turbidity exceedance event, dredging operations need to be stopped immediately and mitigation measures should be taken immediately to contain turbidity. A turbidity exceedance event shall constitute a reading that is 50 NTUs greater than the baseline for the sampling location. A turbidity exceedance event shall be reported to the Engineer and MassDEP.
 - f. Records for turbidity monitoring shall be maintained for submittal to regulatory agencies.
2. Contractor shall prepare a Turbidity Control Plan indicating means and methods for minimizing turbidity and how permit requirements for turbidity control will be met. Alternative turbidity controls and monitoring measures may be submitted for consideration by the regulatory agencies and would require approval before implementation.
- G. Schedule of Permits:
1. Submit copies of all supplemental and/or recurring data required by the permits to the Town, as needed. Include documentation that the supplemental data was provided to the entity that issued the permit, according to the schedule required by the permit.
 2. Submit copies of any Contractor obtained permits to the Town.

1.7. DAILY REPORT

- A. Prepare a daily report summarizing the staff and equipment used and Work performed. The Contractor's internal documentation used for this purpose may fulfill this requirement, subject to approval by the Town. At a minimum, the daily report will include the following additional items:
1. Summary of any safety related issues including a summary of the daily safety meeting and running total of safe hours worked.
 2. Approximate dredging rate for the reporting period and a brief description of where the Work was being performed.
 3. Approximate disposal rate for the reported period and a brief description of where the Work was being performed.
 4. Status of all marine signaling equipment. Note the date and time that any irregularity in the system (e.g., inoperable lights, markers off station, markers removed) is discovered, and the date and time that irregularities are corrected.

5. Status of the turbidity controls. Note any maintenance performed on the systems, unsatisfactory performance observed, and corrective actions taken.

B. Submit the daily report to the Town by 10 AM of the next calendar day.

PART 2 PRODUCTS

(Not Applicable)

PART 3 EXECUTION

(Not Applicable)

---END OF SECTION 01 30 00---

SECTION 01 33 00
SUBMITTAL PROCEDURES

PART 1 GENERAL

1.1. SUMMARY

- A. This section summarizes the protocol and procedures for the preparation and delivery of submittals to the Town.

1.2. GENERAL REQUIREMENTS

- A. The Contractor shall review and approve all submittals prior to submittal to the Town.
- B. Provide all submittals in electronic format directly to the Town. The Town may require review and recommendation by Engineer prior to approval. The Town reserves the right to request that any submittal be provided via paper copy.
- A. For all submittals requested via paper copy, provide five (5) copies unless otherwise directed.
- B. Include calculations, shop drawings, plans, reports, records, photographs, diagrams, and details with submittals, as needed, to facilitate the review and/or approval process.
- C. Contractor shall submit all submittals to the Town and Engineer in sufficient time for checking and processing. Shop Drawings shall be of sufficient clarity so that copies thereof will be legible.
- D. All submittals by subcontractors for approval shall be sent directly to the Contractor for approval. The Contractor shall be responsible for their submission to the Town and Engineer at the proper time so as to prevent delays in delivery of materials.
- E. All Submittals shall be referenced properly to clearly indicate the location, service, and function of each particular item and the specification paragraph under which it is being furnished.
- F. Submittals that are related to or affect each other shall be forwarded simultaneously as a package to facilitate coordinated review. Uncoordinated submittals will be rejected.
- G. The Engineer reserves the right to require submittals in addition to those called for in individual sections.
- H. The term “Shop Drawings” include drawings, diagrams, schematics, descriptive literature, illustrations, schedules, performance and testing data, and similar materials furnished by the Contractor to explain in detail specific portions of the work required by the contract.
- I. Provide submittals electronically in the format requested (i.e. document file, drawing file, image file, etc.). For electronic drawings, submit AutoCAD 2018 (or later) file using the e-transmit feature (i.e. include external references, image files, color table file, font file, line file, etc.). Convert all AutoCAD add on data to AutoCAD format. Use descriptive layer titles (i.e. not numbers or internal use acronyms). Use extensive layer control and use line color by layer and line type by layer management. AutoCAD files of the Contract

Drawings will be made available to the Contractor selected to perform the Work, upon request.

- J. Certifications must be signed by an officer or other individual authorized to sign on behalf of the entity. Submittals requiring preparation by an engineer or surveyor must be signed and sealed by a Professional Engineer/Surveyor licensed to practice engineering in the Commonwealth of Massachusetts.
- K. Schedule submittals to expedite Work. Provide the Town a minimum of five (5) Business Days, excluding transmittal time, for review.

1.3. SUBMITTAL PROCEDURES

- A. Each Submittal shall be numbered with the project name (abbreviated), Specification section and submittal number in consecutive order (Ex NAME-013300-#). Where resubmission is required a letter shall be assigned to designate each resubmission (Ex. NAME- 013300-#A, NAME-013300-#B, etc.)
- B. Use a cover form for each submittal. Include the Project name, Project number used by the Town, date, submittal number, submittal description/title, submittal exclusions, and deviations from the Contract Documents (if any) on each cover form. The submittal cover form must be signed by an individual authorized to sign documents on behalf of the Contractor.
- C. Use the same units of weights and measures on submittals that are used in the Contract Documents.
- D. Identify variations from the Contract Documents and product or system limitations that may be detrimental to successful performance of the completed Work.
- E. Resubmit submittals if requested by the Town. When performing a submittal revision, identify all changes made since previous submission. For each re-submittal allow the same number of workdays required for review as the original submittal.
- F. Submittals not requested will not be recognized or processed.
- G. The Contractor shall distribute approved submittals to job site and record documents files and to suppliers and subcontractors as required.

1.4. SUBMITTAL REGISTER

- A. Maintain a technical submittal register at the Site. Including the submittal number, description, date submitted, status, and date of approval/rejection.

1.5. SUBMITTAL REVIEW

- A. Submittals will be reviewed solely for the purpose of determining whether the information contained in the submittal conforms to the design concept of the Contract Documents. Submittals will be returned with the following classifications:
 - 1. No Exceptions Taken: Work may proceed, no exceptions taken.

2. Furnish as Corrected: Work may proceed subject to comments, resubmittal not required.
 3. Revise and Resubmit: Work may not proceed, resubmittal required for indicated items. Proceed with Work on other items subject to comments.
 4. Rejected: Work may not proceed, resubmittal required, submittal unresponsive and/or not in conformance with Contract Documents.
- B. Any review performed by the Town or Engineer is for the limited purpose of checking for conformance with the information given and the design concept expressed in the Contract Documents. Review is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions or quantities. Approval of a specific item does not constitute approval of an assembly of which the item is a component. The review and approval of the Contractor's submittals does not relieve the Contractor from complying with the requirements of the Contract Documents. The Contractor is responsible for: dimensions to be confirmed and correlated at the jobsite; fabrication processes and construction means, methods, techniques, sequences or procedures; coordination of the Work of all trades; and performing all Work in a safe and satisfactory manner.

1.6. CERTIFICATES OF COMPLIANCE

- A. Certificates must be signed by an official authorized to sign on behalf of the manufacturing or testing company.
- B. For each certification, include the name and address of the Subcontractor, name of the requestor, the Project name and location, relevant test data (if required), and the dates of shipment and delivery.
- C. Certifications do not relieve the Contractor from the requirement for furnishing materials that comply with the requirements of the Contract Documents.

1.7. INVOICES

- A. Submit monthly invoices in accordance with the provisions of the Supplemental Conditions.
 1. Submit invoices on a form approved by the Town with an updated schedule showing contract values, approved Change Orders, Work completed to date, current invoice and quantity amounts, and balance to complete for each bid item.
 2. No payment will be made unless all the proper supporting documentation has been submitted and accepted by the Town.

PART 2 PRODUCTS

(Not Applicable)

PART 3 EXECUTION

(Not Applicable)

---END OF SECTION 01 33 00---

SECTION 01 35 00
HEALTH AND SAFETY REQUIREMENTS

PART 1 GENERAL

1.1. SUMMARY

- A. The Work required under this section includes furnishing all labor, materials and equipment, and performing all operations required to conform to all Federal, State, and local health and safety requirements during the performance of the Work.

1.2. SUBMITTALS

- A. Prior to mobilization, submit the Contractor's Health and Safety Plan, and documentation of OSHA training as described in Section 3.1 – Work Qualifications of this Specification.

1.3. CONTRACTOR'S RESPONSIBILITY FOR HEALTH AND SAFETY

- A. Comply with any and all applicable state, federal, and local ordinances, laws and regulations.
- B. The Contractor is responsible for the Health and Safety their employees, its Subcontractors, suppliers, agents, inspectors, visitors, the general public, and any Others associated with, or interacting with Contractor who provides labor, goods, or other services on the Site.
- C. The Contractor is responsible for emergency response planning and notification and for actual response to all emergencies that may occur during the course of the Work, including emergencies that may occur when the Contractor is not present at the Site.
- D. Designate a Site Safety and Health Officer (SSHO).
- E. The SSHO shall enforce the health and safety requirements for all Contractor personnel on-Site at all times. The SSHO shall ensure that all Contractor personnel, Subcontractor personnel, and Contractor visitors follow the Contractor's site Health and Safety Plan (HASP), including wearing the designated level of Personal Protective Equipment (PPE). If the SSHO elects to require a higher level of protection, the extra costs associated with such higher level shall be borne by Contractor, unless such extra costs are approved in advance in writing by the Town.
- F. Prior to mobilization and continually through the duration of the Work, the SSHO shall inspect the Site and document area-specific and worker-specific protection requirements.
- G. After mobilization, the SSHO shall monitor Work activities and document the need for additional worker protection, as required, based on the Work being performed and action levels specified in the Contractor HASP.
- H. The SSHO shall verify that all activities are performed in accordance with the HASP and all federal, state, local, and Health and Safety standards, Laws and Regulations, and guidelines.
- I. In the event of a health or safety risk, as determined by the SSHO, other Contractor personnel, or by the Town, stop Work until a method for handling the risk has been

determined and implemented. Report any health or safety risk resulting in a Work stoppage to the Town.

- J. The Contractor is responsible for implementing a behavior-based safety process and providing site training, observation, and feedback for Contractor personnel employed at the Site.

1.4. CONTRACTOR'S HEALTH AND SAFETY PLAN

- A. Prepare and submit a Site-specific Health and Safety Plan (HASP) to the Town prior to the start of the Work. Follow all applicable local, state, and federal Health and Safety standards, Laws and Regulations, and guidelines implemented through, but not limited to, the OSHA, NIOSH, ACGIH, and USEPA. Where these references are in conflict, follow the more stringent requirement. At a minimum, address the following topics in the Contractor HASP:

1. Names of key personnel and alternates responsible for Health and Safety, including a Contractor Health and Safety Representative and SSHO.
2. Documentation of employee and Subcontractor training and medical certifications required by 29 CFR 1910.120, as described in Part 3 of this Section.
3. PPE to be used for each of the tasks and operations being conducted, as required by the PPE program in 29 CFR 1910.120, 29 CFR 1910 Subpart I, 29 CFR 1926.28, and 29 CFR 1926 Subpart EA list of Health and Safety and emergency equipment available on the Site.
4. A description of engineering controls used to reduce the hazards of equipment operation.
5. Heat stress program.
6. Cold stress program.
7. Lockout/Tagout procedures where the sudden start up or release of stored energy could cause injury to personnel.

1.5. NOTIFICATIONS

- A. Notify the Town as soon as practical, but no more than twenty-four hours, after any mishaps, including recordable accidents, incidents, and near misses, as well as, any report of injury, illness, or any property damage.
- B. Notify the Town of load handling equipment or rigging mishaps, as soon as practical but not more than 4 hours after mishap.
- C. The Contractor is responsible for obtaining appropriate medical and emergency assistance and for notifying fire, law enforcement, and regulatory agencies.
- D. Immediate reporting is required for electrical mishaps, to include Arc Flash; shock; uncontrolled release of hazardous energy (includes electrical and non-electrical); load handling equipment or rigging; fall from height (any level other than same surface); and

underwater diving. These mishaps must be investigated in depth to identify all causes and to recommend hazard control measures.

- E. Immediately notify the Town of any hazard the Contractor discovers or observes on the Site, and the corrective measures planned or taken to eliminate or minimize the hazard. Within notification include Contractor name; contract title; type of contract; name of location where accident occurred; date and time of accident; names of personnel injured; extent of property damage, if any; extent of injury, if known, and brief description of accident (for example, type of construction equipment used and PPE used). Preserve the conditions and evidence on the accident site until all possible Town investigations are conducted. Assist and cooperate fully with the Town investigation(s) of any mishap.

PART 2 PRODUCTS

2.1. EQUIPMENT AND FACILITIES

- A. Provide all equipment, temporary facilities, and controls required to perform the Work safely in accordance with all applicable laws and regulations and the Contractor's HASP.

2.2. PERSONAL PROTECTIVE EQUIPMENT

- A. The appropriate level of PPE is to be determined by the Contractor for the specific tasks as described in the Contractor's HASP. If hazards are identified that require a level of protection greater than Level D (defined in paragraph C below), Work shall be suspended, and the Town notified.
- B. Furnish and maintain materials and equipment for the health and safety of Contractor employees, Subcontractors, Suppliers, and visitor personnel. Provide all required first aid equipment, tools, monitoring equipment, PPE, and ancillary equipment required to comply with the Contractor's HASP.
- C. Level D protection will be required at all times for all personnel and visitors on the Site. Level D PPE consists of:
 - 1. Hard hat.
 - 2. Steel-toed boots.
 - 3. Safety glasses with permanent side shields.
 - 4. Work clothes (long pants, shirts with sleeves).
 - 5. Work gloves.
 - 6. Hearing protection (as needed to prevent exposure exceeding 85 dB level).
 - 7. High visibility reflective safety vests, or;
 - 8. U.S. Coast Guard approved Personal Flotation Devices for personnel working on or near the water.

PART 3 EXECUTION

3.1. WORKER QUALIFICATIONS

- A. Provide the following training to workers.
 - 1. Current cardiopulmonary resuscitation (CPR) and first aid certification for at least two workers assigned to Work on the Site.
 - 2. OSHA 10 Hour training course.
 - 3. For any worker who is assigned the role of a “competent person,” provide documentation of sufficient and relevant training and experience to perform the assigned duties and responsibilities of that role. As defined in 29 CFR 1926.31, the competent person shall be “one who is capable of identifying existing and predictable hazards, and who has authority to take prompt corrective measures to eliminate them.” Relevant training and experience shall be in the same type of Project activities included in the Work under this Contract.

3.2. WORK PLANNING AND MEETINGS

- A. Conduct a daily health and safety meeting, prior to beginning Work for that day, to address health and safety issues, changing conditions, activities, and personnel. All Contractor and Subcontractor employees working on the Site on that day must attend the meeting. Document all meetings and have attendees sign a form acknowledging their presence at the meeting. Include as part of the daily meeting, an evaluation of the Work to be conducted and the hazards associated with the work.
- B. Contractor personnel who are not in attendance for the daily Health and Safety must be briefed on the meeting notes prior to commencing any Work-related activities.
- C. Hold and document additional safety meetings at the start of each major task, and whenever site conditions change such that it could potentially affect worker safety.

3.3. MONITORING

- A. Perform heat exposure and cold exposure monitoring activities as required by weather conditions.

---END OF SECTION 01 35 00---

SECTION 01 41 00
REGULATORY REQUIREMENTS - PERMITS

PART 1 GENERAL

1.1. SUMMARY

- A. This Section establishes responsibility for obtaining Project permits between the Engineer, the Town, and the Contractor.

1.2. TOWN APPROVALS

- A. The Town has obtained the following Project permits. The Contractor will be required to comply with all approved permit requirements.
 - 1. MA DEP 401 Water Quality Certification.
 - 2. MA DEP Waterways Chapter 91 permit.
 - 3. Town of Wellfleet - Wetlands Protection Act Order of Conditions.
- B. The Town is awaiting approval of the following permits. Example conditions are provided for bidding. The Contractor will be required to comply with all approved permit requirements.
 - 1. Section 401/404 USACE permits

1.3. CONTRACTOR PERMITS

- A. Obtain the following Project permits/acceptances:
 - 1. Coast Guard Notice to Mariners.
 - 2. Local construction permits/notifications, as needed.
 - 3. Permits required for transportation and disposal of dredge material.
 - 4. Permits required for any off-Site parking that is negotiated between the Contractor and the Town, and/or private parking facilities, as needed.
- B. This Section does not describe all permits required for performance of the Work. Any permits not identified in this Section, or elsewhere in the Contract Documents, are the responsibility of Contractor.
- C. Regardless of who is responsible for obtaining a permit, the Contractor is responsible for performing in accordance with the Supplemental Conditions of all permits.

1.4. COORDINATION/ASSISTANCE

- A. Provide all data, as may be requested, by the Town to support permit applications. When necessary, the Town may provide data summaries or other Project information in support of Contractor permit submittals.
- B. Any coordination and/or assistance between the Contractor and the Town or Engineer is provided in the interest of expediting the Project. The provision of coordination and/or

assistance does not relieve the Contractor of their obligations to obtain, or abide by, a permit.

PART 2 PRODUCTS

(Not Applicable)

PART 3 EXECUTION

- A. Comply fully with all requirements and conditions of all Project Permits including performance of any miscellaneous work required to ensure full compliance and not otherwise covered by individual items in the contract.
- B. Comply fully with all requirements and conditions of US Army Corps of Engineers, US Coast Guard, Harbormaster, and other authorities including, but not limited to, coordination, notification, and performance of any other miscellaneous work required to ensure full compliance and not otherwise covered by individual items in the contract.
- C. Perform all other miscellaneous work obviously required to complete the project, but not covered by individual items in the contract.
- D. Obtain governing authorities written permission, when required to close or obstruct street, walks, or adjacent facilities. Provide alternate routes around closed or obstructed traffic ways, when required by governing authorities.
- E. Contractor shall perform all notifications as required within the regulatory permits and approvals.

---END OF SECTION 01 41 00---

SECTION 01 50 00
TEMPORARY FACILITIES

PART 1 GENERAL

1.1. SUMMARY

- A. The Work required under this section includes furnishing all labor, equipment, supplies, materials, and performing all operations required for providing temporary facilities during the performance of the Work.

1.2. GENERAL

- A. All furnished materials must be suitable for their intended use and conform to all applicable codes and standards.

PART 2 PRODUCTS

2.1. WATER

- A. Provide a ready supply of potable water for the Contractor, Subcontractor, and visiting personnel during the performance of the Work.

2.2. RADIOS

- A. Provide a two-way radio with spare batteries for use by the Town during the performance of the Work. The radio provided to the Town must be able to receive and send on all frequencies that will be used by the Contractor during the performance of the Work.

2.3. SANITARY FACILITIES

- A. Provide on-board sanitary facilities for all Contractor employees, Subcontractor personnel, and visiting personnel.
- B. Maintain a supply of soap and water for hand cleaning during the performance of the Work.
- C. Provide on-shore sanitary facilities for all Contractor employees, subcontractor personnel and, and visiting personnel.

2.4. ON-SITE UTILITIES

- A. There are currently no on-site utilities available for use by the Contractor.
- B. It is the responsibility of the Contractor to provide any and all utility services needed to complete the Work.

2.5. LAYDOWN AREA

- A. Upon request, and pending availability, the Town will designate a laydown area for the use and storage of trailers, equipment, and materials. This area will be located at the Town Pier. Contractor shall be responsible for the designated laydown area(s). The area will be maintained in a clean and orderly fashion and secured, if needed to protect supplies and equipment. Construct a temporary 6 foot high chain link fence around laydown area. Restore areas used during the contract to original or better condition.

PART 3 EXECUTION
(Not Applicable)

---END OF SECTION 01 50 00---

SECTION 01 77 00
CLOSEOUT PROCEDURES

PART 1 GENERAL

1.1. SUMMARY

- A. Closeout procedures covers the administrative and technical requirements for final cleaning, inspection, Project as-built documents, warranties, bonds, final payment, and other procedures for Project closeout in accordance with the Contract Documents.

1.2. CLOSEOUT PROCEDURES AND REQUIRED SUBMITTALS

- A. For this Project, Substantial Completion will be defined as all dredging work complete, and all sediment and debris transferred to the offshore disposal site. The Town has sole and final discretion for determining whether the Work has progressed to the point of Substantial Completion or not.
 - 1. Substantial Completion defined as:
 - a. Completion of 3 month minimum production rate of dredge material within Area II – South Mooring Basin. (90,000 CY)
 - b. Hydrographic survey of final dredge area extending 200 feet beyond dredge limits.
 - 2. Submit written certification that project, or designated portion of the project, is substantially complete, and request, in writing, a final inspection. The Town’s representative will perform the final inspection.
 - 3. Should the Town’s representative determine that the work is substantially complete, he will prepare a punch list of deficiencies that need to be corrected before final acceptance and issue a notice of substantial completion with the deficiencies noted.
 - 4. Should the Town’s representative determine that the work is not substantially complete, he will immediately notify the Contractor, in writing, stating reasons. After the Contractor completes the work, he shall re-submit certification and request for final inspection.
 - 5. Failure to complete parameters for Substantial Completion:
 - a. Contractor shall be paid for the Cubic Yards dredged and disposed of within the dredge limits.
- B. Record Drawings:
 - 1. If progress payment applications are submitted by the Contractor, the data collected to substantiate the progress payment is to be submitted to the Town at the conclusion of the Work to be incorporated into the Record Drawings for the Project.
 - 2. Submit record surveys in electronic format (.dwg AutoCAD file) and provide two (2) hard copies to the Town that have been signed and sealed by a surveyor licensed to practice in the State of Massachusetts. At a minimum, Record Drawings are to include:

- a. Approved pre-dredge survey.
 - b. Encountered structures left in place.
 - c. Bottom of dredging grade.
 - d. Benchmark coordinates and elevation.
3. Quantities that are designated to be determined by survey are to be included on the Record Drawings when/if making an application for a progress payment. The Record Drawing must clearly indicate the pay item and total quantity of measured units. Final payment will be based off difference between the Town pre and post dredge surveys.
 4. Provide the Town with an electronic version of the Record Drawing as an AutoCAD file with .xyz file and in a color-PDF format that bears the seal of the Project surveyor who oversaw the preparation of the Record Drawings.
- C. Provide copies of all Project records including, but not limited to, the following:
1. Health and Safety reports.
 2. Copies of closed permits.
 3. Marine Mammal Observer Reports (combined document of all reports)
 4. ACOE Disposal Reports (combined document of all reports)
- D. Permit Closeout:
1. Submit written confirmation that all permits have been closed with their governing authority and that any and all remaining fees (if applicable) have been paid in full.
- E. Other Close-out Submittals
1. Refer to EXECUTION portion of each specification section for closeout requirement, including operating and maintenance manuals; instruction of Town’s personnel in maintenance and operation of systems; submission of certifications, test reports, etc.; provisions of spare parts and maintenance materials, all of which shall be neatly wrapped or packaged in standard sizes and clearly labeled.
 2. Submissions specified elsewhere in the Contract Documents, include consent of surety to final payment; affidavit that all bills and indebtedness from subcontractors and suppliers, or bond satisfactory to the Owner indemnifying the owner against liens or other claims.
- 1.3. ACCEPTANCE OF WORK
- A. After all deficiencies have been corrected, a Letter of Final Acceptance will be issued. If only designated portions of the project have been inspected, a Letter of Partial Acceptance will be issued for that portion of Work.
 - B. Acceptance may be given prior to correction of deficiencies that do not preclude operations and use of the facility; however, final payment will be withheld until all deficiencies are corrected.

- C. Until receipt of Letter of Final Acceptance, the Contractor shall be responsible for the work of this Contract.

PART 2 MATERIALS

(Not Applicable)

PART 3 EXECUTION

(Not Applicable)

---END OF SECTION 01 77 00---

SECTION 35 12 13
MARINE SIGNALING EQUIPMENT

PART 1 GENERAL

1.1. SUMMARY

- A. The Work required under this section includes furnishing all labor, materials, equipment, and performing all operations required for the installation, maintenance, and removal of all marine signaling equipment required for completing the Work.

1.2. SUBMITTALS

- A. Submit a Notice to Mariners to the U.S. Coast Guard for the deployment of any temporary marine signaling equipment.

PART 2 PRODUCTS

2.1. GENERAL

- A. Furnish marine signaling equipment that is commercially available and designed for marine use.
 - 1. Anchors, if applicable, must be of sufficient weight and strength to hold the equipment in position under typically expected range of operating conditions for the area.

2.2. LIGHTS

- A. Furnish navigation warning lights that conform to the United States Coast Guard requirements for location, visibility, and color.
- B. Provide navigational lighting on all vessels, including scows and dredge equipment, which complies with applicable U.S. Coast Guard regulations.
- C. Provide lighting for turbidity curtains and all other potential hazards to navigation put in place during the Work, in compliance with all applicable U.S. Coast Guard regulations and permit requirements.

2.3. BUOYS

- A. Provide buoys that are in compliance with all applicable U.S. Coast Guard regulations.

PART 3 EXECUTION

3.1. INSTALLATION AND OPERATION

- A. Coordinate with the U.S. Coast Guard and obtain all required permits and file all required notifications prior to mobilizing to the Site.
- B. Furnish and maintain all marine signaling equipment required by permit and/or U.S. Coast Guard regulations while the Work is being performed.

3.2. MAINTENANCE

- A. Inspect marine signaling equipment daily. Take immediate corrective action to repair/replace a malfunctioning marine signaling device.

3.3. REMOVAL

- A. Remove the marine signaling equipment within 72 hours when instructed by the Town.
- B. Coordinate demobilization and removal of the marine signaling equipment with the U.S. Coast Guard.

---END OF SECTION 35 12 13---

SECTION 35 20 23
DREDGING BY MECHANICAL METHOD

PART 1 GENERAL

1.1. SUMMARY

- A. The Work required under this section includes furnishing all labor, materials, equipment, and performing all operations required for completing the mechanical dredging portion of the Work.

1.2. GENERAL

- A. The work under this section shall include, but not be limited to, the following:
 - 1. Site mobilization & demobilization.
 - 2. Project scheduling and phasing.
 - 3. Dredging by mechanical method of sediment within the harbor to the depths and limits shown on the Contract Drawings. The dredging must be completed within the Time of Year (TOY) set by the Project permits and completed entirely from the water. The Contractor must comply with all permit conditions and shall schedule his work to meet this condition.
 - 4. Performing all dredging work in accordance with turbidity controls measures including turbidity curtains and turbidity monitoring.
 - 5. Placement of dredged material into scows or other approved transport container, in conformance with the Contract Documents and all regulatory approvals.
 - 6. Transportation and placement of dredged material in the Cape Cod Bay Disposal Site in conformance with these specifications, USACE requirements, and all regulatory approvals.
 - 7. Compliance with USACE National Dredge Quality Management Program (DQM) and Section 35 20 23.13
 - 8. Removal and proper disposal of debris and other obstructions as defined within these Specifications.
 - 9. Preparing, receiving, and acceptance by the Town of all submittals outlined in Section 1.5. of this Specification.
- B. Comply with all applicable regulations, rules, laws, and ordinances of the Commonwealth of Massachusetts, and all other authorities having jurisdiction including, but not limited to, the USACE, U.S. Coast Guard, and the Town of Wellfleet
- C. Compliance with all conditions with the Regulatory Approvals including, but not limited to, the following:
 - 1. US Army Corps of Engineers (USACE) permits (Pending)
 - 2. MA DEP Waterways Chapter 91 License

3. Coastal Zone Management (CZM) Consistency
 4. MA DEP Water Pollution Control: 401 Water Quality Certificate
- D. Contractor shall assume permit requirements include:
1. Providing qualified marine mammal/turtle observer
 2. Providing qualified fisheries observer
 3. Monitoring during dredging and disposal events
 4. Preparation of a turbidity control plan(s)
 5. Preparation and submission of all required reports
- E. Comply with all conditions and perform monitoring and reporting as required by the Regulatory Approvals.
- F. In the event that any conflict between conditions in the Regulatory Approvals and the Contract Document occurs, the Contractor shall comply with the more stringent requirement at no additional cost to the Town.
- G. Comply with all applicable regulations, rules, laws, and ordinances of the Commonwealth of Massachusetts, and all other authorities having jurisdiction including, but not limited to, the USACE, US Coast Guard, and the Town of Wellfleet.
- H. Examine all Contract Drawings and sections of the Specifications for requirements and provisions of the Work that this Section affects.

1.3. QUALIFICATIONS

- A. The Contractor shall have completed at least 3 dredging projects of similar size and scope using mechanical methods.
- B. The dredging supervisor shall have a minimum of 5 years of experience with dredging projects in the role of dredging supervisor or superintendent.
- C. The Contractor's equipment operators, supervisory engineering staff, and technical staff shall have a minimum of 2 years of experience with dredging via mechanical methods.

1.4. QUALITY ASSURANCE

- A. Comply with all applicable local, state, and federal requirements, as well as industry standards and practices regarding materials, methods of work, proper disposal, safety of workers, and safety of the public.
- B. Copies of the Regulatory Approvals and Conditions for performing the work or examples thereof are included within Appendix A of the Contract Documents. The Contractor shall be responsible for understanding and implementation of the stipulated conditions as a condition of the contract. The Contractor shall note that not all regulatory approvals for the Project have been received and examples have been provided for bidding purposes. Contractor shall comply with final regulatory approvals once received.

- C. All the Contractor’s dredging equipment and dredge scows shall be in good working condition and suitable for the intended task.
- D. Dredging and disposal will only be allowed during specified times established by the project permits. The Contractor shall be responsible for adhering to all local, state, and federal requirements for endangered and threatened water mammals and other marine life.
- E. Should it become necessary for work under this section to extend into the no dredging/disposal windows, the Contractor will be responsible, at his expense, to obtain approvals for any time extensions, re-permitting, or changes that may be necessary.
- F. Contractor’s equipment shall comply with all requirements of the USACE Dredge Quality Management (DQM) System.

1.5. SUBMITTALS

A. Dredging Plan:

- 1. Within fifteen (15) calendar days from the date of the Notice to Proceed, or at the pre-construction meeting, whichever occurs first, submit the Dredging Plan to the Town for review and acceptance.
- 2. Include the name, address, and 24-hour emergency contact information of the person who will be in responsible charge of the dredging and disposal operation.
- 3. Include the name, address, and 24-hour emergency contact information of all Subcontractors who will be involved in the Project.
- 4. Identification and list of dredge equipment to be used. Certify that all the Contractor’s dredging equipment and dredge scows are in good working condition and suitable for the Work. All equipment is subject to inspection and approval prior to use on the Project.
- 5. USACE Certifications for Contractors DQM System to be used.
- 6. Plan for dredge area and dredge disposal location monitoring.
- 7. The Contractor is responsible for adhering to the USACE Dredge Quality Management (DQM) System Requirement. It is the responsibility of the Contractor to notify the USACE prior to commencing dredging and to request the exact coordinates for the disposal of the dredged materials from USACE at least ten (10) days prior to the start of the project. Confirmation of notification and the disposal coordinates from USACE shall be submitted to the Town prior to proceeding with the dredging.
- 8. As part of the Dredging Plan, submit a Spill Management Plan which will be utilized to prevent and/or mitigate fuel and material spillage.

B. Progress Plans:

- 1. The Contractor is required to plot the locations of all obstructions encountered during the progress of the Work on the progress plan and on the Daily Reports.

2. Maintain a dredging progress plan onsite and update it daily. This plan shall be colorized and show the locations dredged and the date of the work. The dredging progress plan will be submitted to the Town at the completion of the Work.
 3. Maintain a disposal progress plan onsite that is updated daily to show all disposal work in the Cape Cod Bay Disposal Site. This plan shall show locations of all disposal locations and dates/time of each disposal. The disposal progress plan will be submitted to the Town at the completion of the Work.
 4. The contractor's hydrographic surveys, when performed, shall be provided at the same size and scale as the Contract Drawings and shall show the final elevations of the dredged area with all pertinent data, landmarks, baseline, and shall be based on the datum established for the project on the contract documents. Data grid used shall be sufficient to provide adequate details of the side slope and the limit of dredging. The Town may request additional data sets as required to review the Contractor's data. Submittal shall include hard copies as well as supporting electronic files. All surveys shall be performed using the same horizontal coordinate system and vertical datum based on Mean Low Water datum, unless noted otherwise.
- C. Submit a Turbidity Control Plan for review and acceptance by the Town and Regulatory Agencies prior to mobilizing any materials to the Site.
- D. Certificate of Compliance
1. The Contractor shall provide name and contact information for the Registered Land Surveyor and/or Registered Professional Engineer, experienced in hydrographic surveys, to perform its verification survey and prepare the required plan.
 2. The Contractor's verification survey shall be the same size and scale as the Contract Drawings and shall show the final elevations of the dredged area with all pertinent data, landmarks, baseline and shall be based on the Datum established for the project.
 3. The Contractor's verification survey must be sufficient in detail and accuracy to satisfy the Town that the Town's final survey can be ordered.
- E. Surveys submitted for consideration shall have an original stamp by a licensed professional land surveyor or licensed professional engineer. Surveys shall be provided in AutoCAD with .xyz file and stamped plans on paper copies for the following purposes:
1. Pre-dredge conditions prior to commencing dredging activities.
 2. Disagreement with pre-dredge condition – must be submitted at least 3 days prior to performing any dredge activities.
 3. Requests for partial payment of dredge activities.
 4. Verification survey to confirm work is complete.
 5. Disagreement with post-dredge condition and payment volumes

- F. The Contractor will be required to maintain daily records of dredging operations. A plan will be marked and colored coded showing daily progress, and a sketch of this progress plan indicating the work accomplished for that period will be drawn on the back of the record forms. The record forms shall be submitted to the Authority on a weekly basis. The progress plans will be turned over to the Authority at the completion of work.

1.6. NOTIFICATIONS

- A. Provide notifications required by Project permits in compliance with the notice period prior to the beginning of dredging including, but not limited to:
 - 1. Notify the USACE of intent to start Work at least 10 days prior to the beginning of dredging.
 - 2. The Department of Environmental Protection
 - 3. At least ten (10) working days in advance of the start date, the Contractor shall notify the First Coast Guard District, Aids to Navigation Office, of the location and estimated duration of the dredge and disposal operations.
 - 4. Notify and coordinate all work with the Town of Wellfleet.
- B. It is the Contractor's responsibility to notify the US Coast Guard prior to the start of this Project.
- C. Before beginning any dredge or disposal operations, the Contractor shall coordinate with the US Coast Guard to issue a "Notice to Mariners".
- D. If the Town is not present onsite, it is the Contractor's responsibility to immediately notify the Town of any changes in the Site so that the Town may inspect the conditions.
- E. Upon completion of dredging, submit a letter notifying the Town of completion and when the Contractors final bathymetric survey will be completed. Town will complete its own independent bathymetric survey within one week for verification of project completeness and volume confirmation prior to approving final payment request.

1.7. SITE CONDITIONS

A. PROJECT STAGING

- 1. Upland area may be available for the dredge contractor staging and for material handling and disposal associated with material not suitable for disposal at the CCBDS site. Any use of the upland area for these activities shall be subject to the review and approval of the Town of Wellfleet. If not available Contractor shall provide their own site for these activities at no additional cost to the project.

B. SITE ACCESS

1. Contractor shall note that the dredge site has limited access and size restrictions and will require selection of materials and equipment that are capable of safely navigating within the site restrictions shown on the contract plans.
2. Contractor shall note that the work includes dredging of shallow and intertidal areas. Limitations on the duration of dredging within each tide cycle should be anticipated.

1.8. CONTRACTOR SURVEYS

A. QUALIFICATIONS

1. If needed to support applications for progress payments, subcontract with a Professional Surveyor licensed in the State of Massachusetts to serve as the independent surveyor for the Project.
2. The selected surveyor shall have served in a similar role on at least two previous Projects with a dredging component of a similar or greater size.
3. The selected surveyor may not be replaced unless the Contractor submits a written request to the Town for approval that details the reason(s) for the requested change and includes any noted deficiencies.

B. REFERENCE POINTS

1. Establish horizontal control points and benchmarks, as needed. Protect the reference points from disturbance during performance of the Work.
2. When laying out and controlling the performance of the Work, use horizontal and vertical datums that are consistent with those used in the Contract Drawings.

C. BATHYMETRIC SURVEYS

1. Bathymetric surveys shall be conducted to meet USACE accuracy standards defined in EM 1110-2-1003, Hydrographic Surveying. Surveys will be performed by single vertical beam transducer, or multiple vertical beam transducer sweep, or multibeam sweep methods. When vertical single beam or multiple sweep beam transducers are employed, an acoustic frequency of 200 kHz ($\pm 20\%$) shall be used. When utilizing multibeam technology, the operating acoustic frequency will range from 180 kHz to 250 kHz. All depth measurement devices, positioning, and motion compensation systems will be calibrated following the quality control procedures outlined in EM 1110-2-1003.
2. At the start of each day's soundings, the system shall be calibrated in strict accordance with Corps of Engineer's Manual EM 1110-2-1003 (2004). The Contractor will be required to submit to the Town sufficient field data, including all digital fathometer data in a usable format, corrected for tide, and corresponding boat plots and track sheets, so that the Contractor's submitted survey plot may be reproduced by the Town by referring only to this field data.

3. After completion of the Contractor's survey, the results will be plotted and reviewed by the Contractor to ensure that all Work was completed in accordance with contract requirements, and then submitted to the Town on CD-ROM, DVD-ROM, or by electronic file transfer in digital ASCII format. If deficiencies are noted, a re-survey of the area after correction of deficiencies will be required to assure the Town that appropriate corrections have been made.
4. Submission of all Contractor quality control survey data, including plots, is required prior to the performance of the final examination and acceptance survey to be performed by the Town. The results of the quality control surveys should be used by the Contractor to ensure that Work was performed in accordance with the Contract Documents.
5. If requesting a progress payment, surveys shall be performed by the Contractor for all completed areas of dredging being submitted for payment. All data shall be submitted on CD-ROM, DVD-ROM, or by electronic transfer with X, Y, and Z ASCII files containing Easting, Northing, and true Elevations. Data shall be provided to the Town denoted by shallowest soundings in a 3-foot grid pattern. The files shall be referenced to state plane coordinates, NAD83 Massachusetts Mainland Zone 2001, and vertical datum referenced to MLW.

1.9. ENVIRONMENTAL PROTECTION

- A. The Contractor shall provide the services of a Marine Mammal/Turtle Observer. The Marine Mammal/Turtle Observer will be responsible for prohibiting harassment of marine mammals and sea turtles during transit and disposal work.
- B. The Contractor shall provide the services of a Fisheries Observer. The Fisheries Observer will be responsible for prohibiting harassment and adverse effects to fisheries during dredging, transit, and disposal work.

PART 2 PRODUCTS

(Not Applicable)

PART 3 EXECUTION

3.1. SCOPE OF WORK

- A. General
 1. The Contractor shall dredge to the depths shown on the Contract Drawings. The proposed depths include an over-dredge payment limit depth as shown on the Contract Drawings. No work outside the payment limit will be considered for compensation.
 2. The Contractor shall perform a Pre-Dredge survey of the project area before any work is started. The Pre-Dredge survey must be submitted prior to work commencing.

3. The Contractor shall place and maintain range markers to show the limits of the dredge area. Markers shall not be located to cause an obstruction or other hazard for vessels.

B. Site Mobilization & Demobilization

1. The Contractor shall mobilize dredging plant, work boats, scows, barges, tugs, cranes, and all other equipment to the work site to commence dredging and disposal operations
2. The Contractor shall relocate and move cranes, dredge plant, and related equipment from one work location to another work location(s) within the project limits as work progresses and to accommodate vessel operations, as required.
3. The Contractor shall perform all survey for layout, placement, and maintenance of markers, as well as the verification survey. Survey control baseline(s), markers and tide boards shall be established and maintained at all times during the project for the dredging area.
4. The Contractor shall perform all notifications, as required under this specification and within the Project Regulatory Approvals.
5. The Contractor shall perform all surveys and reports, as required under this specification.
6. Demobilization of the Contractor's dredging plant, work boats, scows, barges, tugs, cranes, and all other equipment from the work site upon completion of the dredging operations shall only take place after receiving approval from the Town.
7. Under no circumstances shall the Contractor leave the site until the Contractor has completed and submitted a Post Dredge survey and the Town has notified the Contractor in writing that it may demobilize from the site, or unless otherwise authorized in writing by the Town. If any work has not been completed, including complete demobilization, or, if any shoals exist within the work area, the Contractor will be ordered to return to the site to complete said work without delay. If the Contractor does not return to the site, all monies owed the Contractor shall be retained by the Town to complete the work. Any funds not utilized to complete the work will be paid to Contractor.

3.2. GENERAL OPERATIONS

- A. Conduct operations in such a manner as to cause the least amount of interference with shipping and boating interests in and around the Site. Coordinate all Work with:
 1. Town of Wellfleet.
 2. USACE.
 3. U.S. Coast Guard.
- B. Notify Town 24 hours prior to any dredging activities.

- C. Ensure proper closure and water-tightness of the scow pocket doors to eliminate any seepage or leakage of material. The use of plastic material or other non-approved materials to cover cracks in scow pockets will not be allowed.
- D. Provide and maintain a walkie-talkie communication system, or other system approved by the Town, between the Town and the dredge plant, and between the towboat and the scow.
- E. Barges, dredge plants, tow boats or any vessel used during this Project shall not sit on the bottom within or adjacent to the Work area.

3.3. DREDGING BY MECHANICAL METHOD

- A. Examine the Site and available data and determine the character of the materials to be removed. The Contractor is required to remove all materials within the design footprint and shall provide all necessary labor and equipment to handle the materials.
- B. Furnish equipment of sufficient size and capacity to dredge sediments to the depths shown on the Contract Drawings. The Contractor shall dredge, by use of environmental bucket dredging equipment or clam shell bucket as required for harder materials, the areas shown on the plan. Project Permits require the use of BMP's and an environmental bucket shall be used to the maximum extent practical and the Contractor shall assume use of an environmental bucket prior to use of a heavy clamshell, as required to complete the work, including removal of all debris encountered. The Contractor shall note that the dredge area has not been dredged for over 60 years and should anticipate sediments cannot be completely removed to depth using an environmental bucket. Contractor shall furnish additional dredging buckets as may be needed to complete the work including removal of large pieces of debris.
- C. Dredged material shall be placed in watertight scows with fast rate hopper door release and transported to the Cape Cod Bay Disposal Site.
 - 1. Scow overflow will not be permitted.
- D. The quantities shown on the plans are estimated based on the survey and soundings. The actual amount removed will be dependent on the amount of material the Contractor removes to the payment limits as shown on the Contract Drawings. Intermittent progress bathymetric surveys may be conducted by the Contractor for progress payments, if desired. Quantity removed will be obtained by computing the volume between the bottom surface of the last Town survey made before dredging, and the bottom surface of the final Town survey made within one week or otherwise as soon as practicable after the work specified has been completed. The Contractor must complete a post-dredge survey within 5 days of completing dredge activities and notify the Town of when post-dredge survey is scheduled to be completed. The Town will complete its own post dredge survey for verification and agreement of post dredge conditions and final payment.
- E. Unless approved in advance by the Town, payment will only be made on the computed volume of the dredge prism shown in the Contract Drawings plus 1 foot of allowable over-dredge, including side slopes.

- F. Minimize over-dredge.
- G. Do not exceed the maximum dredge cut line at the base of side slopes. Remove any upslope sediments that fall into the dredge prism.
- H. Dredging performed beyond the limits of the allowable over-dredge will not be measured for payment. Additionally, any other pay items impacted by the performance of dredging beyond the allowable dredge limits will not be measured for payment.
- I. Make the bottom of the excavation as smooth and level as possible at or within 1 foot below the plane of the required depths. All bumps, shoals, pinnacles or any other obstruction above the design dredge depth are to be removed. No payment will be made for any material dredged beyond the design over-dredge depths as shown on the Contract Drawings as determined from information obtained during the Town post-dredge survey.
- J. The method used to obtain a smooth and level bottom shall be selected by the Contractor, with the approval of the Town, before such method is implemented.
- K. If the Town post-dredge survey shows areas that have not been dredged to the proper depth, the Contractor shall complete the Work required as directed by the Town and shall pay for the additional survey(s) required to show that the Work has been completed per the Contract Documents.
- L. The Town will notify the Contractor in writing, upon the receipt and approval of the final survey, that the Contractor may demobilize from the Site. The Contractor shall not demobilize from the Site without the prior written approval from the Town.

3.4. DEBRIS AND OBSTRUCTIONS

- A. The Contractor shall assume debris is present and shall remove it in the course of his work. In the event, significant obstructions are encountered which may impact the progress of the work, the Contractor shall notify the Town prior to removal.
- B. Debris shall be separated and placed in a separate unsuitable material dumpster. Debris placed in the dumpster shall be free of excessive dredge material and water. All such material shall be disposed in accordance with the Contract Documents.
- C. Furnish any special or additional equipment that may be required for removing debris and submerged obstructions as needed to complete the Work. Care must be taken when removing any debris encountered adjacent to existing structures to minimize any possible impact.
- D. Separate any floating debris contained within the turbidity controls and stockpile for offsite disposal.
- E. Lawfully dispose of debris in accordance with all applicable laws and regulations.
- F. The changing of dredging bucket type or of dredging platform to remove debris is to be included in the Contractors Bid and will not be considered adequate grounds for a Change Order.

- G. Any material that is disposed of other than in places designated by the Town will not be paid for and the Contractor may be required to remove such misplaced material and deposit it where directed at no additional cost to the Town.

3.5. SEDIMENT TRANSPORT AND DISPOSAL

- A. All tow boats used for towing to disposal areas shall be equipped with differential global positioning system (DGPS) and track recording navigational equipment or approved equivalent electronic navigation equipment, radar, corrected compass, marine radio, and depth sounding equipment which shall be maintained in operating condition during each tow. The tow boats utilized by the Contractor for this purpose shall be of a size adequate for towing in the open ocean and shall have necessary reserve power for maneuvering with scows and under emergency conditions as well as for control of scows at the disposal point.
- B. Use of a fully automated horizontal positioning system capable of locations within 1.0 meter of the true position is required to ensure proper positioning of the scows over the disposal site.
- C. Place material at the disposal site such that the mounding of material is minimized.
- D. All scows used for in-water disposal shall be bottom-dump that have been inspected and approved by the USACE.
- E. Any dump scows used to transport material shall be in good operating condition and shall contain the sediment and water placed in it so that no discharge of sediment or water occurs until the barge has been transported to the designated disposal location.
- F. Transport, monitoring, and disposal of dredge material shall be in accordance with all regulatory requirements and the Contractor shall be solely responsible for proper disposal of material.
- G. The Contractor shall bear full responsibility for resolution of issues arising from the transport, monitoring, and disposal of dredge material in violation of regulatory requirements, including but not limited to meetings, surveys, environmental studies, and mitigation. No additional compensation from the Town shall be made to address permit violations.

3.6. PROTECTION OF EXISTING STRUCTURES

- A. Proposed dredging limits as shown on the Contract Drawings are in close proximity to existing structures. Take the necessary precautions to protect these structures from damage. The Contractor shall bear full responsibility for any damage of any nature to these structures caused by his workers and/or equipment, and any such damage shall be satisfactorily remedied at the sole expense of the Contractor to the satisfaction of the Town.
- B. Conduct the dredging operations such that they do not undermine, weaken, or otherwise impair existing structures located in or near the areas to be dredged. The Contractor shall investigate the existing structures at the Site and plan the dredging operations accordingly.

3.7. INSPECTIONS

- A. Furnish, upon request of the Town, the use of such boats, boatmen, laborers, and material forming a part of the ordinary and usual equipment and crew of the equipment or marine plant as may be reasonably necessary in inspecting and monitoring the Work. The Contactor shall furnish, on request of the, suitable transportation from all points on shore to and from the various pieces of the marine plant and the Site.

---END OF SECTION 35 20 23---

SECTION 35 20 23.13

NATIONAL DREDGING QUALITY MANAGEMENT PROGRAM
SCOW - MONITORING PROFILE
02-2022

PART 1 GENERAL

1.1 DESCRIPTION

The work under this contract requires use of the National Dredging Quality Management Program (DQM) to monitor the scow's status at all times during the contract and to manage data history. For the purpose of these specifications, a scow is defined as any non-self-propelled vessel used to transport dredged material. This includes, but is not limited to, split-hull scows, pocket scows, hopper barges, and deck barges.

This performance-based specification section identifies the minimum required output and the precision and instrumentation requirements. The requirements may be satisfied using equipment and technical procedures selected by the Contractor.

1.2 SUBMITTALS

The following shall be submitted in accordance with Section 01 33 00, "SUBMITTAL PROCEDURES":

- SD-07, Certificates
 - Letter of National Dredging Quality Management Program Certification

1.3 PAYMENT

No separate payment shall be made for installation, operation, and maintenance of the DQM-certified system as specified herein for the duration of the dredging operations; all costs in connection therewith will be considered a subsidiary obligation of the Contractor and covered under the contract unit price for dredging in the bidding schedule.

1.4 NATIONAL DREDGING QUALITY MANAGEMENT PROGRAM
CERTIFICATION

The Contractor is required to have a current certification from DQM for the scow instrumentation system to be used under this contract. Criteria for certification shall be based on the most recent specification posted on the DQM website (<https://dqm.usace.army.mil/Specifications/Index.aspx>). Compliance with these criteria

shall be verified by onsite quality assurance (QA) checks conducted by the DQM Support Center Data Acquisition and Analysis Team and by periodic review of the transmitted data. If a system is installed specifically for this contract, in order to ensure that it is capable of transmitting quality data to the DQM database, the QA checks should take place either prior to the start of the contract or, with prior approval of the local USACE District, as soon as practical after dredging commences. DQM certification is valid for one year from the date of certification and is contingent upon the system's ability to meet the performance requirements as outlined in Paragraph 3.3, "Performance Requirements." If issues with data quality are not corrected within 48 hours, the system certification shall be revoked and additional QA checks by the Data Acquisition and Analysis Team may be necessary.

Annual DQM certification shall be based on the following:

- A series of QA checks as outlined on the DQM website (<https://dqm.usace.army.mil/Certifications/Index.aspx>)
- Verification of data acquisition and transfer as described in Paragraph 3.3, "Performance Requirements"
- Review of the Dredge Plant Instrumentation Plan (DPIP) as described in Paragraph 1.5, "Dredge Plant Instrumentation Plan (DPIP)"

The Contractor shall have personnel who are familiar with the system instrumentation and who have the ability to recalibrate the sensors on site during the QA process. The Contractor shall coordinate pickup times and locations and provide transportation to and from any platform with a DQM system to team personnel in a timely manner. The Contractor shall also have on site for the QA checks a tug capable of towing the scow. As a general rule, DQM Data Acquisition and Analysis Team personnel will come with personal protective equipment (PPE) consisting of hardhats, steel toe boots, and life jackets. If additional safety equipment is needed—such as eye protection, safety harnesses, work gloves, or personal location beacons—these items shall be provided to the team while on site. The Contractor shall submit a test data package to the DQM database from the system on each scow and have it accepted by the DQM Support Center prior to scow compliance checks. The Contractor shall also submit data collected during the QA checks from the scow monitoring system to the DQM database and the Data Acquisition and Analysis Team personnel while on site. It is the Contractor's obligation to inform the QA team if the location designated for the QA checks has any site-specific safety concerns prior to their arrival on site.

The owner or operator of the scow shall contact DQM at DQM-AnnualQA@rpsgroup.com on an annual basis, or at least three weeks prior to the proposed beginning of dredging, to schedule QA checks. This notification is meant to make the Data Acquisition and Analysis Team aware of a target date and the contract on

which the plant will be used. At least one week prior to the target date, the Contractor shall contact the Data Acquisition and Analysis Team and verbally coordinate a specific date and location. The Contractor shall then follow up this conversation with a written email confirmation. The owner/operator shall coordinate the QA checks with all local authorities including, but not limited to, the Town and USACE.

Recertification is required for any yard work which produces modification to displacement (for example, a change in scow lines, or repositioning or repainting hull marks), modification to bin volume (change in bin dimensions, or addition or subtraction of structure), or changes in sensor type or location; these changes shall be reported in the sensor log section of the DPIP. A system does not have to be transmitting data between jobs; however, in order to retain certification during this period, the system sensors or hardware should not be disconnected or removed from the scow. If the system is powered down, calibration coefficients shall be retained.

1.5 DREDGE PLANT INSTRUMENTATION PLAN (DPIP)

The Contractor shall have a digital copy of the DPIP on file with the DQM Support Center. While working on site, the Contractor shall also maintain on the dredge a copy of the DPIP which is easily accessible to Government personnel at all times. This document shall describe the sensors used, configuration of the system, how sensor data will be collected, how quality control on the data will be performed, and how sensors/data reporting equipment will be calibrated and repaired if they fail. A description of computed scow-specific data and how the sensor data will be transmitted to the DQM database shall also be included. A complete list of the required DPIP contents is provided on the DQM website (<https://dqm.usace.army.mil/Certifications/Index.aspx>).

The Contractor shall submit to the DQM Support Center any addendum or modifications made to the plan, subsequent to its original submission, prior to the start of work. Any changes to the computation methods shall be approved by the DQM Support Center prior to their implementation.

PART 2 PRODUCTS (Not Applicable)

PART 3 EXECUTION

3.1 REQUIREMENTS FOR REPORTED DATA

The Contractor shall provide, operate, and maintain all hardware and software to meet these specifications. The Contractor shall be responsible for the replacement, repair, and calibration of sensors and other necessary data acquisition equipment needed to supply the required data.

Repairs shall be completed within 48 hours of any sensor failure. Upon completion of a repair, replacement, installation, modification, or calibration, the Contractor shall notify the USACE. The USACE may request recalibration of sensors or other hardware components at any time during the contract as deemed necessary.

The Contractor shall keep a log of sensor repair, replacement, installation, modification, and calibration in the onsite copy of the DPIP. The log shall contain a three-year history of sensor maintenance, including the time of sensor failures (and subsequent repairs), the time and results of sensor calibrations, the time of sensor replacements, and the time that backup sensor systems were initiated to provide the required data. It shall also contain the name of the person responsible for the sensor work.

Sensors installed shall be capable of collecting parameters within specified accuracies and resolutions indicated in the following subparagraphs.

With the exception of position and any value calculated, reported sensor values should represent a weighted average with the highest and lowest values not included in the calculated average for the given interval. The averaging routine used should be consistent across all event triggers. This information should be documented in the DPIP sections that say “Calculations done external to the instrumentation.”

These data-reporting requirements cover the collection of electronic data on a scow through the entire dredging cycle. Disposal events can consist of both open-water disposal and offloading. Open-water disposal is the placement of material via bottom doors or split hull. Offloading is the placement of material via either hydraulic or mechanical means.

3.1.1 Scow Name

Each scow shall be assigned a unique name that will remain constant from one dredging operation to the next.

3.1.2 Contract Number

The USACE-assigned contract number for the project will be reported.

3.1.3 Load Number

A DQM load number shall document the end of a disposal event for a given scow.

3.1.4 Horizontal Positioning

Horizontal positioning shall be recorded as the geographic coordinates of the vessel as indicated by the location of the Global Positioning System (GPS) antenna. All locations

shall be obtained using a positioning system operating with a minimum accuracy level of 1 to 3 meters horizontal Circular Error Probable (CEP). Positions shall be reported as Latitude/Longitude WGS 84 in decimal degrees. West Longitude and South Latitude values are reported as negative.

3.1.5 Date and Time

The date and time shall be reported to the nearest second and referenced to Universal Time Coordinated (UTC) based on a 24-hour format: *yyyy-mm-dd hh:mm:ss*.

3.1.6 Hull Status

Hull status is meant to reflect a condition when material could be removed or released from the scow.

For this contract, hull status shall register closed prior to leaving the disposal area.

3.1.6.1 Open-Water Disposal

An open split hull or open bottom door of a scow shall be indicated by reporting an “OPEN” value. A closed split hull or closed bottom door of a scow shall be indicated by reporting a “CLOSED” value. An open status shall be indicated as the bin starts to open, and a closed status shall be indicated only once the bin is fully closed. For pocket scows, the open/closed status shall correspond to the compartment which is first to open and last to close.

3.1.6.2 Offloading

For non-dumping scows, an “OPEN” value shall indicate that the bin is in the process of being unloaded, either by pumping or mechanical means.

3.1.7 Course

Scow course-over-ground (COG) shall be provided using industry-standard equipment. The Contractor shall provide scow course-over-ground (to the nearest whole degree) with values from 000 (true north) to 359 degrees referenced to a clockwise positive direction convention.

3.1.8 Speed

Scow speed-over-ground shall be provided in knots using industry-standard equipment with a minimum accuracy of 1.0 knot and resolution to the nearest 0.1 knot.

3.1.9 Heading

Scow heading shall be provided using industry-standard equipment. The scow heading shall be accurate to within 5 degrees and reported to the nearest whole degree with values from 000 (true north) to 359 degrees referenced to a clockwise positive direction convention.

3.1.10 Draft

All reported draft measurements shall be in feet, tenths, and hundredths with an accuracy of ± 0.1 foot relative to observed physical draft readings. The measurements shall be reported at a resolution of two decimal places (hundredths of a foot). The reported forward draft value shall be equal to the sum of the visual forward port and starboard draft mark readings divided by two. The reported aft draft value shall be equal to the sum of the visual aft port and starboard draft mark readings divided by two. Forward draft, aft draft, and average draft will be reported. Sensors shall be placed at an optimum location on the scow to be reflective of observed physical draft mark readings at any trim or list. Minimum accuracies are conditional to relatively calm water. The sensor value reported shall be an average of at least ten samples per event, with at least one maximum value and one minimum value removed, and the minimum eight remaining values averaged. When the average draft is calculated for the purpose of determining displacement, significant digits for average draft shall be maintained such that if forward draft were 0.15 and aft draft were 0.1, then the average draft would be 0.125.

3.1.11 Displacement

Scow displacement shall be reported in long tons, based on the most accurate method available for the scow. The minimum standard of accuracy for displacement is interpolation from the displacement table, based on the average draft. For this contract the density of water used to calculate displacement shall be 64 pounds/cubic foot.

3.2 NATIONAL DREDGING QUALITY MANAGEMENT PROGRAM SYSTEM REQUIREMENTS

The Contractor's DQM system shall be capable of collecting, displaying, and transmitting information to the DQM database. The parameters which shall be reported to the DQM database include trip number, date and time, hull status, scow course, scow speed, scow heading, draft, and displacement. An easily accessible, permanent visual display on the scow shall show in real time the parameters collected by the system in the same units as are used for data submitted to the DQM database. In the event a reported parameter is calculated based on multiple sensors, the sensor values as used in the equation shall be able to be viewed in addition to the required parameter. If a hardware problem occurs, or if a part of the system is physically damaged, then the Contractor shall be responsible for repairing it within 48 hours of determination of the condition.

3.2.1 Telemetry

The Contractor may select any commercial satellite, cellular phone, or other data communications systems available as long as it is capable of transmitting real-time data as well as enough additional bandwidth to clear historically queued data when a connection is reobtained. If connectivity is lost, unsent data shall be queued and transmitted upon restoration of connectivity. Delays in pushing real-time data to the DQM database should not exceed four hours. Exceptions to these requirements may be granted by the DQM Support Center on a case-by-case basis with consideration for contract-specific requirements, site-specific conditions, and extreme weather events.

The data transition process from the scow to the DQM database must be automated. The data may be sent from the scow directly to the DQM database or to a shore-based system. Data transmitted to the DQM database should be raw data; any processing of the data conducted shoreside shall be done using repeatable automated software or programming routine. A description of this process shall be included in the DPIP.

3.2.2 Data Reporting Frequency

Disposal activities shall be logged with high temporal and spatial resolution. Data shall be logged as a series of events. Each set of measurements (time, position, etc.) will be considered an event. Any required information in Paragraph 3.1, “Requirements for Reported Data,” that is not an averaged variable (that is, draft and ullage) shall be collected within 1 second of the reported time. Data shall be measured with sufficient frequency by the scow system to resolve the events to the accuracy specified in the following table. Any averaged variable must be collected and computed within this sampling interval. Event types “Sailing,” “Loading/Stationary,” “Offloading,” and “Open Water Disposal” are triggered by a time criterion; the criterion should be consistent across the “Sailing” and “Open Water Disposal” event types and should not change for the data collected on a given scow. This criterion should be documented by the Contractor in the DPIP.

Event Type	Event Trigger Descriptions	Event Time Resolution	Event Position Resolution
Loading/ Stationary	<p>No change in position with hull status closed An elapsed time of 1 hour since the last event.</p> <p>No change in position with hull status open -----NONCLOSURE-----</p> <p>In the event a scow has completed an open-water disposal and transited back to a holding station without closing the hull, the sampling shall be changed to once per hour.</p>	1 minute	N/A

3.2.4 XML-Formatted Sensor Data String

Each scow event shall be passed as a string on one continuous line of data. The example below is broken up by variable for ease of reading:

```
<?xml version="1.0"?>
<SCOW_DREDGING_DATA version="2.5">
  <SCOW_NAME>AU1994</SCOW_NAME>
  <CONTRACT>W123BA-09-D-0087_RL01</CONTRACT>
  <TRIP_NUMBER>34</TRIP_NUMBER>
  <X_POSITION>-81.670632</X_POSITION>
  <Y_POSITION>41.528987</Y_POSITION>
  <DATE_TIME>2010-08-14 10:50:15</DATE_TIME>
  <SCOW_SPEED>0.0</SCOW_SPEED>
  <SCOW_COURSE>0.0</SCOW_COURSE>
  <HULL_STATUS>OPEN</HULL_STATUS>
  <SCOW_HEADING></SCOW_HEADING>
  <SCOW_FWD_DRAFT></SCOW_FWD_DRAFT>
  <SCOW_AFT_DRAFT></SCOW_AFT_DRAFT>
  <SCOW_AVG_DRAFT></SCOW_AVG_DRAFT>
  <ULLAGE_FWD></ULLAGE_FWD>
  <ULLAGE_AFT></ULLAGE_AFT>
  <ULLAGE_AVG></ULLAGE_AVG>
  <SCOW_BIN_VOLUME></SCOW_BIN_VOLUME>
  <SCOW_DISPLACEMENT></SCOW_DISPLACEMENT>
  <SCOW_LIGHTSHIP></SCOW_LIGHTSHIP>
  <SCOW_TDS></SCOW_TDS>
  <ADDITIONAL_DATA>Some more scow info, if needed</ADDITIONAL_DATA>
</SCOW_DREDGING_DATA>
```

DATE_TIME values shall be formatted as *YYYY-MM-DD HH:MM:SS*, as shown above. If, for any reason, a field has no value, the enclosing XML tags should be sent with nothing between them (for example, <DRAFT_AFT></DRAFT_AFT>). The web service cannot handle a “null” value or any other indicators of no value collected.

3.2.5 Contractor Data Backup

The Contractor shall maintain an archive of all data sent to the DQM database during the dredging contract. The Town may require, at no increase in the contract price, that the Contractor provide a copy of these data covering specified time periods. The data shall be provided in the HTML format which would have been transmitted to the DQM database. Data submission shall be via storage medium acceptable to the Town.

At the end of the dredging contract, the Contractor shall contact the DQM Support Center prior to discarding the data. The DQM Support Center will verify that all data has been received and appropriately archived before giving the Contractor discard permission. The

Contractor shall then record in a separate section at the end of the scow’s onsite copy of the DPIP the following information:

- Person who made the call
- Date of the call
- DQM representative who gave permission to discard

3.3 PERFORMANCE REQUIREMENTS

The Contractor’s DQM system shall be fully operational at the start of dredging operations and fully certified prior to moving dredge material on the contract (see Paragraph 1.4, “National Dredging Quality Management Program Certification”). To meet contract requirements for operability, in addition to certification, the Contractor’s system shall provide, at a minimum, a data string with values for all parameters while operating, as described within the specifications. Additionally, all hardware shall be compliant with DPIP requirements (Paragraph 1.5, “Dredge Plant Instrumentation Plan [DPIP]”). Quality data strings are considered to be those providing values for all parameters reported when operating according to the specification. Repairs necessary to restore data return compliance shall be made within 48 hours. Failure by the Contractor to report the required data within the specified time window for scow measurements (see Paragraph 3.2.2, “Data Reporting Frequency,” and Paragraph 3.2.3, “Data Transmission to the Web Service”) and failure to receive DQM certification prior to dredging will result in withholding of up to 10% of the contract progress payment per clause 52.232-5.

3.4 LIST OF ITEMS TO BE PROVIDED BY THE CONTRACTOR

DPIP <https://dqm.usace.army.mil/Certifications/Index.aspx>

DQM SYSTEM

Sensor instrumentation Paragraph 3.1, “Requirements for Reported Data”

SCOW DATA

Event documentation Paragraph 3.2.2, “Data Reporting Frequency”

Data reports Paragraph 3.2.3, “Data Transmission to the Web Service”

QA EQUIPMENT ON THE DREDGE

Clear and accurate draft marks

---END OF SECTION 35 20 23.13---

ATTACHMENT A DRAWINGS

**See 2023 Wellfleet Harbor Dredging – Area II Drawings
Sheets 1 of 5 through 5 of 5**

ATTACHMENT B
PREVAILING WAGE RATES



MAURA HEALEY
Governor

KIM DRISCOLL
Lt. Governor

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT
DEPARTMENT OF LABOR STANDARDS

Prevailing Wage Rates

As determined by the Director under the provisions of the
Massachusetts General Laws, Chapter 149, Sections 26 to 27H

LAUREN JONES
Secretary

MICHAEL FLANAGAN
Director

Awarding Authority: Town of Wellfleet
Contract Number: **City/Town:** WELLFLEET
Description of Work: The project consists of dredging harbor bottom sediment from an area of Wellfleet Harbor known as Area 2 (South Mooring Field). Dredged sediment will be disposed of at Cape Cod Bay Disposal Site.
Job Location: 255 Commercial Street

Information about Prevailing Wage Schedules for Awarding Authorities and Contractors

- **The wage rates will remain in effect for the duration of the project, except in the case of multi-year public construction projects. For construction projects lasting longer than one year, awarding authorities must request an updated wage schedule no later than two weeks before the anniversary of the date the contract was executed by the awarding authority and the general contractor.** For multi-year CM AT RISK projects, the awarding authority must request an annual update no later than two weeks before the anniversary date, determined as the earlier of: (a) the execution date of the GMP Amendment, or (b) the execution date of the first amendment to permit procurement of construction services. The annual update requirement is not applicable to 27F "rental of equipment" contracts. **The updated wage schedule must be provided to all contractors, including general and sub-contractors, working on the construction project.**
- This wage schedule applies only to the specific project referenced at the top of this page and uniquely identified by the "Wage Request Number" on all pages of this schedule.
- An Awarding Authority must request an updated wage schedule if it has not opened bids or selected a contractor within 90 days of the date of issuance of the wage schedule. For CM AT RISK projects (bid pursuant to G.L. c.149A), the earlier of: (a) the execution date of the GMP Amendment, or (b) the bid for the first construction scope of work must be within 90-days of the wage schedule issuance date.
- The wage schedule shall be incorporated in any advertisement or call for bids for the project as required by M.G.L. c. 149, § 27. The wage schedule shall be made a part of the contract awarded for the project. The wage schedule must be posted in a conspicuous place at the work site for the life of the project in accordance with M.G.L. c. 149 § 27. The wages listed on the wage schedule must be paid to employees performing construction work on the project whether they are employed by the prime contractor, a filed sub-bidder, or a sub-contractor.
- Apprentices working on the project are required to be registered with the Massachusetts Division of Apprentice Standards (DAS). Apprentices must keep their apprentice identification card on their persons during all work hours on the project. An apprentice registered with DAS may be paid the lower apprentice wage rate at the applicable step as provided on the prevailing wage schedule. **Any apprentice not registered with DAS regardless of whether they are registered with another federal, state, local, or private agency must be paid the journeyworker's rate.**
- Every contractor or subcontractor working on the construction project must submit weekly payroll reports and a Statement of Compliance directly to the awarding authority by mail or email and keep them on file for three years. Each weekly payroll report must contain: the employee's name, address, occupational classification, hours worked, and wages paid. Do not submit weekly payroll reports to DLS. For a sample payroll reporting form go to <http://www.mass.gov/dols/pw>.
- Contractors with questions about the wage rates or classifications included on the wage schedule have an affirmative obligation to inquire with DLS at (617) 626-6953.
- Contractors must obtain the wage schedules from awarding authorities. Failure of a contractor or subcontractor to pay the prevailing wage rates listed on the wage schedule to all employees who perform construction work on the project is a violation of the law and subjects the contractor or subcontractor to civil and criminal penalties.
- Employees not receiving the prevailing wage rate set forth on the wage schedule may file a complaint with the Fair Labor Division of the office of the Attorney General at (617) 727-3465.

Classification	Effective Date	Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
Op Eng Marine (Dredging Work)						
BOAT OPERATOR <i>OPERATING ENGINEERS - MARINE DIVISION</i>	10/01/2017	\$29.26	\$7.63	\$3.30	\$0.00	\$40.19
CERTIFIED WELDER <i>OPERATING ENGINEERS - MARINE DIVISION</i>	10/01/2017	\$31.09	\$7.63	\$3.60	\$0.00	\$42.32
CHIEF WELDER/ CHIEF MATE <i>OPERATING ENGINEERS - MARINE DIVISION</i>	10/01/2017	\$33.02	\$7.63	\$3.60	\$0.00	\$44.25
DERRICK / SPIDER / SPILLBARGE OPERATOR <i>OPERATING ENGINEERS - MARINE DIVISION</i>	10/01/2017	\$33.02	\$7.63	\$3.60	\$0.00	\$44.25
DRAG BARGE OPERATOR / WELDER / MATE <i>OPERATING ENGINEERS - MARINE DIVISION</i>	10/01/2017	\$30.24	\$7.63	\$3.30	\$0.00	\$41.17
ENGINEER / ELECTRICIAN <i>OPERATING ENGINEERS - MARINE DIVISION</i>	10/01/2017	\$33.02	\$7.63	\$3.60	\$0.00	\$44.25
LICENSED BOAT OPERATOR <i>OPERATING ENGINEERS - MARINE DIVISION</i>	10/01/2017	\$33.02	\$7.63	\$3.60	\$0.00	\$44.25
LICENSED TUG OPERATOR OVER 1000HP <i>OPERATING ENGINEERS - MARINE DIVISION</i>	10/01/2017	\$38.18	\$7.63	\$3.60	\$0.00	\$49.41
MAINTENANCE ENGINEER <i>OPERATING ENGINEERS - MARINE DIVISION</i>	10/01/2017	\$33.03	\$7.63	\$3.60	\$0.00	\$44.26
OILER - MARINE DIVISION <i>OPERATING ENGINEERS - MARINE DIVISION</i>	10/01/2017	\$24.30	\$7.63	\$3.00	\$0.00	\$34.93
OPERATOR / LEVERMAN <i>OPERATING ENGINEERS - MARINE DIVISION</i>	10/01/2017	\$38.18	\$7.63	\$3.60	\$0.00	\$49.41
RODMAN / SCOWMAN <i>OPERATING ENGINEERS - MARINE DIVISION</i>	10/01/2017	\$24.30	\$7.63	\$3.00	\$0.00	\$34.93
SHOREMAN / DECKHAND <i>OPERATING ENGINEERS - MARINE DIVISION</i>	10/01/2017	\$24.30	\$7.63	\$3.00	\$0.00	\$34.93

Additional Apprentice Information:

Minimum wage rates for apprentices employed on public works projects are listed above as a percentage of the pre-determined hourly wage rate established by the Commissioner under the provisions of the M.G.L. c. 149, ss. 26-27D. Apprentice ratios are established by the Division of Apprenticeship Training pursuant to M.G.L. c. 23, ss. 11E-11L.

All apprentices must be registered with the Division of Apprenticeship Training in accordance with M.G.L. c. 23, ss. 11E-11L.

All steps are six months (1000 hours.)

Ratios are expressed in allowable number of apprentices to journeymen or fraction thereof, unless otherwise specified.

** Multiple ratios are listed in the comment field.

*** APP to JM; 1:1, 2:2, 2:3, 3:4, 4:4, 4:5, 4:6, 5:7, 6:7, 6:8, 6:9, 7:10, 8:10, 8:11, 8:12, 9:13, 10:13, 10:14, etc.

**** APP to JM; 1:1, 1:2, 2:3, 2:4, 3:5, 4:6, 4:7, 5:8, 6:9, 6:10, 7:11, 8:12, 8:13, 9:14, 10:15, 10:16, etc.

ATTACHMENT C
REGULATORY PERMITS

- Expanded Environmental Notification Form Certificate
- Order of Conditions
- MESA Conservation Management Permit (CMP)
- MESA CMP Amendment
- MassDEP Combined Chapter 91/401 WQC
- CZM Federal Consistency Review
- MEPA Final Record of Decision
- Suitability Determination
- US Army Corps of Engineers (Example from Area 1)

Expanded Environmental Notification Form Certificate

associated costs has limited the Town’s ability to adequately provide maintenance dredging on a more frequent basis.

Area I includes the North and South Access Channels, North Anchorage and the Access Channel adjacent to the L-Pier. Area II includes the South Anchorage. Water depths in the North Channel and North Anchorage are at 3 feet or less below mean low water (MLW) which hinders navigation and available draft in the marina slips. Some of the marina is now dry at low tide and approximately 15 percent of Area I is intertidal. Many of the mooring in the South Anchorage are dry at low tide. Approximately 64 percent of Area II has become intertidal mudflat with elevations ranging between 0 and +1 feet MLW. The deepest depths range between -1 and -2 feet MLW.

The EENF includes a table identifying previously issued permits associated with dredging. All dredging will occur to depths of -6 feet MLW with a one foot allowance for overdredge. The total volume of sediment to be dredged is approximately 364,500 cubic yards (cy). Offshore disposal is proposed at the Cape Cod Bay Disposal Site (CCBDS). Sediment within proposed dredge areas consists of fine silt and, therefore, is not suitable for beneficial reuse as beach nourishment. The EENF indicates that the dredging will occur in two or three phases subsequent to dredging of the federal anchorage by the United States Army Corps of Engineers (ACOE).

The following table summarizes the proposed dredge areas and volumes:

Site	Dredge Area (acres)	Dredge Volume (cy)	1-foot Overdredge Volume (cy)	Total Dredge Volume (cy)
North and South Access Channels	10.3	65,000	16,000	81,000
North Anchorage Basin	3.5	25,000	7,000	32,000
L-Pier Access Channel	0.8	2,500	1,000	3,500
South Anchorage Basin	23.9	211,000	37,000	248,000
Total	38.5	303,500	61,000	364,500

Project Site

Wellfleet Harbor is a natural harbor and is significant to the history of the Town. It has provided dockage and anchorage for fishing and recreational vessels since 1644. The harbor is currently used by commercial fishing vessels, charter boats, and recreational boats. According to the EENF, the existing channels and anchorages gradually accumulate sediments through natural processes and periodic maintenance is required to maintain navigation. The Town currently operates 250 moorings and 150 boat slips within the harbor. The Town maintains and operates a marina north of the Town Pier and two anchorages, one to the north and one to the south of the Federal Navigation Channel. The Federal Navigation Channel provides access into Wellfleet Harbor with an anchorage basin at the head of the channel.

The EENF stresses the importance of the marina to the Town's economy. Access to the marina is maintained from the Federal Channel via the South Access Channel and North Access Channel. The North Anchorage (Area I) is used to provide seasonal mooring for approximately 35 boats. The South Anchorage (Area II) is contiguous with the Federal Anchorage and both anchorages combined provide approximately 200 seasonal moorings for boats. Areas I and II were last dredged in 2001 and 1957, respectively.

Wellfleet Harbor, with the exception of the existing federal and town channels and anchorages, has been designated an Area of Critical Environmental Concern (ACEC). The project does not propose expansion of the existing maintenance dredge areas, and therefore, will lie fully outside the boundaries of the Wellfleet ACEC.

Jurisdiction and Permitting

This project is undergoing MEPA review and is subject to a mandatory EIR pursuant to 301 CMR 11.03(3)(a)(1)(b) of the MEPA regulations because it requires a State Agency Action and will alter ten or more acres of wetlands. The project also exceeds ENF thresholds pursuant to 301 CMR 11.03(2)(b)(2) because it will disturb greater than two acres of designated priority habitat that results in a take of a state-listed rare species; 301 CMR 11.03(3)(b)(3) because it will involve dredging of 10,000 or more cy of material; and 301 CMR 11.03(3)(b)(4) because it will involve disposal of 10,000 or more cy of material. The project will require a Section 401 Water Quality Certification (401 WQC) and a Chapter 91 (c. 91) Permit from the Massachusetts Department of Environmental Protection (MassDEP). The project will require a Conservation and Management Permit (CMP) from the Natural Heritage and Endangered Species Program (NHESP).

The project will require an Order of Conditions from the Wellfleet Conservation Commission (or in the case of an appeal, a Superseding Order of Conditions from MassDEP) and an Individual Permit from the United States Army Corps of Engineers (ACOE) in accordance with Section 404 of the Federal Clean Water Act (CWA). The project is also subject to Federal Consistency Review by the Massachusetts Office of Coastal Zone Management (CZM).

The project is subject to review under the May 2010 MEPA Greenhouse Gas (GHG) Emissions Policy and Protocol (GHG Policy). However, the project meets the de minimis exception outlined in the MEPA GHG Policy.

Because the project may include State Financial Assistance, MEPA jurisdiction is broad in scope and extends to all aspects of the project that are likely, directly or indirectly, to cause Damage to the Environment, as defined in the MEPA regulations.

Environmental Impacts and Mitigation

Potential environmental impacts associated with the project include direct alteration of 38.5 acres of Land Under Ocean (LUO) and Land Containing Shellfish (LCS), and 11 acres of Tidal Flats.

Measures to avoid, minimize and mitigate potential environmental impacts include: adherence to time-of-year (TOY) restrictions to protect sensitive species such as horseshoe crabs, winter flounder,

shellfish, and right whales; dredging within previously dredged areas; and mechanical dredging with an environmental bucket. A suitability determination for offshore disposal from ACOE indicates that the dredged material is suitable for disposal at the CCBDS.

Waiver Request

In accordance with Section 11.05(7) of the MEPA regulations, the Town submitted an EENF with a request that I waive the requirement for a mandatory EIR. Supplemental information¹ identifies the project's consistency with the criteria for a Waiver. The EENF was subject to an extended comment period pursuant to Section 11.06(1) of the MEPA regulations.

Comment letters from State Agencies support the Waiver request and identify outstanding issues that should be addressed prior to issuance of permits. Comments from the Cape Cod Commission (CCC) indicate concern with potential impacts to rare species but support the Town's request for a Waiver to balance protection of the natural environment and rare species and their habitat while providing for the maintenance of important public infrastructure.

Review of the EENF

The EENF includes a description of the project, supporting data and graphics, a discussion of potential environmental impacts, an alternatives analysis, measures to avoid, minimize and mitigate impacts and a suitability determination for offshore disposal from ACOE, and an Essential Fish Habitat (EFH) Assessment. The EENF identifies measures to avoid, minimize, and mitigate project-related environmental impacts.

Alternatives Analysis

The EENF includes an analysis of four dredge area alternatives. The No-Action Alternative (Alternative 1) would allow siltation to continue unabated. It is anticipated that the navigation channels, which currently have limited depths, would become unusable and prevent future use of the Town Marina. The No-Action Alternative was rejected because it would not meet the project goals of providing safe navigational access and recreational and economic benefits to the Town.

Alternative 2 would involve reducing the marina access channel depths (North and South Channels) to -4 feet MLW and maintaining all other areas to a depth of -6 feet MLW. This alternative would minimize the impacts of dredging by reducing the volume of material removed and the dredging area required. However, the Town has determined that this alternative would not be feasible because it would impede the navigation of a majority of vessels using the marina which have drafts that require a channel depth of -6 feet MLW.

Alternative 3 would involve maintenance dredging of the channels to -6 feet MLW and expansion of the Town's South Anchorage to include the entire area currently used for vessel moorings. The expanded footprint would be the same width as the southern anchorage (750 feet), extend further south by 540 feet, and be dredged to a depth of -4 feet MLW with a 1-foot overdredge. While this alternative would enable the Town to accommodate additional vessels in the harbor, it would increase

¹ Email submitted on May 10, 2016 by Russell Titmuss, Bourne Consulting Engineering, PC, on behalf of the Town.



The Commonwealth of Massachusetts
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Charles D. Baker
GOVERNOR

Karyn E. Polito
LIEUTENANT GOVERNOR

Matthew A. Beaton
SECRETARY

Tel: (617) 626-1000
Fax: (617) 626-1181
<http://www.mass.gov/envir>

May 27, 2016

CERTIFICATE OF THE SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS
ON THE
EXPANDED ENVIRONMENTAL NOTIFICATION FORM

PROJECT NAME : Wellfleet Harbor Maintenance Dredging
PROJECT MUNICIPALITY : Wellfleet
PROJECT WATERSHED : Cape Cod
EEA NUMBER : 15506
PROJECT PROPONENT : Town of Wellfleet
DATE NOTICED IN MONITOR : April 20, 2016

Pursuant to the Massachusetts Environmental Policy Act (MEPA, M.G.L. c. 30, ss. 61-62I) and Sections 11.06 and 11.11 of the MEPA regulations (301 CMR 11.00), I have reviewed the Expanded Environmental Notification Form (EENF) for this project and hereby determine that it **does not require** the submission of an Environmental Impact Report (EIR). In a separate Draft Record of Decision (DROD) also issued today, I have proposed to grant a Waiver from the requirement to prepare a mandatory EIR for the project. This Certificate sets forth the issues that must be addressed by the Town of Wellfleet (the Town) during permitting and discusses comments and recommendations submitted during MEPA review.

Project Description

As described in the EENF, the project consists of maintenance dredging of all Town managed channels and anchorages within Wellfleet Harbor to restore safe and reliable navigation. There are two primary dredge areas (Areas I and II) which are composed of five dredge sites within Wellfleet Harbor that have been maintained by the Town for more than sixty years. The Town proposes to dredge all historically permitted areas to address major shoaling of these areas which impedes commercial and recreational navigation in the harbor. The Town indicates that the scale of the dredging projects and

costs and impacts to coastal resource areas. In addition, dredging in the ACEC is categorically prohibited unless the dredging is demonstrated to be maintenance dredging.

The Preferred Alternative (Alternative 4) would reestablish the previously authorized channel and anchorage depths throughout Area I and II to allow Town usage, while limiting the impacts to coastal resource areas to those areas historically permitted for maintenance.

The EENF provides a limited analysis of alternative dredge methods. The EENF concludes that because the dredged material is mostly fine sediment, other dredge methods such as hydraulic dredging would be inefficient and potentially result in additional impacts to the dredging areas. Dredging will be performed using a mechanical dredge with an environmental bucket² on a barge system.

The EENF includes an analysis of dredged material disposal alternatives. The Town conducted a physical and chemical sediment characterization of proposed dredge material in accordance with an approved sampling and testing plan prepared by ACOE. Samples collected from 14 cores contained sufficient fine material (65 to 95 percent silts) to demonstrate that it would not be suitable for beach nourishment. Disposal options for material that is unsuitable for beach nourishment include transport to offshore open water disposal sites or trucking to upland disposal site(s) with limited or no beneficial reuse. Trucking requires dewatering prior to transport; the EENF does not identify potential dewatering sites. To be eligible to use an offshore disposal site for dredged materials, the Town must demonstrate that: there are no reasonable or practical alternative disposal options available; that the sediments are compatible with natural sediments at the disposal site; and that sediments are not likely to disrupt or degrade natural habitats and/or biotic communities. According to the EENF, upland disposal is not economically viable compared to offshore disposal.

The EENF includes a Suitability Determination for Offshore Disposal from the ACOE which indicated that all of the sediments in the areas sampled are suitable for unconfined open water disposal at the CCBDS. Offshore disposal of dredged material will be regulated under the CWA and the Marine Protection, Research, and Sanctuaries Act (MPRSA).

Wetlands and Waterways

The project will directly impact LUO, LCS, and Tidal Flats. The Wellfleet Conservation Commission will review the project to determine its consistency with the Wetlands Protection Act (WPA), the Wetlands Regulations (310 CMR 10.00), and associated performance standards. MassDEP will review the project to determine its consistency with the c. 91 regulations (310 CMR 9.00) and the 401 WQC regulations (314 CMR 9.00). The Town may choose to file a combined c. 91 and WQC application with MassDEP (BRP WW26). Finally, ACOE will review the project to determine its consistency with Section 404 of the Federal CWA. The EENF demonstrates that the project can be implemented consistent with regulatory performance standards for dredging.

The EENF includes a table summarizing the dredging history for this area. The MassDEP comment letter indicates that the project will be classified as a water-dependent use pursuant to 310 CMR 9.12 and identifies information necessary for permitting. The Town should provide the following additional information in the application:

² An environmental bucket is an enclosed system that minimizes the suspension of sediment.

- documentation that the proposed work will be performed within a previously authorized dredge area which does not extend beyond the original dredge depth, width or length (any dredge work beyond the scope of previously issued licenses would be categorized as improvement dredging and would be permitted accordingly);
- previous permits and/or licenses and documentation with physical locations and any available plans mapping the areas of previous dredging;
- a salt marsh delineation and any historic mapping of the salt marsh resource area; and
- dredge sample analysis of chemical constituents and a grain size analysis.

The EENF provides a discussion of how the project meets specific WPA performance standards for LUO, LCS, and Tidal Flats. Comments from MassDEP note that the project must demonstrate consistency with the performance standards for LUO at 310 CMR 10.25 (3) and (4) which require that dredging projects minimize adverse effects due to changes in marine productivity, particularly increases in turbidity. Best management practices (BMPs) identified in the EENF will include mechanical dredging with an environmental bucket to minimize impacts from suspension of sediment. MassDEP has also requested that the Town further consider the use of silt curtains or similar measures to manage turbidity.

According to the EENF, there is no submerged aquatic vegetation (SAV) within the dredging limits and the project will not directly impact nor be conducted within 100 feet of salt marsh.

The entire project area is mapped as suitable shellfish habitat for American oyster (*Crassostrea virginica*) and quahog (*Mercenaria mercenaria*). Dredge areas also closely border mapped habitat for soft shell clam (*Mya arenaria*) as well as nine existing aquaculture sites. LCS is deemed significant to the interest of the WPA (310 CMR 10.34) and the protection of marine fisheries. According to the EENF, the Town Shellfish Warden affirms that the harbor bottom consists of black muck and is not a productive shellfish area. While some limited portions of the total dredge footprint are open to shellfishing, the majority of the dredge footprint remains closed and unproductive. The proposed project is expected to have minimal temporary impacts to these areas and, at the proposed dredge depths, are not anticipated to permanently impact the ability of the native shellfish populations to recolonize the project area.

Comments from DMF indicate that Wellfleet Harbor provide spawning habitat for winter flounder (*Pseudopleuronectes americanus*) and a variety of diadromous fish species including alewife (*Alosa pseudoharengus*), American eel (*Anguilla rostrata*), blueback herring (*Alosa aestivalis*), white perch (*Morone americana*), and Atlantic tomcod (*Microgadus tomcod*), as well as shellfish species. Several of the beaches to the south and west of the dredge area are mapped horseshoe crab (*Limulus polyphemus*) spawning habitat. Impacts to fish species and shellfish, including horseshoe crabs, will be minimized through compliance with time-of-year (TOY) restrictions. Based on these restrictions, dredging would occur between September and December. I expect MassDEP will consider DMF comments during the permitting process.

Comments from MassDEP and CZM indicate that the Town should provide sufficient information to demonstrate that proposed work is maintenance dredging prior to the issuance of permits and the DROD has been conditioned upon the provision of this information.

Rare Species

The project site is located within mapped *Priority* and *Estimated Habitat* for state-listed rare species, as indicated in the 13th Edition of the Massachusetts Natural Heritage Atlas. The Diamond-backed Terrapin (*Malaclemys terrapin*), a turtle species state-listed as “Threatened”, and its habitat are protected pursuant to the Massachusetts Endangered Species Act (MESA) (MGL c.131A) and its implementing regulations (321 CMR 10.00) and the WPA (M.G.L. c. 131, s. 40) and its implementing regulations (310 CMR 10.00). The Town will be required to file with NHESP in compliance with the MESA.

According to the EENF, during the period of brumation (over-wintering), the Diamond-backed Terrapin would be susceptible to potential impacts associated with dredging. A study conducted in 2011 and 2012 demonstrated that a majority of individuals brumate in the salt marshes adjacent to the project area; however, a small number of individuals utilize the channel and basin areas as overwintering locations.

In its comments, NHESP anticipates that the project will result in a “take” of the Diamond-backed Terrapin given the various TOY restrictions and resource constraints associated with dredging and offshore disposal. Projects resulting in a “take” of state-listed species may be permitted only if they meet the performance standards for a MESA CMP. The CMP must demonstrate that the project can avoid, minimize and mitigate impacts to state-listed species consistent with the following performance standards: (a) the Town has adequately assessed alternatives to both temporary and permanent impacts to state-listed species; (b) an insignificant portion of the local population would be impacted by the project; and (c) the Town agrees to carry out a CMP that provides a long-term net benefit to the conservation of the state-listed species impacted. The Town has been consulting with NHESP and Mass Audubon to develop a mitigation plan. The Town should provide additional specificity regarding rare species mitigation including identification of viable restoration sites or amount of funding for research.

NHESP comments indicate that it is likely the Town will be able to meet the performance standards of a MESA CMP through implementation of measures including but not limited to, permanent protection and enhancement of suitable nesting habitat, funding for conservation research, and habitat management and/or conservation planning to benefit the turtle population. Comments from CCC recommend the Town consider “headstarting” turtles which allows hatchlings to be raised over the winter by cooperating organizations and released when they are large enough to be less vulnerable to predators.

NHESP anticipates that it can address any outstanding issues related to rare species and their habitats through the MESA review process and does not object to the Waiver request. The project will include monitoring and TOY restrictions to avoid and minimize impacts to the Diamond-backed Terrapin. The Town should continue to consult with the NHESP prior to and during the permitting process to develop appropriate mitigation measures in compliance with the MESA and to ensure that dredging activities are closely monitored and minimize and mitigate impacts to state-listed species.

Greenhouse Gases

The project is subject to the MEPA Greenhouse Gas Policy and Protocol (GHG Policy) because it exceeds a threshold for a mandatory EIR. The GHG Policy includes a de minimis exemption for projects that will produce minimal amounts of GHG emissions. Given the nature of the project, I have concluded that this project falls within the de minimis exemption; therefore, the Town is not required to prepare a GHG analysis. However, I encourage the Town to incorporate measures to avoid and minimize GHG emissions (and other air pollutants) during the construction period such as limiting idling, using ultra-low sulfur diesel fuel in dredging equipment.

Public Benefit Review

Consistent with the provisions of *An Act Relative to Licensing Requirements for Certain Tidelands* (2007 Mass. Acts ch. 168, sec.8) (the Act), which was enacted on November 15, 2007, and corresponding regulations at 301 CMR 13.00, I must issue a Public Benefit Determination (PBD) for this project. I note that, consistent with the PBD regulations at 301 CMR 13.04(1), the project is presumed to provide adequate public benefit because it is a water-dependent use.

Construction Period

The project must comply with MassDEP's Solid Waste and Air Pollution Control regulations, pursuant to M.G.L. c.40, s.54. All construction activities should be undertaken in compliance with the conditions of all State and local permits.

The ACOE will perform maintenance dredging of the existing Federal Channel and Anchorage in Wellfleet Harbor. Due to existing water depths, dredging will need to proceed from the outer harbor into the inner harbor. The Town will coordinate the timing of its project with the ACOE dredging of the Federal Channel and Anchorage. It is expected that the Federal dredging project will take a complete dredging season to complete in advance of any Town dredging. Dredging within the harbor will extend over a total of four seasons.

The Town will avoid, minimize and mitigate project-related impacts through the use of TOY restrictions and operational BMPs. The EENF indicates that dredged material will be disposed off at CCBDS and will be performed outside a potential TOY restriction from January 1 to May 15 to avoid right whales. The DMF comment letter recommends the following TOY restrictions and measures on dredging activities: February 1 to September 30 to protect winter flounder and diadromous fish resources, and horseshoe crabs, and shellfish during their respective spawning and larval development periods; and coordination with local bordering aquaculture owners prior to dredging to minimize potential impacts from siltation to these operations during dredging. I expect MassDEP will consider DMF comments during the permitting process.

According to the Massachusetts Board of Underwater Archaeological Resources (BUAR), no record exists of underwater archaeological resources exists within the project area. If any heretofore unknown archaeological resources are detected during construction, the Town should take appropriate measures to prevent impacts to the resources and contact BUAR, the Massachusetts Historical Commission, and other appropriate agencies.

Conclusion

Based on review of the EENF and comment letters, and in consultation with the relevant State Agencies, I find that further MEPA review is not required. The EENF has sufficiently defined the nature and general elements of the project for the purposes of MEPA review. Comment letters support the project, the Waiver request, and do not identify alternatives or mitigation measures that warrant additional analysis through an EIR. I expect that the Town will continue to collaborate with local, State, federal, and regional agencies during the permitting process to further refine project mitigation measures.

I have also issued a DROD proposing to grant a Waiver from the requirement to prepare an EIR for the project. The DROD will be published in the next edition of the *Environmental Monitor* on June 8, 2016 in accordance with 301 CMR 11.15(2). The DROD is conditioned upon provision of additional information. Upon distribution of information, the comment period will begin. The public comment period will last for 14 days. Based on written comments received concerning the DROD, I shall issue a Final Record of Decision (FROD) within seven days after the close of the public comment period, in accordance with 301 CMR 11.15(6). If the Waiver is not approved based on comments received on the DROD, then this Certificate on the EENF will be re-issued with a Scope for an EIR.



May 27, 2016

Date

Matthew A. Beaton

Comments received:

04/25/2016	Massachusetts Board of Underwater Archaeological Resources (BUAR)
05/10/2016	Massachusetts Division of Marine Fisheries (DMF)
05/19/2016	Cape Cod Commission (CCC)
05/20/2016	Massachusetts Department of Environmental Protection (MassDEP) – Southeast Regional Office (SERO)
05/20/2016	Massachusetts Division of Fisheries and Wildlife (DFW) – Natural Heritage and Endangered Species Program (NHESP)
05/20/2016	Massachusetts Office of Coastal Zone Management (CZM)

MAB/PPP/ppp



PP

The COMMONWEALTH OF MASSACHUSETTS
BOARD OF UNDERWATER ARCHAEOLOGICAL RESOURCES
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS
251 Causeway Street, Suite 800, Boston, MA 02114-2136
Tel. (617) 626-1141 Fax (617) 626-1240 Web Site: www.mass.gov/eea/agencies/czm/buar/

April 25, 2016

Secretary Matthew A. Beaton
Executive Office of Energy and Environmental Affairs
Attention: Purvi Patel, MEPA Unit
100 Cambridge St., Suite 900
Boston, MA 02114

RECEIVED

APR 25 2016

MEPA

RE: Wellfleet Harbor Maintenance Dredging, Wellfleet (EEA#15506)

The Massachusetts Board of Underwater Archaeological Resources (BUAR) has completed its review of the proposed project's ENF (EEA#15506) prepared by Bourne Consulting Engineering on behalf of Town of Wellfleet. We offer the following comments.

The Board has conducted a preliminary review of its files and secondary literature sources to identify known and potential submerged cultural resources in the proposed project area. No record of any underwater archaeological resources was found. Based on the results of this review and nature of the limited maintenance dredging, the Board expects that this project is unlikely to impact submerged cultural resources.

However, the area may be considered archaeological sensitive. Should heretofore unknown archaeological resources be encountered during the course of work, the Board expects that the project's sponsor will take steps to limit adverse affects (take care to not further disturb the archaeological resource and note its precise location) and notify the Board and the Massachusetts Historical Commission, as well as other appropriate agencies, immediately in accordance with the Board's *Policy Guidance for the Discovery of Unanticipated Archaeological Resources*.

The Board appreciates the opportunity to provide these comments as part of the review process. Should you have any questions regarding this letter, please do not hesitate to contact me at the address above, by email at victor.mastone@state.ma.us, or by telephone at (617) 626-1141.

Sincerely,

A handwritten signature in blue ink, appearing to read "Victor T. Mastone".

Victor T. Mastone
Director

/vtm



David E. Pierce
Director

Commonwealth of Massachusetts

Division of Marine Fisheries

251 Causeway Street, Suite 400

Boston, Massachusetts 02114

(617) 626-1520

fax (617) 626-1509



Charles D. Baker
Governor

Karyn E. Polito
Lieutenant Governor

Matthew A. Beaton
Secretary

George N. Peterson, Jr.
Commissioner

Mary-Lee King
Deputy Commissioner

May 10, 2016

Secretary Matthew A. Beaton
Executive Office of Energy and Environmental Affairs (EEA)
Attn: MEPA Office
Purvi Patel, EEA No. 15506
100 Cambridge Street, Suite 900
Boston, MA 02114

Dear Secretary Beaton:

The Division of Marine Fisheries (*Marine Fisheries*) has reviewed the Environmental Notification Form by the Town of Wellfleet for the Wellfleet Harbor Dredging Project. Proposed work consists of maintenance dredging 364,500 cubic yards to -6 feet below MLW in two areas within Wellfleet Harbor. Area I consists of the North and South Access Channels, North Anchorage and the Access Channel adjacent to the L-Pier. Area II consists of the South Anchorage area. Dredging would be performed using a barge-mounted mechanical dredge with an environmental bucket. All dredge material would be transferred to the Cape Cod Bay Disposal Site for offshore disposal. Existing marine fisheries resources and potential project impacts to these resources are outlined in the following paragraphs.

Marine Fisheries has identified Wellfleet Harbor as spawning habitat for winter flounder (*Pseudopleuronectes americanus*). Winter flounder enter the area and spawn from January through May, laying clumps of eggs directly on the substrate. These demersal eggs hatch approximately fifteen to twenty days later. The Atlantic States Marine Fisheries Commission has designated winter flounder spawning habitat as "Habitat Areas of Particular Concern" (HAPC). A recent stock assessment has determined that Southern New England/Mid Atlantic winter flounder populations are at only 23% of the recommended recovery level [1].

The proposed maintenance dredge footprint includes mapped habitat for several shellfish species. The dredge areas contain mapped habitat for American oyster (*Crassostrea virginica*) and quahog (*Mercenaria mercenaria*). The dredge region also closely borders mapped habitat for soft shell clam (*Mya arenaria*) as well as nine existing aquaculture sites. Waters within and/or bordering the project site have habitat characteristics suitable for these shellfish species. Land containing shellfish is deemed significant to the interest of the Wetlands Protection Act (310 CMR 10.34) and the protection of marine fisheries.

Several beaches to the south and west of the dredge area are mapped horseshoe crab (*Limulus polyphemus*) spawning habitat. Horseshoe crabs deposit their eggs in the upper intertidal regions of sandy beaches from late spring to early summer during spring high tides [2]. Adult crabs congregate in deep waters such as channel areas during the day while waiting to move on to the beaches at night to spawn. The eggs hatch approximately two to four weeks later. Recent stock assessments show a decline in horseshoe crab abundance in the New England region [3].

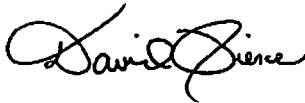
Wellfleet Harbor provides habitat for a variety of finfish species. Diadromous fish species in this system include alewife (*Alosa pseudoharengus*), blueback herring (*Alosa aestivalis*), American eel (*Anguilla rostrata*), white perch (*Morone americana*), and Atlantic tomcod (*Microgadus tomcod*) [4].

Marine Fisheries offers the following comments for your consideration:

- Dredging activity could negatively impact winter flounder, horseshoe crabs, and shellfish during their respective spawning and larval development periods. To minimize such impacts, *Marine Fisheries* recommends a time of year (TOY) restriction on all in-water, silt producing work from **February 1 to September 30**.
- Bordering aquaculture operations could be negatively impacted by siltation associated with dredging activity. *Marine Fisheries* recommends that the Town coordinate with local grant owners prior to dredging to minimize potential impacts to these operations.

Questions regarding this review may be directed to John Logan in our New Bedford office at (508) 990-2860 ext. 141.

Sincerely,



David E. Pierce
Director

cc: Wellfleet Conservation Commission
Russell Titmuss, Bourne Consulting Engineering
Christopher Boelke, Sue Tuxbury & Alison Verkade, NMFS
Robert Boeri, CZM
Ed Reiner, EPA
Ken Chin, DEP
Richard Lehan, DFG
Kelly Kleister, Tom Shields, Kathryn Ford, Christian Petitpas, DMF

References

1. Northeast Fisheries Science Center (2014) Operational assessment of 20 northeast groundfish stocks, updated through 2014. Northeast Fisheries Science Center Reference Document 15-24. <http://www.nefsc.noaa.gov/publications/crd/crd1524/crd1524.pdf>
2. Barlow Jr. RB, Powers MK, Howard H, Kass L (1986) Migration of *Limulus* for mating: relation to lunar phase, tide height, and sunlight. Biological Bulletin 171: 310-329.
3. ASMFC Horseshoe Crab Stock Assessment Subcommittee (2013) Atlantic States Marine Fisheries Commission 2013 Horseshoe Crab Stock Assessment Update. 68 pp. http://www.asmfc.org/uploads/file/52a88db82013HSC_StockAssessmentUpdate.pdf
4. Evans NT, Ford KH, Chase BC, Sheppard J (2011) Recommended Time of Year Restrictions (TOYs) for Coastal Alteration Projects to Protect Marine Fisheries Resources in Massachusetts. Massachusetts Division of Marine Fisheries Technical Report, TR-47.

DP/JL/sd

3225 MAIN STREET • P.O. BOX 226
BARNSTABLE, MASSACHUSETTS 02630



CAPE COD
COMMISSION

(508) 362-3828 • Fax (508) 362-3136 • www.capecodcommission.org

By Electronic Mail

May 16, 2016

Matthew A. Beaton, Secretary
Executive Office of Energy and Environmental Affairs (EEA)
Attn: MEPA Office, Purvi Patel, Analyst
100 Cambridge Street, Suite 900
Boston, MA 02114

**Re: Expanded Environmental Notification Form (EENF)/ Mandatory
EIR Waiver Request – EEA No. 15506
Wellfleet Harbor Maintenance Dredging
Wellfleet Harbor, Wellfleet
(CCC Project No. ENF16009)**

Dear Secretary Beaton:

The Cape Cod Commission (“Commission”) provides the following comments on the EENF submitted by Bourne Consulting Engineering on behalf of the Town of Wellfleet for the above referenced project.

The project site is located within Priority Habitat, as mapped by the Natural Heritage and Endangered Species Program (NHESP), for diamondback terrapins, and is within Essential Fish Habitat, as mapped by National Marine Fisheries Services, for several fish species. As provided in the EENF, this project will likely result in a “take” of diamondback terrapins, as a study in 2011 and 2012 showed that a small number of individuals may utilize the channel and basin areas for overwintering. The town has been working with the NHESP to study and understand the location of terrapins within the proposed work area, and to avoid and mitigate those impacts. The Cape Cod Regional Policy Plan (RPP) (amended August 17, 2012) does not generally support projects that will adversely impact rare species or their habitats. However, Commission staff recognizes the importance of this maintenance dredging project to the Town of Wellfleet for commercial and recreational boating access and safety (which are also interests addressed in the RPP), and thus of balancing these interests with rare species protection.

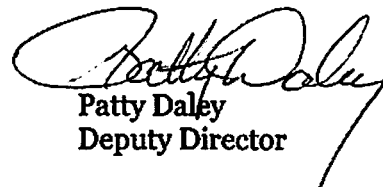
To this end, Commission staff strongly supports efforts to avoid impacts to diamondback terrapins through time of year restrictions for the maintenance dredging, and other efforts to mitigate and minimize impacts. The EENF states that the town is consulting with the NHESP to minimize a “take” and establish a mitigation plan for the terrapin. As part of its discussions with NHESP about mitigation, the Town might consider pursuing a “Permit to Headstart Turtles”

program. The Commission notes that other programs receiving a "Permit to Headstart Turtles" on Cape Cod have provided robust terrapin juveniles for release to the wild, as well as wonderful educational opportunities for participating grade school students.

The RPP also requires that projects be designed to minimize direct and indirect impacts to fish, shellfish and crustaceans, even if these are not state or federally protected species. Commission staff supports time of year restrictions to minimize impacts to these resources, as recommended by Division of Marine Fisheries, while allowing for reasonable dredging windows.

Thank you for the opportunity to provide comments on the above referenced EENF. Cape Cod Commission staff are available and happy to answer any questions about these comments.

Sincerely,



Patty Daley
Deputy Director

Cc: Project File
Russell Titmuss, Bourne Consulting Engineering, Project Consultant (via email)
Town of Wellfleet Cape Cod Commission representative (via email)



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

Southeast Regional Office • 20 Riverside Drive, Lakeville MA 02347 • 508-946-2700

Charles D. Baker
Governor

Karyn E. Polito
Lieutenant Governor

Matthew A. Beaton
Secretary

Martin Suuberg
Commissioner

May 20, 2016

Mathew A. Beaton,
Secretary of Environment and Energy
ATTN: MEPA Office
Executive Office of Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

RE: ENF Review EOEEA # 15506 -
WELLFLEET.Wellfleet Harbor
Maintenance Dredging at Kendrick Avenue

Dear Secretary Beaton,

The Southeast Regional Office of the Department of Environmental Protection (MassDEP) has reviewed the Environmental Notification Form (ENF) for the proposed Wellfleet Harbor Maintenance Dredging Project, located at Kendrick Avenue, Wellfleet, Massachusetts for the proposed (EOEEA # 15506). The project proponent provides the following information for the project:

The Town is seeking to dredge all historically permitted areas to a depth of -6 feet below MLW (-1 overdredge). Dredging would be performed using a mechanical dredge on a barge. An environmental bucket would be used to remove sediment from the dredge sites, it would be placed on a barge for transport to the Cape Cod Bay Disposal Site (CCDS) for offshore disposal. Due to the fine nature of the dredge sediments, this project does not lend itself to beneficial reuse or beach renourishment.

Table 2 below provides a summary of dredge areas and volumes for the project. The total proposed project is relatively large and will take a significant period to complete. The available draft (even after dredging) will limit the size of dredge equipment that can be used for the project and also the available working hours within the tide cycle. A typical dump scow has a laden draft of 10 to 12 feet which limits the working period to mid tide or higher. With these depth limitations, it is anticipated that each dredging "day" will start at around mid tide and the scow will be filled as the tide rises. The scow would then leave for the disposal site during the higher part of the tide cycle.

Assuming a production rate of 2,000 cubic yards per day and 24/7 dredging, the Area I dredging (116,500 cubic yards) is expected to require a minimum of 10 weeks to complete but a more realistic estimate is closer to 14 weeks allowing for equipment setup, breakdown, etc. Similarly, the Area II dredging (211,000 cubic yards) is expected to take a minimum of 18 weeks to complete but should allow up to 25 weeks. Due to the scale, duration and funding requirements for these projects, it is likely that the contract dredge work will be broken into a minimum of two projects and, more likely, three projects.

Site	Dredge Area (acres)	Dredge Volume (cubic yards)	1' Overdredge Volume (cy)	Total Dredge Volume (cy)
North and South Access Channel	10.3	65,000	16,000	81,000
North Anchorage Basin	3.5	25,000	7,000	32,000
L-Pier Access Channel	0.8	2,500	1,000	3,500
South Anchorage Basin	23.9	211,000	37,000	248,000
Totals	38.5	303,500	61,000	364,500

Which MEPA review threshold(s) does the project meet or exceed (see 301 CMR 11.03)?

2(b)2. – Greater than 2 acres disturbance of designated priority habitat, 3(a)(1)(b) – Alteration of ten or more acres of Wetlands, 3(b)(3) – Dredging of 10,000 or more cy of material

Which State Agency Permits will the project require? Conservation Commission Order of Conditions, MA DEP Chapter 91 License, MA WQC

Wetlands and Waterways Comments:

The SERO Wetlands & Waterways Program has reviewed the ENF submitted by the Town of Wellfleet to perform maintenance dredging of all Town managed channels and anchorages within Wellfleet Harbor in an effort to restore safe and reliable navigation. According to the ENF, there are two primary dredge areas composed of 5 dredge sites within Wellfleet Harbor that have been maintained by the Town for more than sixty years. The total volume of sediment to be dredged is approximately 364,500 cubic yards with offshore disposal at the Cape Cod Bay Disposal Site (CCDS). Due to the fine nature of the dredged sediments, beneficial reuse of dredged sediments as beach nourishment is not proposed or appropriate.

- This project involves work within flowed tidelands therefore the Proponent will be required to submit a Chapter 91 Permit Application. Based on the information contained in the ENF, it is the opinion of the Waterways Program that the project would be classified as a water-dependent use pursuant to the Waterways Regulations at 310 CMR 9.12.
- This project will require the submittal of a 401 Water Quality Certification (WQC) Application. The Proponent may choose to file a MassDEP BRP WW26 Combined Application for Chapter 91 and WQC.
- The ENF indicates that the project involves “maintenance dredging” and provides a list of the dredging history for this area. However, the ENF provides no documentation that the proposed work will be performed within a previously authorized dredge area which does not extend the original dredge depth, width or length in accordance with the Waterways Regulation definition at 310 CMR 9.02. Any dredge work beyond the scope of previously issued licenses would be categorized as “improvement dredging” and would have to be permitted accordingly. This includes but is not limited to 310 CMR 9.40 (3)(b). In reviewing the Chapter 91/WQC application the Proponent will be requested to provide any pertinent past permits and/or licenses and documentation with physical locations and if possible plans mapping the areas of previous dredging.

- The ENF submitted by the Proponent states that the dredge material is suitable for offshore disposal, and not suitable for beach nourishment. In reviewing the Chapter 91/WQC application, the Proponent will be requested to provide dredge sample analysis of chemical constituents and a grain size analysis.
- In reviewing the Chapter 91/WQC application, the Proponent will be requested to provide a salt marsh delineation and if available any historic mapping of the salt marsh resource area.
- The proposed project is subject to review under the Wetlands Protection Act (WPA). As noted in ENF, the Proponent must file a Notice of Intent (NOI) and receive an Order of Conditions from the Wellfleet Conservation Commission prior to the commencement of the project.
- The Wetland Regulations for Land Under the Ocean at 310 CMR 10.25 (3) and (4) require that improvement and maintenance dredging projects minimize adverse effects due to changes in marine productivity which will result from suspension or transport of pollutants, increases in turbidity, the smothering of bottom organisms, the accumulation of pollutants by organisms, or the destruction of marine fisheries habitat or wildlife habitat.
- In order to minimize turbidity during dredging operations, the proponent should consider the use of silt curtains or other similar means of containing turbidity in order to minimize adverse effects to marine productivity.
- Wellfleet Harbor is mapped as priority habitat by the Natural Heritage and Endangered Species Program (NHESP). The Wetlands Protection Act Regulations (310 CMR 10.37) state that if a proposed project is found by the issuing authority to alter a resource area which is part of the habitat of state-listed species, such project shall not be permitted to have any short or long term adverse effects on the habitat of the local population of that species. Additionally, 310 CMR 10.27(7), 10.28(6), 10.29(4) state that no project may be permitted which will have any adverse effect on specified habitat sites of rare vertebrate or invertebrate species.
- The Department supports the Town of Wellfleet's request for a waiver from a mandatory Environmental Impact Report (EIR) for this project. The Department is of the opinion that the issues raised in the above comments can be addressed in the permitting process.

Bureau of Waste Site Cleanup (BWSC) Comments:

ENF #15506 – Based upon the information provided, the Bureau of Waste Site Cleanup (BWSC) searched its databases for disposal sites and release notifications that have occurred at or might impact the proposed project area. A disposal site is a location where there has been a release to the environment of oil and/or hazardous material that is regulated under M.G.L. c. 21E, and the Massachusetts Contingency Plan [MCP – 310 CMR 40.0000].

There are no listed MCP disposal sites located at or in the vicinity of the site that might impact the proposed project area. Interested parties may view a map showing the location of BWSC disposal sites using the MassGIS data viewer (Oliver) at:

http://maps.massgis.state.ma.us/map_ol/oliver.php Under “Available Data Layers” select

“Regulated Areas”, and then “DEP Tier Classified 21E Sites”. MCP reports and the compliance status of specific disposal sites may be viewed using the BWSC Waste Sites/Reportable Release Lookup at: <http://public.dep.state.ma.us/SearchableSites2/Search.aspx>

The Project Proponent is advised that if oil and/or hazardous materials are identified during the implementation of this project, notification pursuant to the Massachusetts Contingency Plan (310 CMR 40.0000) may be necessary. A Licensed Site Professional (LSP) should be retained to determine if notification is required, and render appropriate opinions as necessary. The LSP may evaluate whether risk reduction measures are necessary if contamination is present. Please contact BWSC for guidance if questions arise regarding assessment and cleanup under the MCP.

Solid Waste Dredging

The dredged material has been classified as inappropriate for beach nourishment and is consequently proposing to dispose of dredge sediments offshore to the Cape Cod Bay Disposal Site (CCDS). However, if the sediment is deemed unsuitable for offshore disposal, it must be disposed of at an approved upland disposal site.

Construction Stormwater Permit

The project construction activities may disturb one or more acres of land and therefore, may require a NPDES Stormwater Permit for Construction Activities. The proponent can access information regarding the NPDES Stormwater requirements and an application for the Construction General Permit at the EPA website: <http://cfpub.epa.gov/npdes/stormwater/cgp.cfm>

Air Quality Requirements

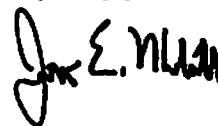
Construction and operation activities shall not cause or contribute to a condition of air pollution due to dust, odor or noise. To determine the appropriate requirements please refer to:

- 310 CMR 7.09 Dust, Odor, Construction, and Demolition
- 310 CMR 7.10 Noise

Proposed s.61 Findings

The “Certificate of the Secretary of Energy and Environmental Affairs on the Environmental Notification Form” may indicate that this project requires further MEPA review and the preparation of an Environmental Impact Report. Pursuant to MEPA Regulations 301 CMR 11.12(5)(d), the Proponent will prepare Proposed Section 61 Findings to be included in the EIR in a separate chapter updating and summarizing proposed mitigation measures. In accordance with 301 CMR 11.07(6)(k), this chapter should also include separate updated draft Section 61 Findings for each State agency that will issue permits for the project. The draft Section 61 Findings should contain clear commitments to implement mitigation measures, estimate the individual costs of each proposed measure, identify the parties responsible for implementation, and contain a schedule for implementation.

Very truly yours,



Jonathan E. Hobill,
Regional Engineer,
Bureau of Water Resources

JH/GZ

Cc: DEP/SERO

**ATTN: Millie Garcia-Serrano, Regional Director
David Johnston, Deputy Regional Director, BWR
Maria Pinaud, Deputy Regional Director, BAW
Gerard Martin, Deputy Regional Director, BWSC
Jennifer Viveiros, Deputy Regional Director, ADMIN
Jim Mahala, Chief, Wetlands and Waterways
Jim McLaughlin, Water Management
Allen Hemberger, Site Management**



Commonwealth of Massachusetts

Division of Fisheries & Wildlife

Jack Buckley, *Director*

May 20, 2016

Matthew A. Beaton, Secretary
Executive Office of Energy and Environmental Affairs
Attention: MEPA Office
Purvi Patel, EEA No. 15506
100 Cambridge St.
Boston, Massachusetts 02114

Project Name: Wellfleet Harbor Maintenance Dredging
Proponent: Town of Wellfleet
Location: Wellfleet Harbor, off Kendrick Ave
Document Reviewed: Environmental Notification Form & Request for Waiver of Mandatory Environmental Impact Report
EEA No.: 15506
NHESP No.: 09-26539

Dear Secretary Beaton:

The Natural Heritage & Endangered Species Program of the Massachusetts Division of Fisheries & Wildlife (the "Division") has reviewed the *Environmental Notification Form* (ENF) and the *Request for Waiver of a Mandatory Environmental Impact Report* (EIR) for the proposed maintenance dredge in Wellfleet Harbor and would like to offer the following comments.

The proposed project will occur within *Estimated* and *Priority Habitat* as indicated in the 13th Edition of the MA Natural Heritage Atlas and therefore the requires review through a direct filing with Division for compliance with the Massachusetts Endangered Species Act (MESA, MGL c.131A) and its implementing regulations (321 CMR 10.00). The Division has determined that the proposed project will occur within the habitat for the Diamond-backed Terrapin (*Malaclemys terrapin*), a turtle species state-listed as "Threatened" in accordance with the MESA. A Fact Sheet for this species can be found on our website, www.mass.gov/nhESP.

Based on a review of the materials submitted to the Division and the information contained in our database, the Division anticipates that the proposed project will result in a "take" of the Diamond-backed Terrapin. Given the various time of year restrictions and resource constraints associated with the dredge and offshore disposal, it appears that the proposed work cannot avoid direct impacts to over-wintering (brumating) individuals. Projects resulting in a "take" of state-listed species may only be permitted if they meet the performance standards for a Conservation and Management Permit (CMP; 321 CMR 10.23). The CMP must demonstrate that the project has avoided, minimized and mitigated impacts to state-listed species consistent with the following performance standards: (a) the applicant has adequately assessed alternatives to both temporary and permanent impacts to state-listed species; (b) an insignificant portion of the local population would be impacted by the project; and (c) the applicant agrees to carry out a conservation and

www.mass.gov

Division of Fisheries and Wildlife

Field Headquarters, One Rabbit Hill Road, Westborough, MA 01581 (508) 389-6300 Fax (508) 389-7890

An Agency of the Department of Fish and Game

management plan that provides a long-term Net Benefit to the conservation of the state-listed species impacted.

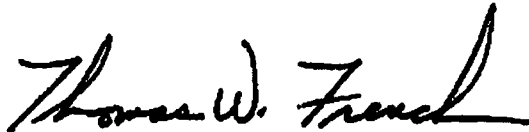
In anticipation of filing the proposed project for compliance with the MESA, the project proponent has been consulting with the Division to reduce the impacts of the proposed project to state-listed species and their habitats. Based on the most recent consultations and the information provided in the ENF, the Division believes that the Proponent will be able to meet the performance standards of a MESA CMP. Although the exact details of the long-term Net Benefit have yet to be finalized, several options are available, including but not limited to, permanent protection and enhancement of suitable nesting habitat, funding for conservation research, habitat management and/or conservation planning to benefit the Diamond-backed Terrapin population, or a combination thereof. We look forward to continued careful coordination with the Proponent on the details of the project, its implementation, and mitigation requirements.

The Division anticipates being able to resolve any outstanding state-listed species issues through the MESA permitting process; therefore, we do not object to a waiver of the mandatory Environmental Impact Report as it relates to the State-listed Species thresholds of the MEPA.

The Division will not render a final decision until the MEPA review process and its associated public comment period is complete, and until all required MESA filing materials have been submitted to the Division for review. As the MESA review process is ongoing, no alteration to the soil, surface, or vegetation associated with the proposed project shall occur on the project site until the Division has made a final determination.

If you have any questions about this letter, please contact Amy Hoenig, Endangered Species Review Biologist, at amy.hoenig@state.ma.us or 508-389-6364. We appreciate the opportunity to comment on this project.

Sincerely,

A handwritten signature in black ink that reads "Thomas W. French". The signature is written in a cursive style with a large, sweeping flourish at the end.

Thomas W. French, Ph.D.
Assistant Director

cc: Russell Titmuss, Bourne Consulting Engineering
Town of Wellfleet Conservation Commission
Town of Wellfleet Board of Selectmen
Town of Wellfleet Planning Board
MA DEP Southeast MEPA Coordinator



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS
OFFICE OF COASTAL ZONE MANAGEMENT
251 Causeway Street, Suite 800, Boston, MA 02114-2136
(617) 626-1200 FAX: (617) 626-1240

MEMORANDUM

TO: Matthew A. Beaton, Secretary, EEA
ATTN: Purvi Patel MEPA Unit
FROM: Bruce Carlisle, Director, CZM
DATE: May 13, 2016
RE: EEA-15504, Wellfleet Harbor Maintenance Dredging

The Massachusetts Office of Coastal Zone Management (CZM) has completed its review of the above-referenced Environmental Notification Form (ENF), noticed in the *Environmental Monitor* dated April 20, 2016, and offers the following comments.

Project Description

The project involves proposed maintenance dredging of all Town managed channels and anchorages within Wellfleet Harbor. The Town of Wellfleet maintains and operates a marina at the Town Pier and two anchorages, one to the north and one to the south of the Pier. The channels and anchorages are adjacent to the Federal Navigation Channel which is the main entrance channel into Wellfleet Harbor. Many of these areas are severely shoaled, and a portion of the anchorages have become intertidal in areas. These channels and anchorages accommodate 150 vessels at the town owned marina, and approximately 250 vessels in the town mooring fields. In addition, commercial fishing vessels and transient vessels regularly use this town managed facility. The work has been identified in two areas: Area I includes the North and South Access Channels, North Anchorage and Access Channel adjacent to the Pier; Area II is the South Anchorage area.

The channels and anchorage in Area I are authorized for dredging to a depth of -6 feet, and were last dredged in 2001. The Area II anchorage is approximately 22 acres in size, with a previously authorized depth of -6 feet. The last known dredging of this anchorage was in 1957. Approximately 64% of the historic footprint has now shoaled to become inter-tidal, with elevations between 0 and +1 MLW. Dredging is proposed to be done by mechanical dredge, with the dredge material being placed at the Cape Cod Bay Dredge Disposal site. The proponents are seeking a waiver from the mandatory Environmental Impact Report (EIR) as required in CMR 301 11.11.

Project Comments

Wellfleet pier, public boat ramp and adjacent anchorages support a variety of water dependent uses for both commercial and recreational vessels. Maintaining navigable waterways for these vessels is essential for vessel safety and for the economic health of this town owned facility. Adequate channel and anchorage depths protect water quality by reducing turbidity caused by vessel prop scour and suspension of fine materials in shallow areas. The dredge areas within Area I have been maintained on a regular basis and have been recently permitted. CZM supports the continued maintenance of these areas.

Area II represents a mooring area that has existed and been used for many years, but has not been actively maintained. Approximately 200 vessels currently are moored in this area. The deepest portion of the anchorage is adjacent to the Federal Anchorage area, and has depths between -1 and -2 feet MLW. Approximately 11 acres of the proposed dredge area is currently inter-tidal. Many



moorings within this area are dry at low tide. Due to the lack of maintenance dredging, the historic dredged anchorage area has gradually filled in over the past 59 years, resulting in the smaller anchorage area that exists today.

The ENF references the Federal Navigation Project Contract # 1769, which was issued for the 1957 dredge project that created this anchorage area, but a copy of this contract was not part of the ENF. In consultation with MassDEP, CZM discussed the issue of whether the dredging proposed in Area II should be considered "improvement dredging" due to the long period of time since it has last been dredged. MassDEP indicated that the project will likely be considered maintenance dredging based upon their review of the ENF and discussions with the project engineer. However, no determination has been made, and MassDEP will need to review the actual Federal Navigation Project Contract issued for the original project before making this determination as part of the required state permitting process. CZM supports this approach to address the issue, and supports the proponent's request for a waiver of the mandatory EIR.

A portion of the proposed dredging is within mapped priority habitat for the Northern diamondback terrapin. The town conducted studies in 2011 and 2012 to better understand diamondback terrapin activity in this area. Information from these studies indicate that the majority of individuals brumate in the salt marshes adjacent to the project area, but there are a very small number of individuals that may utilize the channel and basin areas as overwintering areas. The town has sought consultation with the Massachusetts Natural Heritage and Endangered Species Program (NHESP). CZM recommends the continued close consultation with NHESP staff to minimize any species "Take" and to develop a Conservation Mitigation Plan for any impacts.

BKC/sm

cc: Stephen McKenna, CZM Cape & Islands Regional Coordinator
Michael Flanagan, Harbormaster
Commercial Street, Wellfleet, MA 02667
Jim Mahalla, DEP
Southeast Regional Office
Russell Titmuss, Bourne Engineering
3 Bent Street, Franklin, MA 02038

Order of Conditions

Bk 33536 Pg 216 #68432
12-02-2020 @ 02:48p



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands
WPA Form 5 – Order of Conditions
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

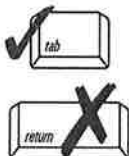
Provided by MassDEP:
SE077-1560
MassDEP File #
eDEP Transaction #
Wellfleet
City/Town

A. General Information

Please note:
this form has been modified with added space to accommodate the Registry of Deeds Requirements

- 1. From: Wellfleet
Conservation Commission
- 2. This issuance is for (check one):
a. Order of Conditions b. Amended Order of Conditions
- 3. To: Applicant:

Important:
When filling out forms on the computer, use only the tab key to move your cursor - do not use the return key.



a. First Name _____ b. Last Name _____
 Town of Wellfleet
 c. Organization _____
 300 Main Street
 d. Mailing Address _____
 Wellfleet MA 02667
 e. City/Town _____ f. State _____ g. Zip Code _____

4. Property Owner (if different from applicant):

a. First Name _____ b. Last Name _____
 c. Organization _____
 d. Mailing Address _____
 e. City/Town _____ f. State _____ g. Zip Code _____

5. Project Location:

Kendrick Avenue Wellfleet
 a. Street Address _____ b. City/Town _____
 21 114
 c. Assessors Map/Plat Number _____ d. Parcel/Lot Number _____

Latitude and Longitude, if known: _____ d m s _____ d m s
 d. Latitude e. Longitude

19



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

WPA Form 5 – Order of Conditions

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:
SE077-1560
MassDEP File #

eDEP Transaction #
Wellfleet
City/Town

A. General Information (cont.)

6. Property recorded at the Registry of Deeds for (attach additional information if more than one parcel):
Barnstable
 a. County Barnstable b. Certificate Number (if registered land) 180
 c. Book 831 d. Page 180

7. Dates: 09/30/20 10/21/20 11/4/20
 a. Date Notice of Intent Filed b. Date Public Hearing Closed c. Date of Issuance

8. Final Approved Plans and Other Documents (attach additional plan or document references as needed):
Harbor Dredging Wellfleet Harbor
 a. Plan Title GEI Consultants Russell J. Titmuss
 b. Prepared By c. Signed and Stamped by
09/29/20
 d. Final Revision Date e. Scale

f. Additional Plan or Document Title g. Date

B. Findings

1. Findings pursuant to the Massachusetts Wetlands Protection Act:
 Following the review of the above-referenced Notice of Intent and based on the information provided in this application and presented at the public hearing, this Commission finds that the areas in which work is proposed is significant to the following interests of the Wetlands Protection Act (the Act). Check all that apply:

a. Public Water Supply b. Land Containing Shellfish c. Prevention of Pollution
 d. Private Water Supply e. Fisheries f. Protection of Wildlife Habitat
 g. Groundwater Supply h. Storm Damage Prevention i. Flood Control

2. This Commission hereby finds the project, as proposed, is: (check one of the following boxes)

Approved subject to:

a. the following conditions which are necessary in accordance with the performance standards set forth in the wetlands regulations. This Commission orders that all work shall be performed in accordance with the Notice of Intent referenced above, the following General Conditions, and any other special conditions attached to this Order. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, these conditions shall control.



**Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands**

WPA Form 5 – Order of Conditions

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP;
SE077-1560
MassDEP File #

eDEP Transaction #
Wellfleet
City/Town

B. Findings (cont.)

Denied because:

- b. the proposed work cannot be conditioned to meet the performance standards set forth in the wetland regulations. Therefore, work on this project may not go forward unless and until a new Notice of Intent is submitted which provides measures which are adequate to protect the interests of the Act, and a final Order of Conditions is issued. **A description of the performance standards which the proposed work cannot meet is attached to this Order.**
- c. the information submitted by the applicant is not sufficient to describe the site, the work, or the effect of the work on the interests identified in the Wetlands Protection Act. Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides sufficient information and includes measures which are adequate to protect the Act's interests, and a final Order of Conditions is issued. **A description of the specific information which is lacking and why it is necessary is attached to this Order as per 310 CMR 10.05(6)(c).**
- 3. Buffer Zone Impacts: Shortest distance between limit of project disturbance and the wetland resource area specified in 310 CMR 10.02(1)(a) _____ a. linear feet

Inland Resource Area Impacts: Check all that apply below. (For Approvals Only)

Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
4. <input type="checkbox"/> Bank	_____ a. linear feet	_____ b. linear feet	_____ c. linear feet	_____ d. linear feet
5. <input type="checkbox"/> Bordering Vegetated Wetland	_____ a. square feet	_____ b. square feet	_____ c. square feet	_____ d. square feet
6. <input type="checkbox"/> Land Under Waterbodies and Waterways	_____ a. square feet _____ e. c/y dredged	_____ b. square feet _____ f. c/y dredged	_____ c. square feet	_____ d. square feet
7. <input type="checkbox"/> Bordering Land Subject to Flooding	_____ a. square feet	_____ b. square feet	_____ c. square feet	_____ d. square feet
Cubic Feet Flood Storage	_____ e. cubic feet	_____ f. cubic feet	_____ g. cubic feet	_____ h. cubic feet
8. <input type="checkbox"/> Isolated Land Subject to Flooding	_____ a. square feet	_____ b. square feet		
Cubic Feet Flood Storage	_____ c. cubic feet	_____ d. cubic feet	_____ e. cubic feet	_____ f. cubic feet
9. <input type="checkbox"/> Riverfront Area	_____ a. total sq. feet	_____ b. total sq. feet		
Sq ft within 100 ft	_____ c. square feet	_____ d. square feet	_____ e. square feet	_____ f. square feet
Sq ft between 100-200 ft	_____ g. square feet	_____ h. square feet	_____ i. square feet	_____ j. square feet



**Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands**

WPA Form 5 – Order of Conditions

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:
SE077-1560
MassDEP File #

eDEP Transaction #
Wellfleet
City/Town

B. Findings (cont.)

Coastal Resource Area Impacts: Check all that apply below. (For Approvals Only)

	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
10. <input checked="" type="checkbox"/> Designated Port Areas	Indicate size under Land Under the Ocean, below			
11. <input checked="" type="checkbox"/> Land Under the Ocean	<u>38.5 acres</u> a. square feet	<u>38.5 acres</u> b. square feet		
	<u>364,500 cy</u> c. c/y dredged	<u>364,500 cy</u> d. c/y dredged		
12. <input type="checkbox"/> Barrier Beaches	Indicate size under Coastal Beaches and/or Coastal Dunes below			
13. <input type="checkbox"/> Coastal Beaches	<u> </u> a. square feet	<u> </u> b. square feet	<u> </u> c. nourishment	<u> </u> d. nourishment
14. <input type="checkbox"/> Coastal Dunes	<u> </u> a. square feet	<u> </u> b. square feet	<u> </u> c. nourishment	<u> </u> d. nourishment
15. <input type="checkbox"/> Coastal Banks	<u> </u> a. linear feet	<u> </u> b. linear feet		
16. <input type="checkbox"/> Rocky Intertidal Shores	<u> </u> a. square feet	<u> </u> b. square feet		
17. <input type="checkbox"/> Salt Marshes	<u> </u> a. square feet	<u> </u> b. square feet	<u> </u> c. square feet	<u> </u> d. square feet
18. <input type="checkbox"/> Land Under Salt Ponds	<u> </u> a. square feet	<u> </u> b. square feet		
	<u> </u> c. c/y dredged	<u> </u> d. c/y dredged		
19. <input type="checkbox"/> Land Containing Shellfish	<u> </u> a. square feet	<u> </u> b. square feet	<u> </u> c. square feet	<u> </u> d. square feet
20. <input type="checkbox"/> Fish Runs	Indicate size under Coastal Banks, Inland Bank, Land Under the Ocean, and/or inland Land Under Waterbodies and Waterways, above			
	<u> </u> a. c/y dredged	<u> </u> b. c/y dredged		
21. <input type="checkbox"/> Land Subject to Coastal Storm Flowage	<u> </u> a. square feet	<u> </u> b. square feet		
22. <input type="checkbox"/> Riverfront Area	<u> </u> a. total sq. feet	<u> </u> b. total sq. feet		
Sq ft within 100 ft	<u> </u> c. square feet	<u> </u> d. square feet	<u> </u> e. square feet	<u> </u> f. square feet
Sq ft between 100-200 ft	<u> </u> g. square feet	<u> </u> h. square feet	<u> </u> i. square feet	<u> </u> j. square feet



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

WPA Form 5 – Order of Conditions

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:
SE077-1560
MassDEP File #

eDEP Transaction #
Wellfleet
City/Town

B. Findings (cont.)

* #23. If the project is for the purpose of restoring or enhancing a wetland resource area in addition to the square footage that has been entered in Section B.5.c (BVW) or B.17.c (Salt Marsh) above, please enter the additional amount here.

- 23. Restoration/Enhancement *:

a. square feet of BVW	b. square feet of salt marsh
-----------------------	------------------------------
- 24. Stream Crossing(s):

a. number of new stream crossings	b. number of replacement stream crossings
-----------------------------------	---

C. General Conditions Under Massachusetts Wetlands Protection Act

The following conditions are only applicable to Approved projects.

1. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Order.
2. The Order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
3. This Order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state, or local statutes, ordinances, bylaws, or regulations.
4. The work authorized hereunder shall be completed within three years from the date of this Order unless either of the following apply:
 - a. The work is a maintenance dredging project as provided for in the Act; or
 - b. The time for completion has been extended to a specified date more than three years, but less than five years, from the date of issuance. If this Order is intended to be valid for more than three years, the extension date and the special circumstances warranting the extended time period are set forth as a special condition in this Order.
 - c. If the work is for a Test Project, this Order of Conditions shall be valid for no more than one year.
5. This Order may be extended by the issuing authority for one or more periods of up to three years each upon application to the issuing authority at least 30 days prior to the expiration date of the Order. An Order of Conditions for a Test Project may be extended for one additional year only upon written application by the applicant, subject to the provisions of 310 CMR 10.05(11)(f).
6. If this Order constitutes an Amended Order of Conditions, this Amended Order of Conditions does not extend the issuance date of the original Final Order of Conditions and the Order will expire on _____ unless extended in writing by the Department.
7. Any fill used in connection with this project shall be clean fill. Any fill shall contain no trash, refuse, rubbish, or debris, including but not limited to lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles, or parts of any of the foregoing.



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

WPA Form 5 – Order of Conditions

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:
SE077-1560
MassDEP File #

eDEP Transaction #
Wellfleet
City/Town

C. General Conditions Under Massachusetts Wetlands Protection Act

8. This Order is not final until all administrative appeal periods from this Order have elapsed, or if such an appeal has been taken, until all proceedings before the Department have been completed.
9. No work shall be undertaken until the Order has become final and then has been recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the proposed work is to be done. In the case of the registered land, the Final Order shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is done. The recording information shall be submitted to the Conservation Commission on the form at the end of this Order, which form must be stamped by the Registry of Deeds, prior to the commencement of work.
10. A sign shall be displayed at the site not less than two square feet or more than three square feet in size bearing the words,

"Massachusetts Department of Environmental Protection" [or, "MassDEP"]
"File Number SE077-1560 "
11. Where the Department of Environmental Protection is requested to issue a Superseding Order, the Conservation Commission shall be a party to all agency proceedings and hearings before MassDEP.
12. Upon completion of the work described herein, the applicant shall submit a Request for Certificate of Compliance (WPA Form 8A) to the Conservation Commission.
13. The work shall conform to the plans and special conditions referenced in this order.
14. Any change to the plans identified in Condition #13 above shall require the applicant to inquire of the Conservation Commission in writing whether the change is significant enough to require the filing of a new Notice of Intent.
15. The Agent or members of the Conservation Commission and the Department of Environmental Protection shall have the right to enter and inspect the area subject to this Order at reasonable hours to evaluate compliance with the conditions stated in this Order, and may require the submittal of any data deemed necessary by the Conservation Commission or Department for that evaluation.
16. This Order of Conditions shall apply to any successor in interest or successor in control of the property subject to this Order and to any contractor or other person performing work conditioned by this Order.



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

WPA Form 5 – Order of Conditions

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:
 SE077-1560
 MassDEP File #

eDEP Transaction #
 Wellfleet
 City/Town

C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)

17. Prior to the start of work, and if the project involves work adjacent to a Bordering Vegetated Wetland, the boundary of the wetland in the vicinity of the proposed work area shall be marked by wooden stakes or flagging. Once in place, the wetland boundary markers shall be maintained until a Certificate of Compliance has been issued by the Conservation Commission.
18. All sedimentation barriers shall be maintained in good repair until all disturbed areas have been fully stabilized with vegetation or other means. At no time shall sediments be deposited in a wetland or water body. During construction, the applicant or his/her designee shall inspect the erosion controls on a daily basis and shall remove accumulated sediments as needed. The applicant shall immediately control any erosion problems that occur at the site and shall also immediately notify the Conservation Commission, which reserves the right to require additional erosion and/or damage prevention controls it may deem necessary. Sedimentation barriers shall serve as the limit of work unless another limit of work line has been approved by this Order.
19. The work associated with this Order (the "Project")
- (1) is subject to the Massachusetts Stormwater Standards
- (2) is NOT subject to the Massachusetts Stormwater Standards

If the work is subject to the Stormwater Standards, then the project is subject to the following conditions:

- a) All work, including site preparation, land disturbance, construction and redevelopment, shall be implemented in accordance with the construction period pollution prevention and erosion and sedimentation control plan and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollution Discharge Elimination System Construction General Permit as required by Stormwater Condition 8. Construction period erosion, sedimentation and pollution control measures and best management practices (BMPs) shall remain in place until the site is fully stabilized.
- b) No stormwater runoff may be discharged to the post-construction stormwater BMPs unless and until a Registered Professional Engineer provides a Certification that:
- i.* all construction period BMPs have been removed or will be removed by a date certain specified in the Certification. For any construction period BMPs intended to be converted to post construction operation for stormwater attenuation, recharge, and/or treatment, the conversion is allowed by the MassDEP Stormwater Handbook BMP specifications and that the BMP has been properly cleaned or prepared for post construction operation, including removal of all construction period sediment trapped in inlet and outlet control structures;
 - ii.* as-built final construction BMP plans are included, signed and stamped by a Registered Professional Engineer, certifying the site is fully stabilized;
 - iii.* any illicit discharges to the stormwater management system have been removed, as per the requirements of Stormwater Standard 10;



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

WPA Form 5 – Order of Conditions

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:
SE077-1560
MassDEP File #

eDEP Transaction #
Wellfleet
City/Town

C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)

- iv. all post-construction stormwater BMPs are installed in accordance with the plans (including all planting plans) approved by the issuing authority, and have been inspected to ensure that they are not damaged and that they are in proper working condition;
- v. any vegetation associated with post-construction BMPs is suitably established to withstand erosion.
- c) The landowner is responsible for BMP maintenance until the issuing authority is notified that another party has legally assumed responsibility for BMP maintenance. Prior to requesting a Certificate of Compliance, or Partial Certificate of Compliance, the responsible party (defined in General Condition 18(e)) shall execute and submit to the issuing authority an Operation and Maintenance Compliance Statement ("O&M Statement") for the Stormwater BMPs identifying the party responsible for implementing the stormwater BMP Operation and Maintenance Plan ("O&M Plan") and certifying the following:
- i.) the O&M Plan is complete and will be implemented upon receipt of the Certificate of Compliance, and
 - ii.) the future responsible parties shall be notified in writing of their ongoing legal responsibility to operate and maintain the stormwater management BMPs and implement the Stormwater Pollution Prevention Plan.
- d) Post-construction pollution prevention and source control shall be implemented in accordance with the long-term pollution prevention plan section of the approved Stormwater Report and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollution Discharge Elimination System Multi-Sector General Permit.
- e) Unless and until another party accepts responsibility, the landowner, or owner of any drainage easement, assumes responsibility for maintaining each BMP. To overcome this presumption, the landowner of the property must submit to the issuing authority a legally binding agreement of record, acceptable to the issuing authority, evidencing that another entity has accepted responsibility for maintaining the BMP, and that the proposed responsible party shall be treated as a permittee for purposes of implementing the requirements of Conditions 18(f) through 18(k) with respect to that BMP. Any failure of the proposed responsible party to implement the requirements of Conditions 18(f) through 18(k) with respect to that BMP shall be a violation of the Order of Conditions or Certificate of Compliance. In the case of stormwater BMPs that are serving more than one lot, the legally binding agreement shall also identify the lots that will be serviced by the stormwater BMPs. A plan and easement deed that grants the responsible party access to perform the required operation and maintenance must be submitted along with the legally binding agreement.
- f) The responsible party shall operate and maintain all stormwater BMPs in accordance with the design plans, the O&M Plan, and the requirements of the Massachusetts Stormwater Handbook.



Massachusetts Department of Environmental Protection
 Bureau of Resource Protection - Wetlands

WPA Form 5 – Order of Conditions

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:
 SE077-1560
 MassDEP File #

eDEP Transaction #
 Wellfleet
 City/Town

C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)

- g) The responsible party shall:
1. Maintain an operation and maintenance log for the last three (3) consecutive calendar years of inspections, repairs, maintenance and/or replacement of the stormwater management system or any part thereof, and disposal (for disposal the log shall indicate the type of material and the disposal location);
 2. Make the maintenance log available to MassDEP and the Conservation Commission ("Commission") upon request; and
 3. Allow members and agents of the MassDEP and the Commission to enter and inspect the site to evaluate and ensure that the responsible party is in compliance with the requirements for each BMP established in the O&M Plan approved by the issuing authority.
- h) All sediment or other contaminants removed from stormwater BMPs shall be disposed of in accordance with all applicable federal, state, and local laws and regulations.
- i) Illicit discharges to the stormwater management system as defined in 310 CMR 10.04 are prohibited.
- j) The stormwater management system approved in the Order of Conditions shall not be changed without the prior written approval of the issuing authority.
- k) Areas designated as qualifying pervious areas for the purpose of the Low Impact Site Design Credit (as defined in the MassDEP Stormwater Handbook, Volume 3, Chapter 1, Low Impact Development Site Design Credits) shall not be altered without the prior written approval of the issuing authority.
- l) Access for maintenance, repair, and/or replacement of BMPs shall not be withheld. Any fencing constructed around stormwater BMPs shall include access gates and shall be at least six inches above grade to allow for wildlife passage.

Special Conditions (if you need more space for additional conditions, please attach a text document):

-
20. For Test Projects subject to 310 CMR 10.05(11), the applicant shall also implement the monitoring plan and the restoration plan submitted with the Notice of Intent. If the conservation commission or Department determines that the Test Project threatens the public health, safety or the environment, the applicant shall implement the removal plan submitted with the Notice of Intent or modify the project as directed by the conservation commission or the Department.



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

WPA Form 5 – Order of Conditions

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:
SE077-1560
MassDEP File #

eDEP Transaction #
Wellfleet
City/Town

D. Findings Under Municipal Wetlands Bylaw or Ordinance

- 1. Is a municipal wetlands bylaw or ordinance applicable? Yes No
- 2. The Wellfleet Conservation Commission hereby finds (check one that applies):
 - a. that the proposed work cannot be conditioned to meet the standards set forth in a municipal ordinance or bylaw, specifically:

1. Municipal Ordinance or Bylaw	2. Citation
---------------------------------	-------------

Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides measures which are adequate to meet these standards, and a final Order of Conditions is issued.

- b. that the following additional conditions are necessary to comply with a municipal ordinance or bylaw:

<u>Wellfleet Environmental Bylaw</u>	<u>Article 5</u>
1. Municipal Ordinance or Bylaw	2. Citation

- 3. The Commission orders that all work shall be performed in accordance with the following conditions and with the Notice of Intent referenced above. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, the conditions shall control.

The special conditions relating to municipal ordinance or bylaw are as follows (if you need more space for additional conditions, attach a text document):

1) Essential Fish Habitat Survey; 2) Water Quality; 3) Sediment Information; 4) Appendix E

Conditions: DMF Letter

General Conditions Issued Pursuant to the Wellfleet Environmental Protection Bylaw

- 1. Plan Changes** - All construction must comply with the approved plans and conditions of this Order. For any proposed change in the approved plans or work, the applicant shall file a new Notice of Intent or Amendment. A written inquiry may be made to the Conservation Commission to determine whether the change is substantial enough to require a new filing. No change in the plan is permissible without prior written approval from the Wellfleet Conservation Commission or its agents.
- 2. Order and Plan Distribution** - The applicant and the project representative shall be responsible for providing the contractor(s) with a copy of this Order of Conditions, as well as the plan(s) of record. The Order and plans shall be furnished on site during all phases of construction.
- 3. Order Compliance** - The applicant, property owners, and/or any successor(s) in title are responsible for ensuring compliance with this Order and its conditions. This includes informing all contractors and subcontractors of any special conditions or provisions of this Order concerning their work.
- 4. Order Recording** - The Order shall be recorded with the Barnstable County Registry of Deeds prior to the commencement of work. The applicant or its agent shall submit the recording information (stamp on WPA Form 5, Section G). Failure to do so is regarded as a violation of this Order and may result in the issuance of an Enforcement Order to cease and desist all work under this Order until the recording information is received by the Wellfleet Conservation Commission.
- 5. Pre-construction Notification and Site Visit** - The conservation commission is to be notified in writing of the date on which work will begin. A pre-construction site visit shall be conducted with the conservation agent, supervisor, contractor(s), applicant and engineer prior to commencement of work.
- 6. Photo Documentation** - Pre and post construction photos shall be submitted prior to issuance of a Certificate of Compliance.
- 7. Inspection of Ongoing Work** - The Wellfleet Conservation Commission and its agents shall have the right to enter and inspect the property at all reasonable times to evaluate compliance with the conditions stated in this Order. This may include taking photographs, or acquiring other data necessary to assess compliance with the Order.
- 8. Order Conveyance** - This Order shall convey to any successor in control, or successor in interest of the property described in the Notice of Intent and plan(s) of record cited. The Order conveys until a Certificate of Compliance has been issued.
- 9. Certificate of Compliance and Recording** - Upon completion of the project, the applicant shall notify the Conservation Commission in writing and request a Certificate of Compliance (WPA Form 8A). Once issued, the Certificate of Compliance shall be recorded at the Registry of Deeds and the applicant shall send a copy of the completed, stamped Recording Confirmation (WPA Form 8B, Section D) to the Wellfleet Conservation Commission.
- 10. Ongoing Conditions** - The Wellfleet Conservation Commission may continue any conditions imposed in this Order (including but not limited to monitoring, maintenance, beach nourishment, etc.) beyond the issuance of the Certificate of Compliance in accordance with 310 CMR 10.05.9E.



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

WPA Form 5 – Order of Conditions

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:
SE077-1560
MassDEP File #

eDEP Transaction #
Wellfleet
City/Town

E. Signatures

This Order is valid for three years, unless otherwise specified as a special condition pursuant to General Conditions #4, from the date of issuance.

11/4/20

1. Date of Issuance

Please indicate the number of members who will sign this form.

7

2. Number of Signers

This Order must be signed by a majority of the Conservation Commission.

The Order must be mailed by certified mail (return receipt requested) or hand delivered to the applicant. A copy also must be mailed or hand delivered at the same time to the appropriate Department of Environmental Protection Regional Office, if not filing electronically, and the property owner, if different from applicant.

Leon Shreves
Signature

Leon Shreves
Printed Name

Signature

Printed Name

Signature

Printed Name

Signature

Printed Name

Signature

Printed Name

Signature

Printed Name

Signature

Printed Name

Signature

Printed Name

by hand delivery on

by certified mail, return receipt requested, on

Date

Date



Massachusetts Department of Environmental Protection
 Bureau of Resource Protection - Wetlands
WPA Form 5 – Order of Conditions
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:
SE077-1560
 MassDEP File #

eDEP Transaction #
Wellfleet
 City/Town

E. Signatures

This Order is valid for three years, unless otherwise specified as a special condition pursuant to General Conditions #4, from the date of issuance.

11/4/20
 1. Date of Issuance

Please indicate the number of members who will sign this form.

This Order must be signed by a majority of the Conservation Commission.

7
 2. Number of Signers

The Order must be mailed by certified mail (return receipt requested) or hand delivered to the applicant. A copy also must be mailed or hand delivered at the same time to the appropriate Department of Environmental Protection Regional Office, if not filing electronically, and the property owner, if different from applicant.

<u>Deborah Freeman</u> Signature	<u>Deborah Freeman</u> Printed Name
_____ Signature	_____ Printed Name
_____ Signature	_____ Printed Name
_____ Signature	_____ Printed Name
_____ Signature	_____ Printed Name
_____ Signature	_____ Printed Name
_____ Signature	_____ Printed Name
_____ Signature	_____ Printed Name

by hand delivery on

by certified mail, return receipt requested, on

Date

Date

TOWN



Massachusetts Department of Environmental Protection
 Bureau of Resource Protection - Wetlands
WPA Form 5 – Order of Conditions
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:
SE019-1560
 MassDEP File #

eDEP Transaction #
Wellfleet
 City/Town

E. Signatures

This Order is valid for three years, unless otherwise specified as a special condition pursuant to General Conditions #4, from the date of issuance.

Please indicate the number of members who will sign this form.

This Order must be signed by a majority of the Conservation Commission.

The Order must be mailed by certified mail (return receipt requested) or hand delivered to the applicant. A copy also must be mailed or hand delivered at the same time to the appropriate Department of Environmental Protection Regional Office, if not filing electronically, and the property owner, if different from applicant.

11/4/20
 1. Date of Issuance
7
 2. Number of Signers

M. Fisher
 Signature

MICHAEL FISHER
 Printed Name

Signature

Printed Name

Signature

Printed Name

Signature

Printed Name

Signature

Printed Name

Signature

Printed Name

Signature

Printed Name

Signature

Printed Name

by hand delivery on

by certified mail, return receipt requested, on

Date

Date



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands
WPA Form 5 – Order of Conditions
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:
5E077-1560
 MassDEP File #
 eDEP Transaction #
Wellfleet
 City/Town

E. Signatures

This Order is valid for three years, unless otherwise specified as a special condition pursuant to General Conditions #4, from the date of issuance.
 Please indicate the number of members who will sign this form.
 This Order must be signed by a majority of the Conservation Commission.

11/4/20
 1. Date of Issuance
7
 2. Number of Signers

The Order must be mailed by certified mail (return receipt requested) or hand delivered to the applicant. A copy also must be mailed or hand delivered at the same time to the appropriate Department of Environmental Protection Regional Office, if not filing electronically, and the property owner, if different from applicant.

Barbara Brennessel
 Signature
 Signature
 Signature
 Signature
 Signature
 Signature
 Signature
 Signature

Barbara Brennessel
 Printed Name
 Printed Name
 Printed Name
 Printed Name
 Printed Name
 Printed Name
 Printed Name

by hand delivery on

by certified mail, return receipt requested, on

Date

Date



Massachusetts Department of Environmental Protection
 Bureau of Resource Protection - Wetlands
WPA Form 5 – Order of Conditions
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:
SE077-1560
 MassDEP File #

eDEP Transaction #
Wellfleet
 City/Town

E. Signatures

This Order is valid for three years, unless otherwise specified as a special condition pursuant to General Conditions #4, from the date of issuance.

Please indicate the number of members who will sign this form.

This Order must be signed by a majority of the Conservation Commission.

The Order must be mailed by certified mail (return receipt requested) or hand delivered to the applicant. A copy also must be mailed or hand delivered at the same time to the appropriate Department of Environmental Protection Regional Office, if not filing electronically, and the property owner, if different from applicant.

11/4/20
 1. Date of Issuance
7
 2. Number of Signers

<u>[Signature]</u> Signature	<u>John T Cumber</u> Printed Name
_____ Signature	_____ Printed Name
_____ Signature	_____ Printed Name
_____ Signature	_____ Printed Name
_____ Signature	_____ Printed Name
_____ Signature	_____ Printed Name
_____ Signature	_____ Printed Name

by hand delivery on

by certified mail, return receipt requested, on

Date

Date



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands
WPA Form 5 – Order of Conditions
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:
38077-1560
 MassDEP File #

eDEP Transaction #
 Wellfleet
 City/Town

E. Signatures

This Order is valid for three years, unless otherwise specified as a special condition pursuant to General Conditions #4, from the date of issuance.

11/4/20
 1. Date of Issuance

Please indicate the number of members who will sign this form.

This Order must be signed by a majority of the Conservation Commission.

7
 2. Number of Signers

The Order must be mailed by certified mail (return receipt requested) or hand delivered to the applicant. A copy also must be mailed or hand delivered at the same time to the appropriate Department of Environmental Protection Regional Office, if not filing electronically, and the property owner, if different from applicant.

Benjamin Fairbank
 Signature

Benjamin Fairbank
 Printed Name

Signature

Printed Name

Signature

Printed Name

Signature

Printed Name

Signature

Printed Name

Signature

Printed Name

Signature

Printed Name

Signature

Printed Name

by hand delivery on

by certified mail, return receipt requested, on

10/28/20
 Date

Date



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

WPA Form 5 – Order of Conditions

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:

SE077-1560

MassDEP File #

eDEP Transaction #

Wellfleet

City/Town

F. Appeals

The applicant, the owner, any person aggrieved by this Order, any owner of land abutting the land subject to this Order, or any ten residents of the city or town in which such land is located, are hereby notified of their right to request the appropriate MassDEP Regional Office to issue a Superseding Order of Conditions. The request must be made by certified mail or hand delivery to the Department, with the appropriate filing fee and a completed Request for Departmental Action Fee Transmittal Form, as provided in 310 CMR 10.03(7) within ten business days from the date of issuance of this Order. A copy of the request shall at the same time be sent by certified mail or hand delivery to the Conservation Commission and to the applicant, if he/she is not the appellant.

Any appellants seeking to appeal the Department's Superseding Order associated with this appeal will be required to demonstrate prior participation in the review of this project. Previous participation in the permit proceeding means the submission of written information to the Conservation Commission prior to the close of the public hearing, requesting a Superseding Order, or providing written information to the Department prior to issuance of a Superseding Order.

The request shall state clearly and concisely the objections to the Order which is being appealed and how the Order does not contribute to the protection of the interests identified in the Massachusetts Wetlands Protection Act (M.G.L. c. 131, § 40), and is inconsistent with the wetlands regulations (310 CMR 10.00). To the extent that the Order is based on a municipal ordinance or bylaw, and not on the Massachusetts Wetlands Protection Act or regulations, the Department has no appellate jurisdiction.



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands
WPA Form 5 – Order of Conditions
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:
 SE077-1560
 MassDEP File #

 eDEP Transaction #
 Wellfleet
 City/Town

G. Recording Information

Prior to commencement of work, this Order of Conditions must be recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land subject to the Order. In the case of registered land, this Order shall also be noted on the Land Court Certificate of Title of the owner of the land subject to the Order of Conditions. The recording information on this page shall be submitted to the Conservation Commission listed below.

 Conservation Commission

Detach on dotted line, have stamped by the Registry of Deeds and submit to the Conservation Commission.

To:

Wellfleet
 Conservation Commission

Please be advised that the Order of Conditions for the Project at:

Kendrick Ave (21 / 114)	SE077-1560
Project Location	MassDEP File Number

Has been recorded at the Registry of Deeds of:

_____	_____	_____
County	Book	Page

for: _____
Property Owner

and has been noted in the chain of title of the affected property in:

_____	_____
Book	Page

In accordance with the Order of Conditions issued on:

11/4/20

 Date

If recorded land, the instrument number identifying this transaction is:

 Instrument Number

If registered land, the document number identifying this transaction is:

 Document Number

 Signature of Applicant

BARNSTABLE REGISTRY OF DEEDS
John F. Meade, Register

MESA Conservation Management Permit (CMP)



DIVISION OF FISHERIES & WILDLIFE

1 Rabbit Hill Road, Westborough, MA 01581
p: (508) 389-6300 | f: (508) 389-7890
MASS.GOV/MASSWILDLIFE



MA ENDANGERED SPECIES ACT (G.L. c.131A)
CONSERVATION AND MANAGEMENT PERMIT

Table with 2 columns: Field Name and Value. Fields include DATE (October 5, 2017), CONSERVATION PERMIT NO.: (017-311.DFW), NHESP FILE NO. (09-26539), PERMIT HOLDER (Selectboard of the Town of Wellfleet), and PROJECT (Wellfleet Harbor Dredge).

Pursuant to the authority granted in the Massachusetts Endangered Species Act ("MESA") (G.L. c. 131A) and its implementing regulations (321 CMR 10.23), the Director of the Massachusetts Division of Fisheries & Wildlife (the "Division") hereby issues a Conservation and Management Permit (the "Permit") to the Selectboard of the Town of Wellfleet (the "Permit Holder").

A total of ±38 acres of Wellfleet Harbor within the area of Town Pier and Chipman's Cove will be dredged and disposal will occur at Cape Cod Bay Disposal Site. To complete the ±38 acre dredging project, work will occur over multiple phases during the overwintering period for Diamond-back Terrapin.

Under the authority granted by and in accordance with MGL c131A§3 and 321 CMR 10.23, the Director may permit the Take of a State-listed species for conservation and management purposes provided that there is a long-term Net Benefit to the conservation of the impacted species.

- (a) the applicant has adequately assessed alternatives to both temporary and permanent impacts to State-listed species;
(b) an insignificant portion of the local population would be impacted by the Project or Activity, and;

(c) the applicant agrees to carry out a conservation and management plan that provides a long-term Net Benefit to the conservation of the State-listed species that has been approved by the Director, as provided in 321 CMR 10.23(5), and shall be carried out by the applicant.

The Director has determined that the applicant for this Permit has met the above noted Performance Standards and that the conservation and management plan described herein provides a long-term Net Benefit to the conservation of the Diamond-backed Terrapin.

Pursuant to this Permit, the Permit Holder proposes to provide \$16,800 for off-site land protection, conservation research, habitat management, and/or conservation planning in order to provide a long-term Net Benefit to the Diamond-backed Terrapin in Massachusetts.

The Applicant also submitted an *Environmental Notification Form* pursuant to the MA Environmental Policy Act for the Project and received *Final Record of Decision* on December 9, 2016 that granted a waiver of the mandatory Environmental Impact Report (MEPA File No. 15506).

Therefore, the Project can be permitted pursuant to the MESA. This Permit is issued to condition the Project and to provide a long-term Net Benefit to Diamond-backed Terrapin.

In accordance with the documents submitted to the Division entitled:

- "Conservation and Management Permit Application" (dated August 2017, prepared by Bourne Consulting Engineering, GEI Consulting Inc.; the "Permit Application");
- Proposed Dredge Site Plans (dated 7/06/16, 7 Sheets including revisions on Sheets 4 & 6 dated 05/15/17, prepared by Bourne Consulting Engineering, GEI Consulting, Inc.; the "Project Plan"; Attachment 1);
- Mitigation Fund Agreement (Attachment 2);

and any other plans and documents referenced herein, this Permit is issued with the following conditions:

General Conditions:

1.	The Project authorized by this Permit shall be completed within ten (10) years from the date of issuance. If needed, the Permit Holder shall submit a written request to the Division for an extension of time to complete said Project and the Division will review the Project pursuant to MESA for any continuing impacts as described herein and for any new impacts to any State-listed species found subsequent to the issuance date of this Permit.
2.	This Permit shall not preclude the review of future projects on the Property that are subject to the Wetlands Protection Act regulations (310 CMR 10.37, 10.58(4)(b), 10.59), as applicable, by the Natural Heritage & Endangered Species Program ("NHESP") of the Division.
3.	The work authorized by this Permit involves the dredging of ±38 acres of Wellfleet Harbor as shown on the Project Plan (the "Work"; Attachment 1) and described in the Permit Application. The Work also includes any other on-site activity required by the Division as a condition of this Permit.
4.	Division representatives shall have the right to enter and inspect the Property subject to this Permit at reasonable hours to evaluate Permit compliance and require the submittal of any reasonable information not otherwise required by this Permit but deemed necessary by the Division to complete its evaluation.

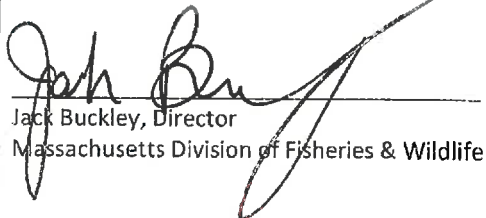
5.	Any proposed change to any plan identified in this Permit, or to the State-listed species conservation plan required by way of this Permit, shall require the Permit Holder to inquire of the Division, in writing, whether the change is significant enough to require the filing of a new Conservation and Management Permit Application, and or require additional long-term Net Benefit for affected State-listed species. The Division retains the right to require the submittal of additional, reasonable information to evaluate the plan change.
6.	This Permit shall apply to, and inure to the benefit of, the Permit Holder and any successor-in-interest of the Permit Holder, or to a subsequent successor-in-control of the Property or portion thereof subject to this Permit should the Permit Holder convey its record ownership of the Property to said successor-in-control, as well as to any contractor or other person performing Work conditioned by this Permit. Within three (3) days of the transfer of an interest in the Property or a portion thereof, any successor-in-interest or subsequent successor-in-control [i.e., subsequent owners or operators] of the Property or a portion thereof shall provide the Division with a letter indicating (1) that the successor is the successor-in-interest of the Permit Holder or the successor-in-control [i.e., current owner or operator] of the Property or a portion thereof, and (2) that said successor will perform the obligations of the Permit Holder as set forth in this Permit.
7.	<u>Prior to the start of Work</u> , the Permit Holder shall notify the Division in writing of the name, address, email, business and home telephone numbers of the project supervisor(s) and/or contractor(s) responsible for compliance with this Permit. The Permit Holder shall provide updated information in writing to the Division should new or additional project supervisors and/or contractors be hired after Work has commenced. <u>Within three (3) days of the start of Work</u> , the Permit Holder shall send a letter to the Division stating the date upon which Work commenced.
8.	<u>Prior to the start of Work</u> , the text of this Permit shall be recorded by the Permit Holder in the Registry of Deeds or the Land Court for the district in which the Property is located so as to become a record part of the chain of title of the Property. In the case of recorded land, the Permit shall be noted in the Registry's Grantor Index under the name of the owner of the Property upon which the proposed Work is to be done. In the case of registered land, the Permit shall be noted on the Land Court Certificate of Title of the owner of the Property upon which the proposed Work is done. The Permit Holder shall submit to the Division a date-stamped and signed copy of said recorded Permit showing the date and book and page of recording of said Permit within five (5) days after recording and/or filing, as applicable. No Work shall begin on the Property until the Permit is recorded and said recorded copy is submitted to the Division, except as otherwise approved by the Division in writing.
9.	<u>At the completion of Work</u> the Permit Holder shall submit to the Division a written request for a Certificate of Permit Compliance, including as-built plans and other supporting materials demonstrating the completion of Work and compliance with all conditions herein.
10.	Any land protected to achieve a long-term Net Benefit associated with this Permit, shall remain undeveloped and protected as habitat for State-listed species in perpetuity.
11.	The Permit Holder shall comply with all Conditions and Special Conditions contained within this Permit and complete the Project consistent with all Division-approved plans and supporting documents except as otherwise approved by the Division in writing.
12.	The Permit Holder shall submit in writing any documents, plans, reports, or other items required for submission in accordance with this Permit, for review and written approval by the Division, unless otherwise stipulated in this Permit or by the Division in writing.

13.	A violation of any condition of this Permit will result in an unauthorized Take pursuant to M.G.L. c. 131A and may be subject to civil and or criminal penalties pursuant to M.G.L. c. 131A.
14.	This Permit does not relieve the Permit Holder or any other person of the necessity of complying with all applicable federal, state, or local statutes, ordinances, bylaws, or regulations, including but not limited to those administered by the USACE and MassDEP. This Permit does not grant any property rights or any exclusive privileges; it does not authorize injury to private property or invasion of property rights.
15.	The contractor(s) employed to implement the Project shall be provided a copy of this Permit prior to commencement of Work. Said contractor(s) may be held responsible with the Permit Holder for violations of the Permit performed by the contractor(s).

Special Conditions:

16.	<u>Authorized Construction and Uses:</u> This Permit authorizes dredging of ±38 acres within Wellfleet Harbor as described above and detailed in the Permit Application. All Work shall be confined to the area of the Property within the limits of Work as shown on the Project Plan (Attachment I). As detailed in the Permit Application, dredging will occur in phases. Subsequent dredging within the same footprint (i.e. maintenance dredging) is not permitted herein.
17.	<u>Maintenance Dredging:</u> This Permit does not authorize an additional dredge within the same footprint of the initial ±38 ac dredge (i.e. no area shall be dredged more than once). However, in the event that the Permit Holder plans to conduct maintenance dredging, the Permit Holder shall consult with the Division in advance of such work to determine if said maintenance dredging can be authorized in accordance with this Permit or requires a separate Division-authorization, pursuant to General Condition 5 herein. The Division reserves the right to require mitigation for any work deemed a Take. Written authorization from the Division is required for any additional Work not described in the Permit Application and Permit Plans.
18.	<u>State-listed Species Conservation/Research:</u> In order to provide a Net Benefit to the conservation of the State-listed species impacted by this Project, the Permit Holder has proposed, by way of the Permit Application, to provide funding for land protection, conservation research, habitat management, and/or conservation planning to benefit the State-listed species impacted by this Project. The Permit Holder has chosen to fulfill this obligation by providing funding in the amount of \$16,800.00 into Turtle Mitigation Account #001-4-123-000.00-5300.17, a separate Town held account, designated for the benefit Diamond-backed Terrapin and subject to the Mitigation Fund Agreement (Attachment 2).
19.	<u>Mitigation Fund Agreement:</u> The Permit Holder shall execute the Mitigation Fund Agreement, and provide written proof of the execution, <u>prior to the start of Work</u> . The document shall be in substantially the same form as shown in Attachment 2. Any changes in the form of said Agreement other than typographical or grammatical changes must be approved in writing by the Division prior to execution. The Division, and not the Permit Holder, shall have sole responsibility for insuring that said funds are used for land protection, conservation research, habitat management, and/or conservation planning to benefit the State-listed species impacted by this Project.
20.	<u>Procedure for Turtle observation during Dredge:</u> All Dredge operators, contractors, employees, etc. shall be advised, via visual pamphlet/sheet (NHESP Fact Sheet) of the potential to encounter Diamond-backed Terrapin during the dredge operations. Visual observations shall be reported as described in Condition #22, herein. If observed in the dredge scow an effort to recover the individual shall be made, if feasible. If recovered, the animal shall be placed in a cooler and delivered to MA Audubon Wellfleet Bay. Care should

	<p>be taken not to warm the animal and to the extent practicable, it should not be exposed to frigid temperatures or wind.</p>
21.	<p>Construction Staff Education: All dredge contractors, employees, and other sub-contractors associated with the Project shall be informed in writing of the likely presence of State-listed species on the Property and what measures should be implemented to minimize direct harm to State-listed species. Further, no wildlife shall be removed from the Property without approval of a qualified wildlife biologist or the Division except as necessary to receive veterinary treatment in the case of harm during construction.</p>
22.	<p>Rare Species Observations: The Division shall be notified, in the form of an NHESP Rare Animal or Plant Observation Form, within ten (10) days of the observation of any State-listed species within or outside the limits of Work. Preferably notification will be through the Division's data submittal tool, the Vernal Pool & Rare Species (VPRS) Information System. VPRS and our paper observations forms can be found at: http://www.mass.gov/dfw/nhESP/vprs.</p>
23.	<p>Notice of Appeal Rights: This Determination is a final decision of the Division of Fisheries and Wildlife pursuant to 321 CMR 10.23. Any person aggrieved by this decision shall have the right to an adjudicatory hearing at the Division pursuant to M.G.L. c. 30A, s.11 in accordance with the procedures for informal hearings set forth in 801 CMR 1.02 and 1.03.</p> <p>Any notice of claim for an adjudicatory hearing shall be made in writing and be accompanied by a filing fee in the amount of \$500.00. The notice of claim shall be sent to the Division by certified mail, hand delivered or postmarked within twenty-one (21) days of the date of the Division's Determination to:</p> <p style="text-align: center;"> Jack Buckley Director Division of Fisheries and Wildlife Field Headquarters One Rabbit Hill Road Westborough, MA 01581 </p> <p>Any notice of claim for an adjudicatory hearing shall include the following information:</p> <ol style="list-style-type: none"> 1. The file number for the project; 2. The complete name, address and telephone number of the person filing the request, and the name, address and telephone number of any authorized representative; 3. The specific facts that demonstrate that a party filing a notice of claim satisfies the requirements of an "aggrieved person," including but not limited to (a) how they have a definite interest in the matters in contention within the scope of interests or area of concern of M.G.L. c. 131A or the regulations at 321 CMR 10.00 and (b) have suffered an actual injury which is special and different from that of the public and which has resulted from violation of a duty owed to them by the Division; 4. A clear statement that an adjudicatory hearing is being requested; 5. A clear and concise statement of facts which are grounds for the proceeding, the specific objections to the actions of the Division and the basis for those objections; and the relief sought through the adjudicatory hearing; and a statement that a copy of the request has been sent by certified mail or hand delivered to the applicant and the record owner, if different from the applicant.



Jack Buckley, Director
Massachusetts Division of Fisheries & Wildlife

On this 5th day of October 2017, before me, the undersigned notary public, personally appeared Jack Buckley, Director, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his/her knowledge and belief.



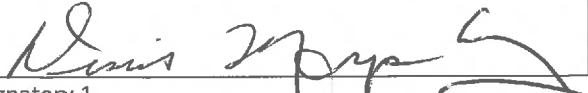
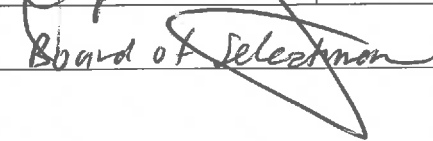
Emily Melissa Holt, Notary Public
My Commission expires: July 12, 2024

Conservation Permit 017-311.DFW
Issued this 5th day of October, 2017
Work must be completed by: October 5, 2027



ACKNOWLEDGEMENT AND ACCEPTANCE OF ALL TERMS OF THIS CONSERVATION PERMIT

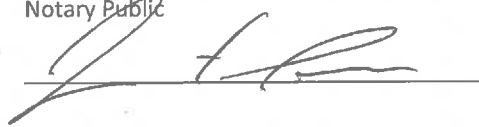
The undersigned below agrees that commencement of any work authorized by and described in this Conservation and Management Permit constitutes acknowledgement and acceptance of all terms of this Permit.

	
Signatory 1	
Organization	

COMMONWEALTH OF MASSACHUSETTS

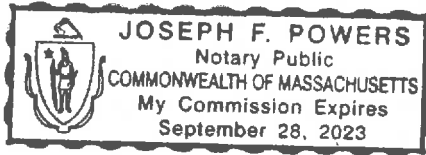
On this 10th day of October, 2017, before me, the undersigned notary public, personally appeared Dennis Murphy, personally known to me, proved to me through satisfactory evidence of identification which was to be the person whose name is signed on the preceding or attached document, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his/her knowledge and belief.

Notary Public



SEAL

My commission expires: September 28, 2023



Distribution List

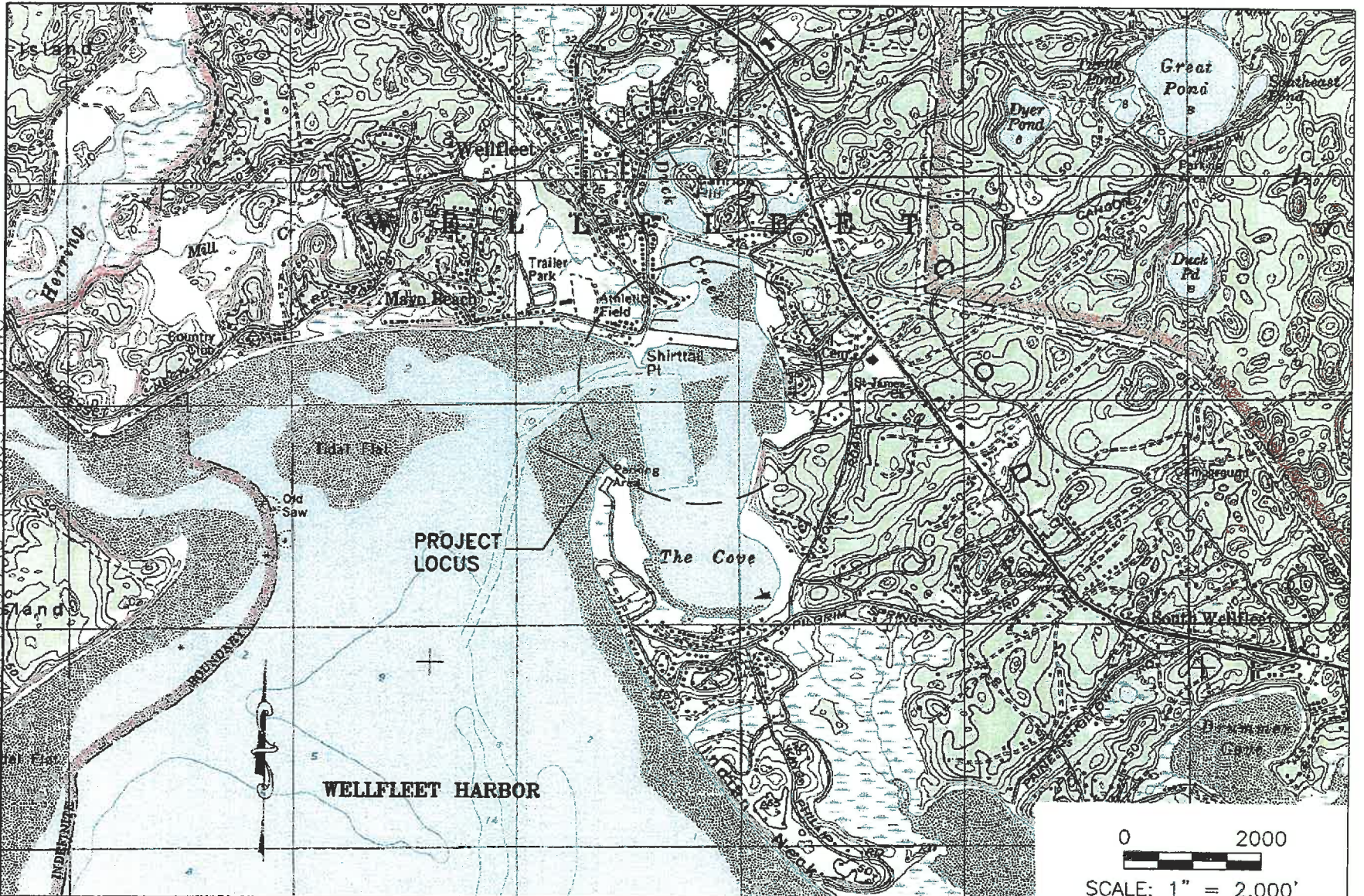
Alyssa Richard, Bourne Consulting Engineering
Russell Titmuss, Bourne Consulting Engineering
Wellfleet Board of Selectmen
Wellfleet Conservation Commission
Wellfleet Planning Board
DEP Southeast Regional Office, Wetlands Program
Jason Zimmer, DFW Southeast District Office
Purvi Patel, MA Environmental Policy Act Office



Attachment 1

"Proposed Dredge Site Plans (dated 7/06/16, 7 Sheets including revisions on Sheets 4 & 6 dated 05/15/17, prepared by Bourne Consulting Engineering, GEI Consulting, Inc.; the "Project Plan")

File: X:\30777\USACE SUBMISSION 120312\A-S-1 LOCUS PLAN.DWG



100 YR FLOOD	+17.4	NGVD	+5.4
HTL	+13.2	MLW	0.0
MHW	+10.0		

TITLE:
LOCUS MAP

IN: **WELLFLEET**
 AT: **TOWN PIER**
 COUNTY: **BARNSTABLE** STATE: **MA**

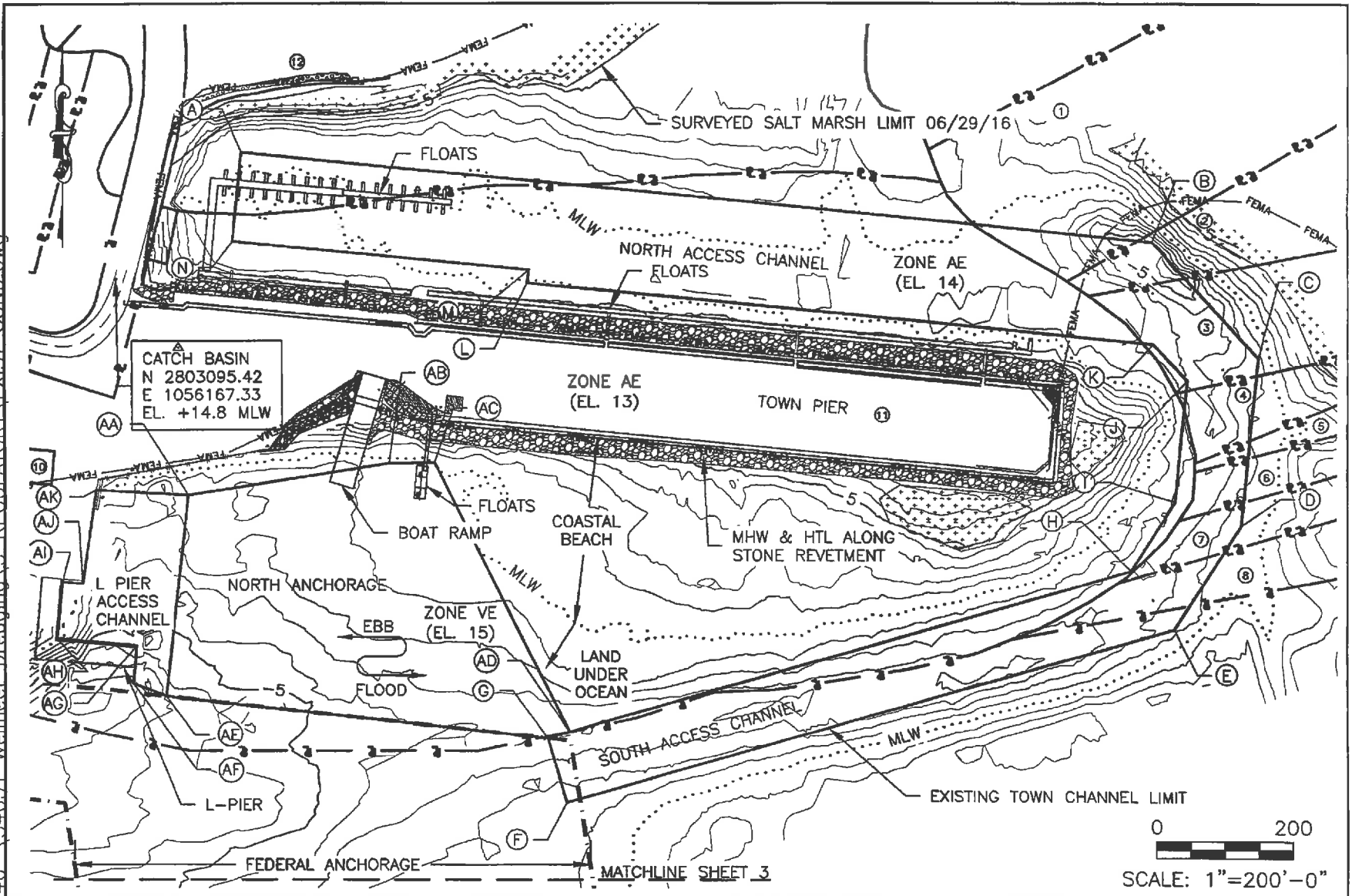
Borne Consulting Engineering
 A Division of GEI Consultants, Inc.
 3 Rest Street, Franklin, MA 01025
 TEL: (508) 532-0596

PURPOSE:
DREDGING

APPLICATION BY:
TOWN OF WELLFLEET

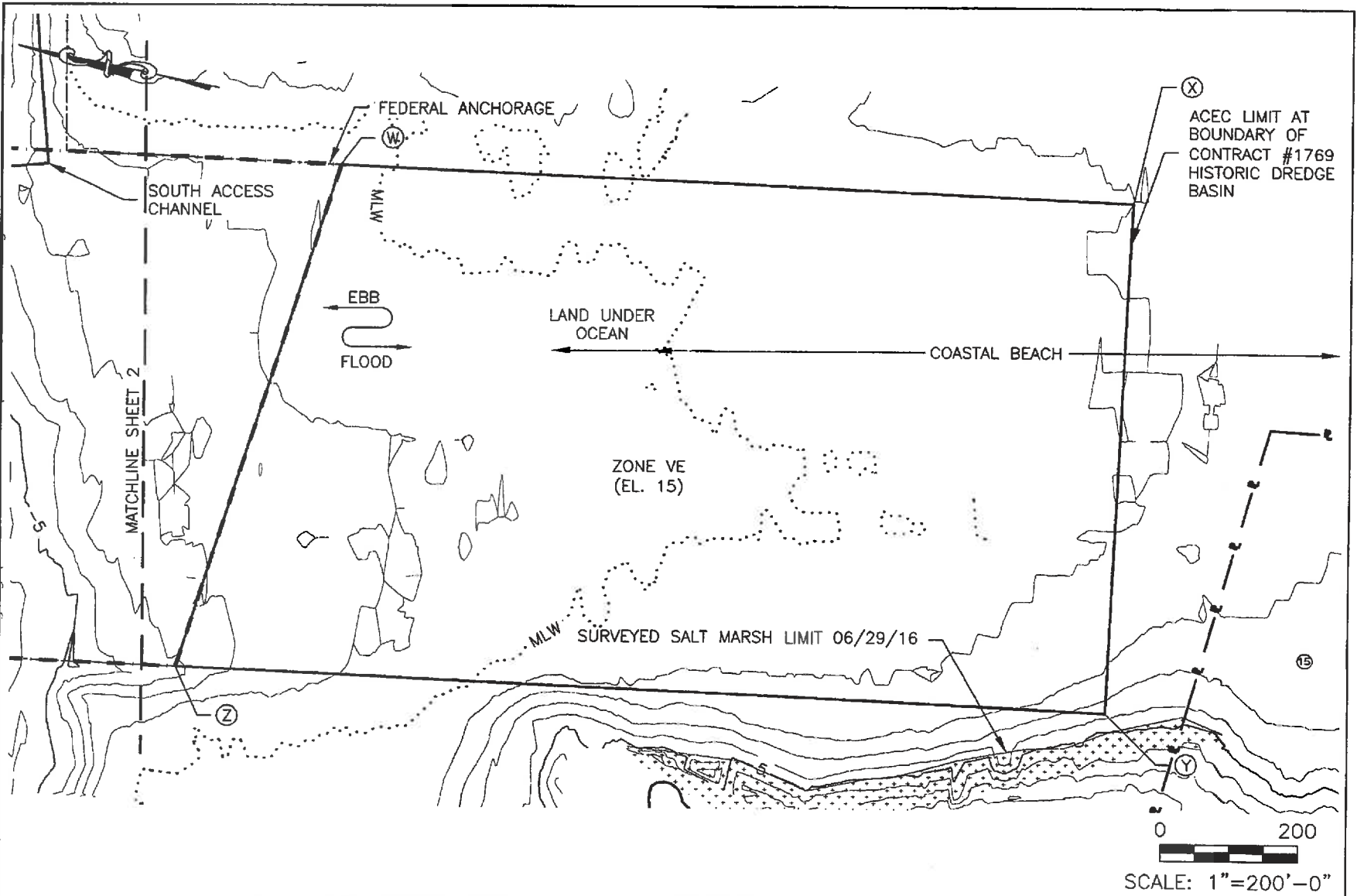
SHEET **1** OF **7**
 DATE: **07/06/16**

File: X:\34946-34031 Wellfleet_Dredging_3 REGULATORY_EXIST_COND.dwg



100 YR FLOOD	+17.4	NGVD	+5.4	TITLE:	EXISTING CONDITIONS CHANNEL		IN: WELLFLEET
HTL	+13.2	MLW	0.0	PURPOSE:	DREDGING	APPLICATION BY:	AT: TOWN PIER
MHW	+10.0						COUNTY: BARNSTABLE STATE: MA
							SHEET 2 OF 7
							DATE: 07/06/16

File: X:\34946--\34031 Wellfleet Dredging\3 REGULATORY\EXIST COND.dwg



100 YR FLOOD	+17.4	NGVD	+5.4
HTL	+13.2	MLW	0.0
MHW	+10.0		



TITLE:	EXISTING CONDITIONS BASIN	
PURPOSE:	DREDGING	APPLICATION BY:
		TOWN OF WELFLEET

IN: WELFLEET
AT: TOWN PIER
COUNTY: BARNSTABLE STATE: MA
SHEET 3 OF 7
DATE: 07/06/16

File: B:\Working\WELLFLEET MA TOWN OF 1607951 Marina Dredging\60 DRAWINGS\3 REGULATO

COORDINATES OF EXISTING CHANNELS & ANCHORAGES:

A	N	2803280.7	E	1056351.6
B	N	2803151.1	E	1057690.3
C	N	2802979.6	E	1057845.9
D	N	2802732.3	E	1057822.0
E	N	2802579.3	E	1057723.6
F	N	2802318.5	E	1056830.3
G	N	2802414.6	E	1056802.3
H	N	2802664.8	E	1057659.7
I	N	2802766.0	E	1057724.8
J	N	2802945.2	E	1057742.1
K	N	2803000.3	E	1057692.2
L	N	2803089.2	E	1056772.6
M	N	2803109.1	E	1056775.1
N	N	2803151.3	E	1056339.1
O	N	2803207.7	E	1056325.9

COORDINATES OF EXISTING CHANNELS & ANCHORAGES:

P	N	2803075.7	E	1057691.2
Q	N	2802962.4	E	1057793.9
R	N	2802749.1	E	1057773.3
S	N	2802622.0	E	1057691.6
T	N	2802352.1	E	1056770.4
U	N	2802102.7	E	1056503.9
V	N	2800521.9	E	1056751.1
W	N	2801898.9	E	1056915.2
X	N	2800753.1	E	1057094.6
Y	N	2800637.1	E	1056353.6
Z	N	2801984.2	E	1056142.8
AA	N	2802774.7	E	1056273.5
AB	N	2802821.3	E	1056569.0
AC	N	2802822.3	E	1056635.8
AD	N	2802423.7	E	1056834.0
AE	N	2802476.5	E	1056240.7
AF	N	2802495.7	E	1056192.4
AG	N	2802552.5	E	1056197.3
AH	N	2802562.7	E	1056080.8
AI	N	2802646.9	E	1056088.2
AJ	N	2802645.2	E	1056118.3
AK	N	2802782.6	E	1056138.2
AL	N	2802675.2	E	1056090.4
AM	N	2802604.7	E	1056887.3

DREDGE AREAS:

LOCATION	AREA (SF)
INTERTIDAL WITHIN AREA 1	105,245
TOTAL AREA 1	637,720
INTERTIDAL WITHIN AREA 2	607,230
TOTAL AREA 2	1,038,950

DREDGE VOLUMES:

LOCATION	PROPOSED DREDGE (CY)	1' OVER-DREDGE (CY)	TOTAL (CY)
AREA 1 CHANNELS	65,300	16,000	81,300
AREA 1 NORTH ANCHORAGE & L PIER ACCESS	28,500	8,500	37,000
AREA 2	221,000	39,000	260,000

ABUTTERS

1. 125 MARVEN WAY STEPHEN L DURKEE, JR. TRUSTEE
2. 40 RICHMAN LANE ROBERT C DUBEAU, TRUSTEE
MARSHA DUBEAU, TRUSTEE
MARTHA CARROLL, TRUSTEE
C/O MARC & RILEY SARAH STRAUSS
3. 75 RICHMAN LANE DAVID J BERNSTEIN, TRUSTEE
ANTONIA H BERNSTEIN, TRUSTEE
4. 139 NAUHAUGHT BLUFF RD VON KAESBORG GIFFORD K/MARY C
% WILLIAM POST TTEE
5. 137 NAUHAUGHT BLUFF RD MICHAEL J MCNAMARA
MARK J POWERS
7. 131 NAUHAUGHT BLUFF RD ALLAN D BRASH
8. 125 NAUHAUGHT BLUFF RD EDMUND B & HAROLD J FROST, TRUSTEES
HENDERSON - FROST
STEPHEN B COONEY
9. 3 KENDRICK AVE HAY MACGREGOR & ALEXANDER
10. 265 COMMERCIAL ST TOWN OF WELLFLEET
11. 255 COMMERCIAL ST JOSEPH A DOWNEY JR TRUSTEE
PAUL D MESSINA TRUSTEE
JAY & WENDY BRONSTEIN
JOANNE WUSCHKE TRUSTEE
PHILIP S & CAROLYN BATTAGLIA
STEVEN M & JEANNE B COSER
WAYNE E & MARIE J OASTLER
THEODORE P ORENSTEIN TRUSTEE
CATHERINE R BARNHOLTZ
CLIFFORD D NULMAN
JANE TURANO THOMPSON
12. 205 COMMERCIAL ST MICHAEL R & ELIZABETH A BRITT
ANDREW H CHESNICK
WALTER & MARCIA TTES ROCKWOOD
NANCY RAE HEYWOOD
RAYMOND J & PATSY A MISIURA
TOWN OF WELLFLEET
13. 0 INDIAN NECK RD OFF TOWN OF WELLFLEET
14. 235 NAUSET RD TOWN OF WELLFLEET
15. 0 CHIPMANS COVE TOWN OF WELLFLEET
16. 0 NAUSET RD WELLFLEET CONSERVATION TRUST

100 YR FLOOD	+17.4	NGVD	+5.4
HTL	+13.2	MLW	0.0
MHW	+10.0		

TITLE:

PROJECT NOTES

IN: **WELLFLEET**
 AT: **TOWN PIER**
 COUNTY: **BARNSTABLE** STATE: **MA**

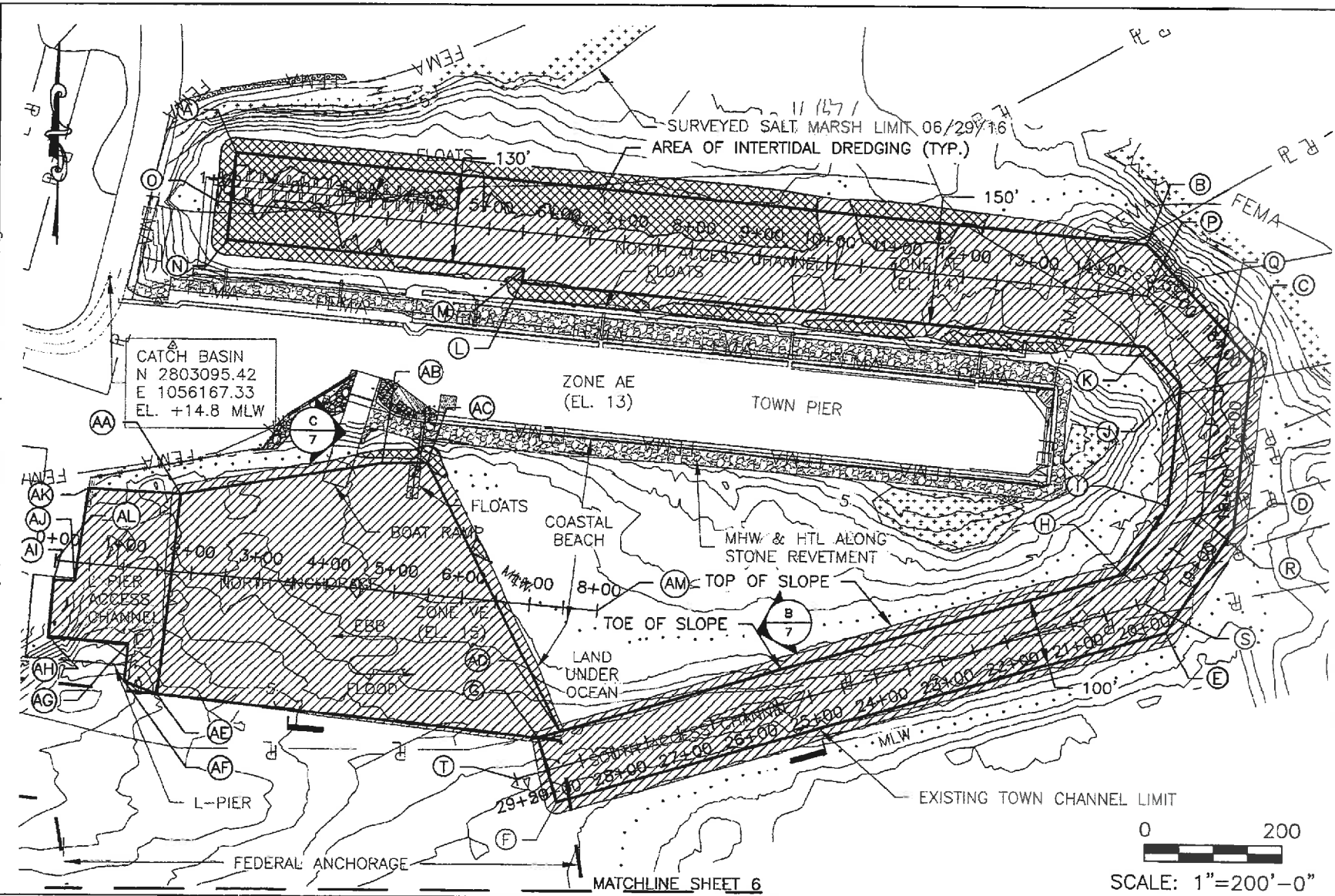


PURPOSE:
DREDGING

APPLICATION BY:
TOWN OF WELLFLEET

SHEET **4** OF **7**
 DATE: **07/06/16** REV: **05/15/17**

File: X:\34946-34031 Wellfleet_Dredging_3 REGULATORY PRCP_COND.dwg



100 YR FLOOD	+17.4	NGVD	+5.4
HTL	+13.2	MLW	0.0
MHW	+10.0		

TITLE: **PROPOSED CONDITIONS
AREA 1 DREDGE**

IN: **WELLFLEET**
 AT: **TOWN PIER**
 COUNTY: **BARNSTABLE** STATE: **MA**

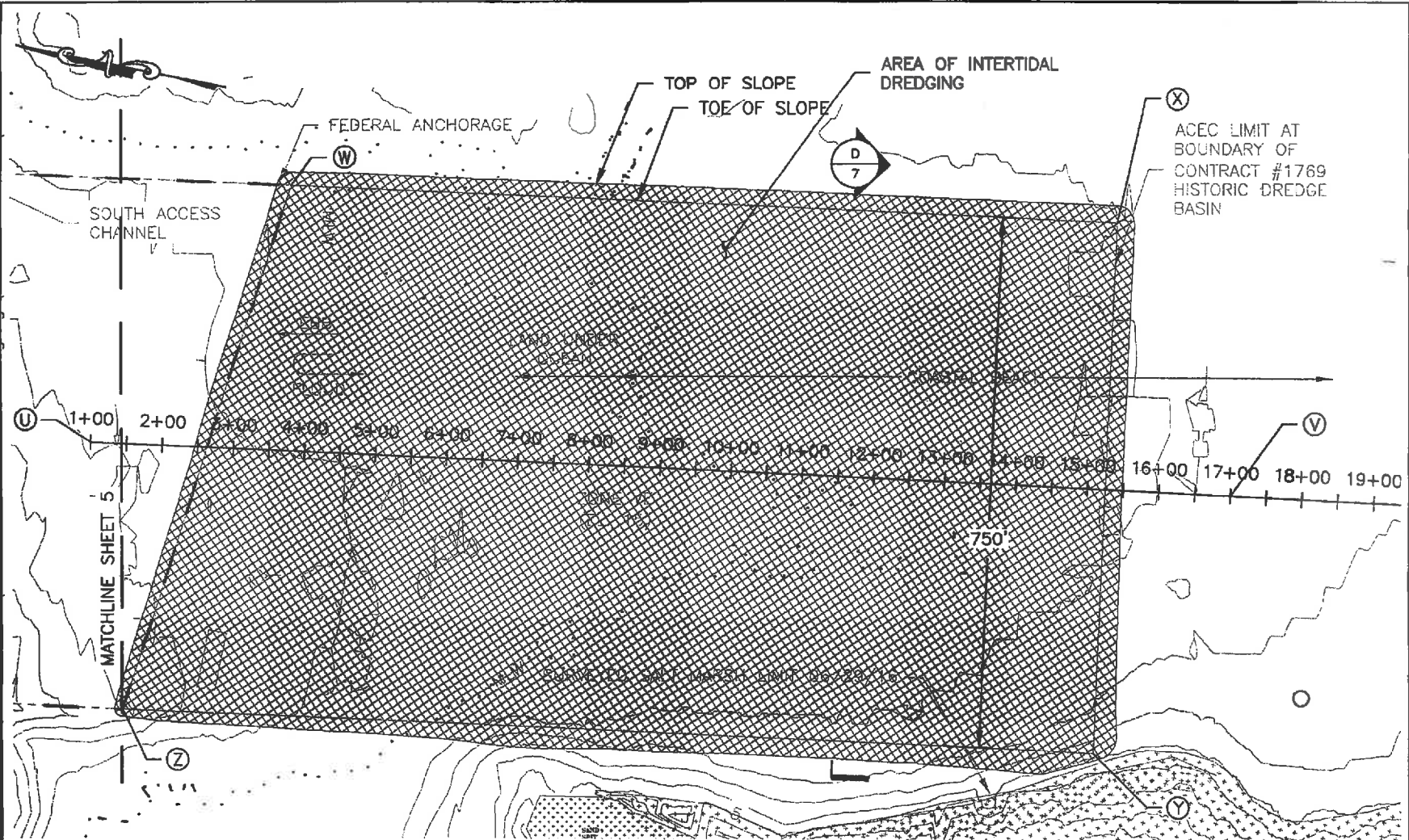


PURPOSE: **DREDGING**


APPLICATION BY: **TOWN OF WELLFLEET**

SHEET **5** OF **7**
 DATE: **07/06/16**

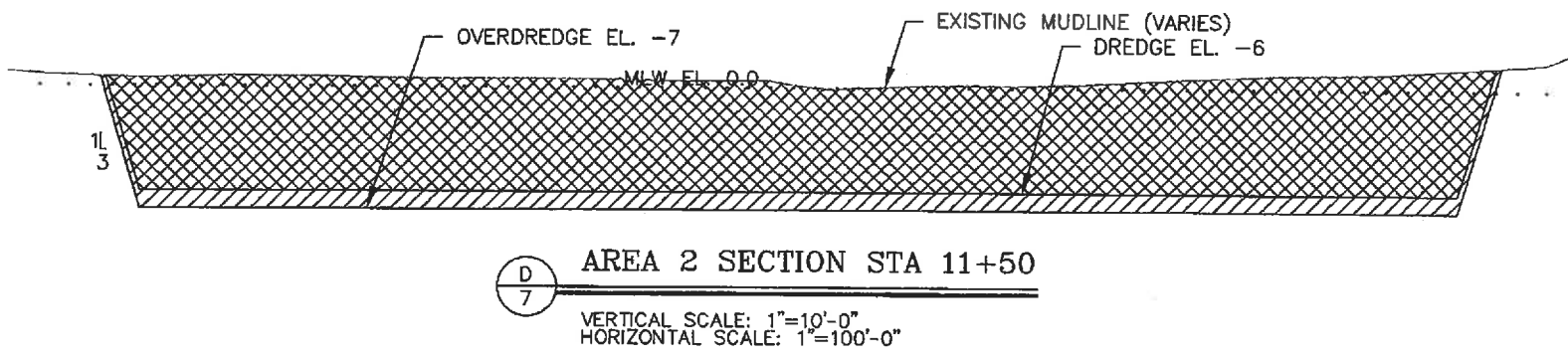
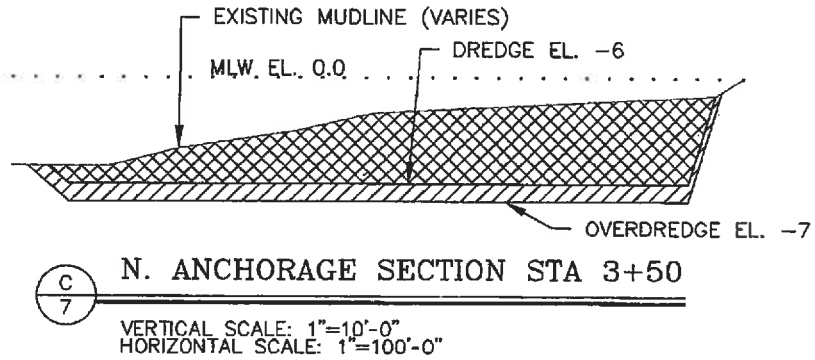
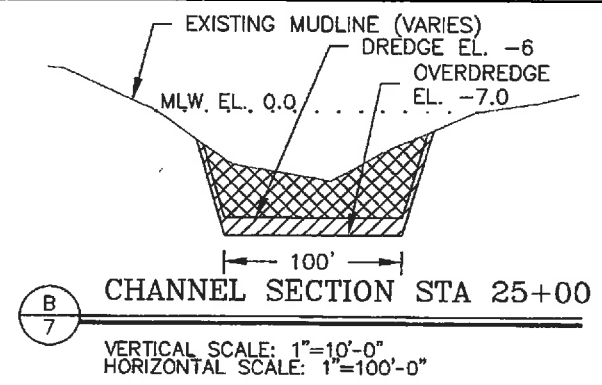
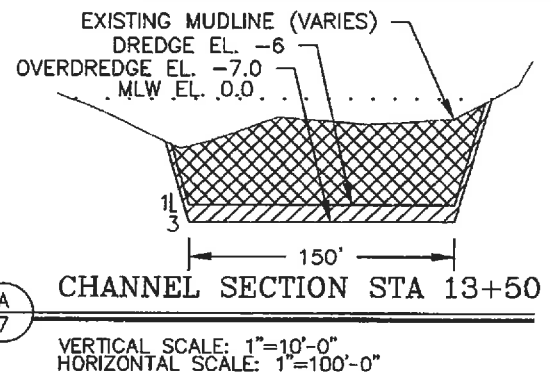
File: P:\Working\WELLFLEET MA_TOWN_OF\1607951_Marina_Dredging\60_DRAWINGS\3_REGULATO




0 200
SCALE: 1"=200'-0"

100 YR FLOOD	+17.4	NGVD	+5.4	TITLE:	PROPOSED CONDITIONS AREA 2 DREDGE		IN: WELLFLEET
HTL	+13.2	MLW	0.0				AT: TOWN PIER
MHW	+10.0						COUNTY: BARNSTABLE STATE: MA
 Bourne Consulting Engineering <small>A Division of BEI Consulting, Inc. 3 West Street, Franklin, MA 02045 TEL. (508) 533-6666</small>				PURPOSE:	APPLICATION BY:	SHEET 6 OF 7	
				DREDGING	TOWN OF WELLFLEET	DATE: 07/06/16 REV: 05/15/17	

File: X:\34946-34031 Wellfleet Dredging\3 REGULATORY\PROP_COND.dwg



100 YR FLOOD	+17.4	NGVD	+5.4	TITLE: PROPOSED CONDITIONS SECTIONS	IN: WELLFLEET AT: TOWN PIER COUNTY: BARNSTABLE STATE: MA
HTL	+13.2	MLW	0.0		
MHW	+10.0				
				PURPOSE: DREDGING	APPLICATION BY: TOWN OF WELLFLEET
DATE: 07/06/16					

Attachment 2

Mitigation Fund Agreement

MITIGATION FUND AGREEMENT

THIS MITIGATION FUND AGREEMENT (this "Agreement") is made by and between the Town of Wellfleet, a Massachusetts municipal corporation with a principal place of business at Town Hall, 300 Main Street, Wellfleet, Massachusetts, 02667 (the "Town") and the Massachusetts Division of Fisheries & Wildlife, Natural Heritage & Endangered Species Program, One Rabbit Hill Road, Westborough, MA, 01581 (the "Division").

WHEREAS, the Town desires to improve navigation and mooring capability by dredging ±38 acres of navigation channels and mooring basins within Wellfleet Harbor, Wellfleet, MA, during the overwintering period for Diamond-backed Terrapin (the "Project");

WHEREAS, the Town's Conservation and Management Permit No. 017-311, DFW, issued pursuant to M.G.L. c.131A, (the "Permit"), authorizes the Taking of the state-protected Diamond-backed Terrapin (*Malaclemys terrapin*), which is listed as Threatened pursuant to the Massachusetts Endangered Species Act, for the proposed dredge.

WHEREAS, the Town is required under the Permit to establish a Net Benefit for Diamond-backed Terrapin and has agreed to provide funding in the amount of \$16,800.00 (the "Funds") to mitigate for impacts to Diamond-backed Terrapin resulting from the Project;

WHEREAS, the Town has agreed to provide such Funds to be used solely by the Division or its assigns for the purposes of acquisition, restoration and/or management of habitat, and/or conservation research for the benefit of Diamond-backed Terrapin populations in Massachusetts and to hold such Funds in a dedicated, interest bearing special revenue account established for such purpose (the "Mitigation Fund");

WHEREAS, the parties hereto have entered into this Agreement in order to set forth the terms, conditions and procedures with respect to the funding and use of the Mitigation Fund.

NOW THEREFORE, with reference to the foregoing Recitals, all of which are incorporated herein by this reference, and in consideration of the terms and conditions of the Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto covenant and agree as follows:

1. Funding of the Mitigation Fund. The Town shall allocate the Funds to the Mitigation Fund at least 30 days prior to the start of any dredging activity. Confirmation of deposition of the Funds shall be provided to the Division before the Project may begin.
2. Use of Mitigation Fund. The Funds shall be used solely for the purposes of acquisition, restoration and/or management of habitat, and/or conservation research for the benefit of Diamond-backed Terrapin populations in Massachusetts.
3. Dedicated Account. The Funds have been separately allocated in an interest bearing Town held account. Town of Wellfleet Account # 001-4-123-000.00-5300.17, Account Name "Turtle Mitigation".

4. Disbursements. From time to time during the term of this Agreement, the Division may, on or before the date, which is ten (10) years from the date of this Agreement, request in writing to the Town to deliver all or portions of the Funds, plus any interest thereon, for the purposes of acquisition, restoration and/or management of habitat, and/or conservation research for the benefit of Diamond-backed Terrapin populations in Massachusetts. Upon receipt of such written request, the Town shall deliver the requested portion of the Funds to the Division or any party designated in writing by the Division within thirty (30) days of the receipt of such request. The Town shall not be required to deliver any portion of the Funds to a third party unless and until it receives the following documentation: (1) W-9 form from the third party designee; (2) scope of work; (3) cost estimate; and (4) written authorization to pay from the Division. Delivery of the requested portion of the Funds in accordance with the terms of this Agreement shall be made by cashier's check or by federal funds wire transfer, at the option of the payee. The Division shall make written requests for disbursement of the Funds to the Town at the following:

Constance Boulos, Town Accountant
and
Brian Carlson, Assistant Town Administrator
Town Hall
300 Main Street
Wellfleet, Massachusetts 02667

If, at the end of ten (10) years from the date of execution of this Agreement, any portion of the Funds is still held in the Mitigation Fund by the Town, then the Division shall, within six (6) months after such ten (10) year date, develop a plan for the use of any remaining Funds by the Division and submit such plan to the Town for the further acquisition, restoration and/or management of habitat, and/or conservation research for the benefit of Diamond-backed Terrapin populations in Massachusetts. Following the receipt of a plan for the use of any remaining Funds, the City shall release any remaining Funds to the Division or any party designated in writing by the Division in accordance with such plan.

5. Reporting. The Town shall provide an annual report, beginning one year after the execution of this agreement, on the status of the Mitigation Fund account. Said report shall include all expenditures, interest, and total funds available.

6. Termination of Agreement. This Agreement shall terminate and the Town shall be relieved of all liability, after all funds in the Mitigation Fund have been properly disbursed in accordance with the terms and conditions of this Agreement.

7. Severability. If any provision of this Agreement shall be invalid, illegal or unenforceable, it shall not affect or impair the validity, legality and enforceability of any other provisions of this Agreement.

8. Amendment. This Agreement may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except by an instrument in writing and signed by all parties to this Agreement.

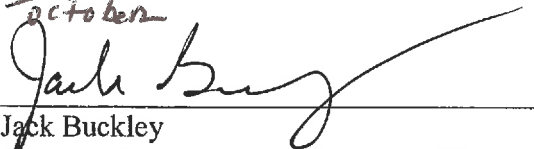
9. Successors and Assigns. This Agreement shall be binding upon the parties hereto and their respective successors and assigns, and shall inure to the benefit of the parties hereto and their respective successors and assigns, subject to the limitations on assignment set forth herein.

10. Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.


11. Notices. All written notices or demands of any kind that any party hereto may be required or may desire to serve on any other party in connection with this Agreement shall be served (as an alternative to personal service) by hand delivery or by registered, certified, or overnight mail, return receipt requested. Any such notice or demand shall be deposited with postage thereon fully prepaid and, at the address set forth on page 1 above or such other address as any party may set forth in a notice to the other parties sent in the manner set forth herein. Service of any such notice or demand so made by mail shall be deemed complete on the date of hand delivery or the date of actual delivery as shown on the addressee's registry or certification receipt or at the expiration of the second (2nd) business day after the date of mailing, whichever is earlier in time.

12. Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which, when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of this 10 day of August, 2017.

October


Jack Buckley
Director, Massachusetts Division of Fisheries and Wildlife



Daniel Hoort
Town Administrator, Town of Wellfleet

MESA CMP Amendment



MASSWILDLIFE

**DIVISION OF
FISHERIES & WILDLIFE**

1 Rabbit Hill Road, Westborough, MA 01581
p: (508) 389-6300 | f: (508) 389-7890
MASS.GOV/MASSWILDLIFE

MA ENDANGERED SPECIES ACT (G.L. c.131A)
AMENDMENT TO
CONSERVATION AND MANAGEMENT PERMIT

BK 31047 Pg 90
255 Commercial St

DATE	August 15, 2019
CONSERVATION PERMIT No.:	017-311.DFW
NHESP FILE No.	09-26539
PERMIT HOLDER	Selectboard of the Town of Wellfleet
PROJECT	2017 CMP: Wellfleet Harbor Dredge 2019 CMP Amendment: one-time dredge of the turning basin and channel (Federal Navigation Project)

Pursuant to the authority granted in the Massachusetts Endangered Species Act (MESA) (G.L. c. 131A) and its implementing regulations (321 CMR 10.23), the Director of the Massachusetts Division of Fisheries & Wildlife (the "Division") hereby amends Conservation and Management Permit 017-311.DFW (the "Permit"). The Permit was originally issued to the Town of Wellfleet Selectboard (the "Permit Holder") on October 5, 2017 for the ±38 acre dredging of Chipman's Cove and areas adjacent to Town Pier within Wellfleet Harbor (the "Project") for Take of Diamond-backed Terrapin. The Project is located on land recorded in the Town of Wellfleet, Massachusetts (Book 831, Page 180, Barnstable County Registry of Deeds; the "Property").

This amendment to the Permit (the "2019 Permit Amendment") is issued to the Permit Holder to authorize dredging of the adjacent channel and turning basin within Wellfleet Harbor and associated with the Federal Navigation Project. The proposed project will result in an expansion of the previously approved limit of dredging by ±12 acres (the "Work"), depicted on Attachment 1. The requested ±12 acre expansion is a new area that is not co-located within the previously permitted ±38 acre dredging of Chipman's Cove and areas adjacent to Town Pier. Collectively, the Permit and 2019 Permit Amendment now authorize dredging of a total of ±50 acres of Wellfleet Harbor including; Chipman's Cove, Town Pier, turning basin and channel.

MASSWILDLIFE

In order to mitigate for the additional ± 12 acres of disturbance, the Permit Holder proposed to provide \$16,800 as funding for off-site land protection, conservation research, habitat management, and/or conservation planning in order to provide a long-term Net Benefit to the Diamond-backed Terrapin in Massachusetts.

The Director has determined that the revisions to the conservation plan proposed by the Permit Holder, as described herein, provides a long-term Net Benefit to the conservation of the Diamond-backed Terrapin. All other provisions, terms and conditions of the Permit shall remain in effect and unchanged.

In accordance with the documents submitted to the Division entitled:

- “Channel & Turning Basin Shoaling Wellfleet Harbor” (2 Figures, dated April 2019; prepared by GEI Consultants, Inc.; the “Project Plan”; Attachment 1);
- Mitigation Fund Agreement (Attachment 2);

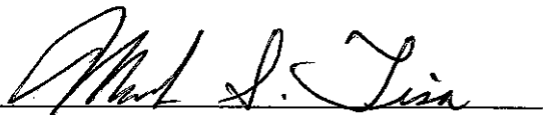
and any other plans and documents referenced herein, this Permit Amendment is issued with the following conditions:

Amendment Conditions:

1. State-listed Species Conservation/Research: In order to provide a Net Benefit to the conservation of the State-listed species impacted by the additional ± 12 acres of impact from this Project, the Permit Holder shall provide funding for land protection, conservation research, habitat management, and/or conservation planning to benefit the State-listed species impacted by this Project. The Permit Holder has chosen to fulfill this obligation by providing funding in the amount of \$16,800.00 into Turtle Mitigation Account #001-4-123-000.00-5300.17, a separate Town held account, designated for the benefit Diamond-backed Terrapin and subject to the Mitigation Fund Agreement (Attachment 2).
2. Mitigation Fund Agreement: The Permit Holder has executed the Mitigation Fund Agreement. Thus, no later than 30 days prior to the start of work, the Permit Holder must provide proof of the depositing the \$16,800.00 into the Turtle Mitigation Account. The Division, and not the Permit Holder, shall have sole responsibility for insuring that said funds are used for land protection, conservation research, habitat management, and/or conservation planning to benefit the State-listed species impacted by this Project.
3. Maintenance Dredging: This 2019 Permit Amendment and the Permit authorize a single dredging of each area and explicitly does not authorize additional dredging within the same footprint of the ± 50 ac dredge (i.e. no area shall be dredged more than once). In the event that the Permit Holder plans to conduct maintenance dredging, the Permit Holder shall consult with the Division in advance of such work to determine if said maintenance dredging can be authorized in accordance with the Permit or Permit Amendment or requires a separate Division-authorization, pursuant to General Condition 5 in the Permit. The Division reserves the right to require mitigation for any work deemed a Take. Written authorization from the Division is required for any additional work not described in the Permit Application, amendment request, or shown on the Project Plans.

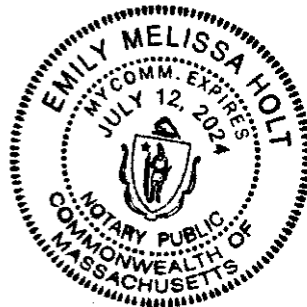
4. Recordation: Within thirty (30) days of issuance, the text of this Permit Amendment shall be recorded in the Registry of Deeds or the Land Court for the district in which the Property is located, so as to become a record part of the chain of title of the Property. In the case of recorded land, the Permit shall be noted in the Registry's Grantor Index under the name of the owner of the Property upon which the proposed work is to be done. In the case of registered land, the Permit shall be noted on the Land Court Certificate of Title of the owner of the Property upon which the proposed work is done. The Permit Holder shall submit to the Division a date-stamped and signed copy of said recorded Permit Amendment, showing the date and book and page of recording of said Permit Amendment, within five (5) days after recording and/or filing, as applicable. No Work shall begin on the Property until the Permit Amendment is recorded and said recorded copy is submitted to the Division, except as otherwise approved by the Division in writing.

All other provisions, terms and conditions of the Permit shall remain in full force and effect, and are unchanged.



Mark S Tisa, Director
Massachusetts Division of Fisheries & Wildlife

On this 15th day of August, 2019, before me, the undersigned notary public, personally appeared Mark S Tisa, Director, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his/her knowledge and belief.



Emily Melissa Holt, Notary Public
My Commission expires: July 12, 2024

Conservation Permit 017-311.DFW
Amended this 15th day of August, 2019

Distribution List

Alyssa Richard, GEI Consultants, Inc.
Wellfleet Board of Selectmen
Wellfleet Planning Board
Wellfleet Conservation Commission
Craig Martin, ACOE Navigation Section
DEP Southeast Regional Office, Wetlands Program
Jason Zimmer, DFW Wildlife District Office

**ACKNOWLEDGEMENT AND ACCEPTANCE OF ALL TERMS OF THIS PERMIT
AMENDMENT**

The undersigned below agrees that commencement of any work authorized by and described in this Permit Amendment constitutes acknowledgement and acceptance of all terms of this Permit Amendment.

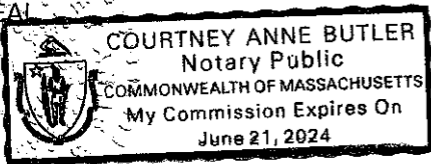
<i>Kathleen E. Bacon</i> VICE CHAIR - WELLfleet B.O.S.
Signatory 1
Organization

COMMONWEALTH OF MASSACHUSETTS

On this 22 day of August, 2019, before me, the undersigned notary public, personally appeared ~~Janet Reinhardt~~ Kathleen Bacon who proved to me through satisfactory evidence of identification which was personally known to be the person whose name is signed on the preceding or attached document, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his/her knowledge and belief.

Notary Public

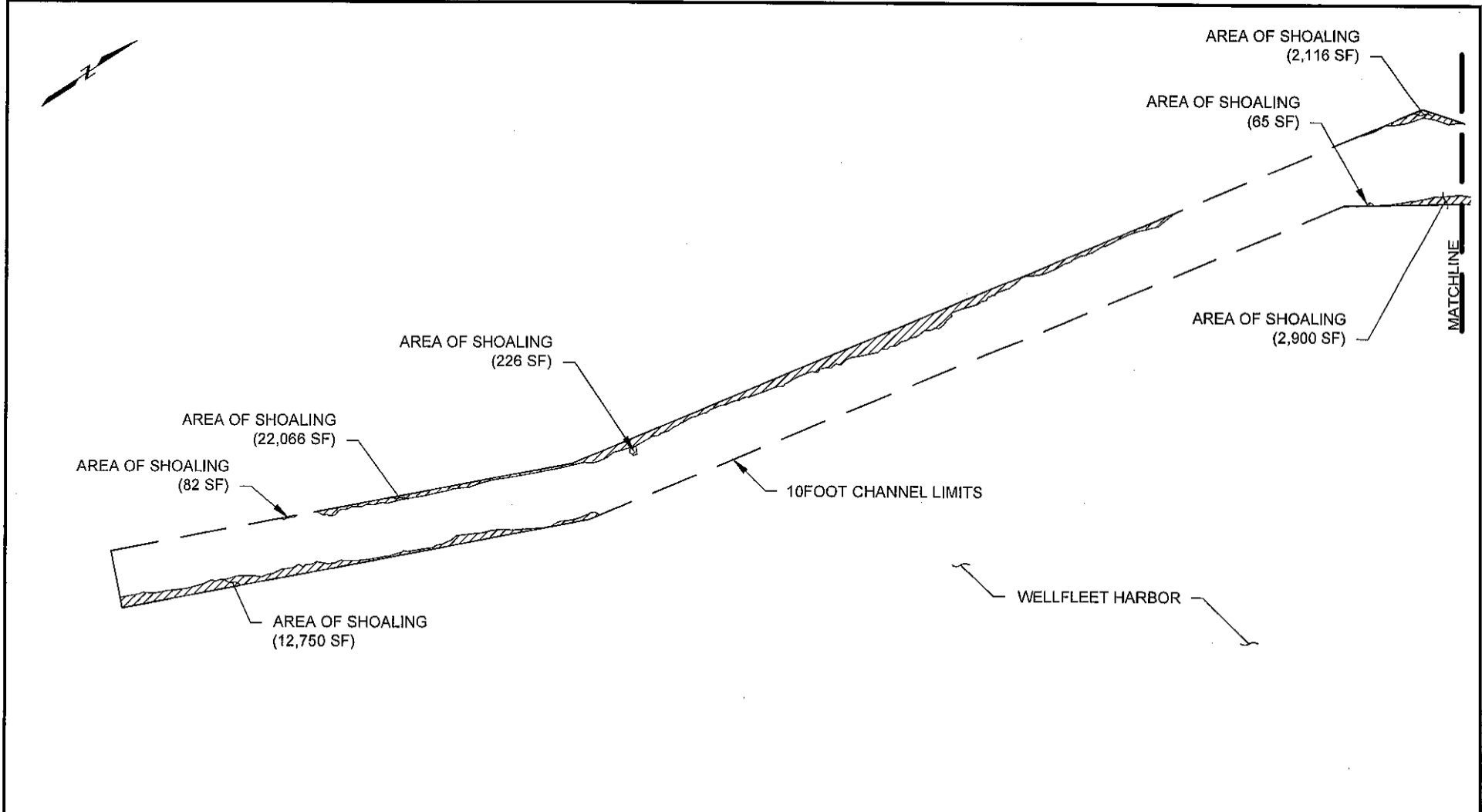
Courtney Butler



My commission expires: June 21, 2024

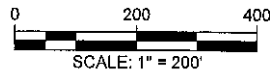
Attachment 1


“Channel & Turning Basin Shoaling Wellfleet Harbor” (2 Figures, dated April 2019; prepared by GEI Consultants, Inc.; the “Project Plan”)

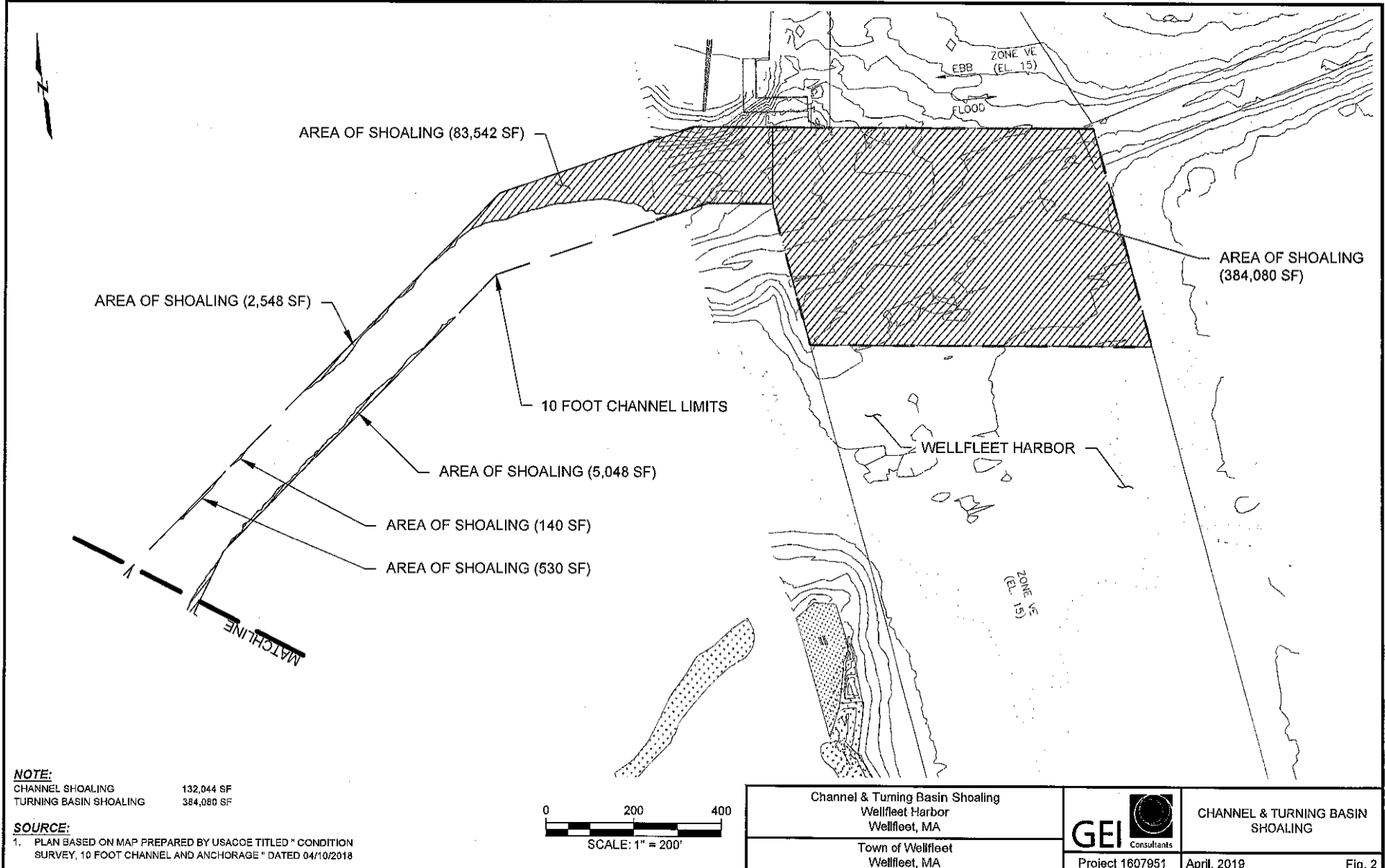


NOTE:
 CHANNEL SHOALING 132,044 SF
 TURNING BASIN SHOALING 384,080 SF

SOURCE:
 1. PLAN BASED ON MAP PREPARED BY USACOE TITLED "CONDITION SURVEY, 10 FOOT CHANNEL AND ANCHORAGE" DATED 04/10/2018



Channel & Turning Basin Shoaling Wellfleet Harbor Wellfleet, MA	 GEI Consultants	CHANNEL SHOALING
Town of Wellfleet Wellfleet, MA		Project 1607951 April, 2019 Fig. 1



Attachment 2

Mitigation Fund Agreement

MITIGATION FUND AGREEMENT

THIS MITIGATION FUND AGREEMENT (this "Agreement") is made by and between the Town of Wellfleet, a Massachusetts municipal corporation with a principal place of business at Town Hall, 300 Main Street, Wellfleet, Massachusetts, 02667 (the "Town") and the Massachusetts Division of Fisheries & Wildlife, Natural Heritage & Endangered Species Program, One Rabbit Hill Road, Westborough, MA, 01581 (the "Division").

WHEREAS, the Town desires to facilitate Federal permitting of the Federal Navigation Project that involves the dredging of ±24 acres of navigation channels and a turning basin within Wellfleet Harbor, Wellfleet, MA, during the overwintering period for Diamond-backed Terrapin (the "Project");

WHEREAS, the Town's Conservation and Management Permit No. #09-26539.DFW, issued pursuant to M.G.L. c.131A, (the "Permit"), authorizes the Taking of the state-protected Diamond-backed Terrapin (*Malaclemys terrapin*), which is listed as Threatened pursuant to the Massachusetts Endangered Species Act, for the proposed dredge.

WHEREAS, the Town is required under the Permit to establish a Net Benefit for Diamond-backed Terrapin and has agreed to provide funding in the amount of \$16,800.00 (the "Funds") to mitigate for impacts to Diamond-backed Terrapin resulting from the Project;

WHEREAS, the Town has agreed to provide such Funds to be used solely by the Division or its assigns for the purposes of acquisition, restoration and/or management of habitat, and/or conservation research for the benefit of Diamond-backed Terrapin populations in Massachusetts and to hold such Funds in a dedicated, interest bearing special revenue account established for such purpose (the "Mitigation Fund");

WHEREAS, the parties hereto have entered into this Agreement in order to set forth the terms, conditions and procedures with respect to the funding and use of the Mitigation Fund.

NOW THEREFORE, with reference to the foregoing Recitals, all of which are incorporated herein by this reference, and in consideration of the terms and conditions of the Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto covenant and agree as follows:

1. Funding of the Mitigation Fund. The Town shall allocate the Funds to the Mitigation Fund at least 30 days prior to the start of any dredging activity. Confirmation of deposition of the Funds shall be provided to the Division before the Project may begin.
2. Use of Mitigation Fund. The Funds shall be used solely for the purposes of acquisition, restoration and/or management of habitat, and/or conservation research for the benefit of Diamond-backed Terrapin populations in Massachusetts.
3. Dedicated Account. The Funds have been separately allocated in an interest bearing Town held account. Town of Wellfleet Account # 001-4-123-000.00-5300.17, Account Name "Turtle Mitigation".

4. Disbursements. From time to time during the term of this Agreement, the Division may, on or before the date, which is ten (10) years from the date of this Agreement, request in writing to the Town to deliver all or portions of the Funds, plus any interest thereon, for the purposes of acquisition, restoration and/or management of habitat, and/or conservation research for the benefit of Diamond-backed Terrapin populations in Massachusetts. Upon receipt of such written request, the Town shall deliver the requested portion of the Funds to the Division or any party designated in writing by the Division within thirty (30) days of the receipt of such request. The Town shall not be required to deliver any portion of the Funds to a third party unless and until it receives the following documentation: (1) W-9 form from the third party designee; (2) scope of work; (3) cost estimate; and (4) written authorization to pay from the Division. Delivery of the requested portion of the Funds in accordance with the terms of this Agreement shall be made by cashier's check or by federal funds wire transfer, at the option of the payee. The Division shall make written requests for disbursement of the Funds to the Town at the following:

Wellfleet Town Accountant
and
Daniel R Hoort, Town Administrator
Town Hall
300 Main Street
Wellfleet, Massachusetts 02667

If, at the end of ten (10) years from the date of execution of this Agreement, any portion of the Funds is still held in the Mitigation Fund by the Town, then the Division shall, within six (6) months after such ten (10) year date, develop a plan for the use of any remaining Funds by the Division and submit such plan to the Town for the further acquisition, restoration and/or management of habitat, and/or conservation research for the benefit of Diamond-backed Terrapin populations in Massachusetts. Following the receipt of a plan for the use of any remaining Funds, the City shall release any remaining Funds to the Division or any party designated in writing by the Division in accordance with such plan.

5. Reporting. The Town shall provide an annual report, beginning one year after the execution of this agreement, on the status of the Mitigation Fund account. Said report shall include all expenditures, interest, and total funds available.

6. Termination of Agreement. This Agreement shall terminate and the Town shall be relieved of all liability, after all funds in the Mitigation Fund have been properly disbursed in accordance with the terms and conditions of this Agreement.

7. Severability. If any provision of this Agreement shall be invalid, illegal or unenforceable, it shall not affect or impair the validity, legality and enforceability of any other provisions of this Agreement.

8. Amendment. This Agreement may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except by an instrument in writing and signed by all parties to this Agreement.

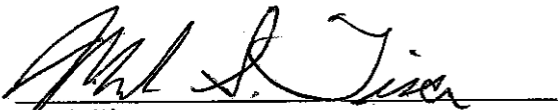
9. Successors and Assigns. This Agreement shall be binding upon the parties hereto and their respective successors and assigns, and shall inure to the benefit of the parties hereto and their respective successors and assigns, subject to the limitations on assignment set forth herein.

10. Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

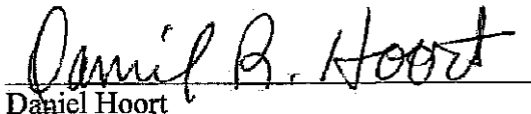
11. Notices. All written notices or demands of any kind that any party hereto may be required or may desire to serve on any other party in connection with this Agreement shall be served (as an alternative to personal service) by hand delivery or by registered, certified, or overnight mail, return receipt requested. Any such notice or demand shall be deposited with postage thereon fully prepaid and, at the address set forth on page 1 above or such other address as any party may set forth in a notice to the other parties sent in the manner set forth herein. Service of any such notice or demand so made by mail shall be deemed complete on the date of hand delivery or the date of actual delivery as shown on the addressee's registry or certification receipt or at the expiration of the second (2nd) business day after the date of mailing, whichever is earlier in time.

12. Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which, when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of this 19th day of June, 2019.



Mark Tisa
Director, Massachusetts Division of Fisheries and Wildlife



Daniel Hoort
Town Administrator, Town of Wellfleet

MassDEP Combined Chapter 91/401 WQC



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

One Winter Street Boston, MA 02108 • 617-292-5500

Charles D. Baker
Governor

Karyn E. Polito
Lieutenant Governor

Matthew A. Beaton
Secretary

Martin Suuberg
Commissioner

August 1, 2017

Michael Flanagan
Wellfleet Harbor Master
255 Commercial Street, Town Pier
Kendrick Ave and Commercial Street
Wellfleet, MA 02667

Re: **COMBINED PERMIT - CHAPTER 91 PERMIT and 401 WATER QUALITY
CERTIFICATION**
Application for BRP WW 26
COMBINED PERMIT FOR DREDGING – MAJOR DREDGING PROJECT

At: Wellfleet Harbor, WELLFLEET

401 WQC Transmittal No: X273091
Chapter 91 Permit No: 14480
Wetlands File No:
ACoE Application No:

Dear Mr. Flanagan:

The Department has reviewed your application for a combined Chapter 91 Dredge Permit and Water Quality Certification ("Combined Permit"), referenced above. In accordance with the provisions of Section 401 of the Federal Clean Water Act as amended (33 U.S.C. §1251 et seq.), MGL c.21, §§ 26-53, 314 CMR 9.00 and MGL c.91, 310 CMR 9.00, the Department has determined there is reasonable assurance the project or activity will be conducted in a manner which will not violate applicable water quality standards (314 CMR 4.00) and other applicable requirements of state law.

The waters of Wellfleet Harbor are designated in the Massachusetts Surface Water Quality Standards as Class SA and Outstanding Resource Water (ORW). Class SA waters are designated "as excellent habitat for fish, other aquatic life and wildlife and for primary and secondary contact recreation." Anti-degradation provisions of these Standards require that "existing uses and the level of water quality necessary to protect the existing uses shall be maintained and protected."

New or increased discharges to Outstanding Resource Waters (ORW) are prohibited unless the discharge is dredged or fill material, limited as specified in 314 CMR 9.06(3)(a) through (k) and 9.07(1)(k)1 through 5.

Background: On September 24, 1999, the Department issued a Water Quality Certification to the Town of Wellfleet to dredge sediment at the Town Pier, Town Landing and anchorage areas. The Town of Wellfleet maintains and operates a marina at the Town Pier and two anchorage areas, one to the north and one to the south of the Federal Navigation Channel.

Wellfleet Harbor is designated as an Area of Critical Environmental Concern; however the federal and state channel and anchorage area are exempted from this designation.

Proposed project: For the purpose of this combined application, the portion of Wellfleet Harbor under the management of the Town is identified as Area I and Area II. Area I includes the North and South Access Channels, North Anchorage and the Access Channel adjacent to the L-Pier and Area II is the South Anchorage area. The proposed project scope entails conducting maintenance dredging of approximately 364,500 yd³ of sediment and the dredge volume of each sub area is summarized as follow:

Table 1

Sub-area	Dredge Area (acres)	Dredge Volume (yd ³)	1 foot Overdredge(yd ³)	Total Dredge Volume (yd ³)
North and South Access Channel	10.3	65,000	16,000	81,000
North Anchorage	3.5	25,000	7,000	32,000
L-Pier Access Channel	0.8	2,500	1,000	3,500
South Anchorage	23.9	211,000	37,000	248,000
Total	38.5	303,500	61,000	364,500

The sediment will be removed mechanically using conventional equipment such as a crane with clamshell bucket or an excavator affixed on a barge. The dredged material will be placed on a dump scow to be transported to the Cape Cod Bay Disposal Site (CCBDS)

Dredged Material Dewatering: No dredged material dewatering will take place within the waters of the Commonwealth.

Sediment sampling data: Sediment sampling and analysis was conducted in accordance with protocols of the Army Corps of Engineers (ACoE) and the US Environmental Protection Agency (EPA) for unconfined ocean disposal.

Dredged Material Disposal: The ACoE issued a Suitability Determination on March 13, 2015 to the Town of Wellfleet for unconfined ocean disposal of the sediment at the CCBDS.

Rare Species and Rare Wildlife Habitat: The site is located within the Priority Habitats of Rare Species, Estimated Habitats of Rare Wildlife, and Certified Vernal Pools in accordance with the

Massachusetts Natural Heritage Atlas, 13th Edition. According to a letter dated August 31, 2016, from the Division of Fisheries & Wildlife, Natural Heritage & Endangered Species Program (NHESP), it has determined that a Conservation Management Permit (CMP) will be required in order for the proposed project to avoid a prohibited "take" of the diamond back terrapin.

The Town is in the process of preparing a Massachusetts Endangered Species Act (MESA) application for the CMP, and has informed NHESP that an account for diamond back terrapin mitigation has been established.

Public Notice: The public notice of the combined dredge permit for Chapter 91 and 401 WQC was published in the Cape Cod Times on March 2, 2017. The Department received comment during the 21-day public comment period under 314 CMR 9.05(3)(e) and the 15-day public comment period under 310 CMR 9.13(1)(c)5, which ended on March 22, 2017 and March 15, 2017 respectively.

Comments submitted to the Department were supportive of the dredging project.

Section 61 Findings: Pursuant to M.G.L. Chapter 30, Sections 61 to 62H (M.E.P.A.) this project was reviewed as EOE No. 15506 and the Secretary's Certificate, issued on May 27, 2016 determined that an Environmental Impact Report (EIR) was not required.

Therefore, based on information currently in the record, the Department grants a Combined Permit for this project subject to the following conditions to maintain water quality, to minimize impact on waters and wetlands, and to ensure compliance with appropriate state law. The Department further certifies in accordance with 314 CMR 9.00 that there is reasonable assurance the project or activity will be conducted in a manner which will not violate applicable water quality standards (314 CMR 4.00) and other applicable requirements of state law. Finally, the Department has determined that upon satisfying the conditions and mitigation requirements of this approval, the project provides a level of water quality necessary to protect existing uses and accordingly finds that the project to be implemented satisfies the Surface Water Quality Standards at 314 CMR 4.00

STANDARD COMBINED PERMIT CONDITIONS:

1. Acceptance of this Combined Permit shall constitute an agreement by the Applicant to conform to all terms and conditions stated herein.
2. This Combined Permit is issued upon the express condition that any and all other applicable authorizations necessitated due to the provisions hereof shall be secured by the Applicant prior to the commencement of any activity hereby authorized.
3. This Combined Permit shall be revocable by the Department for noncompliance with the terms and conditions set forth herein. This Combined Permit may be revoked after the Department has given written notice of the alleged noncompliance to the Applicant, or his agent, and those persons who have filed a written request, with the Department, for such notice and have afforded the Applicant a reasonable opportunity to correct said noncompliance.

4. This Combined Permit is issued subject to all applicable federal, state, county, and municipal laws, ordinances, by-laws, and regulations, including but not limited to, a valid Order of Conditions issued pursuant to the Wetlands Protection Act, M.G.L. Chapter 131, s.40.
5. This Combined Permit is issued upon the express condition that dredging and transportation and disposal of dredge material shall be in strict conformance with all applicable requirements and authorizations of the Department.
6. The Applicant shall assume and pay all claims and demands arising in any manner from the work authorized herein, and shall save harmless and indemnify the Commonwealth of Massachusetts, its officers, employees, and agents from all claims, audits, damages, costs and expenses incurred by reason thereof.
7. Dredging under this Combined Permit shall be conducted in a manner not to cause unnecessary obstruction of the free passage of vessels. When conducting authorized dredging, care shall be taken not to cause any shoaling. If, however, any shoaling is caused, the Applicant shall, at his expense remove the shoal areas. The Applicant shall pay all costs of supervision, and if at any time the Department deems necessary a survey or surveys of the area dredged, the Applicant shall pay all costs associated with such work. Nothing in this Combined Permit shall be construed as to impair the legal rights of any persons, or authorize dredging on land not owned by the Applicant without consent of the owner(s) of such property.

SPECIAL COMBINED PERMIT CONDITIONS

1. The Contractor shall take all steps necessary to assure that the proposed activities will be conducted in a manner that will avoid violations of the anti-degradation provisions of the Massachusetts Surface Water Quality Standards that protect all waters, including wetlands.
2. Prior to the start of work, or any other portion of the work thereafter, the Department shall be notified of any change(s) in the proposed project or plans that may affect waters or wetlands. The Department will determine whether the change(s) require a revision to this Combined Permit.
3. Dredging in accordance with this Combined Permit may begin following the 21-day appeal period and once all other Permits have been received.
4. Work in waters and wetlands shall conform to Part E – Proposed Scope of Project and Use Activity Description and plans submitted in this application to the Department, seven sheets prepared by Bourne Consulting Engineering, a Division of GEI Consultants, Inc., July 6, 2016 (Sheet 4 and 6 revised on May 15, 2017) and are unsigned and unstamped. The Department shall be notified if there are modifications and or deletions of work as specified in the plans. Depending on the nature and the scope of any change, approval by the Department may be required.
5. The applicant and its contractor shall allow agents of the Department to enter the project sites to verify compliance with the conditions of this Combined Permit.

6. The Department shall be notified, attention Ken Chin 617-292-5893, one week prior to the start of in-water work so that Department staff may inspect the work for compliance with the terms and conditions of this Combined Permit.
7. The term of the Chapter 91 dredge permit of this Combined Permit is five years in accordance with 310 CMR 9.15(2). The term of the 401 WQC dredging of the Combined Permit remains in effect for the same duration as the federal permit that requires it or five years from the date of issuance of this Combined Permit whichever comes first.
8. The applicant may request an extension of the 401 dredging of the Combined Permit in accordance with 314 CMR 9.09(3). If the Department grants an extension, the Chapter 91 dredge permit of the Combined Permit will also be extended for the same term.
9. Within 21 days of issuance of the Combined Permit, the applicant shall perform a due-diligence review in accordance with 314 CMR 9.07(2)(a) to determine that no known spills of oil or other toxic substances have occurred which could have contaminated the sediment in the proposed dredge area(s). The findings of the due-diligence review shall be submitted to the Department prior to commencement of the dredging activity.
10. Future maintenance dredging may be conducted as necessary for the duration of this Combined Permit, provided that:
 - a. the initial project and any subsequent dredging has been conducted satisfactorily with no violations of the terms and conditions of this Combined Permit or any violations which did occur have been resolved to the satisfaction of the Department;
 - b. information has been submitted to the Department regarding chemical characteristics and final end use/disposal of the dredged material for review and approval and no future maintenance dredging has commenced without obtaining end use/disposal approval from the Department;
 - c. **Documentation** showing the grain-size distribution of the sediment to be dredged is compatible with the grain-size distribution of the **approved** receiving beach(es) in accordance with the document entitled Beach Nourishment, Mass DEP's Guide to Best Management Practices for Projects in Massachusetts, March 2007 and is submitted to the Department;
 - d. **an updated Suitability Determination from the Army Corps of Engineers for unconfined ocean disposal at CCBDS is submitted to the Department;**
 - e. coordinates of the maintenance dredge footprint are the same as the authorized dredge footprint under this Combined Permit;
 - f. a current due-diligence evaluation is done to determine that no known spills of oil or other toxic substances have occurred which could have contaminated the sediment in the dredge area and submitted to the Department prior to maintenance dredging;
 - g. a bathymetric survey has been submitted to the Department in compliance with Condition no. 16;
 - h. the volume of future maintenance dredging does not exceed 364,500 cubic yards in a single year and the Department is notified prior to commencement of maintenance dredging.

11. Best Management Practices (BMPs) such as a silt curtain shall be deployed surrounding the dredge area to minimize turbidity. At a minimum, the silt curtain shall be bottom-weighted to minimize the degree of lifting/flailing or billowing and shall be of suitable material/grade appropriate based on the velocity of the current at the site. Intermediate vertical floats or other means shall be placed on the silt curtain to lift the bottom of the silt curtain at low tide so that the bottom edges of the curtain remain close to the mudline at low tide but do not rake the sediment in areas subject to tidal influence. Dredging shall be carried out using a closed, environmental bucket if the sediment does not consist solely of densely compacted silt/clay.
12. The applicant shall submit a turbidity monitoring plan to the Department for review and approval within eight weeks of the effective date of this Combined Permit or four weeks prior to the commencement of the dredging operation whichever comes first. At a minimum, the monitoring plan shall include monitoring locations, frequency of monitoring, type of monitoring equipment, proposed action level for implementation of corrective action or BMPs, level for sop work, background monitoring locations and frequency.
13. There shall be no dredged material dewatering within the waters of the Commonwealth.
14. The applicant shall comply with the conditions set forth in the Conservation Management Permit issued by the Natural Heritage Endangered Species Program.
15. Disposal of any volume of dredged material at any location in tidal waters is subject to approval by this Department and the Massachusetts Coastal Zone Management office.
16. Within 90 days of the completion of the initial dredging and any future maintenance dredging to be conducted authorized under this Combined Permit, a bathymetric survey of the dredged area within the Wellfleet Harbor depicting post-dredge conditions shall be conducted. At a minimum, the survey shall include an overlay of the dredge footprint (i.e. top of slope) with sufficient coordinates in the Massachusetts State Plane (e.g. longitude and latitude) to clearly delineate the dredge footprint. The survey shall be submitted within five working days after its completion to the Department and a copy shall be sent to the Massachusetts Coastal Zone Management office, attention: Robert Boeri. This submittal shall also include a cross section or profile showing the water depths at mean low water within the dredge footprint.
17. In order to protect right whale feeding aggregations in Cape Cod Bay, no dredged material for unconfined ocean disposal at the CCBDS from January 1st to May 15th.
18. In order to protect spawning, larval and juvenile development of winter flounder, horseshoe crab and shellfish, no dredging shall occur between February 1st and September 30th.
19. The applicant, or its contractor, shall make every feasible effort to complete the project within the Combined Permitted timeframe. Should the applicant, or their contractor, fail to complete the project and wish to request an amendment to the Combined Permit for incursion into the **no disposal period**, the written request shall be received by the Department by December 15th. The following information shall be included in the request:
 - a. project location and transmittal number,

- b. the date on which dredging started,
- c. the number of days and hours per day the dredge operated,
- d. expected daily average production rate and the actual daily average production rate,
- e. an explanation of why the project failed to remain on schedule,
- f. an account of efforts made to get the project back on schedule,
- g. a plan depicting the areas that remain to be dredged,
- h. the number of cubic yards that remain to be dredged,
- i. an accurate estimate of the number of days required to complete the project,
- j. an evaluation of the impact of continued dredging on the species of concern,
- k. a description of any efforts that will be made to minimize the impacts of the project on the species of concern, and a realistic assessment of any societal/financial effects of a denial of permission to continue dredging.

The Department will share the information with other resource agencies and a decision to grant or deny the amendment shall be made by January 15th. Requests for amendment received after January 2nd will be considered at the Department's discretion.

20. No later than four weeks after issuance of the Combined Permit, the applicant shall submit a notification procedure outlining the reporting process to the Department for incidents, relating to the dredging activities, impacting surrounding resource areas and habitats such as, but not limited to, observed dead or distressed fish, or other aquatic organisms, observed oily sheen on surface water, sediment spill, turbidity plume beyond the deployed BMP's, and barging or equipment accident/spill. If at any time during implementation of the project any incident environment impacts such as those listed above, all site related activities impacting the water shall cease until the source of the problem is identified and adequate mitigating measures employed to the satisfaction of the Department.

Failure to comply with this Combined Permit is grounds for enforcement, including civil and criminal penalties, under MGL c.21 §42, 314 CMR 9.00, MGL c. 21A §16, 310 CMR 5.00, MGL c.91, 310 CMR 9.00 or other possible actions/penalties as authorized by the General Laws of the Commonwealth.

This Combined Permit does not relieve the applicant of the obligation to comply with other applicable state or federal statutes or regulations. Any changes made to the project as described in the previously submitted Notice of Intent, Combined Permit application, or supplemental documents will require further notification to the Department.

NOTICE OF APPEAL RIGHTS

Chapter 91 Appeal Process (310 CMR 9.17)

Pursuant to 310 CMR 9.17(1)(a) and 9.17(2), the applicant may appeal this decision within twenty-one (21) days of the date of Combined Permit issuance, by submitting a written request, by certified mail, for an adjudicatory hearing. Any notice of claim for an adjudicatory hearing must include the following information: the DEP Combined Application license/permit Number; the complete name, address and telephone number of the party filing the request; if represented by counsel, the name, address and telephone number of the attorney; a clear statement that a formal

adjudicatory hearing is being requested; and a clear and concise statement of the specific objections to the Department's license decision, and the relief sought through the adjudicatory hearing, including, specifically, the changes desired in the final Combined Permit.

The following persons shall have the right to an adjudicatory hearing concerning this decision by MassDEP to grant or deny a license or Combined Permit, in accordance with 310 CMR 9.17(1):

- a. an applicant who has demonstrated property rights in the lands in question, or which is a public agency;
- b. any person aggrieved by the decision of MassDEP to grant a Combined Permit who has submitted written comments within the public comment period;
- c. ten (10) residents of the Commonwealth who, pursuant to M.G.L. c. 30A, § 10A, have submitted comments within the public comment period with at least 5 of the 10 residents residing in the municipality(s) in which the Combined Permit activity is located. The appeal shall clearly and specifically state the facts and grounds for the appeal and the relief sought, and each appealing resident shall file an affidavit stating the intent to be part of the group and to be represented by its authorized representative;
- d. the municipal official in the affected municipality who has submitted written comments within the public comment period; and
- e. CZM, for any project identified in 310 CMR 9.13(2) (a) for CZM participation or, in an Ocean Sanctuary, if it has filed a notice of participation within the public comment period.

A person requesting an adjudicatory hearing must submit a "Notice of Claim" to the Department, with a copy of the MassDEP Transmittal Form and including the detail specified below, within twenty-one (21) days of the date of issuance of this decision. The MassDEP Fee Transmittal Form is available at the following website:

<http://www.mass.gov/eea/docs/dep/service/adr/adjherfm.doc>. The Notice of Claim must be made in writing and sent by certified mail or hand delivery to:

Case Administrator
MassDEP
One Winter Street, 2nd Floor
Boston, MA 02108

A copy of the complete Notice of Claim must be sent at the same time by certified mail or hand delivery to: (1) the applicant, (2) the municipal official of the city or town where the project is located, and (3) the issuing office of the MassDEP, which in this case is located at:

MassDEP Waterways Regulation Program
[appropriate Regional Office address]

The MassDEP Fee Transmittal Form and a valid check payable to the Commonwealth of Massachusetts in the amount of one hundred dollars (\$100) must be mailed to:

Mass. Department of Environmental Protection
Commonwealth Master Lockbox
P.O. Box 4062
Boston, Massachusetts 02211

Information must be included in the hearing request

Pursuant to 310 CMR 9.17(3), any Notice of Claim requesting an adjudicatory hearing must include the following information:

- a. the 401 Combined Permit Transmittal Number and MassDEP Waterways Application File Number;
- b. the complete name, address, fax number and telephone number of the applicant;
- c. the address of the project;
- d. the complete name, address, fax number, and telephone number of the party filing the request and, if represented by counsel, the name, address, fax number, and phone number of the attorney;
- e. if claiming to be a person aggrieved, the specific facts that demonstrate that the party satisfies the definition of "aggrieved person" found in 310 CMR 9.02;
- f. a clear statement that a formal adjudicatory hearing is being requested;
- g. a clear statement of the facts which are the grounds for the proceedings, the specific objections to the MassDEP's written decision, and the relief sought through the adjudicatory hearing, including specifically the changes desired in the final written decision; and
- h. a statement that a copy of the request has been sent to: the applicant and the municipal official of the city or town where the project is located.

Dismissal of request

The request for appeal will be dismissed if the filing fee is not paid, unless the appellant is exempt or is granted a waiver. The filing fee is not required if the appellant is a city or town (or municipal agency), county, or district of the Commonwealth of Massachusetts, or a municipal housing authority. The Department may waive the adjudicatory hearing filing fee pursuant to 310 CMR 4.06(2) for a person who shows that paying the fee will create an undue financial hardship. A person seeking a waiver must file an affidavit setting forth the facts believed to support the claim of undue financial hardship together with the hearing request as provided above.

Please note that the Department may revoke this Combined Permit for non-compliance with the terms and conditions set forth. Therefore, it is recommended that you contact the Department prior to performing any alterations or use modifications for review and, if necessary, approval pursuant to M.G.L. Chapter 91.

401 WQC Appeal Process (314 CMR 9.10):

Certain persons shall have a right to request an adjudicatory hearing concerning Combined Permits by the Department when an application is required:

- a. the applicant or property owner;
- b. any person aggrieved by the decision who has submitted written comments during the public comment period;
- c. any ten (10) persons of the Commonwealth pursuant to M.G.L. c.30A where a group member has submitted written comments during the public comment period; or

- d. any governmental body or private organization with a mandate to protect the environment, which has submitted written comments during the public comment period.

Any person aggrieved, any ten (10) persons of the Commonwealth, or a governmental body or private organization with a mandate to protect the environment may appeal without having submitted written comments during the public comment period only when the claim is based on new substantive issues arising from material changes to the scope or impact of the activity and not apparent at the time of public notice. To request an adjudicatory hearing pursuant to M.G.L. c.30A, § 10, a Notice of Claim must be made in writing, provided that the request is made by certified mail or hand delivery to the Department, with the appropriate filing fee specified within 310 CMR 4.10 along with a DEP Fee Transmittal Form within twenty-one (21) days from the date of issuance of this Certificate.

Case Administrator
Department of Environmental Protection
One Winter Street, 2nd Floor
Boston, MA 02108.

A copy of the request shall at the same time be sent by certified mail or hand delivery to the issuing office of the Wetlands and Waterways Program at:

Department of Environmental Protection
One Winter Street, 5th Floor
Boston, MA 02108.

A Notice of Claim for Adjudicatory Hearing shall comply with the Department's Rules for Adjudicatory Proceedings, 310 CMR 1.01(6), and shall contain the following information pursuant to 314 CMR 9.10(3):

- a. the 401 Combined Permit Transmittal Number and DEP Wetlands Protection Act File Number;
- b. the complete name of the applicant and address of the project;
- c. the complete name, address, and fax and telephone numbers of the party filing the request, and, if represented by counsel or other representative, the name, fax and telephone numbers, and address of the attorney;
- d. if claiming to be a party aggrieved, the specific facts that demonstrate that the party satisfies the definition of "aggrieved person" found at 314 CMR 9.02;
- e. a clear and concise statement that an adjudicatory hearing is being requested;
- f. a clear and concise statement of (1) the facts which are grounds for the proceedings, (2) the objections to this Certificate, including specifically the manner in which it is alleged to be inconsistent with the Department's Water Quality Regulations, 314 CMR 9.00, and (3) the relief sought through the adjudicatory hearing, including specifically the changes desired in the final written Combined Permit; and
- g. a statement that a copy of the request has been sent by certified mail or hand delivery to the applicant, the owner (if different from the applicant), the conservation commission of the city or town where the activity will occur, the Department of Environmental Management (when the certificate concerns projects in Areas of Critical Environmental Concern), the public or private water supplier where the project is located (when the

certificate concerns projects in Outstanding Resource Waters), and any other entity with responsibility for the resource where the project is located.

The hearing request along with a DEP Fee Transmittal Form and a valid check or money order payable to the Commonwealth of Massachusetts in the amount of one hundred dollars (\$100) must be mailed to:

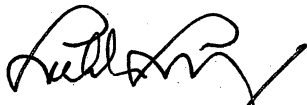
Commonwealth of Massachusetts
Department of Environmental Protection
Commonwealth Master Lockbox
P.O. Box 4062
Boston, MA 02211

The request will be dismissed if the filing fee is not paid, unless the appellant is exempt or granted a waiver. The filing fee is not required if the appellant is a city or town (or municipal agency), county, or district of the Commonwealth of Massachusetts, or a municipal housing authority. The Department may waive the adjudicatory-hearing filing fee pursuant to 310 CMR 4.06(2) for a person who shows that paying the fee will create an undue financial hardship. A person seeking a waiver must file an affidavit setting forth the facts believed to support the claim of undue financial hardship together with the hearing request as provided above.

Failure to comply with this Combined Permit is grounds for enforcement, including civil and criminal penalties, under MGL c.21 §42, 314 CMR 9.00, MGL c. 21A §16, 310 CMR 5.00, or other possible actions/penalties as authorized by the General Laws of the Commonwealth.

If you have questions about this decision, please contact Ken Chin at 617-292-5893.

Sincerely,



Lealdon Langley
Director
Wetlands and Wastewater Program

enclosure: Departmental Action Fee Transmittal Form

ecc:

Barbara Newman, Regulatory/Enforcement Division, U.S. Army Corps of Engineers, 696 Virginia Road, Concord, MA 01742-2751
Robert Boeri, CZM, 251 Causeway Street, Suite 800, Boston, MA 02114
Eileen Feeney, DMF, 1213 Purchase St., 3rd floor, New Bedford, MA 02740-6694
David Hill, Jim Mahala, DEP SERO
Michael Girvan, DEP Boston Office
Alyssa Richard, GEI Consultants, Inc., 3 Bent St, Franklin, MA 02038

cc:

Wellfleet Conservation Commission, 300 Main Street, Wellfleet, MA 02667



Massachusetts Department of Environmental Protection
One Winter Street, Boston MA 02108 • Phone: 617-292-5751
Communication For Non-English Speaking Parties
310 CMR 1.03(5)(a)



1 English:

This document is important and should be translated immediately. If you need this document translated, please contact MassDEP's Diversity Director at the telephone numbers listed below.



2 Español (Spanish):

Este documento es importante y debe ser traducido inmediatamente. Si necesita este documento traducido, por favor póngase en contacto con el Director de Diversidad MassDEP a los números de teléfono que aparecen más abajo.



3 Português (Portuguese):

Este documento é importante e deve ser traduzida imediatamente. Se você precisa deste documento traduzido, por favor, entre em contato com Diretor de Diversidade da MassDEP para os números de telefone listados abaixo.



4(a) 中國（傳統）(Chinese (Traditional)):

本文件非常重要，應立即翻譯。如果您需要翻譯這份文件，請用下面列出的電話號碼與MassDEP的多樣性總監聯繫。



4(b) 中国（简体中文）(Chinese (Simplified)):

本文件非常重要，應立即翻譯。如果您需要翻譯這份文件，請用下面列出的電話號碼與MassDEP的多样性总监联系。



5 Ayisyen (franse kreyòl) (Haitian) (French Creole):

Dokiman sa-a se yon bagay enpòtan epi yo ta dwe tradui imedyatman. Si ou bezwen dokiman sa a tradui, tanpri kontakte Divèsite Direktè MassDEP a nan nimewo telefòn ki nan lis pi ba a.



6 Việt (Vietnamese):

Tài liệu này là rất quan trọng và cần được dịch ngay lập tức. Nếu bạn cần dịch tài liệu này, xin vui lòng liên hệ với Giám đốc MassDEP đa dạng tại các số điện thoại được liệt kê dưới đây.



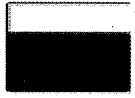
7 ប្រទេសកម្ពុជា (Kmer (Cambodian)):

ឯកសារនេះគឺមានសារៈសំខាន់និងគួរត្រូវបានបកប្រែភ្លាម។ ប្រសិនបើអ្នកត្រូវបានបកប្រែឯកសារនេះសូមទំនាក់ទំនងភ្នាក់ងារជាតិរបស់ MassDEP នៅលេខទូរស័ព្ទដែលបានរាយខាងក្រោម។



8 Kriolu Kabuverdianu (Cape Verdean):

Es documento é importante e deve ser traduzido imidiatamente. Se bo precisa des documento traduzido, por favor contacta Director de Diversidade na MassDEP's pa es numero indicode li d'boche.



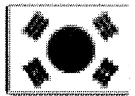
9 Русский язык (Russian):

Этот документ является важным и должно быть переведено сразу. Если вам нужен этот документ переведенный, пожалуйста, свяжитесь с директором разнообразия MassDEP по адресу телефонных номеров, указанных ниже.



10 العربية (Arabic):

هذه الوثيقة الهامة وينبغي أن تترجم على الفور. إذا كنت بحاجة إلى هذه الوثيقة المترجمة، يرجى الاتصال مدير التنوع في MassDEP على أرقام الهواتف المدرجة أدناه.



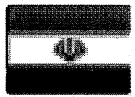
11 한국어 (Korean):

이 문서는 중요하고 즉시 번역해야 합니다. 당신이 번역이 문서가 필요하다면 아래의 전화 번호로 MassDEP의 다양성 감독에 문의하시기 바랍니다



12 հայերէն (Armenian):

Այս փաստաթուղթը շատ կարևոր է եւ պէտք է թարգմանել անմիջապէս. Եթէ Ձեզ անհրաժեշտ է այս փաստաթուղթը թարգմանվել դիմել MassDEP բազմազանությունը տնօրէն է հեռախոսահամարների թվարկված են ստորև.



13 فارسی (Farsi (Persian):

این سند مهم است و باید فوراً ترجمه شده است. اگر شما نیاز به این سند ترجمه شده، لطفاً با ما تماس تنوع مدیر MassDEP در شماره تلفن های ذکر شده در زیر.



14 Français (French):

Ce document est important et devrait être traduit immédiatement. Si vous avez besoin de ce document traduit, s'il vous plaît communiquer avec le directeur de la diversité MassDEP aux numéros de téléphone indiqués ci-dessous.



15 Deutsch (German):

Dieses Dokument ist wichtig und sollte sofort übersetzt werden. Wenn Sie dieses Dokument übersetzt benötigen, wenden Sie sich bitte Diversity Director MassDEP die in den unten aufgeführten Telefonnummern.



16 Ελληνική (Greek):

Το έγγραφο αυτό είναι σημαντικό και θα πρέπει να μεταφραστούν αμέσως. Αν χρειάζεστε αυτό το έγγραφο μεταφράζεται, παρακαλούμε επικοινωνήστε Diversity Director MassDEP κατά τους αριθμούς τηλεφώνου

που αναγράφεται πιο κάτω.



17 Italiano (Italian):

Questo documento è importante e dovrebbe essere tradotto immediatamente. Se avete bisogno di questo documento tradotto, si prega di contattare la diversità Direttore di MassDEP ai numeri di telefono elencati di seguito.



18 Język Polski (Polish):

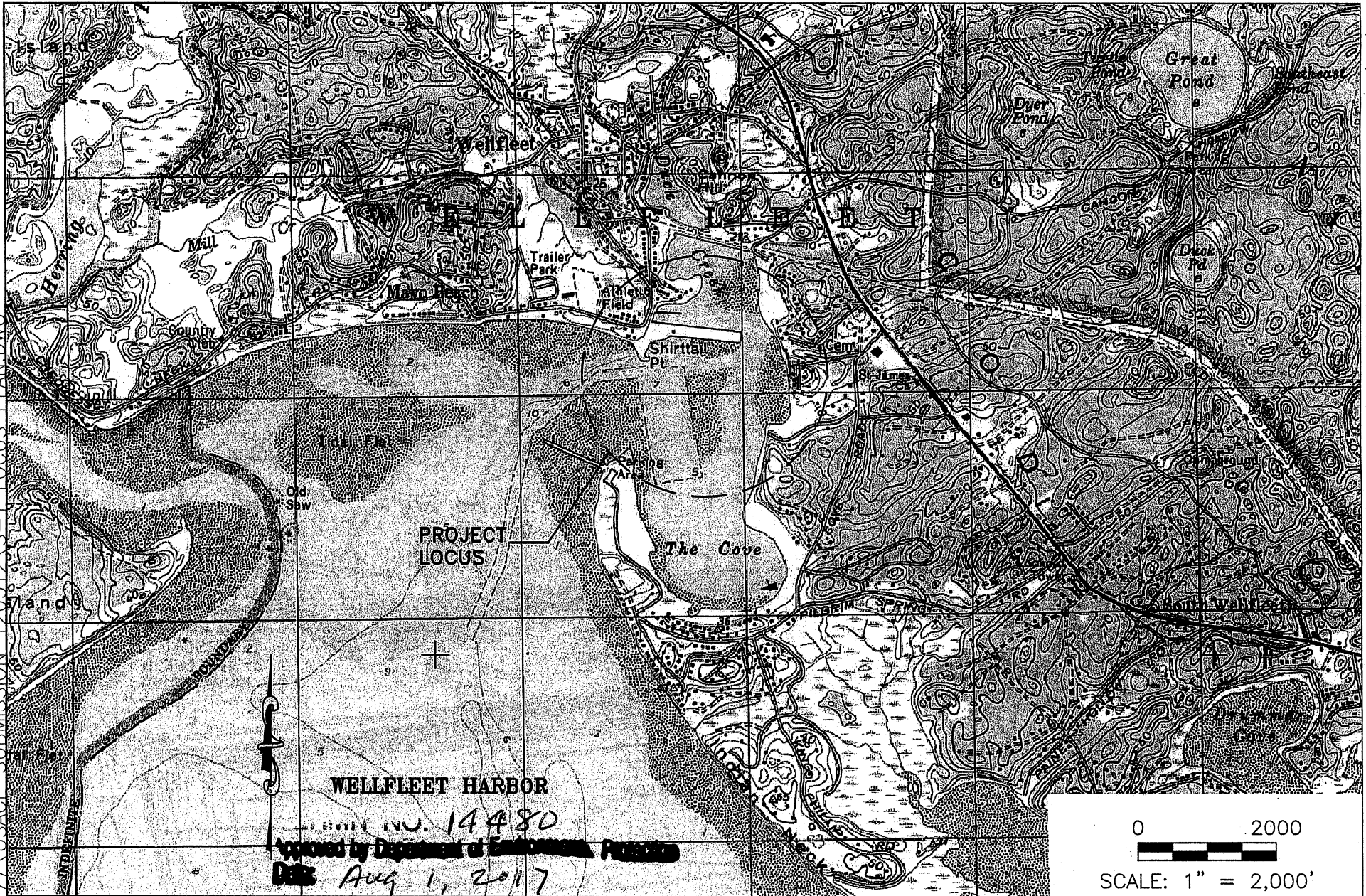
Dokument ten jest ważny i powinien być natychmiast przetłumaczony. Jeśli potrzebujesz tego dokumentu tłumaczony, prosimy o kontakt z Dyrektorem MassDEP w różnorodności na numery telefonów wymienionych poniżej.



19 हिन्दी (Hindi):

यह दस्तावेज महत्वपूर्ण है और तुरंत अनुवाद किया जाना चाहिए. आप अनुवाद इस दस्तावेज की जरूरत है, नीचे सूचीबद्ध फोन नंबरों पर MassDEP की विविधता निदेशक से संपर्क करें.

File: X:\30777\USACE SUBMISSION 120312\S-1 LOCUS PLAN.DWG



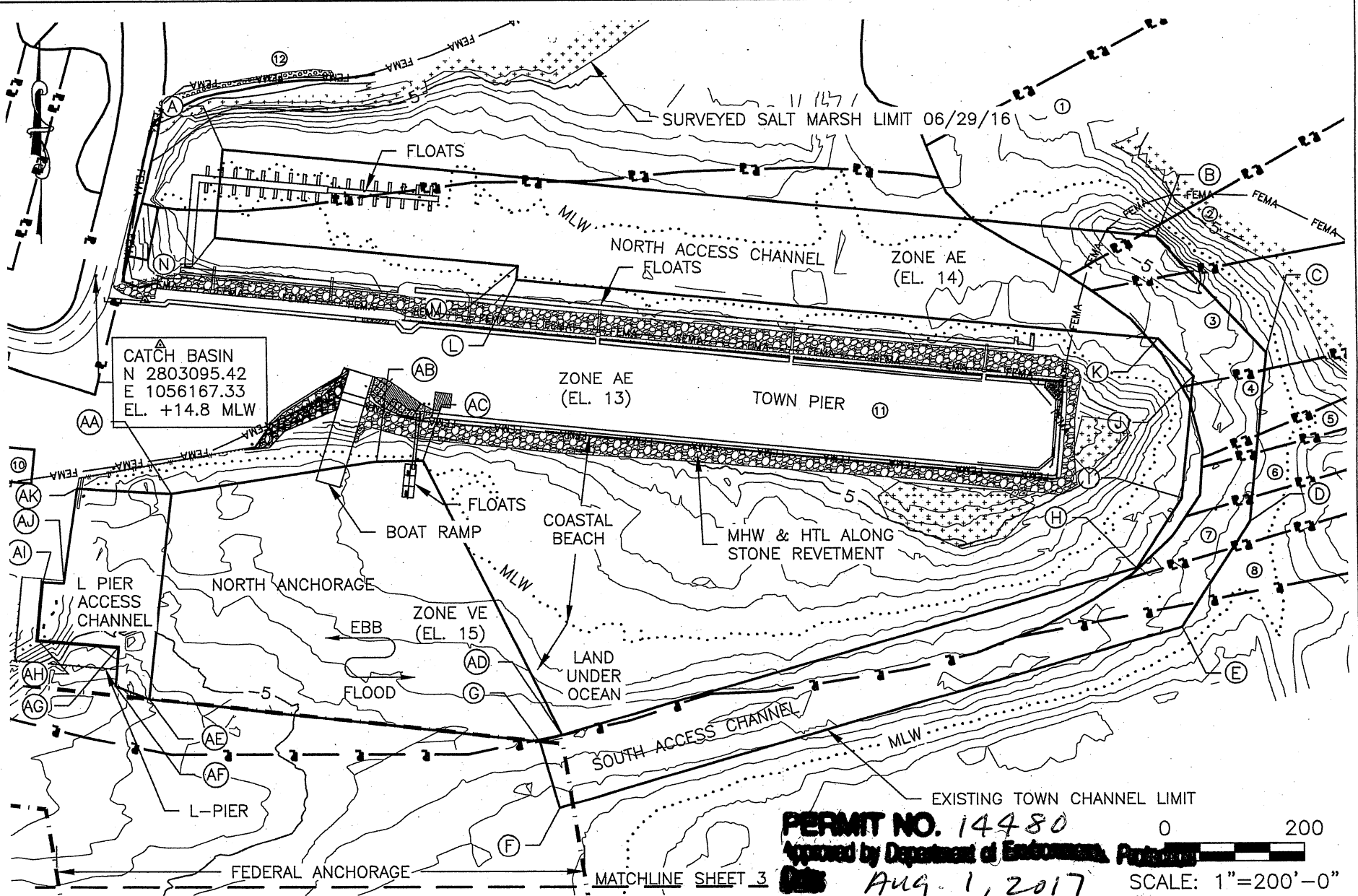
WELLFLEET HARBOR
 PROJECT NO. 14480
 Approved by Department of Environmental Protection
 Date Aug 1, 2017



SCALE: 1" = 2,000'

100 YR FLOOD	+17.4	NGVD	+5.4	TITLE:	IN: WELLFLEET
HTL	+13.2	MLW	0.0	LOCUS MAP	AT: TOWN PIER
MHW	+10.0				COUNTY: BARNSTABLE STATE: MA
				PURPOSE:	APPLICATION BY:
				DREDGING	TOWN OF WELLFLEET
					SHEET 1 OF 7
					DATE: 07/06/16

File: X:\34946-34031 Wellfleet Dredging\3 REGULATORY\EXIST_COND.dwg



PERMIT NO. 14480
 Approved by Department of Environmental Protection
 DATE: **Aug 1, 2017**
 SCALE: 1"=200'-0"

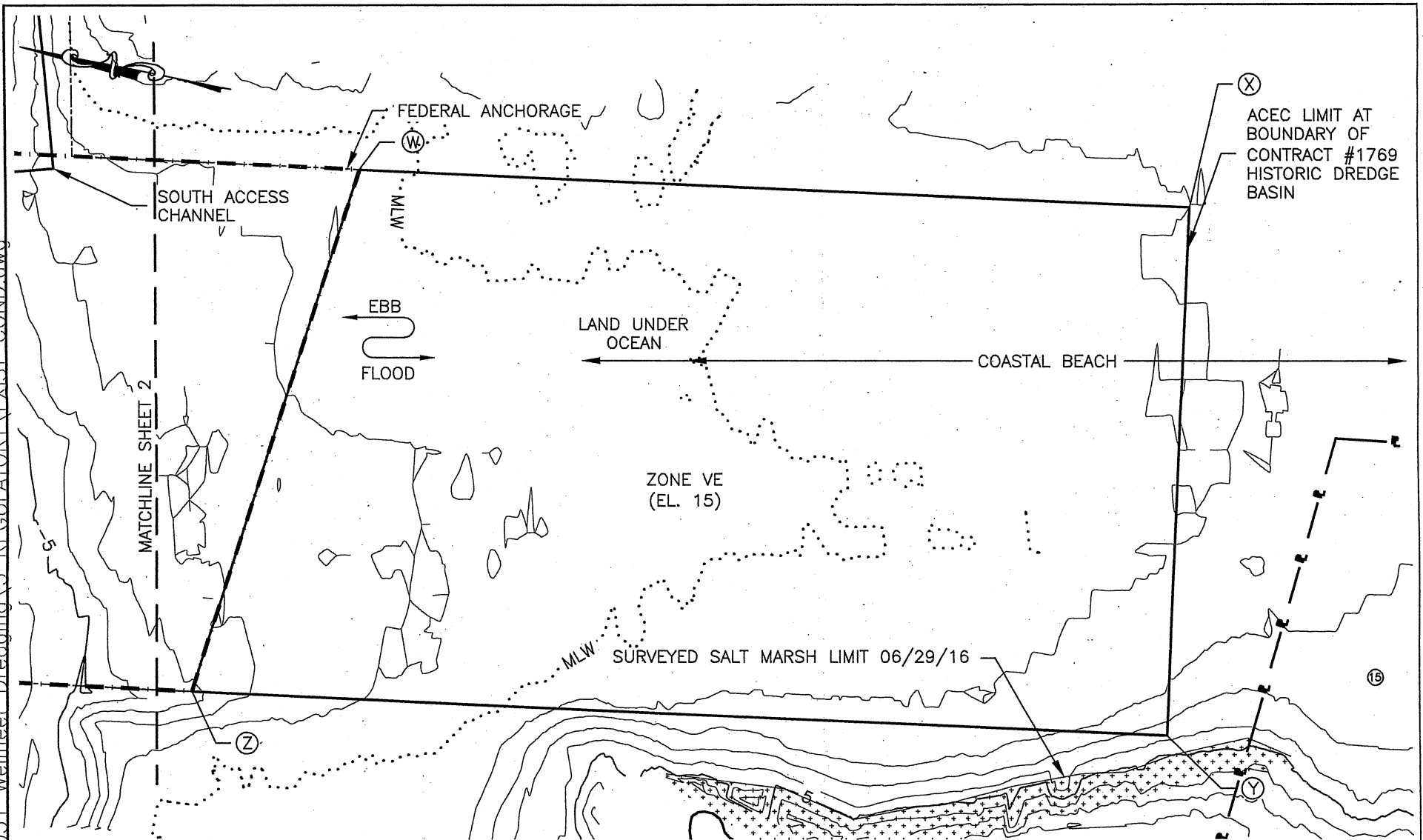
100 YR FLOOD	+17.4	NGVD	+5.4
HTL	+13.2	MLW	0.0
MHW	+10.0		

BCE Bourne Consulting Engineering
A Division of GRI Consultants, Inc.
 3 Bent Street, Franklin, MA 02038
 TEL. (508) 533-8666

TITLE:	EXISTING CONDITIONS CHANNEL
PURPOSE:	DREDGING
APPLICATION BY:	TOWN OF WELFLEET

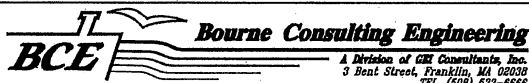
IN: WELFLEET
AT: TOWN PIER
COUNTY: BARNSTABLE STATE: MA
SHEET 2 OF 7
DATE: 07/06/16

File: X:\34946-34031_Wellfleet_Dredging\3 REGULATORY\EXIST_COND.dwg



PERMIT NO. 14480
 Approved by Department of Environmental Protection
 Date: August 1, 2017

0 200
 SCALE: 1"=200'-0"

100 YR FLOOD +17.4 HTL +13.2 MHW +10.0	NGVD +5.4 MLW 0.0	TITLE: EXISTING CONDITIONS BASIN	IN: WELLFLEET AT: TOWN PIER COUNTY: BARNSTABLE STATE: MA
 <p>Bourne Consulting Engineering <small>A Division of C&E Consultants, Inc. 3 Bent Street, Franklin, MA 02038 TEL (508) 633-6666</small></p>		PURPOSE: DREDGING	APPLICATION BY: TOWN OF WELLFLEET
			SHEET 3 OF 7 DATE: 07/06/16

File: B:\Working\WELLFLEET MA TOWN OF\1607951 Marina Dredging\60 DRAWINGS\3 REGULATO

COORDINATES OF EXISTING CHANNELS & ANCHORAGES:

A	N	2803280.7	E	1056351.6
B	N	2803151.1	E	1057690.3
C	N	2802979.6	E	1057845.9
D	N	2802732.3	E	1057822.0
E	N	2802579.3	E	1057723.6
F	N	2802318.5	E	1056830.3
G	N	2802414.6	E	1056802.3
H	N	2802664.8	E	1057659.7
I	N	2802766.0	E	1057724.8
J	N	2802945.2	E	1057742.1
K	N	2803000.3	E	1057692.2
L	N	2803089.2	E	1056772.6
M	N	2803109.1	E	1056775.1
N	N	2803151.3	E	1056339.1
O	N	2803207.7	E	1056325.9

COORDINATES OF EXISTING CHANNELS & ANCHORAGES:

P	N	2803075.7	E	1057691.2
Q	N	2802962.4	E	1057793.9
R	N	2802749.1	E	1057773.3
S	N	2802622.0	E	1057691.6
T	N	2802352.1	E	1056770.4
U	N	2802102.7	E	1056503.9
V	N	2800521.9	E	1056751.1
W	N	2801898.9	E	1056915.2
X	N	2800753.1	E	1057094.6
Y	N	2800637.1	E	1056353.6
Z	N	2801984.2	E	1056142.8
AA	N	2802774.7	E	1056273.5
AB	N	2802821.3	E	1056569.0
AC	N	2802822.3	E	1056635.8
AD	N	2802423.7	E	1056834.0
AE	N	2802476.5	E	1056240.7
AF	N	2802495.7	E	1056192.4
AG	N	2802552.5	E	1056197.3
AH	N	2802562.7	E	1056080.8
AI	N	2802646.9	E	1056088.2
AJ	N	2802645.2	E	1056118.3
AK	N	2802782.6	E	1056138.2
AL	N	2802675.2	E	1056090.4
AM	N	2802604.7	E	1056887.3

DREDGE AREAS:

LOCATION	AREA (SF)
INTERTIDAL WITHIN AREA 1	105,245
TOTAL AREA 1	637,720
INTERTIDAL WITHIN AREA 2	607,230
TOTAL AREA 2	1,038,950

DREDGE VOLUMES:

LOCATION	PROPOSED DREDGE (CY)	1' OVER-DREDGE (CY)	TOTAL (CY)
AREA 1 CHANNELS	65,300	16,000	81,300
AREA 1 NORTH ANCHORAGE & L PIER ACCESS	28,500	8,500	37,000
AREA 2	221,000	39,000	260,000

ABUTTERS

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. 125 MARVEN WAY 2. 40 RICHMAN LANE 3. 75 RICHMAN LANE 4. 139 NAUHAUGHT BLUFF RD 5. 137 NAUHAUGHT BLUFF RD 6. 135 NAUHAUGHT BLUFF RD 7. 131 NAUHAUGHT BLUFF RD 8. 125 NAUHAUGHT BLUFF RD 9. 3 KENDRICK AVE 10. 265 COMMERCIAL ST 11. 255 COMMERCIAL ST 12. 205 COMMERCIAL ST 13. 0 INDIAN NECK RD OFF 14. 235 NAUSET RD 15. 0 CHIPMANS COVE 16. 0 NAUSET RD | <p>STEPHEN L DURKEE, JR. TRUSTEE
 ROBERT C DUBEAU, TRUSTEE
 MARSHA DUBEAU, TRUSTEE
 MARTHA CARROLL, TRUSTEE
 C/O MARC & RILEY SARAH STRAUSS
 DAVID J BERNSTEIN, TRUSTEE
 ANTONIA H BERNSTEIN, TRUSTEE
 VON KAESBORG GIFFORD K/MARY C
 % WILLIAM POST TTEE
 MICHAEL J MCNAMARA
 MARK J POWERS
 ALLAN D BRASH
 EDMUND B & HAROLD J FROST, TRUSTEES
 HENDERSON - FROST
 STEPHEN B COONEY
 HAY MACGREGOR & ALEXANDER
 TOWN OF WELLFLEET
 JOSEPH A DOWNEY JR TRUSTEE
 PAUL D MESSINA TRUSTEE
 JAY & WENDY BRONSTEIN
 JOANNE WUSCHKE TRUSTEE
 PHILIP S & CAROLYN BATTAGLIA
 STEVEN M & JEANNE B COSER
 WAYNE E & MARIE J OASTLER
 THEODORE P ORENSTEIN TRUSTEE
 CATHERINE R BARNHOLTZ
 CLIFFORD D NULMAN
 JANE TURANO THOMPSON
 MICHAEL R & ELIZABETH A BRITT
 ANDREW H CHESNICK
 WALTER & MARCIA TTES ROCKWOOD
 NANCY RAE HEYWOOD
 RAYMOND J & PATSY A MISIURA
 TOWN OF WELLFLEET
 TOWN OF WELLFLEET
 TOWN OF WELLFLEET
 WELLFLEET CONSERVATION TRUST</p> |
|---|--|

PERMIT NO. 14480
 Approved by Department of Environmental Protection
 Date: *Aug. 1, 2017*

100 YR FLOOD	+17.4	NGVD	+5.4
HTL	+13.2	MLW	0.0
MHW	+10.0		

TITLE:



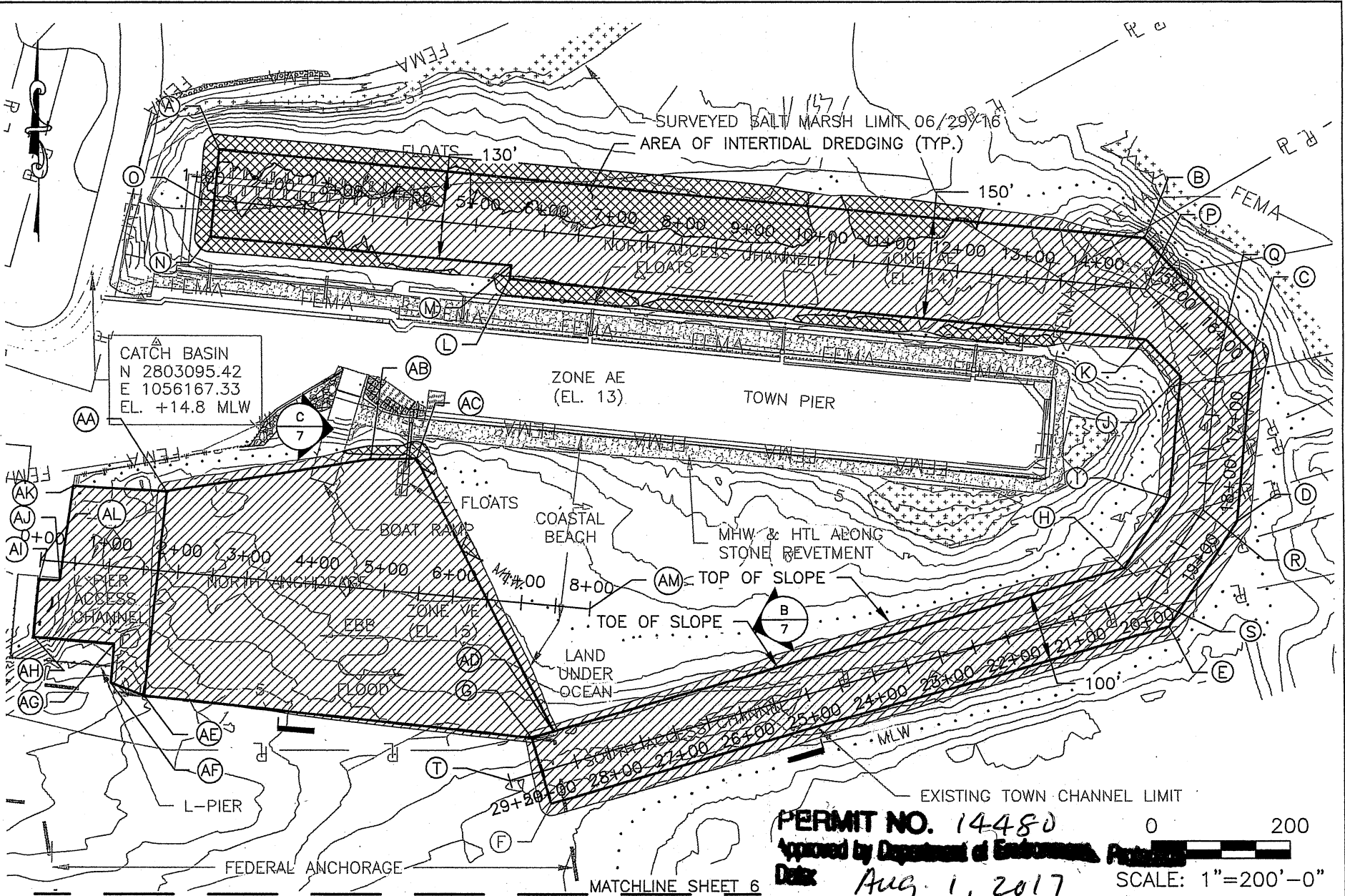
PURPOSE:
DREDGING

APPLICATION BY:
TOWN OF WELLFLEET

IN: **WELLFLEET**
 AT: **TOWN PIER**
 COUNTY: **BARNSTABLE** STATE: **MA**
 SHEET **4** OF **7**
 DATE: **07/06/16** REV: **05/15/17**

PROJECT NOTES

File: X:\34946-1\34031 Wellfleet Dredging\3 REGULATORY\PROP_COND.dwg



100 YR FLOOD	+17.4	NGVD	+5.4
HTL	+13.2	MLW	0.0
MHW	+10.0		

TITLE: **PROPOSED CONDITIONS
AREA 1 DREDGE**

IN: **WELLFLEET**
 AT: **TOWN PIER**
 COUNTY: **BARNSTABLE** STATE: **MA**

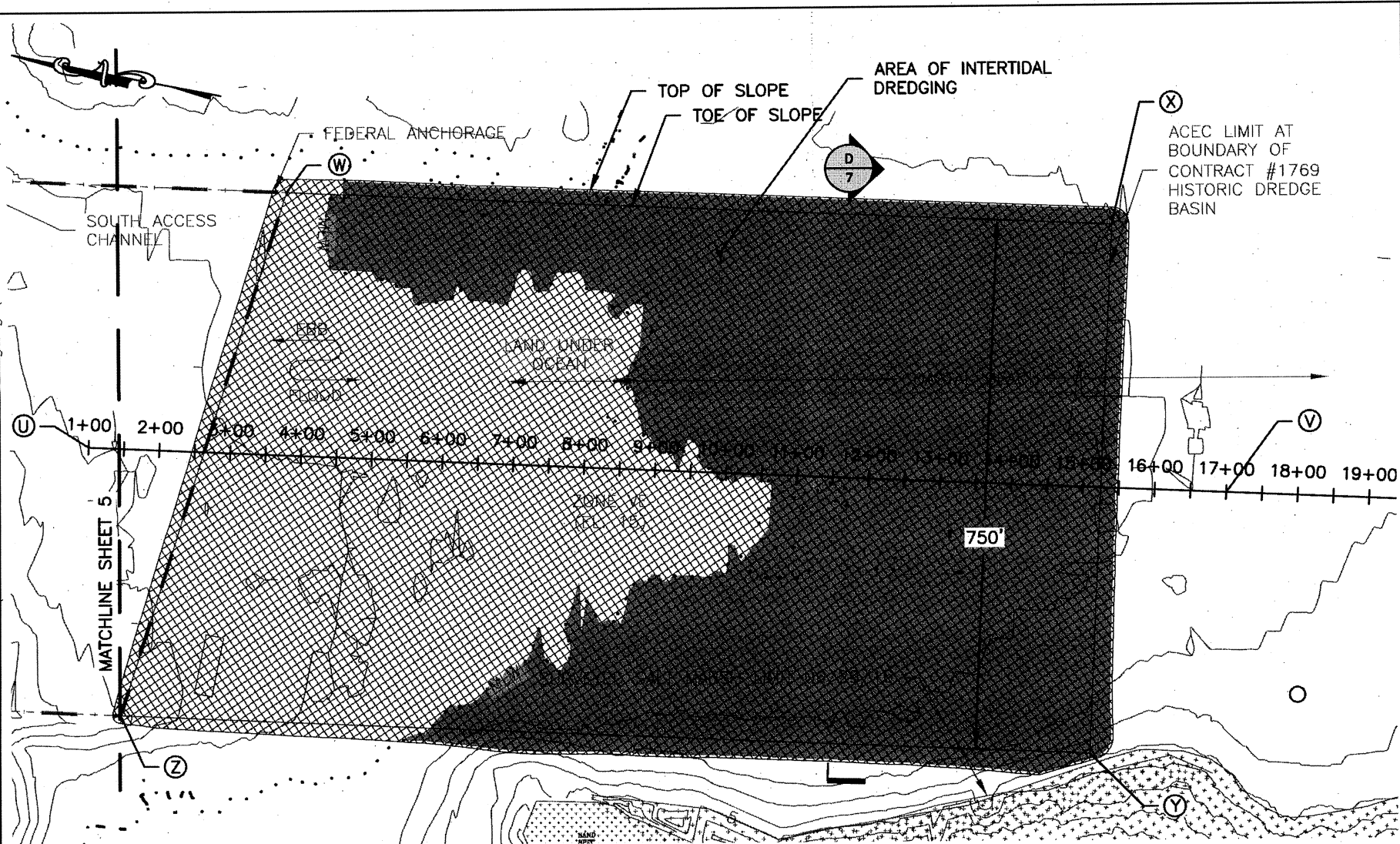
BCE Bourne Consulting Engineering
 A Division of C&E Consultants, Inc.
 3 Bent Street, Franklin, MA 02038
 TEL. (608) 633-6666

PURPOSE:
DREDGING

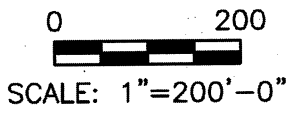
APPLICATION BY:
TOWN OF WELLFLEET


SHEET **5** OF **7**
 DATE: **07/06/16**

File: B:\Working\WELLFLEET MA TOWN OF\1607951 Marine Dredging\60 DRAWINGS\3 REGULATO

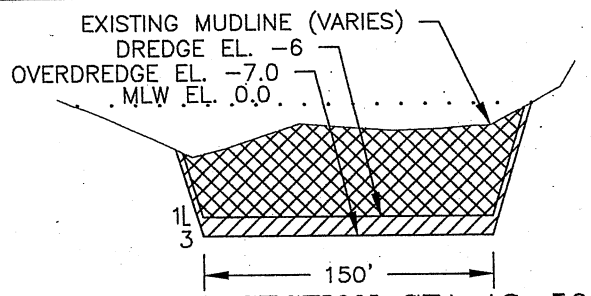


PERMIT NO. 14480
 Approved by Department of Environmental Protection
 Date: *Aug. 1, 2017*

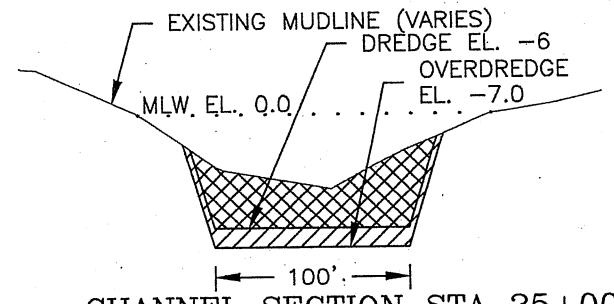


100 YR FLOOD +17.4 NGVD +5.4 HTL +13.2 MLW 0.0 MHW +10.0	TITLE: PROPOSED CONDITIONS AREA 2 DREDGE	IN: WELLFLEET AT: TOWN PIER COUNTY: BARNSTABLE STATE: MA
 Bourne Consulting Engineering <small>A Division of G&E Consultants, Inc. 3 Bent Street, Franklin, MA 02039 TEL (508) 533-6666</small>	PURPOSE: DREDGING	APPLICATION BY: TOWN OF WELLFLEET
SHEET 6 OF 7 DATE: 07/06/16 REV:05/15/17		

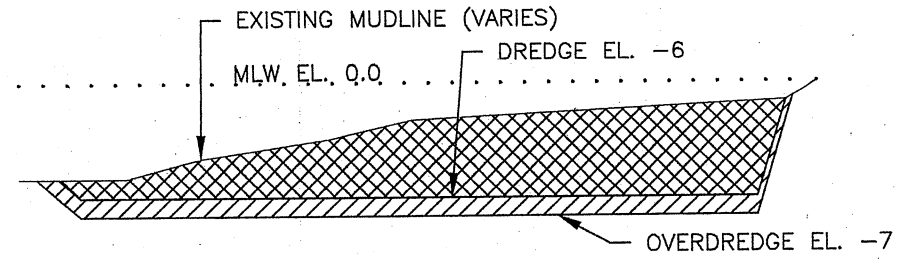
File: X:\34946-34031 Wellfleet Dredging\3 REGULATORY\PROP COND.dwg



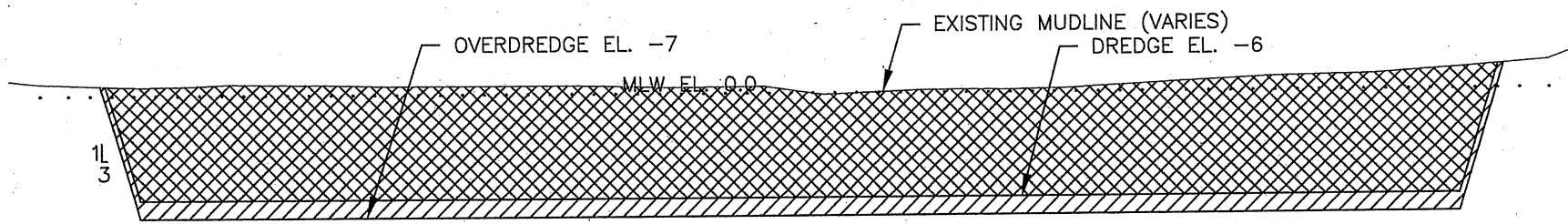
A
7
CHANNEL SECTION STA 13+50
VERTICAL SCALE: 1"=10'-0"
HORIZONTAL SCALE: 1"=100'-0"



B
7
CHANNEL SECTION STA 25+00
VERTICAL SCALE: 1"=10'-0"
HORIZONTAL SCALE: 1"=100'-0"




C
7
N. ANCHORAGE SECTION STA 3+50
VERTICAL SCALE: 1"=10'-0"
HORIZONTAL SCALE: 1"=100'-0"



D
7
AREA 2 SECTION STA 11+50
VERTICAL SCALE: 1"=10'-0"
HORIZONTAL SCALE: 1"=100'-0"

PERMIT NO. 14480
Approved by Department of Environment Protection
Date: Aug. 1, 2017

100 YR FLOOD	+17.4	NGVD	+5.4	TITLE: PROPOSED CONDITIONS SECTIONS	IN: WELLFLEET AT: TOWN PIER COUNTY: BARNSTABLE STATE: MA
HTL	+13.2	MLW	0.0		
MHW	+10.0				
				PURPOSE: DREDGING	APPLICATION BY: TOWN OF WELLFLEET
DATE: 07/06/16					

CZM Federal Consistency Review



THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS
OFFICE OF COASTAL ZONE MANAGEMENT
251 Causeway Street, Suite 800, Boston, MA 02114-2136
(617) 626-1200 FAX: (617) 626-1240

August 13, 2018

Town of Wellfleet
C/o Alyssa Richard
Bourne Consulting Engineering
3 Bent Street
Franklin, MA 02038

Re: CZM Federal Consistency Review of Wellfleet Harbor Dredging Project; Wellfleet.

Dear Ms. Richard:

The Massachusetts Office of Coastal Zone Management (CZM) has completed its review of the proposed maintenance dredging of a historic channel and anchorage area within the Town of Wellfleet.

Based upon our review of applicable information, we concur with your certification and find that the activity as proposed is consistent with the CZM enforceable program policies.

If the above-referenced project is modified in any manner, including any changes resulting from permit, license or certification revisions, including those ensuing from an appeal, or the project is noted to be having effects on coastal resources or uses that are different than originally proposed, it is incumbent upon the proponent to notify CZM, submit an explanation of the nature of the change pursuant to 15 CFR 930, and submit any modified state permits, licenses, or certifications. CZM will use this information to determine if further federal consistency review is required.

Thank you for your cooperation with CZM.

Sincerely,

Bruce K. Carlisle,
Director

RLB/pb
CZM # 16366

cc: Phillip Nimeskern, Project manager
Regulatory Branch, NED, US Army Corps of Engineers
Ben Lynch, Program Chief,
Waterways Regulation, Massachusetts DEP
Derek Standish, Environmental Engineer,
Wetlands Program, Massachusetts DEP
Jim Mahala, DEP
Southeast Regional Office
Michael Flanagan, Harbormaster
Commercial Street, Wellfleet, MA 02667
Steve McKenna,
CZM Cape Cod Regional Coordinator



MEPA Final Record of Decision



The Commonwealth of Massachusetts
Executive Office of Energy and Environmental Affairs
 100 Cambridge Street, Suite 900
 Boston, MA 02114

Charles D. Baker
 GOVERNOR

Karyn E. Polito
 LIEUTENANT GOVERNOR

Matthew A. Beaton
 SECRETARY

Tel: (617) 626-1000
 Fax: (617) 626-1181
<http://www.mass.gov/envir>

December 9, 2016

FINAL RECORD OF DECISION

PROJECT NAME : Wellfleet Harbor Maintenance Dredging
 PROJECT MUNICIPALITY : Wellfleet
 PROJECT WATERSHED : Cape Cod
 EEA NUMBER : 15506
 PROJECT PROPONENT : Town of Wellfleet
 DATE NOTICED IN MONITOR : , 2016

Pursuant to the Massachusetts Environmental Policy Act (MEPA, M.G.L. c. 30, ss. 61-62I) and Section 11.11 of the MEPA Regulations (301 CMR 11.00), I have reviewed this project and hereby **grant a waiver** from the categorical requirement to prepare an Environmental Impact Report (EIR).

Project Description

As described in the Expanded Environmental Notification Form (EENF), the project consists of maintenance dredging of all Town managed channels and anchorages within Wellfleet Harbor to restore safe and reliable navigation. There are two primary dredge areas (Areas I and II) which are composed of five dredge sites within Wellfleet Harbor that have been maintained by the Town for more than sixty years. The Town proposes to dredge all historically permitted areas to address major shoaling of these areas which impedes commercial and recreational navigation in the harbor. The scale of the projects and their associated costs has limited the Town's ability to adequately provide maintenance dredging on a more frequent basis.

Area I includes the North and South Access Channels, North Anchorage and the Access Channel adjacent to the L-Pier. Area II includes the South Anchorage. Water depths in the North Channel and North Anchorage are at 3 feet or less below mean low water (MLW) which hinders navigation and available draft in the marina slips. Some of the marina is now dry at low tide and approximately 15 percent of Area I is intertidal. Many of the mooring in the South Anchorage are dry at low tide. Approximately 64 percent of Area II has become intertidal mudflat with elevations ranging between 0

and +1 feet MLW. The deepest depths range between -1 and -2 feet MLW.

The EENF includes a table identifying previously issued permits associated with dredging. All dredging will occur to depths of -6 feet MLW with a one foot allowance for overdredge. The total volume of sediment to be dredged is approximately 364,500 cubic yards (cy). Offshore disposal is proposed at the Cape Cod Bay Disposal Site (CCBDS). Sediment within proposed dredge areas consists of fine silt and, therefore, is not suitable for beneficial reuse as beach nourishment. The EENF indicates that the dredging will occur in two or three phases subsequent to dredging of the federal anchorage by the United States Army Corps of Engineers (ACOE).

The following table summarizes the proposed dredge areas and volumes:

Site	Dredge Area (acres)	Dredge Volume (cy)	1-foot Overdredge Volume (cy)	Total Dredge Volume (cy)
North and South Access Channels	10.3	65,000	16,000	81,000
North Anchorage Basin	3.5	25,000	7,000	32,000
L-Pier Access Channel	0.8	2,500	1,000	3,500
South Anchorage Basin	23.9	211,000	37,000	248,000
Total	38.5	303,500	61,000	364,500

Project Site

Wellfleet Harbor is a natural harbor and is significant to the history of the Town. It has provided dockage and anchorage for fishing and recreational vessels since 1644. The harbor is currently used by commercial fishing vessels, charter boats, and recreational boats. According to the EENF, the existing channels and anchorages gradually accumulate sediments through natural processes and periodic maintenance is required to maintain navigation. The Town currently operates 250 moorings and 150 boat slips within the harbor. The Town maintains and operates a marina north of the Town Pier and two anchorages, one to the north and one to the south of the Federal Navigation Channel. The Federal Navigation Channel provides access into Wellfleet Harbor with an anchorage basin at the head of the channel.

The EENF stresses the importance of the marina to the Town’s economy. Access to the marina is maintained from the Federal Channel via the South Access Channel and North Access Channel. The North Anchorage (Area I) is used to provide seasonal mooring to approximately 35 boats. The South Anchorage (Area II) is contiguous with the Federal Anchorage and both anchorages combined provide approximately 200 seasonal moorings for boats. Areas I and II were last dredged in 2001 and 1957, respectively.

Wellfleet Harbor, with the exception of the existing federal and town channels and anchorages, has been designated an Area of Critical Environmental Concern (ACEC). The project does not propose expansion of the existing maintenance dredge areas, and therefore, will lie fully outside the boundaries

of the Wellfleet ACEC.

Jurisdiction and Permitting

This project is undergoing MEPA review and is subject to a mandatory EIR pursuant to 301 CMR 11.03(3)(a)(1)(b) of the MEPA regulations because it requires a State Agency Action and will alter ten or more acres of wetlands. The project also exceeds ENF thresholds pursuant to 301 CMR 11.03(2)(b)(2) because it will disturb greater than two acres of designated priority habitat that results in a take of a state-listed rare species; 301 CMR 11.03(3)(b)(3) because it will involve dredging of 10,000 or more cy of material; and 301 CMR 11.03(3)(b)(4) because it will involve disposal of 10,000 or more cy of material. The project will require a Section 401 Water Quality Certification (401 WQC) and a Chapter 91 (c. 91) Permit from the Massachusetts Department of Environmental Protection (MassDEP). The project will require a Conservation and Management Permit (CMP) from the Natural Heritage and Endangered Species Program (NHESP).

The project will require an Order of Conditions from the Wellfleet Conservation Commission (or in the case of an appeal, a Superseding Order of Conditions from MassDEP) and an Individual Permit from the United States Army Corps of Engineers (ACOE) in accordance with Section 404 of the Federal Clean Water Act (CWA). The project is also subject to Federal Consistency Review by the Massachusetts Office of Coastal Zone Management (CZM).

The project is subject to review under the May 2010 MEPA Greenhouse Gas (GHG) Emissions Policy and Protocol (GHG Policy). However, the project meets the de minimis exception outlined in the MEPA GHG Policy.

Because the project may include State Financial Assistance, MEPA jurisdiction is broad in scope and extends to all aspects of the project that are likely, directly or indirectly, to cause Damage to the Environment, as defined in the MEPA regulations.

Environmental Impacts and Mitigation

Potential environmental impacts associated with the project include direct alteration of 38.5 acres of Land Under Ocean (LUO) and Land Containing Shellfish (LCS), and 11 acres of Tidal Flats.

Measures to avoid, minimize and mitigate potential environmental impacts include: adherence to time-of-year (TOY) restrictions to protect sensitive species such as horseshoe crabs, winter flounder, shellfish, and right whales; dredging within previously dredged areas; and mechanical dredging with an environmental bucket. A suitability determination for offshore disposal from ACOE indicates that the dredged material is suitable for disposal at the CCBDS.

Waiver Request

In accordance with Section 11.05(7) of the MEPA regulations, the Town submitted an EENF with a request that I waive the requirement for a mandatory EIR. Supplemental information¹ identifies the project's consistency with the criteria for a Waiver. The EENF was subject to an extended comment

¹ Email submitted on May 10, 2016 by Russell Titmuss, Bourne Consulting Engineering, PC, on behalf of the Town.

period pursuant to Section 11.06(1) of the MEPA regulations. Comment letters from State Agencies on the EENF supported the Waiver request and identified outstanding issues that should be addressed prior to issuance of permits. Comments from the Cape Cod Commission (CCC) indicate concern with potential impacts to rare species but support the Town's request for a Waiver to balance protection of the natural environment and rare species and their habitat while providing for the maintenance of important public infrastructure.

Standards for All Waivers

The MEPA regulations at 301 CMR 11.11(1) state that I may waive any provision or requirement in 301 CMR 11.00 not specifically required by MEPA and may impose appropriate and relevant conditions or restrictions, provided that I find that strict compliance with the provision or requirement would:

- (a) Result in an undue hardship for the Proponent, unless based on delay in compliance by the Proponent; and,
- (b) Not serve to avoid or minimize Damage to the Environment.

Determinations for an EIR Waiver

The MEPA regulations at 301 CMR 11.11(3) state that, in the case of a waiver of a mandatory EIR review threshold, I shall at a minimum base the finding required in accordance with 301 CMR 11.11(1)(b) stated above on a determination that:

- (a) The project is likely to cause no Damage to the Environment; and,
- (b) Ample and unconstrained infrastructure facilities and services exist to support those aspects of the project within subject matter jurisdiction.

Findings

Based upon the information submitted by the Town, consultation with the relevant State Agencies, and review of comment letters, I find that the Waiver request has merit and that the Town has demonstrated that the proposed project can meet the standards for all waivers at 301 CMR 11.11(1). I find that strict compliance with the requirement to prepare a mandatory EIR for the project would result in undue hardship for the Town as sufficient means to avoid, minimize and mitigate Damage to the Environment have been demonstrated in the EENF. The Draft Record of Decision (DROD) was conditioned upon the provision of supplemental information to address outstanding issues prior to State permitting, including documentation that the dredging is limited to maintenance dredging of historically permitted areas to maintain access into Wellfleet Harbor.

The Town presented sufficient information regarding potential project alternatives, existing and proposed environmental conditions and impacts, and appropriate and feasible mitigation in support of the Waiver request.

I also find that compliance with the requirement to prepare an EIR for the project would not serve to avoid or minimize Damage to the Environment. In accordance with 301 CMR 11.11(3), this

finding is based on my determination that:

1. The project is not likely to cause Damage to the Environment. The project will employ the following mitigation measures to ensure the impacts of the project are avoided, minimized and mitigated:
 - The Town will adhere to time-of-year (TOY) restrictions to protect sensitive species such as horseshoe crabs, winter flounder, shellfish, right whales, and state-listed rare species, as determined by the conditions of permits subsequent to consultation with DMF, MassDEP, and NHESP.
 - Use of mechanical dredging with an environmental bucket.
 - Town has demonstrated that dredge material is suitable for offshore disposal at the CCBDS.

The Town provided the following supplemental information to support its Waiver request:

- documentation (previous permits and/or licenses) that the proposed work will be performed within a previously authorized dredge area which does not extend beyond the original dredge depth, width or length (any dredge work beyond the scope of previously issued licenses would be categorized as improvement dredging and would be permitted accordingly);
- delineation of salt marsh and any available historic mapping of the salt marsh resource area;
- expanded description of rare species mitigation including identification of the amount of funding for research.

In addition, the project will require an Order of Conditions from the Wellfleet Conservation Commission, and a Section 401 WQC and a c. 91 from MassDEP, and will comply with all conditions of these permits. The Town will continue to work collaboratively with State Agencies and CCC during the permitting process to further refine project mitigation measures.

The Town will work with NHESP, through permitting, to finalize mitigation for a “take” of the Diamond-backed Terrapin to meet the performance standards of a CMP for compliance with MESA and its implementing regulations (321 CMR 10.00).

2. Ample and unconstrained infrastructure facilities and services exist to support those aspects of the project within subject matter jurisdiction:
 - The project does not require any infrastructure or services to accomplish its overall goal of dredging and offshore disposal. Therefore, this criterion does not apply to this project.

Conclusion

Based on these findings, I have determined that the Waiver request has merit. A DROD was issued on May 27, 2016 and published in the *Environmental Monitor* on June 8, 2016 in accordance with 301 CMR 11.15(2). The public comment period began on November 3, 2016 upon receipt of the supplemental information identified above. Based on written comments received concerning the DROD, and after consultation with MassDEP and NHESP, I hereby **grant** a waiver from the requirement to prepare a mandatory EIR, subject to the above findings and conditions.



December 9, 2016

Date

Matthew A. Beaton

Comments received on the DROD:

- 12/01/2016 Massachusetts Department of Environmental Protection (MassDEP) – Southeast Regional Office (SERO)
 12/7/2016 Massachusetts Division of Fisheries and Wildlife (DFW) – Natural Heritage and Endangered Species Program (NHESP)

Comments received:

- 04/25/2016 Massachusetts Board of Underwater Archaeological Resources (BUAR)
 05/10/2016 Massachusetts Division of Marine Fisheries (DMF)
 05/19/2016 Cape Cod Commission (CCC)
 05/20/2016 MassDEP/SERO
 05/20/2016 NHESP
 05/20/2016 Massachusetts Office of Coastal Zone Management (CZM)

MAB/PPP/ppp

Suitability Determination

Memorandum Thru:

Ruth M. Ladd, Chief, Policy Analysis and Technical Support Branch

For: Phill Nimeskern, Project Manager, CENAE-R-B

Subject: Suitability Determination for Town of Wellfleet - CORRECTED, Wellfleet Harbor, Wellfleet, MA, Application Number NAE-2005-1059.

1. Summary:

Based on an evaluation of the data that characterize the material proposed to be dredged, this memorandum addresses the suitability of that material for disposal as proposed at the Cape Cod Bay Disposal Site (CCBDS) in accordance with applicable regulations. The Marine Analysis Section (MAS) finds that the data provide sufficient information to satisfy the evaluation and testing requirements of the appropriate regulations. The determination found that some of the sediments were unsuitable for open water disposal. However, MAS talked to the lab and had them re-examine the method detection limits reported previously. The lab reported back on 23 February that their previous report was in error and submitted a new corrected data report. Examining these new values showed that ALL these sediments are suitable for unconfined open water disposal at CCBDS as proposed.

2. Project Description:

The applicant is proposing to dredge two areas in Wellfleet Harbor. The first area (Area 1) is comprised of the North and South channels, the North Anchorage, and the Access Channel adjacent to L-Pier. This area is approximately 674,309 sq. ft. and would be dredged to depths of - 6 ft. MLW. Approximately 118,300 cu. yds. of material will be removed. The second area (Area 2) is the South Anchorage. This area is approximately 945,688 sq. ft. and would be dredged to depths of - 6 MLW, producing approximately 248,000 cu. yds. of material to be removed. The Town of Wellfleet proposes to mechanically dredge and dispose of this material at the Cape Cod Bay Disposal Site (CCBDS). This area was last permitted to be dredged in part ten years ago.

3. Sampling and Testing:

Charles N. Farris prepared a sampling plan for this project on 25 March 2014. The plan called for 14 cores (W-1 through W-14) to be taken from the project area. Bulk sediment chemistry analyses were conducted on four composites comprised of 14 samples (EXAMPLE: Composite A is comprised of cores W-5 and W-6). See the spreadsheets for details.

Comparison to (CCBDS) Reference Values

Metals: The contaminant concentrations in the sediments represented by Composites A through D were below or near the means plus twice the standard deviations of the contaminant concentrations found at the CCBDS reference site. The exception is copper in Composite A, which is two times larger. See the attached spreadsheets for details.

PAHs: In all of the project sediment samples, the PAH concentrations were below or near the means plus twice the standard deviations of the contaminant concentrations found at the CCBDS reference site. See the attached spreadsheets for details.

4. Regulations governing the determination of the suitability of dredged material for open-water disposal:

The disposal of dredged material seaward of the high tide line in Cape Cod Bay is regulated under Section 404 of the Clean Water Act (CWA).

Subpart G of the Section 404(b)(1) guidelines (40 CFR Section 230.60 and 230.61) describes the procedures for determining the suitability of this material for open-water disposal, including any relevant testing that may be required.

40 CFR 230.60 General Evaluation of Dredged or Fill Material

(a) This subsection states that further testing may not be necessary if it could be determined with the evaluation under paragraph (b) that the sediment is not a carrier of contaminants. Dredged or fill material is most likely to be free from pollutants when it is composed primarily of sand, gravel or other naturally occurring inert material. Based upon our Tier 1 review, the proposed dredge sediment is primarily sand, gravel or other inert material in an area of high current and/or wave energy and evaluation under paragraph (b) below indicates the material is not a carrier of contaminants. Therefore, this subsection does not apply. Based upon our Tier 1 review, evaluation under paragraph (b) below indicates the proposed dredge sediment is a carrier of contaminants so this subsection does not apply.

(b) This subsection states that the site should be evaluated to determine whether it is sufficiently removed from sources of pollution. These factors include records of spills or potential routes of contamination, like outfall pipes. There is a boat ramp and a fuel dock on the main pier as well as a drainage system to control runoff from impervious surfaces. No history of spills was reported by the contractor after examination of the area.

(c) This subsection states that further testing may not be necessary if certain conditions and circumstances make it unlikely that the dredged material would degrade the disposal site. For the project to meet this exclusion, the material to be dredged and the material at the disposal site must be adjacent to each other **and** composed of the same materials **and** subject to the same sources of contaminants. As the project site is not adjacent to the disposal site, this exclusion does not apply to this project

(d) This subsection states that further testing may not be necessary if the material to be dredged is constrained, both to reduce contamination within the disposal site and to prevent transport of contaminants beyond the boundaries of the disposal site. As such constraints in handling are not proposed, this subsection does not apply.

40 CFR 230.61 Chemical, Biological and Physical Evaluation and Testing

(a) This subsection describes the purpose of Part 230.61 and does not give any criteria for the evaluation of sediments.

(b) This subsection states that dredged material may be excluded from testing for water column effects and benthic bioassays if it is determined, by evaluation under 40 CFR Part 230.60, that the likelihood of contamination levels that could exert ecological impacts (as defined in Part 230.60 – is that the right section) is acceptably low. Such testing is not needed, as it was determined, based on evaluation under Part 230.61(c), that the likelihood of contamination is low.

(c) This subsection states that an inventory of the concentrations of the contaminants of concern would aid in an environmental assessment of the impact of their disposal on the designated disposal site. Such an inventory was performed at the dredge site. See Section 3 above and the attached spreadsheets for details. The dredged materials should have minimal impact at the disposal site.

CENAE and the federal agencies did not think an analysis of biological community structure was needed for this project.

(d) This subsection states the importance of the disposal of dredged materials on the characteristics of the physical substrate. MAS determined that the likelihood of physical effects from the disposal of the dredged material at the disposal site should be minimal. Although some benthic marine organisms will be buried by the disposal of the project materials, the disposal site should be rapidly re-colonized.

CENAE-R-PT

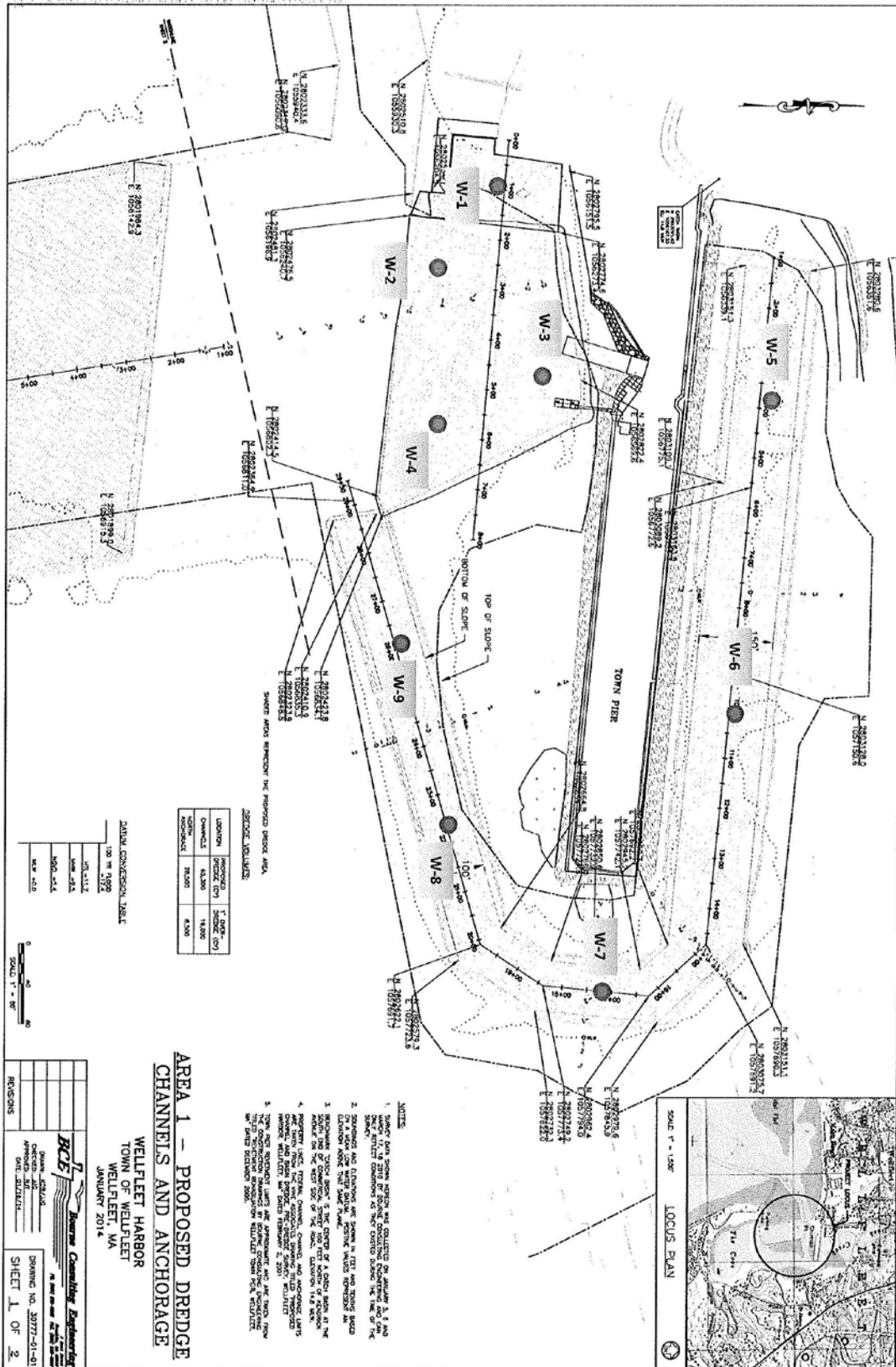
SUBJECT: Suitability Determination for Town of Wellfleet, Wellfleet Harbor,
Wellfleet, MA, Application Number NAE-2005-1059

5. Copies of this determination were sent to the MADEP and the USEPA. The EPA concurred with this determination. The MADEP did not respond within the 10-business day review period and their concurrence is assumed.

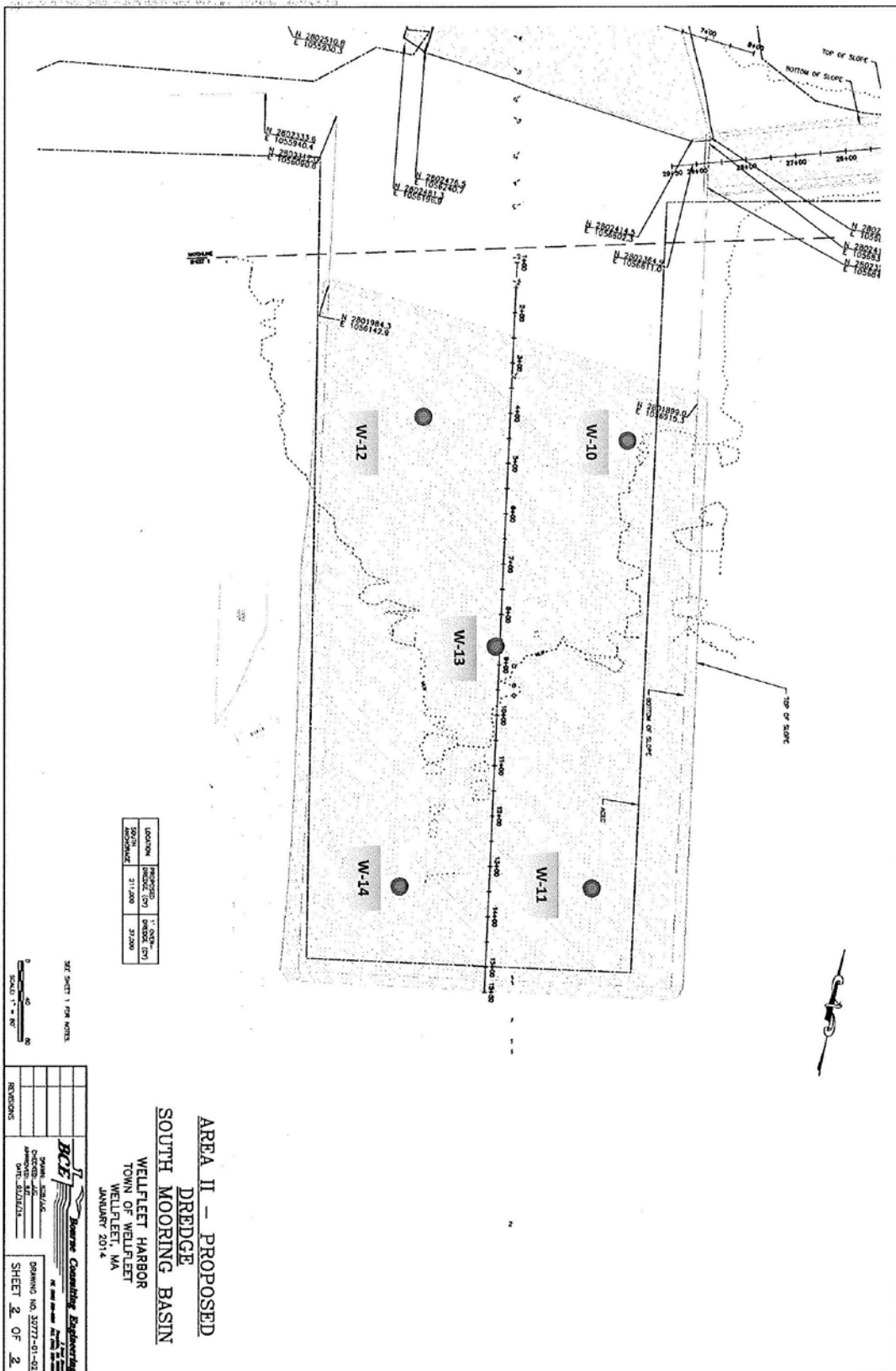
6. If you have any questions, please contact me at (978) 318-8336 or charles.n.farris@usace.army.mil.

CHARLES N. FARRIS
Project Manager,
Marine Analysis Section

CENAE-R-PT
 SUBJECT: Suitability Determination for Town of Wellfleet, Wellfleet Harbor,
 Wellfleet, MA, Application Number NAE-2005-1059



CENAE-R-PT
 SUBJECT: Suitability Determination for Town of Wellfleet, Wellfleet Harbor,
 Wellfleet, MA, Application Number NAE-2005-1059



US Army Corps of Engineers

PENDING
EXAMPLE FROM AREA 1



DEPARTMENT OF THE ARMY
US ARMY CORPS OF ENGINEERS
NEW ENGLAND DISTRICT
696 VIRGINIA ROAD
CONCORD MA 01742-2751

November 25, 2020

Regulatory Division
File No. NAE-2015-1414

Michael Flanagan
Town of Wellfleet
300 Main Street
Wellfleet, MA 02667

Dear Mr. Flanagan:

We have reviewed your application to dredge 116,500 cubic yards of material from 14.6 acres of bottom in Wellfleet Harbor. The area would be dredged to a depth of -6.0 MLW and disposed of at the Cape Cod Bay Disposal Site (CCBDS). Only the area labeled Area 1 and designated in the attached plans would be dredged. This area includes the North and South Access Channels, North Anchorage and the Access Channel adjacent to the L-Pier. This project is located in Wellfleet Harbor at Kendrick Avenue in Wellfleet, Massachusetts. The work is shown on the enclosed plans titled "Dredging, Town of Wellfleet", on seven sheets, and dated "July 6, 2016".

Based on the information that you have provided, we verify that the activity is authorized under General Permit #5 of the enclosed April 16, 2018 Federal permit known as the Massachusetts General Permits (GPs). Also, it has been determined that the activities authorized do not impair the usefulness of the USACE Navigation project and is not injurious to the public interest.]

Please review the enclosed GPs carefully, including the general conditions beginning on page 19, to be sure that you and whoever does the work understand its requirements. A copy of the GPs and this verification letter shall be available at the project site throughout the time the work is underway. Performing work within our jurisdiction that is not specifically authorized by this determination or failing to comply with any special condition(s) provided below or all of the terms and conditions of the GPs may subject you to the enforcement provisions of our regulations. You must perform this work in compliance with the terms and conditions of the GPs and also in compliance with the following special condition(s):].

1. The U.S. Coast Guard, Sector Southeastern New England, Waterways Management Division, (401) 435-2351, shall be notified at least ten working days in advance of the intended start date of the location and estimated duration of the dredging and disposal operations. An alternate contact is the Coast Guard Sector Southeastern New England Command Center, Woods Hole, (508) 457-3211.

2. There shall be no dredging or disposal from February 1 to September 30, inclusive, in

order to minimize adverse impacts to winter flounder and shellfish. This is to protect Essential Fish Habitat designated under the Magnuson-Stevens Fishery Conservation and Management Act.

3. Except when directed otherwise by the Corps for site management purposes, disposal of dredged material is not permitted unless the following requirements can be met:

a. Dredged material shall be released at a specified set of coordinates within the disposal site provided in the Dredge and Disposal Approval Letter with the scow moving at a speed of 3 knots or less.

b. Disposal shall occur with the scow within 300 feet of the disposal coordinates provided in the Dredge and Disposal Approval Letter.

c. If following the requirements in (a) and (b) above is unsafe, e.g., due to weather or sea conditions, disposal with the scow moving only fast enough to maintain safe control is permitted. In that regard, special attention needs to be given to predicted conditions prior to departing for the disposal site. If disposal occurs without complying with (a) or (b) above, you, your representative, or the captain of the disposal vessel, must notify the Corps DQM contact immediately (see contact information below). Leave a voice message with the relevant information if no one answers. Information provided shall include disposal coordinates, permit number, volume disposed, date and time of disposal, circumstances of incident, disposal vessel name, name of caller, and phone number of caller. In addition, a detailed written report with supporting documentation shall be provided to the Corps within 48 hours following any non-compliant event.

4 National Dredging Quality Management (DQM) Program Requirements:

a. Discharges of dredged material involving open-water disposal and confined aquatic disposal cells require monitoring by the contractor, which must be performed using the DQM system software and hardware system developed by the Corps. Please address questions regarding certification to the Corps New England District DQM contact (see contact information below).

b. You are required to follow the DQM specifications, including the DQM information transfer protocol, located at <http://dqm.usace.army.mil>. The Corps must have certified each disposal vessel used for this project within a year of the disposal activity and you must send the DQM Certification and the Annual System Quality Assurance Verification to the Corps with the Dredge and Disposal Request Form. You are responsible for ensuring that the DQM system is operational throughout the project and that project data are submitted to the National DQM Support Center in accordance with the specifications provided at the aforementioned website. Disposal may not take place if any component of the DQM system is inoperable unless otherwise authorized by the Corps New England District DQM contact (see contact information below). An alternative recording of the absent data stream must be maintained if any of the DQM-certified telemetry ceases operation during a disposal trip. The breakdown of any DQM-certified telemetry must be reported to the DQM contact and repaired within 48 hours to keep the scow fully compliant with permit conditions. Unless weather, safety or sea state conditions prevent it, the hull doors must be fully closed on split hull scows before the vessel leaves the disposal site.

c. The DQM system used by the permittee must be capable of providing the information necessary for the Scow Monitoring Profile Specification. The permittee must provide the Corps with a: i) “Weekly Summary Report Form” at the end of each week that dredging and disposal activities are conducted for the duration of the project; and ii) “Seasonal/Final Completion of Dredging with Open-Water Disposal Report Form” upon completion of dredging and disposal for the season and project. These will be provided to you with the Dredge and Disposal Approval Letter that authorizes the initiation or continuation of disposal operations. You must make the data collected by the DQM system available to the Corps upon request.

d. Prior to the initial dredge/disposal action, or any time dredging/disposal resumes after ceasing for 30 days or more, you or your representative must submit the enclosed Dredge and Disposal Request Form at least 10 working days before dredging or disposal is expected to begin or resume. Dredging/disposal must not begin or resume until the Corps issues a Dredge and Disposal Approval Letter. The letter will include the approved start and end dates. These disposal point coordinates that may differ from those specified for other projects using the same disposal site or even from those specified earlier for this project. You must contact us (see contact information below) as early as possible to request an extension if you anticipate not completing dredge or disposal operations before the approved end date.

5. Unless otherwise stated, all submittals related to these special conditions for dredging and disposal shall be emailed to the DQM contact at charles.n.farris@usace.army.mil and cenae-r-pats@usace.army.mil. If it is necessary to provide a paper copy of any submittal, please also provide a digital copy or communicate with our staff if this is not possible. Please send paper copies to: a) MAIL: PATS Branch - Regulatory Division, Corps of Engineers, New England District, 696 Virginia Road, Concord, MA 01742-2751; or b) FAX: (978) 318-8303. Direct dredge related questions to (978) 318-8336 OR (978) 318-8831] or (978) 318-8338. Documents which are not addressed in this manner may not reach their intended destination and do not comply with the requirements of this authorization.

6. You must complete and return the enclosed Work Start Notification Form to this office at least two weeks before the anticipated starting date.

Disposal operations must not begin or resume until you submit the enclosed Disposal Request Form and the Corps issues an Open-Water Disposal Approval Letter that provides a specified set of coordinates for dredged material release within the disposal site. See the special conditions above.

This authorization expires on April 5, 2023. You must commence or be under contract to commence the work authorized herein by April 5, 2023, and complete the work by April 5, 2024. If not, you must contact this office to determine the need for further authorization before beginning or continuing the activity. We recommend that you contact us *before* this authorization expires to discuss reissuance. Please contact us immediately if you change the plans or construction methods for work within our jurisdiction. We must approve any changes before you undertake them.

This authorization does not obviate the need to obtain other Federal, State, or local authorizations required by law.

Your project is located within, or may affect resources within the coastal zone. The Massachusetts Office of Coastal Zone Management (CZM) has already determined that no further Federal Consistency Review is required.

We continually strive to improve our customer service. In order for us to better serve you, we would appreciate your completing our Customer Service Survey located at http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey.

Please contact Charles N. Farris of my staff at (978) 318-8336 or (978) 318-8338 if you have any questions.

Sincerely,

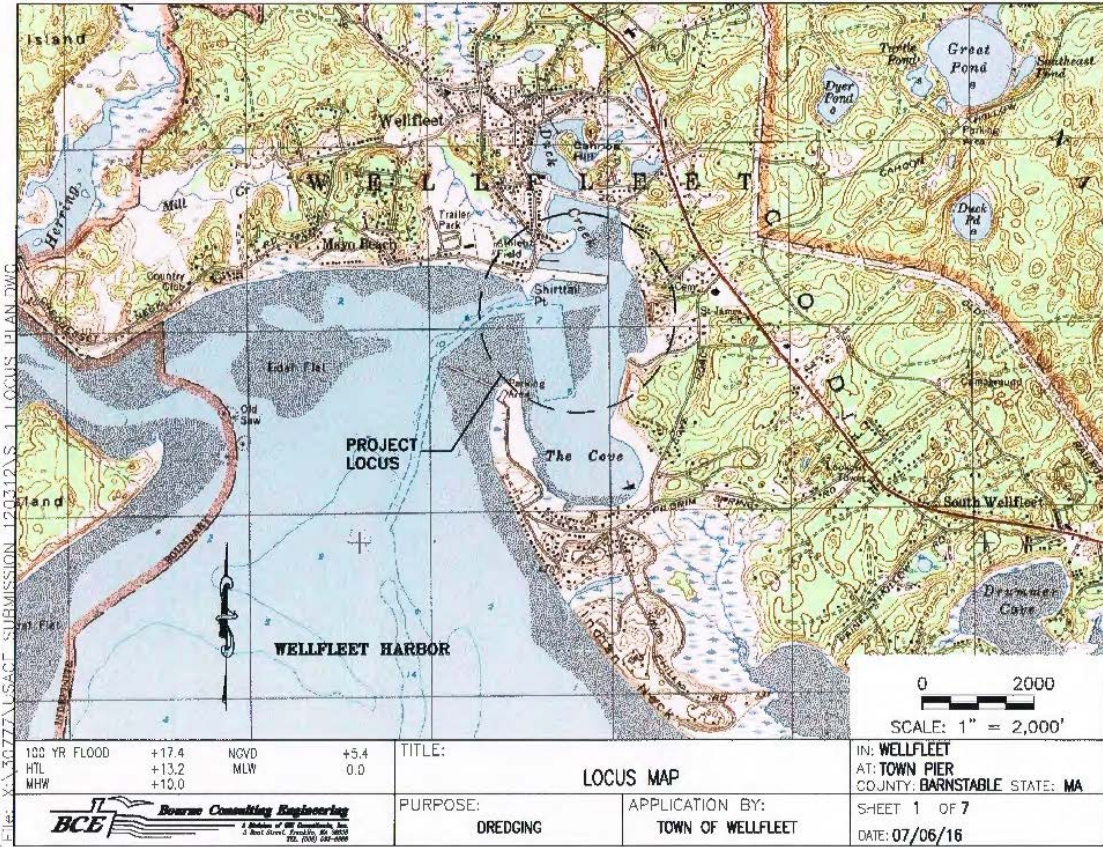


Robert J. DeSista
Chief, Policy and Technical Support Branch
Regulatory Division

Enclosures

cc: Daniel Robbins, GEI Consultants, drobbins@geiconsultants.com
Ed Reiner, U.S. EPA, Region 1, Boston, Massachusetts, reiner.ed@epa.gov
Chris Boelke, NMFS, Gloucester, MA; christopher.boelke@noaa.gov
David Simmons, USFWS; david_simmons@fws.gov
Robert Boeri, Coastal Zone Management, Boston, Massachusetts, robert.boeri@mass.gov
Jim Mahala, Acting Chief, DEP SERO, Wetlands and Waterways, Lakeville, Massachusetts; jim.mahala@mass.gov
DEP CERO, Wetlands and Waterways, Worcester, Massachusetts; cero_noi@mass.gov
David Wong, MassDEP, david.w.wong@mass.gov
MassDEP-WRP, Boston, Massachusetts; dep.waterways@mass.gov,

David Robinson, Massachusetts Board of Underwater Archaeological Resources (BUAR); david.s.robinson@mass.gov
Wellfleet Conservation Commission, 220 W. Main Street, Wellfleet, MA 02667



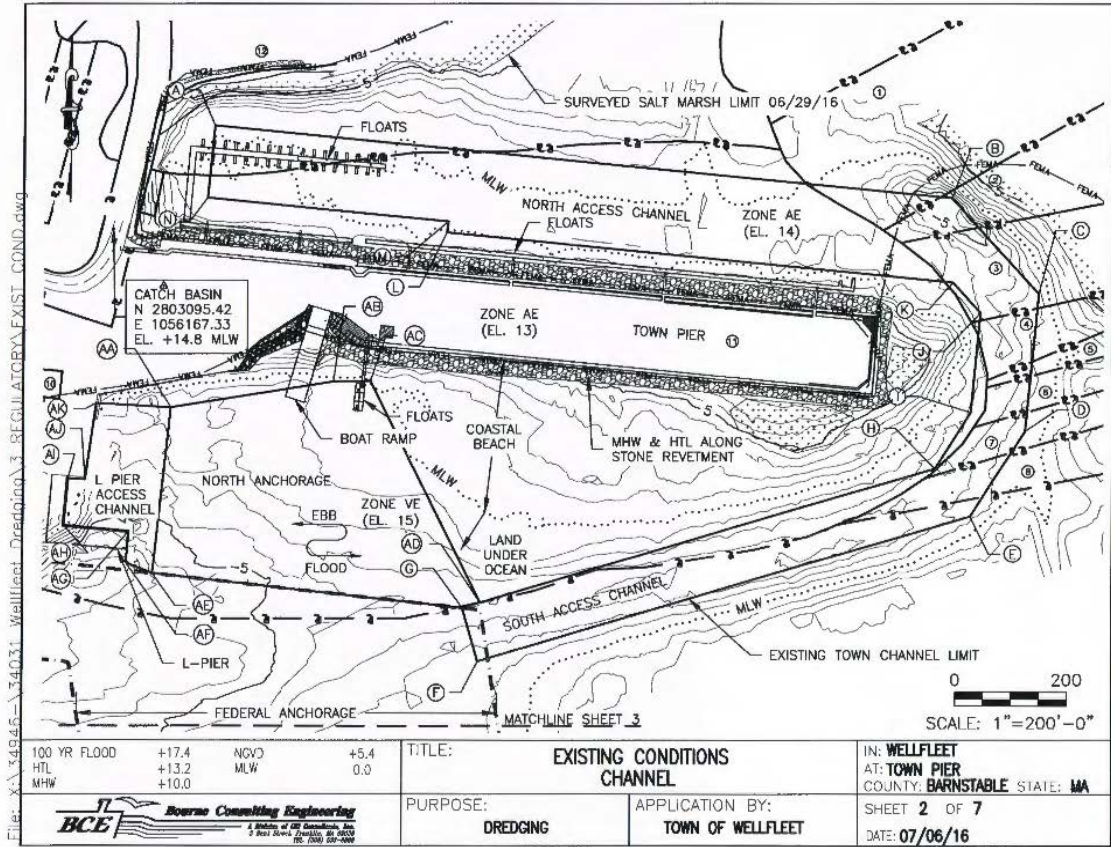
FILE: X:\30777\5\ACT SUBMISSION 120312\5 1 LOCUS PLAN.DWG

100 YR FLOOD	+17.4	NGVD	+5.4
HTL	+13.2	MLW	0.0
MHW	+10.0		



TITLE:	LOCUS MAP
PURPOSE:	DREDGING
APPLICATION BY:	TOWN OF WELLFLEET

IN: WELLFLEET
AT: TOWN PIER
COUNTY: BARNSTABLE STATE: MA
SHEET 1 OF 7
DATE: 07/06/16



File: R:\Working\WELFLEET_MA_TOWN_OF_1607951_Marina_Dredging_160_DRAWINGS_3_REGULATIO

COORDINATES OF EXISTING CHANNELS & ANCHORAGES:

A	N	2803280.7	E	1056351.6
B	N	2803151.1	E	1057890.3
C	N	2802979.6	E	1057845.9
D	N	2802732.3	E	1057822.0
E	N	2802579.3	E	1057723.6
F	N	2802318.5	E	1056830.3
G	N	2802414.6	E	1056802.3
H	N	2802664.8	E	1057659.7
I	N	2802766.0	E	1057724.8
J	N	2802945.2	E	1057742.1
K	N	2803000.3	E	1057692.2
L	N	2803089.2	E	1056772.6
M	N	2803109.1	E	1056775.1
N	N	2803151.3	E	1056339.1
O	N	2803207.7	E	1056325.9

COORDINATES OF EXISTING CHANNELS & ANCHORAGES:

P	N	2803075.7	E	1057691.2
Q	N	2802962.4	E	1057793.9
R	N	2802749.1	E	1057773.3
S	N	2802622.0	E	1057691.6
T	N	2802352.1	E	1056770.4
U	N	2802102.7	E	1056503.9
V	N	2800521.9	E	1056751.1
W	N	2801898.9	E	1056915.2
X	N	2800753.1	E	1057094.6
Y	N	2800637.1	E	1056353.6
Z	N	2801984.2	E	1056142.8
AA	N	2802774.7	E	1056273.5
AB	N	2802821.3	E	1056080.8
AC	N	2802822.3	E	1056635.8
AD	N	2802423.7	E	1056834.0
AE	N	2802476.5	E	1056240.7
AF	N	2802495.7	E	1056192.4
AG	N	2802552.5	E	1056197.3
AH	N	2802562.7	E	1056080.8
AI	N	2802646.9	E	1056088.2
AJ	N	2802645.2	E	1056118.3
AK	N	2802782.6	E	1056138.2
AL	N	2802675.2	E	1056090.4
AM	N	2802604.7	E	1056887.3

ABUTTERS

1.	125 MARVEN WAY	STEPHEN L DURKEE, JR. TRUSTEE
2.	40 RICHMAN LANE	ROBERT C DUBEAU, TRUSTEE MARSHA DUBEAU, TRUSTEE MARTHA CARROLL, TRUSTEE
3.	75 RICHMAN LANE	C/O MARC & RILEY SARAH STRAUSS DAVID J BERNSTEIN, TRUSTEE ANTONIA H BERNSTEIN, TRUSTEE
4.	139 NAUHAUGHT BLUFF RD	VON KAESBORG GIFFORD K/MARY C & WILLIAM POST TTEE
5.	137 NAUHAUGHT BLUFF RD	MICHAEL J MCNAMARA MARK J POWERS
6.	135 NAUHAUGHT BLUFF RD	ALLAN D BRASH
7.	131 NAUHAUGHT BLUFF RD	EDMUND B & HAROLD J FROST, TRUSTEES HENDERSON - FROST
8.	125 NAUHAUGHT BLUFF RD	STEPHEN B COONEY HAY MAGGREGOR & ALEXANDER TOWN OF WELLFLEET JOSEPH A DOWNEY JR TRUSTEE PAUL D MESSINA TRUSTEE JAY & WENDY BRONSTEIN JOANNE WUSCHKE TRUSTEE PHILIP S & CAROLYN BATTAGLIA STEVEN M & JEANNE B COSER WAYNE E & MARIE J OASTLER THEODORE P ORENSTEIN TRUSTEE CATHERINE R BARNHOLTZ CLIFFORD D NULMAN JANE TURANO THOMPSON MICHAEL R & ELIZABETH A BRITT ANDREW H CHESNICK WALTER & MARCIA TTES ROCKWOOD NANCY RAE HEYWOOD RAYMOND J & PATSY A MISIURA TOWN OF WELLFLEET TOWN OF WELLFLEET TOWN OF WELLFLEET WELLFLEET CONSERVATION TRUST
9.	3 KENDRICK AVE	
10.	265 COMMERCIAL ST	
11.	255 COMMERCIAL ST	
12.	205 COMMERCIAL ST	
13.	0 INDIAN NECK RD OFF	
14.	235 NAUSET RD	
15.	0 CHIPMANS COVE	
16.	0 NAUSET RD	

DREDGE AREAS:

LOCATION	AREA (SF)
INTERTIDAL WITHIN AREA 1	105,245
TOTAL AREA 1	637,720

DREDGE VOLUMES:

LOCATION	PROPOSED DREDGE (CY)	1' OVER-DREDGE (CY)	TOTAL (CY)
AREA 1 CHANNELS	65,300	16,000	81,300
AREA 1 NORTH ANCHORAGE & L PIER ACCESS	28,500	8,500	37,000

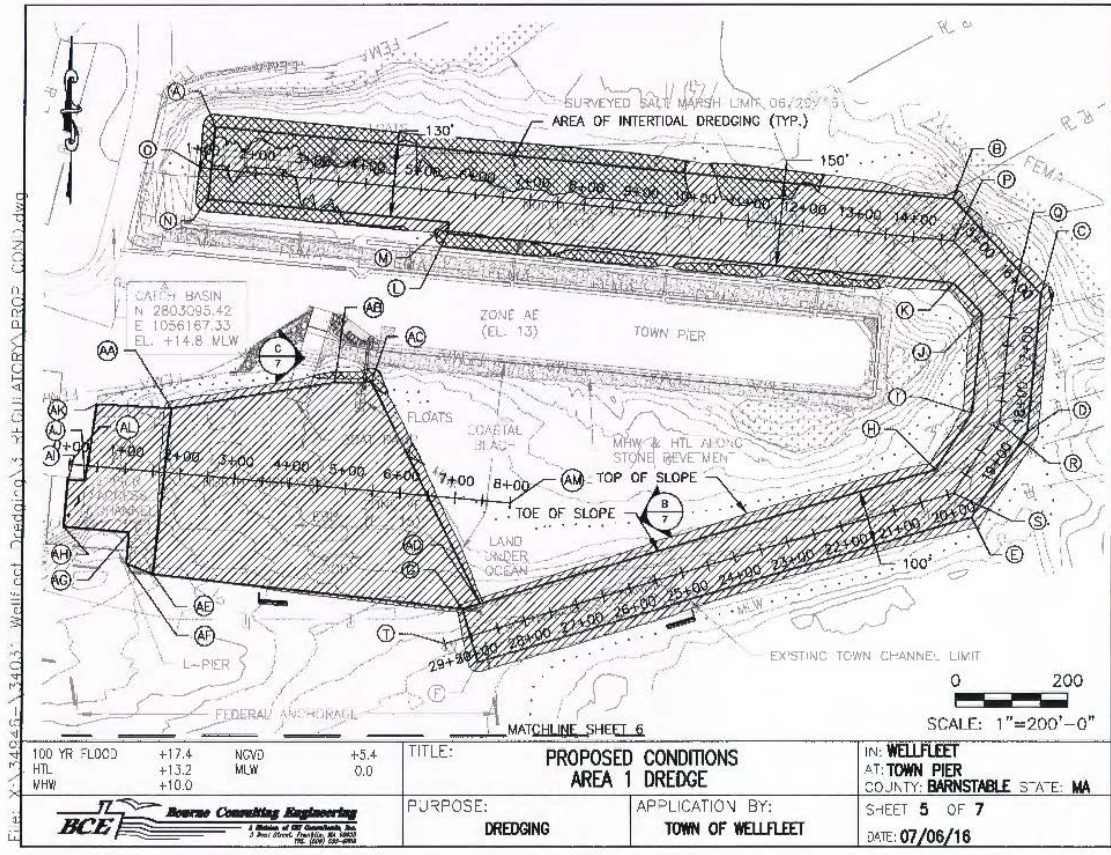
100 YR FLOOD	+17.4	NGVD	+5.4
HTL	+13.2	MLW	0.0
MHW	+10.0		



PROJECT NOTES

TITLE:	
PURPOSE:	DREDGING
APPLICATION BY:	TOWN OF WELLFLEET

IN:	WELLFLEET
AT:	TOWN PIER
COUNTY:	BARNSTABLE STATE: MA
SHEET	4 OF 7
DATE:	07/06/16 REV: 05/15/17



File: X:\34846\3403\Wellfleet_Dredging\3-Stimulator\PROP_CON.DWG

100 YR FLOOD	+17.4	NOVD	+5.4
HTL	+13.2	MLW	0.0
MHW	+10.0		

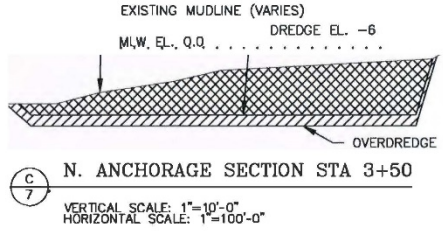
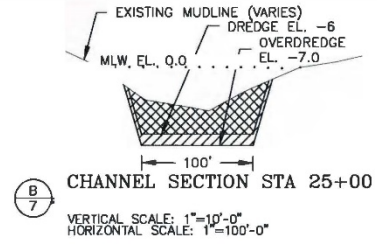
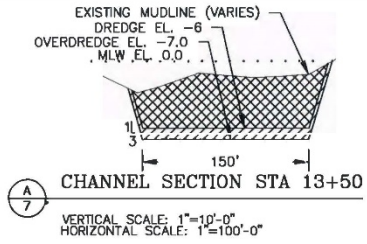
BCE *Boas Consulting Engineering*
1 Boston St. Suite 200, Boston, MA 02108
 Tel: 617-552-8800 Fax: 617-552-8801

TITLE:	PROPOSED CONDITIONS AREA 1 DREDGE
PURPOSE:	DREDGING

IN:	WELLFLEET
AT:	TOWN PIER
COUNTY:	BARNSTABLE STATE: MA
SHEET	5 OF 7
DATE:	07/06/16

APPLICATION BY:
TOWN OF WELLFLEET

File: X:\34946\34946-34031 Wellfleet Dredging\3. REGULATORY\PROP_COND.dwg



EXISTING MUDLINE (VARIES)
DREDGE EL. -6

OVERDREDGE EL. -7

MLW EL. Q.Q.

100 YR FLOOD	+17.4	NGVD	+5.4
HTL	+13.2	MLW	0.0
MHW	+10.0		

BCE *Bourne Consulting Engineering*
A Division of BE Consultants, Inc.
5 First Street, Barnstable, MA 02536
TEL: 508-233-3800

TITLE: **PROPOSED CONDITIONS SECTIONS**

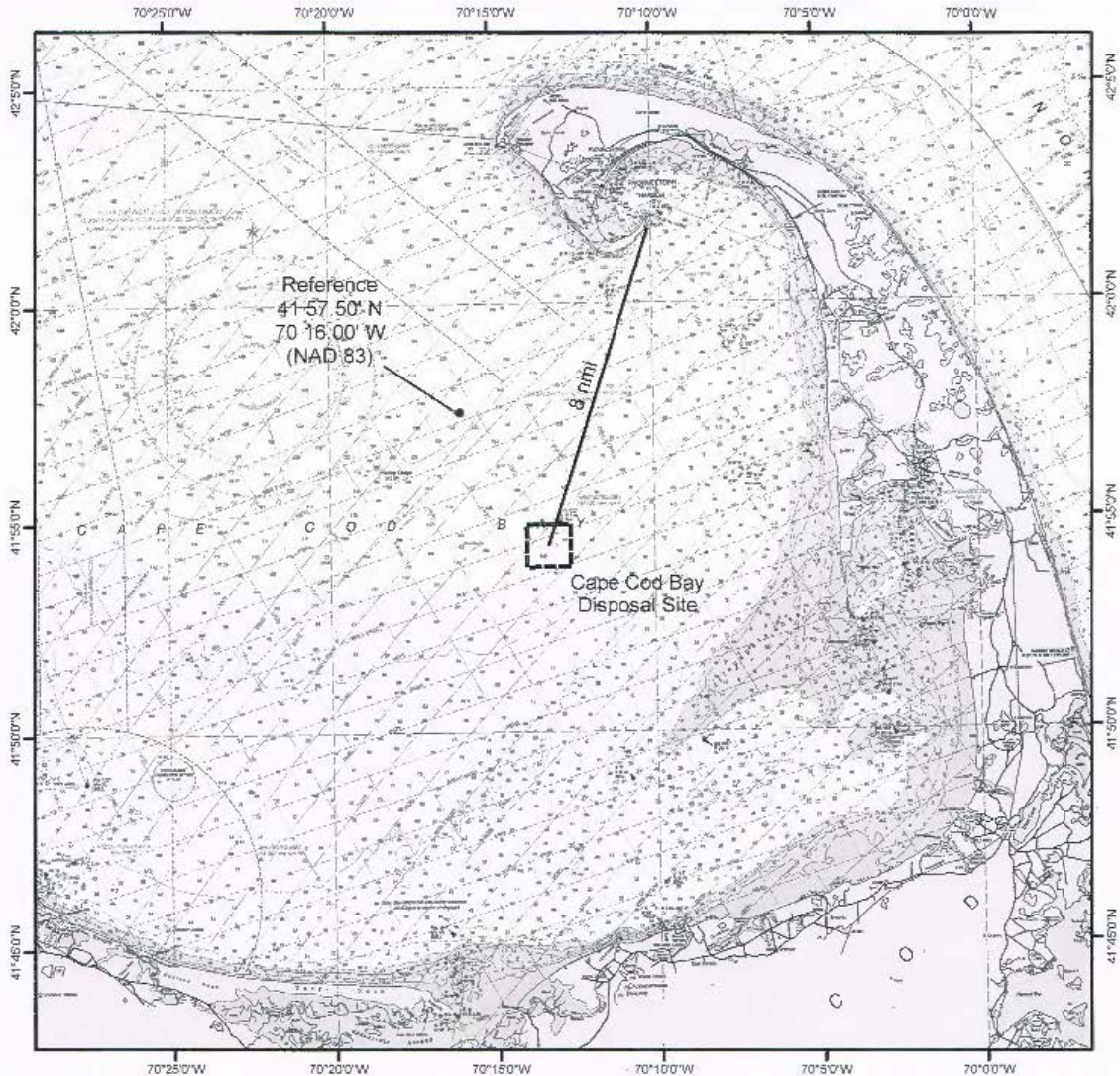
PURPOSE: **DREDGING**

APPLICATION BY: **TOWN OF WELLFLEET**

IN: **WELLFLEET**
AT: **TOWN PIER**
COUNTY: **BARNSTABLE** STATE: **MA**

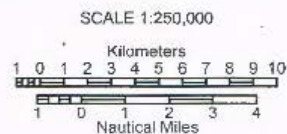
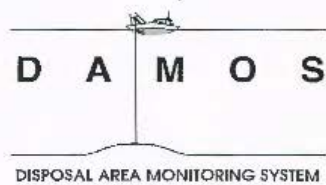
SHEET **7** OF **7**

DATE: **07 06 16**



CAPE COD BAY DISPOSAL SITE

Description: The Cape Cod Bay Disposal Site (CCBDS) is centered at coordinates 41° 54.406' N, 70° 13.268' W (NAD 83) and is located 8.0 nmi (14.9 km) southwest of Long Point, Provincetown, Massachusetts. The site has a relatively flat, featureless seafloor with an average water depth of 102 ft (31 m). The authorized disposal point (within the overall disposal area) is specified for each dredging project in other project documents

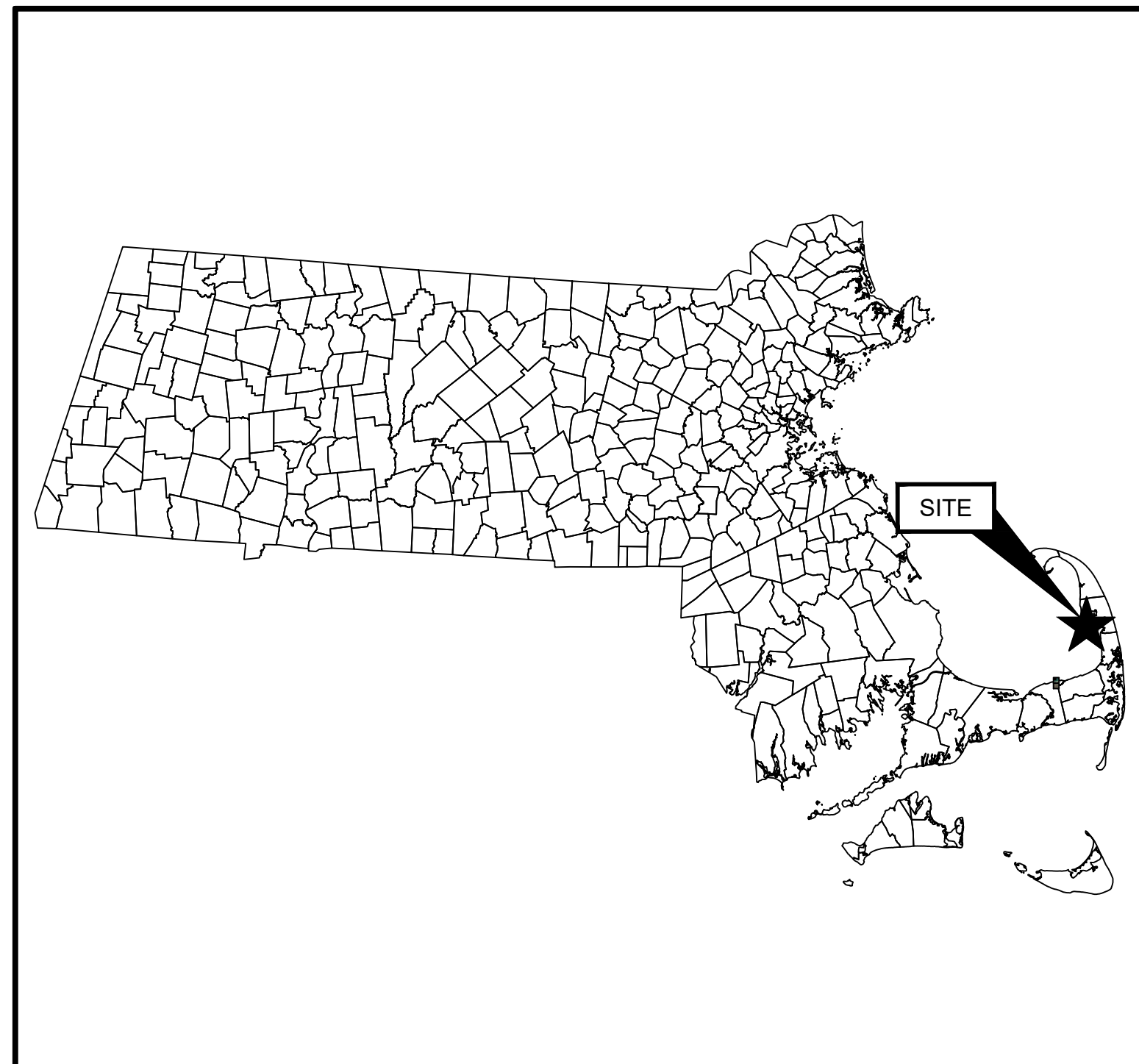


NOTE: This chart is not intended for use in navigation.



2023 WELLFLEET HARBOR DREDGING AREA II

255 COMMERCIAL ST.
WELLFLEET, MA 02667



STATE MAP
(NOT TO SCALE)



SITE LOCATION MAP
(NOT TO SCALE)

PREPARED FOR:

TOWN OF WELLFLEET
300 MAIN ST.
WELLFLEET, MA
(508) 349-0300

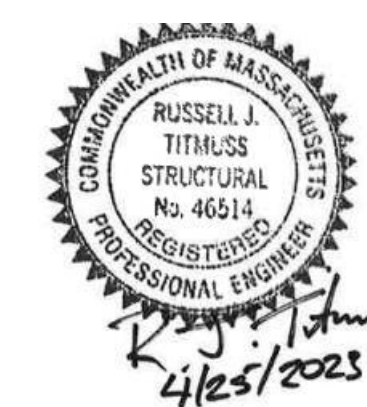
PREPARED BY:

GEI CONSULTANTS, INC.
124 GROVE ST., SUITE 300
FRANKLIN, MA 02038
(508) 533 - 6666



THIS DOCUMENT, AND THE IDEAS AND DESIGNS INCORPORATED HEREIN, IS AN INSTRUMENT OF PROFESSIONAL SERVICE, IS THE PROPERTY OF GEI CONSULTANTS AND IS NOT TO BE USED, IN WHOLE OR IN PART, FOR ANY OTHER PROJECT WITHOUT THE WRITTEN AUTHORIZATION OF GEI CONSULTANTS.

GEI PROJECT NO. 2004486
APRIL 2023



FOR BID

DWG. NO. G-001
SHEET NO. 01 OF 05
REV NO. 0

OSHA REQUIREMENTS:

1. PURSUANT TO M.G.L. c.30, §39S, ANY PERSON SIGNING A CONTRACT TO WORK ON A PUBLIC BUILDING OR PUBLIC WORKS PROJECT ESTIMATED TO COST MORE THAN \$10,000, MUST CERTIFY UNDER THE PAINS AND PENALTIES OF PERJURY THAT ALL EMPLOYEES EMPLOYED ON THE WORKSITE, OR IN WORK SUBJECT TO THE BID, HAVE SUCCESSFULLY COMPLETED AT LEAST TEN HOURS OF OSHA APPROVED TRAINING. PROOF OF OSHA CERTIFICATION OF ALL WORKERS ONSITE WILL BE REQUIRED BY THE TOWN OF WELLFLEET PRIOR TO THE START OF WORK.

SURVEY CONTROL AND BASELINES

1. HYDROGRAPHIC DATA SHOWN HEREON WAS COLLECTED ON JUNE 2, 2022 BY GEI CONSULTANTS, INC. AND CAN ONLY REFLECT CONDITIONS AS THEY EXISTED DURING THE TIME OF THE SURVEY.
2. VERTICAL DATUM FOR PROJECT IS MEAN LOW WATER DATUM (MLW).
3. ELEVATIONS ARE SHOWN IN FEET AND BASED ON MEAN LOW WATER DATUM (MLW). SEE TIDAL DATUM FOR DATUM CONVERSIONS. NEGATIVE VALUES REPRESENT DEPTH BELOW MLW.
4. HORIZONTAL POSITION AND COORDINATES ARE BASED ON MASSACHUSETTS MAINLAND STATE PLANE COORDINATE SYSTEM (NAD83).
5. PROJECT BASE PLAN, FLOAT LAYOUT AND MARINA PROVIDED BY THE TOWN OF WELLFLEET.
6. PROPERTY LINES AND EXISTING BUILDINGS ARE APPROXIMATE AND OBTAINED FROM MASSGIS.
7. WETLAND BOUNDARY WAS PROVIDED BY MASSGIS AND ALSO SURVEYED BY GEI CONSULTANTS IN 2016.

SITE PREPARATION

1. THE CONTRACTOR SHALL PROVIDE PHOTOGRAPHIC AND VIDEO RECORD OF EXISTING SITE CONDITIONS OF THE WORK AREA, BUILDINGS, MARINA, AND AREAS DIRECTLY ADJACENT TO WORK AREAS.
2. THE CONTRACTOR SHALL INSTALL ALL SIGNAGE PRIOR TO INITIATION OF CONSTRUCTION ACTIVITIES INCLUDING OWNER PROJECT SIGNAGE, DEP FILE NUMBER, AND STATE AND FEDERAL MANDATED SIGNAGE.
3. CONTRACTOR SHALL HAVE IN-PLACE TRASH AND SANITARY FACILITIES FOR THE WORK PLACE.
4. DISCOVERY OF INCONSISTENT SITE INFORMATION OR CONDITIONS SHALL BE IMMEDIATELY CONVEYED TO THE HARBORMASTER PRIOR TO COMMENCING OR CONTINUING CONSTRUCTION.
5. THE CONTRACTOR SHALL FIELD VERIFY EXACT LOCATIONS OF UTILITIES AND EXISTING STRUCTURES AS MAY BE REQUIRED.
6. THE CONTRACTOR SHALL BE FULLY RESPONSIBLE FOR ANY AND ALL DAMAGES OCCURRING AS A RESULT OF THE CONTRACTOR'S FAILURE TO LOCATE AND PROTECT UNDERGROUND UTILITIES AND STRUCTURES. ALL REPAIRS SHALL BE MADE AT THE CONTRACTOR'S EXPENSE.
7. THE CONTRACTOR SHALL PROTECT ALL EXISTING STRUCTURES AND SHALL PERFORM THE WORK IN A MANNER THAT AVOIDS DAMAGE TO EXISTING STRUCTURES. STRUCTURES INCLUDE, BUT ARE NOT LIMITED TO, BUILDINGS, PIERS, BULKHEADS, FLOATS, BOAT RAMPS, AND RIPRAP SLOPES. CONTRACTOR SHALL REPAIR ANY DAMAGE AT NO ADDITIONAL COST TO THE TOWN.
8. CONTRACTOR SHALL SUPPLY ALL NECESSARY TEMPORARY UTILITIES FOR CONSTRUCTION INCLUDING WATER, POWER, LIGHTING, DATA AND TELEPHONE.
9. CONTRACTOR SHALL READ AND UNDERSTAND ALL REGULATORY CONDITIONS ASSOCIATED WITH THE PROJECT AND SHALL COMPLY WITH ALL ENVIRONMENTAL REQUIREMENTS AND PERMIT CONDITIONS.
10. CONTRACTOR IS RESPONSIBLE FOR SITE SAFETY AND SHALL PROVIDE SIGNAGE, TEMPORARY BARRIERS, FENCING, OR EQUIVALENT TO PREVENT UNAUTHORIZED ACCESS INTO WORK AREAS AT ALL TIMES.
11. CONTRACTOR SHALL PERFORM THE WORK TO MINIMIZE IMPACTS ON VESSEL NAVIGATION IN THE HARBOR.
12. CONTRACTOR SHALL COORDINATE WITH ADJACENT ONGOING FEDERAL DREDGING PROJECT FOR ACCESS AND NAVIGATION THROUGH THE HARBOR.
13. ALL CONSTRUCTION ACTIVITY SHALL BE IN ACCORDANCE WITH OSHA STANDARDS AND LOCAL AND STATE REGULATIONS.

EXISTING SITE CONDITIONS:

1. CONTRACTOR SHALL NOTE THAT ALL EXISTING STRUCTURE DETAILS, DIMENSIONS, AND LOCATIONS ARE APPROXIMATE. BIDDERS SHALL MAKE THEIR OWN ASSESSMENT OF EXISTING CONDITIONS.
2. THE TOWN WILL PERMIT THE CONTRACTOR TO HAVE A LAYDOWN AREA ON THE PIER FOR USE DURING CONSTRUCTION. THE LOCATION AND SIZE OF THE LAYDOWN AREA SHALL BE APPROVED BY THE TOWN. THE CONTRACTOR MAY ASSUME A LAYDOWN AREA OF 100 FEET X 100 FEET WILL BE AVAILABLE. NO OTHER EQUIPMENT SHALL BE PERMITTED ON WELLFLEET TOWN PROPERTY DURING CONSTRUCTION.
3. CONTRACTOR SHALL NOTIFY HARBORMASTER WHEN BURIED STRUCTURES OR OBSTRUCTIONS ARE FOUND.

EXISTING STRUCTURES

1. EXISTING STRUCTURES AND AMENITIES WITHIN THE PROXIMITY OF THE WORK SHALL BE PROTECTED TO PREVENT ACCIDENTAL DAMAGE BY CONSTRUCTION ACTIVITIES.
2. EXISTING FLOATS AND MOORINGS WILL BE REMOVED BY THE TOWN PRIOR TO CONTRACTOR COMMENCING DREDGING ACTIVITIES AT THE SITE. EXISTING MOORING PILES WILL REMAIN IN PLACE. ANY DAMAGE OR IMPACT TO THE MOORING PILES MUST BE CORRECTED IN KIND AT NO ADDITIONAL COST TO THE TOWN.


DREDGING

1. THE CONTRACTOR SHALL DREDGE TO DEPTHS SHOWN ON THE CONTRACT DRAWINGS.
2. ALL AREAS INCLUDE AN OVERDREDGE PAYMENT LIMIT DEPTH AS SHOWN ON THE PLAN. NO WORK OUTSIDE THE PAYMENT LIMIT SHALL BE CONSIDERED FOR COMPENSATION.
3. CONTRACTOR SHALL NOTE LIKELY PRESENCE OF DEBRIS WITHIN THE DREDGING FOOTPRINT INCLUDING, BUT NOT LIMITED TO, MOORING BLOCKS, CHAINS, STONE, CONCRETE, TIMBER, TIMBER PILES OR COMMERCIAL FISHING EQUIPMENT. ALL DEBRIS SHALL BE SEGREGATED FOR DISPOSAL IN ACCORDANCE WITH THE CONTRACT DOCUMENTS.
4. CONTRACTOR SHALL NOTE THIS PROJECT REQUIRES INTERTIDAL DREDGING.
5. CONTRACTOR SHALL NOTE AND COMPLY WITH ALL TIME OF YEAR (TOY) RESTRICTIONS IN THE PROJECT PERMITS.
6. CONTRACTOR SHALL PROVIDE THE TOWN A MINIMUM OF THREE WORKING DAYS NOTICE PRIOR TO MOVING INTO THE DREDGE AREA. THE TOWN WILL ARRANGE FOR VESSELS TO BE RELOCATED TO KEEP WORK AREA CLEAR.
7. CONTRACTOR SHALL NOTE THAT NO DREDGING OR DISTURBANCE SHALL OCCUR WITHIN THE AREA OF CRITICAL ENVIRONMENTAL CONCERN.


DATUM CONVERSION TABLE

100 YR FLOOD	+17.06
HTL	+12.86
MHW	+9.66
NAVD88	+5.89
MLW	+0.0
MLLW	-0.34

Attention:



If this scale bar does not measure 1" then drawing is not original scale.



4/25/2023

Designed: DBR

Drawn: JSF

Checked: DBR

Approved: RJT

P.E. No.: 46514

GEI Project: 2004486



Town of Wellfleet
300 Main St
Wellfleet, MA 02667

**2023 WELLFLEET HARBOR
DREDGING - AREA II**

WELLFLEET, MA

NO	DATE	ISSUE/REVISION	APP
0	4/26/2023	FOR BID	DBR

SHEET NAME
PROJECT NOTES

SHEET NO.
C-002

DWG NO.	SHEET NO.	DESCRIPTION
G-001	1	TITLE SHEET
G-002	2	PROJECT NOTES
C-001	3	EXISTING CONDITIONS PLAN
C-002	4	PROPOSED CONDITIONS PLAN
C-003	5	PROPOSED SECTIONS

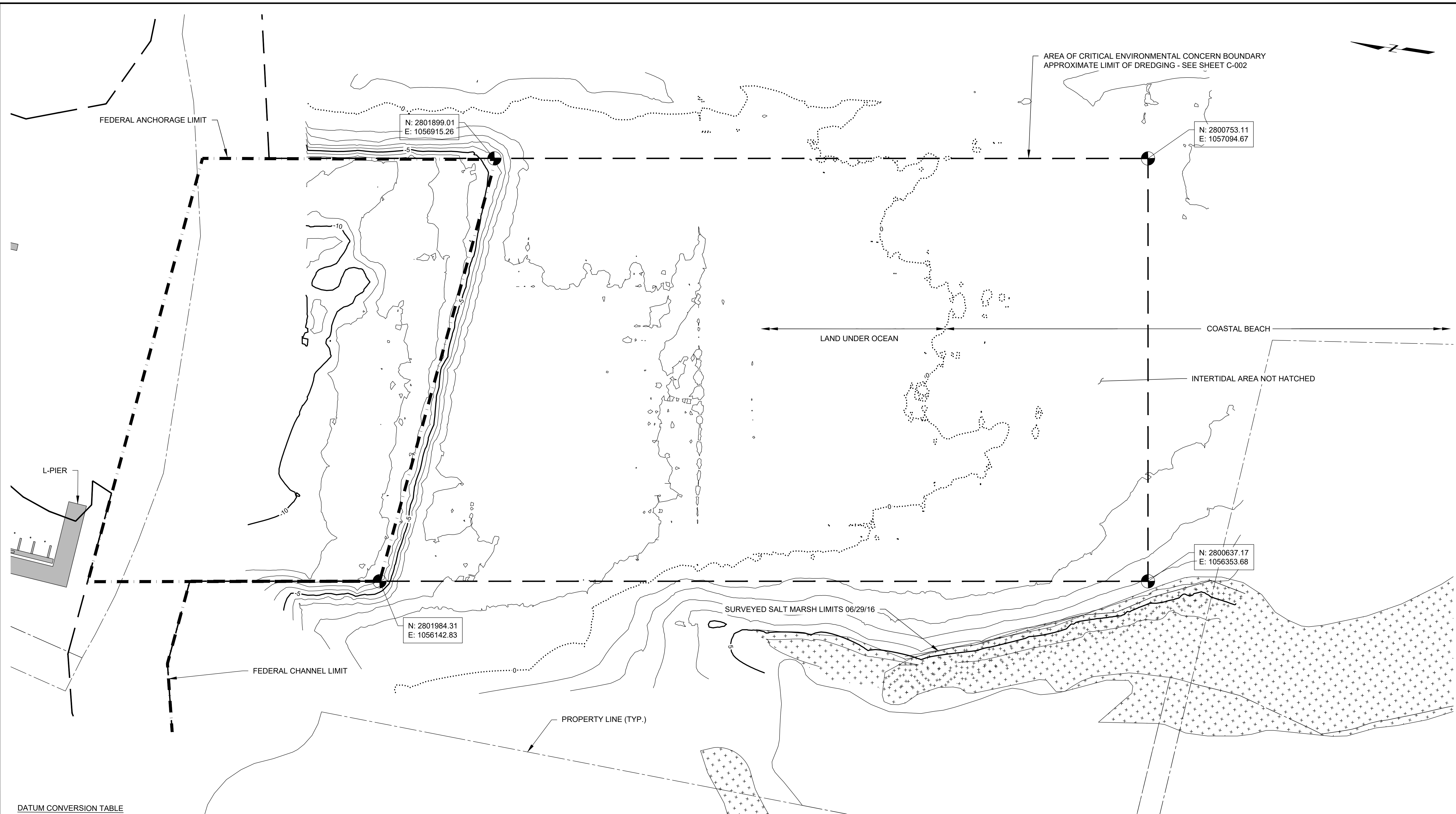
LEGEND

CONTOUR	— 15 —
PROPERTY LINE	— R —
WETLAND BOUNDARY	
INTERTIDAL AREA	
DREDGE AREA (EL. -6.0)	
DREDGE TOE LIMITS	
FEDERAL CHANNEL	
REVTMENT	
DREDGE COORIDNATES	

BASE BID (ESTIMATED AVAILABLE VOLUME)	
ELEVATION (MLW)	VOLUME (CU.YDS)
EL. -6.0 DREDGE	82,350
EL. -7.0 OVERDREDGE	17,650
TOTAL	100,000

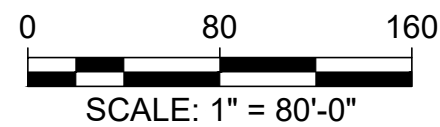
ADD ALT 1 (ESTIMATED AVAILABLE VOLUME)	
ELEVATION (MLW)	VOLUME (CU.YDS)
EL. -6.0 DREDGE	97,400
EL. -7.0 OVERDREDGE	16,500
TOTAL	113,900

For Bid



DATUM CONVERSION TABLE

100 YR FLOOD	+17.06
HTL	+12.86
MHW	+9.66
NAVD88	+5.89
MLW	+0.0
MLLW	-0.34



Attention:

 If this scale bar does not measure 1" then drawing is not original scale.



Designed:	DBR
Drawn:	JSF
Checked:	DBR
Approved:	RJT
P.E. No:	46514
GEI Project	2004486



Town of Wellfleet
 300 Main St
 Wellfleet, MA 02667

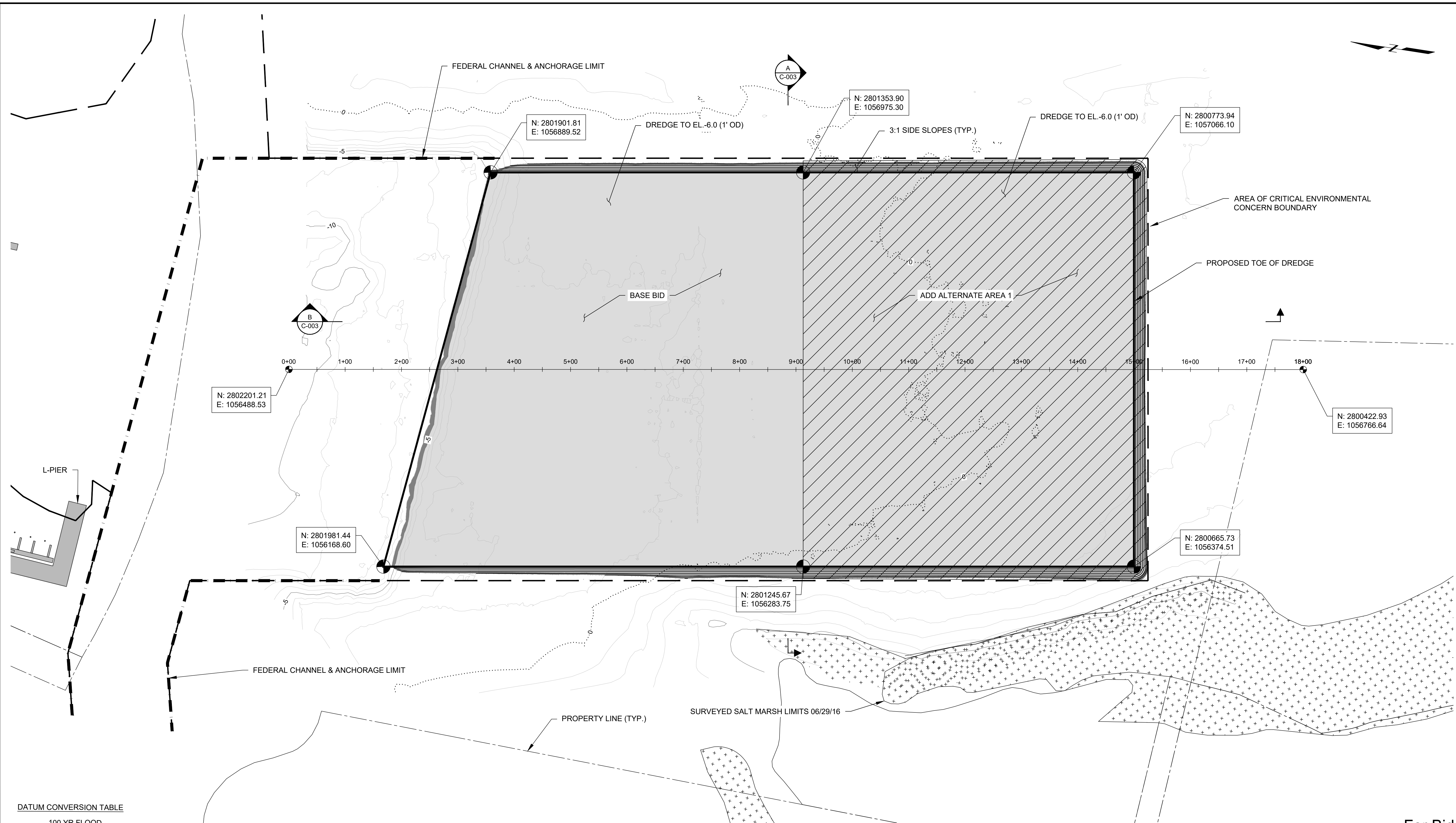
**2023 WELLFLEET HARBOR
 DREDGING - AREA II**

WELLFLEET, MA

NO	DATE	ISSUE/REVISION	APP
0	4/26/2023	FOR BID	DBR

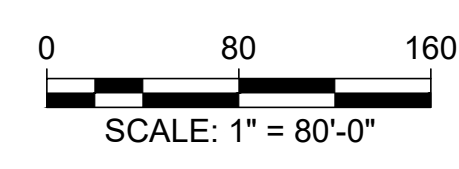
SHEET NAME
**EXISTING CONDITIONS
 PLAN**

For Bid
 SHEET NO.
C-001



DATUM CONVERSION TABLE

100 YR FLOOD	+17.06
HTL	+12.86
MHW	+9.66
NAVD88	+5.89
MLW	+0.0
MLLW	-0.34



Attention:

Designed: DBR
 Drawn: JSF
 Checked: DBR
 Approved: RJT
 P.E. No: 46514
 GEI Project: 2004486

4/25/2023

Town of Wellfleet
 300 Main St
 Wellfleet, MA 02667

**2023 WELLFLEET HARBOR
 DREDGING - AREA II**

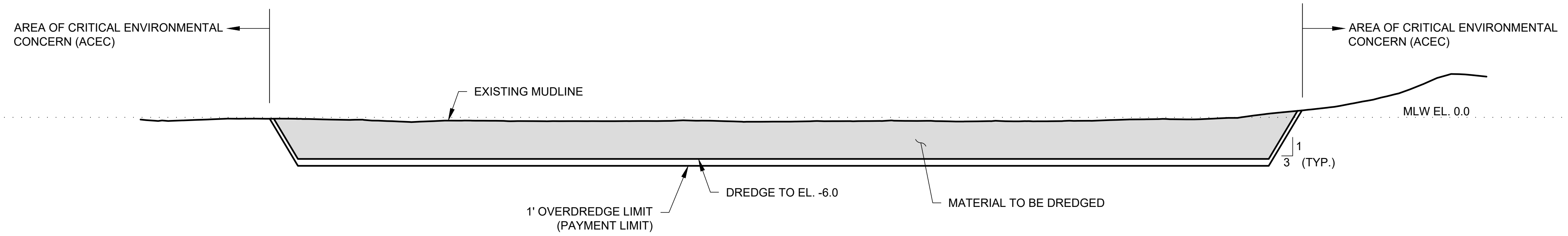
WELLFLEET, MA

NO	DATE	ISSUE/REVISION	APP
0	4/26/2023	FOR BID	DBR

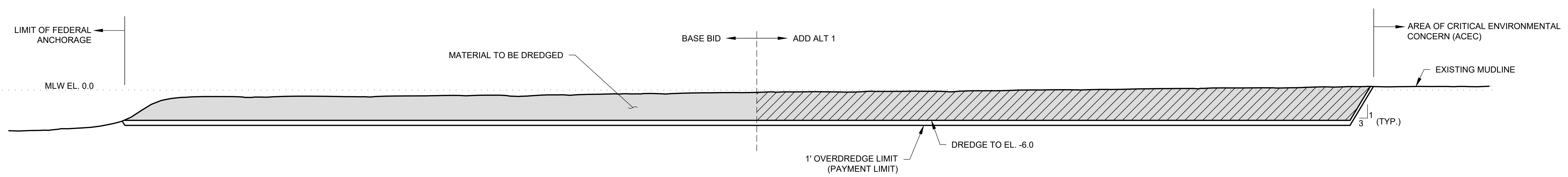
SHEET NAME
**PROPOSED CONDITIONS
 PLAN**

SHEET NO.
C-002

For Bid



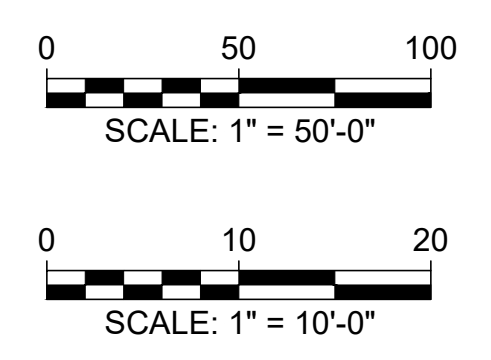
A DREDGE SECTION
 C-003 SCALE: 1" = 50'-0" H
 1" = 10'-0" V



B DREDGE SECTION
 C-003 SCALE: 1" = 50'-0" H
 1" = 10'-0" V

DATUM CONVERSION TABLE

100 YR FLOOD	+17.06
HTL	+12.86
MHW	+9.66
NAVD88	+5.89
MLW	+0.0
MLLW	-0.34



Attention:

If this scale bar does not measure 1" then drawing is not original scale.

Designed:	DBR
Drawn:	JSF
Checked:	DBR
Approved:	RJT
P.E. No:	46514
GEI Project	2004486



Town of Wellfleet
 300 Main St
 Wellfleet, MA 02667

**2023 WELLFLEET HARBOR
 DREDGING - AREA II**

WELLFLEET, MA

NO	DATE	ISSUE/REVISION	APP
0	4/26/2023	FOR BID	DBR

SHEET NAME	PROPOSED SECTIONS
------------	-------------------

SHEET NO.	C-003
-----------	-------

For Bid




SELECTBOARD

AGENDA ACTION REQUEST
Meeting Date: June 20, 2023

X

BUSINESS

~ E ~

REQUESTED BY:	The Entire Town of Wellfleet
DESIRED ACTION:	To recognize Joe Pellegrino on his 100th Birthday 
PROPOSED MOTION:	No Motion Needed
ACTION TAKEN:	Moved By: _____ Seconded By: _____ Condition(s):
VOTED:	Yea _____ Nay _____ Abstain _____

TOWN OF WELFLEET ~ SELECTBOARD

300 MAIN STREET WELFLEET, MASSACHUSETTS

THIS CERTIFICATE OF APPRECIATION FOR YOUR SERVICE, DEDICATION AND 100TH BIRTHDAY!
IS PRESENTED TO

JOE PELLEGRINO

Thank you for being an exemplary Volunteer, Resident and
Human for the Town of Wellfleet.
Happy 100th Birthday!

JULY 20, 2023



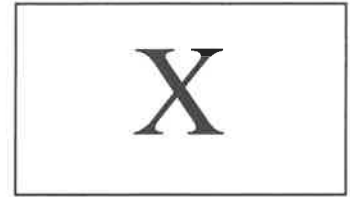
Ryan Curley, Selectboard
Chair

Richard J. Waldo, Town
Administrator



SELECTBOARD

AGENDA ACTION REQUEST
Meeting Date: June 20, 2023



BUSINESS

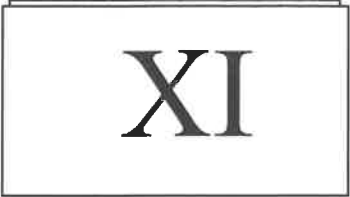
~ F ~

REQUESTED BY:	Ryan Curley ~ Chair
DESIRED ACTION:	Update on Town Staffing
PROPOSED MOTION:	If a motion is needed one will be made at the time of the meeting.
ACTION TAKEN:	Moved By: _____ Seconded By: _____ Condition(s):
VOTED:	Yea _____ Nay _____ Abstain _____



SELECTBOARD

AGENDA ACTION REQUEST
Meeting Date: June 20, 2023



SELECTBOARD REPORTS:

Reported by:	Topic:



SELECTBOARD

AGENDA ACTION REQUEST
Meeting Date: June 20, 2023

XII

TOWN ADMINISTRATOR REPORTS

- **Please see Selectboard packet for full report**



MEMORANDUM

TOWN OF WELLFLEET MASSACHUSETTS 02667
Tel (508) 349-0300 Fax (508) 349-0305
www.wellfleet-ma.gov

To: Selectboard
From: Richard J. Waldo, Town Administrator
Cc: Rebekah Eldridge, Executive Assistant to Town Administrator
Subject: Department Update Report for the June 6, 2023 Select Board Meeting
Date: June 15, 2023

Administration

- Administration is working with HR and Dept. Heads on recruitment of staff including finding interim help in the critical area of Administration.
- The administration has had extensive meetings with National Oceanic Atmospheric Association on the recent \$14.6 million dollar grant award for the Herring River Restoration Project. We are thankful for their contribution and look forward to our continued partnership throughout the project.
- The administration is making early preparations for a Fall Town Meeting in September.
- The Town Administration and Financial Team is working hard to wrap up the fiscal year with final year-end budgetary transfer tentatively scheduled for July 13, 2023. A joint meeting by the Select Board and Finance Committee will be required to vote on those transfers.
- Want to wish everyone a Happy 4th of July and please join us for the annual parade at 10am.

Building

- No Update

Community Services

Council on Aging

- The grounds at the ACC have been trimmed, mulched and planted with new perennials thanks to the efforts of Wayne Clough and with the assistance of the Friends of the Council on Aging who fronted the funds for this activity and who will be reimbursed from the CPC grant that Wayne received for FY24.

SOCIAL AND HUMAN SERVICES

- The cut off date for applications for Social and Human Services grants was June 10th. At the end of the day, there are 13 agencies that have applied for funding. The applications will be considered by the Social and Human Services Committee and all applicants will be notified of their decisions by July 1. This year, we switched to electronic communication so the results will be emailed.

BEACHES

- Our annual Surf/Rescue School took place on Sunday, June 11th at the WFD training room and at Gull Pond for water stations and the Swim/Run. It serves as a refresher for returning Guards and a try-out for Rookies. This is the PP of the morning training. In addition, Lt. Shawn Clark spoke to the Guards about packaging up patients and the transfer from Lifeguard First Responders to the WFD. Off. Mark Spigel spoke to them about Cahoon Hollow and the newly amended Compendium on open containers of alcohol at CH.
- Lifeguards as well as parking lot staff will be on duty beginning June 17th.
- As of Saturday, June 10th, sales at the Beach Office were up over last year by \$32,000.
- The Beach Office is open daily (yes, that includes Sundays) and this year we are again set up for walk up sales as well as online sales.

Harbormaster

- Low levels of seasonal staffing been a difficult hurdle, however we have been keeping up with other marinas nearby as far as hours go by spreading staff hours thinner and staying open as late as possible right now on weekends, and more as the season picks up as well.
- All the waterlines which supply water to our docks via hoses and spigots and Electric lines are connected officially to the docks, including new waterlines on our front docks & public dock. These new waterlines extend down the gangways to allow for people to use hoses and wash down their boats at the public dock. They also extend down the following gangways and allow for the tenants of those dock to use water as well.
- Our Fueling stations for boats and Municipal Vehicles are now up and running officially as of Friday the 26th of May. Accounts have been created for each of the Wellfleet departments so they may fuel up at the municipal use pump, and our boaters are very pleased with our new fuel setup on the docks.
- Water Lines and Electric are all connected and turned on to our main slip docks, including our 15 new floats that have replaced all old cement docks. Any repairs needed to our water lines have been addressed promptly as noticed.
- All gangways are now into our docks with the help from the Department of Public Works, most of our boaters are In their respective slips and gearing up for a busy boating season.
- Many people are starting their boats up for the first time for the season, and with that often comes technical and mechanical issues- We have been here to assist and tow anyone in who has engine issues or otherwise as they “wake up” their boats for the season.
- We’ve completed a successful Memorial day weekend, With a very busy boating day on Saturday the 27th, A perfect test run of how we hope our summer season turns out.
- New Guide lines have been painted on the pump out dock, Public Dock, Fuel dock and Wellfleet Marine Corps. Private dock to indicate their use. The fuel dock and public dock have been painted with indicators to show there is a time limit to tying up on the dock. 15 minutes for the public dock for offloading and loading of passengers, and fuel dock is to

strictly only be tied up to for fueling purposes, this will be strictly enforced. No offloading and loading of passengers should occur on the fuel dock, as that would violate safety codes. Any charters or pleasure vessels looking to onload passengers should be directed to the first gangway to the right of the launch ramp, which is the public dock, marked with a white line.

- Fire Marshall has come down and assessed our new fueling systems and made sure that everything is properly identified and labeled as deemed fit by the fire code. All proper signage is now in place at the pumps, including indicators for fuel shut off valves, and stickers to identify and mark the sale of diesel at the respective pump. Municipal use of the municipal fueling dock has also gone well so far, with the Fire Department and Health and Conservation both having a successful and easy experiences with the new pump. Municipal vehicles are encouraged to come down to the marina and try it out.
- The pump out station has been replumbed and is in business for the season for the vessels with heads on board that need it. Sailboats and Motorboats moored in our harbor are welcome to come dock at the pump out station before going out to their mooring, or at any time as long as we are open for a pump out.
- All 10 of our Transient Moorings are now in, as well as many residential moorings, so boaters are encouraged to move their boats out to their moorings for the season. Boats that belong in moorings and instead have been temporarily placed in a slip until the mooring has been placed are now to go out to their designated spot in the mooring field.
- Our second public row dinghy is now in the water for public use to access moorings.
- Informed boaters on the new addendum on Striper catching limits- which is now limited to one fish, and it must be between 28 in to under 31 inches. With recent developments and state and federal regulations on fishing, it is important to keep the fishing population informed and up to date on policy.

Health/Conservation

- No Update

Fire

- The Chief and other Department members will be attending the graduation ceremony of Firefighter/EMT Brendan Cutting from the Massachusetts Fire Academy, Bridgewater campus, on June 16, 2023. Brendan will return to us as a certified Firefighter I/II after three months of his very successful completion of this program.
-
- We have made conditional offers of employment to two (2) individuals to fill our full-time positions that were approved at April's Annual Town Meeting. The next steps include full background checks, CORI checks, pre-employment physicals, etc.
- We are in the final stages of completing up and closing out our Federal Emergency Management Agency (FEMA), Staffing for Adequate and Emergency Response (SAFER) grant which has been in place for the last three (3) years. Again, this entire grant project, to include managing and working through the Federal government's bureaucracy and constant IT issues has been very challenging and at times quite frustrating. Our Administrative Assistant, Theresa Townsend, has been very successful in navigating through these challenges to the benefit of the Town of Wellfleet. Once the final closeout

authorizations are approved by FEMA we will have an accurate and final account of the funds received through this grant.

- Again, we continue to monitor and keep up to date on the prospective changes with respect to the Lower Cape Ambulance Association's (LCAA) longevity as a 911 EMS service provider, and, the extension of a contract or agreements between the LCAA and the Town's of Truro and Provincetown. This is a very fluid situation and most likely will continue to be so.
- Congratulations to Firefighter/EMT Rob Czujak who has passed both his written and practical Paramedic exams and is now finishing up this process performing the last step of his certification finishing up required mentor and "ride time". Excellent job Rob!

Library

- Our annual programming partnership with the Wellfleet Historical Society & Museum has begun. On Wednesday, June 21st, please join us for a very special program with Mass. Audubon on the History of Wellfleet's bird population. This should be a fascinating evening. It begins at 7:00 PM.
- Summer Reading kicks off on Wednesday, June 28th at 3:00 PM. The Atlantic White Shark Conservancy will be on hand to present a fun and interesting program to kids and families, and treats will be provided by The Penny Patch. Thank you to the Friends of the Library for their support of summer reading and youth programming!
- I have two major CLAMS meetings this month - one where they are revising our fee formula based on the new system (which is web-based. Part of the fee formula used to be based on the number of software licenses we needed to operate the library). We are working towards an equitable solution based on library use as well as patron count.
- Congratulations to Nauset senior, Emma Easley. She is the winner of the Claire Simmons scholarship - an annual scholarship awarded by the Friends of the Wellfleet Library in the name of a beloved late staff member. In her essay, Emma names the library as a reason she took Advanced Placement literature in high school.
- Former Wellfleet Police Chief and current author, Richard Rosenthal, will be presenting his book on electric vehicles. Join us on Wednesday, June 28th at 7:00 PM for what will surely be a lively and informative discussion.
- NOAA Meteorologist Frances Achorn, Wellfleet native and daughter of former Town Administrator, Harry Terkanian, will be here on Monday, July 3rd to discuss Ocean Weather. We have been trying to get Frances to come here for many years, so we are absolutely thrilled to finally have her. The event begins at 7:00 PM.

Police

- No Update

Public Works

- No Update

Recreation

- As the school year winds down, Spring activities have successfully culminated in track meets, t-ball games and parties, several creative arts projects and much learning and fun with the hiking and foraging class. Many thanks to community and parent volunteers for helping to make these programs such a success. Including: Arozana Davis, Justin Dalby, Alex Emmons, Rachel Finn, Elspeth Hay and Mollie Baird.
- Extensive planning is underway for the summer season. The Baker's Field Morning Recreation Program is currently full. All other programs are still open with the registration link available on the Town website.
- Pickleball round robins are held at the outdoor Mayo Beach Courts four days per week.
- The Music at Mayo Concert Series will consist of 18 shows beginning on Thursday July 6th
- A full list of summer activities as Well as the Music at Mayo Concert Schedule can be found on the Town of Wellfleet website.
- Morning Recreation registration is closed because the capacity has been reached.
- Both Morning Rec and Swimming lessons at Gull begin the first week in July.
- The Annual Road Race from Bakers Field to Great Island and back will be held on July 9th.
- Wellfleet's beloved square dances begin July 5th at the Rutz bandstand at the Pier.

Shellfish Department

- We revised and finalized the department's FY 24-26 goals.
- We finalized and distributed our two job postings. We worked with Town Administrator to increase our part-time winter position to full-time in order to take on Principal Clerk shellfish-related responsibilities, such as grant licenses and winter shellfish permit sales. We distributed it to the Mass Shellfish Officer's Assn. and AmeriCorps Cape Cod. It is also on the Town's website.
- As of June 1, and until Sept. 30, recreational shellfishing can only take place on Wednesdays and Sundays at the Indian Neck recreational-only shellfishing area. In addition, South Lieutenant Island is closed to oyster harvest. We changed out shellfish signs throughout town.
- We made a few seed confiscations in the recreational shellfishery and had a few who were using last year's permits and made them renew.
- We conducted our first grant inspection.
- On June 2, we began our cultch season which is still ongoing. We are grateful to the DPW staff for helping us at any time of day! We received our Chapter 91 license and Water Quality Certification for our cultching activities in the summer of 2022 (after our 2022 cultching operations were completed), so this is the first year where we are confined to cultching within our permitted areas. We buoy off new cultch areas every low tide we can, taking our GPS with us so we understand where the boundary lines are. We place our

buoys within the cultch area boundaries. Then, we come back with the barge during high tides to lay the strips. We are using the GPS on the barge while deploying the cultch so we can understand where these are being laid. Our first efforts are proving how difficult a task this is, but we are working on it.

- However, in our first week of cultching, it has become amply clear that we will be constrained with where we can deploy cultch in the future. The permitted areas are small in comparison to where the department used to cultch, and we don't have confidence in some of the areas that were permitted. This is a process that we inherited and were not a part of from the beginning. We are corresponding with Coastal Engineering to have them file a Notice of Project Change for our cultching permits to include the Blackfish Creek dredging mitigation area as well as other areas. Our goal is to include all areas of Wellfleet Harbor that have been traditionally cultched and areas where we know that cultch will successfully perform as oyster nursery habitat. Should we obtain the necessary permits, we will operate as usual with a full volume of cultch. If permitting is not secured, we will limit 2024 cultch purchasing due to lack of permitted bottom.
- We submitted our Town Order of Conditions extension application to the Conservation Department for our cultch permit. We are working with Coastal Engineering who has done it since the beginning to make sure everything is filed and recorded correctly.
- We buoyed off the spat collecting area in Chipman's Cove so growers know where they can place their hats. The department had four volunteers help us get 48 stacks of hats out on June 14.
- On June 9, we opened the contaminated quahog area in the Herring River for shellfishing.
- We attended many meetings including, Senior Staff, Dredging Working Group, Dredging Task Force, Shellfish Advisory Board (Johnny presented our propagation plans) and Selectboard (Nancy shared her thoughts on the need for Selectboard leadership).
- We are working with Town Counsel on the blockage by a property owner on Chequessett Neck Rd. of a Town easement to the Herring River for shellfishermen and the public.
- We helped Cape Cod Cooperative Extension dig clams for ongoing disease studies, and the USDA collect oysters for genetic testing for broodstock project they are developing.
- We helped the state with data for CCB13 re: boat moorings and with the number of grants in CCB11 and CCB14.
- We submitted requested clarifications for our AmeriCorps Cape Cod Year 25 Individual Placement application.
- We continue to work with Town Counsel on corporations and remove vs. revoke in regulations.
- We took the 2023 Ford truck to get the faulty tailgate repaired and got oil changed in 2020 truck and a protective undercoating put on. We did prep work to make sure all components of the cultch barge were ready for operation. Thanks to Kevin at the DPW for helping us take care of our equipment. We worked on getting a new truck ordered for FY24.

- The Shellfish Department's partnership with Mass Oyster project's restaurant shell recycling program was featured on Boston 25 and last year's piece from Chronicle was aired again.



SELECTBOARD

AGENDA ACTION REQUEST
Meeting Date: June 20, 2023

XIII

TOPICS FOR FUTURE DISCUSSION

- **Please see the attached list for topics added beginning January 2023.**

Current Topics of Concern

- Parking at the Marina needs to be addressed. ~ Wolf
- A pilot program for parking to be paid in the town of Wellfleet. ~ Bacon
- Have regularly scheduled grant inspections to not have one person going out and doing it alone. ~ Wolf
- Mary Beth Rodman Day to celebrate her outstanding work as the principal to the Wellfleet Elementary School. ~ Bacon
- Jay Coburn to come before the board to give the board a debrief on the board on the application that didn't get funded to improve the application. ~ Bacon
- Implementation of a Capital Improvement Committee ~ Carboni



SELECTBOARD

AGENDA ACTION REQUEST
Meeting Date: June 20, 2023

XIV

MINUTES

REQUESTED BY:	Executive Assistant
DESIRED ACTION:	Approval of the Meeting Minutes of June 6, 2023
PROPOSED MOTION:	I move to approve the minutes of June 6, 2023, as printed in draft.
ACTION TAKEN:	Moved By: _____ Seconded By: _____ Condition(s):
VOTED:	Yea _____ Nay _____ Abstain _____

Wellfleet Selectboard
Hybrid Meeting: Zoom/715 Old King's Highway
Tuesday June 6, 2023; 7pm
Meeting Minutes

Members Present: Ryan Curley, Chair; Barbara Carboni, Vice Chair; Michael DeVasto, Kathleen Bacon, John Wolf

Others Present: Rich Waldo, Town Administrator; Rebekah Eldridge, Executive Assistant; Andrew Gottlieb, Association to Preserve Cape Cod; Suzanne Grout-Thomas; Community Service Director; Becky Rosenberg, recreation Director; Jay Coburn, Cape Cod Housing Partnership; Vita Shklovsky, Cape Cod Julie Simpson, Maurice's Campground; Tim Sayre, Roland Blair, resident; Melissa Yeaw, July 4th event person. Nancy Civetta, Shellfish Constable; Jay Norton, DPW Director; Katherine Klein, KP Law representative, Carole Ridley, Herring River Restoration Project Coordinator.

Chair Curley Called the meeting to order 7:01pm

I. *Announcements, Open Session and Public Comments*

Note: *Public comments are limited to no more than two minutes per speaker. The Board will not deliberate or vote on any matter raised solely during Announcements & Public Comments.*

Chair Curley announced that the 4th of July parade registration for rafts is open through the Chamber of Commerce beginning with the old fashion car parade and then the parade following after.

Waldo announced that the interim building inspector will be on vacation until June 14th so no new building permits will be handed out until after the 14th as June.

II. *Consent Agenda*

- A.** Agreement between the Town of Orleans and Wellfleet to allow Wellfleet residents to participate in Orleans COA day program.
- B.** Appointment of Cynthia Franklin to the Energy and Climate Action Committee
- C.** Approval of Common Victualler License ~ Leaside café, LLC ~ Murro VanMeter

Chair Curley Moved; Board Member DeVasto Seconded; and it was voted to approve the consent agenda as printed.

Roll Call Vote: 5-0

III. *Community Updates*

- A.** Lawrence Hill Update ~ Jay Coburn

Coburn came to the table and gave a brief update on the Lawrence Hill Road project. He thanked the town staff for their help with this project. He spoke about the role in housing working with the residents and officials of the town. He spoke about building a beautiful project. He gave explanations on the progress, and the funding/grants they have and haven't received. He spoke

about wastewater with this project. He continued to speak about the ambitious goals that go along with this project. He stated that they will be applying for state funding in the next round. Shklovsky spoke to the board and public explaining the funding that they will be applying for within the next round of state funding. She gave details about the application for funding and the need to be ready to move forward before they are awarded the funding. Coburn gave some details of what they need regarding the town's support. He explained that the goal is to have as many details worked out, so they are able to state that the group is ready, he also stated the need to identify additional resources. He continued discussing affordable housing, he discussed ARPA funds that are being applied for. The board had some questions and comments. She read a statement that was approved by the chair, which discussed housing and the desperate need for it.

Chair Curley asked Waldo to discuss wastewater and the progress of it. Waldo gave some information on the wastewater project, and the design project for it. He explained bid documents should be ready to go out to bid in February of 2024. He stated a Mass Works grant was submitted and he explained the funding and the amount of funding needed. He stated the town has applied for funding through SRF and the town has heard that they are a candidate for SRF funding and will need to go to the town meeting to get approval for this funding. He stated by June of 2024 the town would be beginning construction for wastewater. The board discussed their concerns. Blair spoke to the board about housing, and his feelings about low-income housing. He stated he doesn't want crime riddled housing in the town of Wellfleet. Sayre came to the microphone and spoke about short term rental tax.

- B. Andrew Gottlieb ~ Association to Preserve Cape Cod (APCC) Presentation
Gottlieb joined remotely and gave the board a slide show presentation regarding the hanging in the balance. He shared his screen explaining the water quality and the issues the cape is facing. Gottlieb explained the recommendations for municipalities and individuals.

- C. Letter from The Town of Brewster Selectboard requesting amendments to the Nauset Regional School Agreement ~ Enrollment calculations.
Chair Curley asked Waldo to explain this letter and what Brewster and the school committee are asking of the Wellfleet Selectboard. Waldo explained that this was the last minute. He stated the intent with this letter is to soften the ask each budget year regarding enrollment. He stated it is to help make the budget process a little easier for the school districts. He stated he does support this letter and feels it is a cleaner method going into budget season.

Chair Curley Moved; Board Member Seconded; and it was voted to support the town of Brewster and the Nauset School Committee's amendments dated in the letter of May 9, 2023, and recommend these amendments move forward.

Roll Call Vote: 5-0

- D. Maurice's Campground ~ Julie Simpson, to discuss Beach Stickers for Campground, See packet for memo.

Chair Curley Recused himself from this item.

Board Member Carboni Chaired this agenda item.

Simpson spoke to the board stating that she is a part of the community and has had numerous people coming to her stating they have no place to live. She stated they are being denied residency at the beach office, for beach stickers. She stated that she feels they should be allowed to be residents. The request is to allow the campground residents to have resident beach stickers. Carboni asked Thomas to come forward and speak about the issue. Thomas came to the table stated that since the pandemic the people who rent annually from Maurice's have not lived at the campground 12 months a year. She explained how she came to this. She provided documents explaining her comments. She explained the new sticker that was created for Maurice campers that is more than a resident sticker but not as much as a non-resident sticker. It was asked of Thomas to read the categories for beach stickers and how one would obtain a beach sticker for the cost of a resident. The board discussed the categories. Simpson explained that she pays the property tax for the property. The board discussed the stickers, Thomas suggested that the board revisit this after this season as this is the first season the \$75 sticker. Blair spoke to the board stating he feels Maurice's is being singled out and feeling disenfranchised. As they are losing their campers in 3 to 6 years. Smith spoke to the board stating he doesn't like to be referred to as a Maurice person.

Bacon spoke to the public stating that she fully supports the campground, however this change of fees was fully discussed at great length in February and she feels they were able to come to a decision on the new sticker for them and stated it was unfortunate that they felt this way. There was much discussion on the beach sticker, and it's cost to Maurice's residents. Carboni stated that Thomas and the beach department are enforcing the regulations that the board has set forth. Thomas stated she and her staff work with people when they have issues. It was discussed to revisit the sticker prices and how the stickers went throughout the season.

NO ACTION WAS TAKEN.

IV. **Public Hearings**

- A. **CONTINUED FROM 5/16/2023:** To amend the fees and set guidelines for the use of Bakers Field Pavilion for Commercial/private events. *(Documents of the changes can be found in the administration office at town hall)*

Chair Curley reopened the hearing.

Thomas and Rosenberg came to the table and discussed the pavilion fees at Baker's field. Thomas spoke to the board stating that Rosenberg did research on fees with the surrounding towns public event sites and Thomas did research on the private place events. She gave some amendments that they both made from the last time the board met with them. Bacon stated her feelings about the cost being less than she felt it needed to be. The fees were discussed. It was brought up

that yes, this was a lovely location but there are no bathrooms, it is surrounded by woodchips. It is a public park, and the fees shouldn't be as high as Bacon stated. **Board Member Carboni Moved; Board Member DeVasto Seconded; and it was voted to approve the amended fees and guidelines for the use of Baker's Field Pavilion as presented with the addition of language indicating that children's events are exempt from fees.**

Roll Call Vote: 5-0

- B. CONTINUED FROM 3/21/2023** ~ Application received 1/10/2023 for a grant extension (to be numbered #99-1 Ext) to shellfish grant license #99-1 consisting of approximately .43 acres on Mayo Beach from Angela Osowski (Wellfleet, MA) Robert Mallory (Wellfleet, MA) and Mary Mallory (Wellfleet, MA).

Chair Curley Opened the hearing.

Board Member DeVasto Recused himself from the shellfish hearing.

Civetta came to the table and requested the board continue this hearing until June 20, 2023. Civetta stated that a site visit for a reconfiguration, she stated that the advertisement would need to be written tomorrow and stated there wasn't enough time. She questioned the 20th of June but was told that the meeting on the 20th was an issue so the board would need to have a separate meeting.

Chair Curley stated that he would like to have a separate meeting for just shellfish related items. He asked Thomas to check on July 12th, 13th, and the 25th for potential meeting dates. July 13th the room is available.

V. Use of Town Property

- A. Peter McMahon, Cape Cod Modern House Trust ~ Use of Baker's Field Pavilion for a workshop, Monday July 3, 2023; 7:00pm – 9:00pm.**

Melissa Yeaw explained this is for music that will be taking place on the 4th of July Parade, and this is a workshop to prepare for the parade.

It was explained that because of the new regulation the community service director didn't approve of this as it was in July the busy season. Yeaw asked to be grandfathered in. Rosenberg spoke to the board stating she did urge them to make use of town property application. Rosenberg stated that she wasn't opposed to this application. Yeaw explained more of what the workshop is about. Bacon stated she understood the issue with the regulation change but suggested that they speak to the Masonic lodge and ask for use of the lodge.

Chair Curley Moved; Board Member Seconded; and it was voted to approve the Use of Town Property for the Baker's Field Pavilion on July 3rd for a two-hour window time frame to be agreed upon with the recreation director, the community service director, and the Cape Cod Modern House Trust, between 5pm – 8pm, and to waive the fee.

Roll Call Vote: 5-0

- B. Kayla Sibia, ALTAER Sauna ~ Use of a local beach to conduct a photo shoot of a Sauna Trailer ~ June 18, 2023.**

Sibia gave a brief explanation of why she wanted to use the beach.

Chair Curley Moved, Board Member DeVasto Seconded, and it was voted to approve the use of Newcomb Hollow Beach for a photo shoot on June 18, 2023.

Roll Call Vote: 5-0

- C. Murro VanMeter ~ Leaside Café LLC ~ Newcomb Hollow Beach, concession parking space for the 8th year of his food truck; June 15, 2023 – September 15, 2023.

VanMeter spoke to the board, it was stated by the board that this usually goes out to bid. VanMeter explained his understanding of the bidding process. He stated that it didn't go out to bid through the winter. Thomas spoke to the board stating that it no longer requires a bid as it isn't a large amount of money.

Chair Curley Moved, Board Member DeVasto Seconded; and it was voted to approve the use of Newcomb Hollow Beach from June 15, 2023, to September 15, 2023,

Roll Call Vote: 5-0

VI. **Business**

- A. Order of Taking ~ Main Street ~ As voted at the Town Meeting June 11, 2022.

Norton explained how the town got to the point of taking. He gave some background of the project. Klein spoke to the board and gave instructions on how the order of taking would move forward and what the vote needed to be done moving forward. The abutters and property owners have been given the required time frame of 30 days to state their issues, Norton has been working with the two property owners that have issues with this taking. She explained the notification of the taking would be sent to the property owners. She explained that the owners have two options, and she broke down those options to the board. The board discussed this with Norton and his ability to work with the homeowner. Butanol continued to state that he hadn't been made aware of the changes.

Board Member Carboni Moved; Board Member DeVasto Seconded, and it was voted to approve the taking of Route 6 Main Street intersection project as previously voted on June 11, 2022, that was article 40 at the town meeting.

Roll Call Vote: 5-0

- B. Agreement for Professional Engineering Services between the town of Wellfleet and Fuss & O'Neil for Chequessett Neck Bridge and Water Access Facility Project, to be authorized by the Selectboard and signed by the Town Administrator.

Board Member Carboni Recused herself from this agenda item.

Norton spoke to the board regarding this agreement. He explained what the contract was and what it entailed. He stated this was part of the Herring River Restoration Project. Ridley spoke to the board and public, stating that this contract was entirely funded by grant funding and gave the names of the three grants that would cover the fees of this particular contract. The funding for this project was discussed at great length.

Chair Curley Moved; Board Member Wolf Seconded; and it was voted to approve the agreement for professional engineering services between the Town of Wellfleet and Fuss & O'Neil for Chequessett Neck Bridge and Water Access Facility Project, and to direct the Town Administrator to sign on behalf of the town.

Roll Call Vote: 4-0-1

- C. Staffing Discussion and possible regrading recruitment and retention
 Chair Curley spoke to Waldo and asked him to discuss with the board the lack of staffing. Waldo stated that the town is entering into a critical period in the next few months. Waldo stated there have been a series of staffing changes whether it be from retiring, resigning, and promotions. He explained that the Assistant Town Administrator is leaving on June 30th, he gave all the vacancies that the town has. Waldo spoke of the systematic challenges throughout the town and the structure needed to support the functions of the town. He spoke of supporting the staff and working together as a team. He spoke about hiring interim staff positions, stating people could come in as retired and help keep the town on track with objectives.

Bacon stated that she has a huge concern with the financial department, she stated that she wants to keep the assistant town accountant Frank. She questioned asking the DLS report and if we could ask that agency for help. She stated that she has a huge concern with procurement. And the town needs a procurement officer. Finances were discussed and the need for a stable team. He addressed the procurement and stated there is a way around that, with the legal team and he stated he had a 2 out of the 3 classes for his procurement. It was questioned how can the selectboard support the staff? Waldo stated that it was a tough question. He stated that these jobs are an open platform to complain and the staff being easy targets.

Chair Curley Moved; Board Member Bacon Seconded; and it was voted to authorize the Collins Center to review and make recommendations with regard to employee recruitment and retention under the existing contract between the town and the Collins Center provided there are the available funds to do so.

Roll Call Vote: 5-0

- D. Staffing

- VII. **Selectboard Reports**
- VIII. **Town Administrator's Report**
- IX. **Topics for Future Discussion**
- X. **Vacancy Reports**
- XI. **Minutes**
 - A. May 23, 2023
 - B. May 30, 2023

Board Member Bacon Moved, Board Member Wolf Seconded; and it was voted to approve the minutes of May 23rd and May 30, 2023, as printed in draft.

Roll Call Vote: 5-0

- XII. **Adjournment**

Chair Curley Moved; Board Member Bacon Seconded, and it was voted to adjourn the meeting.

Roll Call Vote: 5-0

Meeting adjourned: 11:45pm

Public Documents:

Agreement from Town of Orleans for COA day program

Application from Cynthia Franklin to be appointed a member to the Energy and Climate Action Committee

Slide presentation from Jay Coburn

Slide presentation from Andrew Gottlieb, APCC

Letter and list of residents for Maurice's Campground, Julie Simpson

Fees and new guidelines from Community Services and Recreation regarding the Baker's Field Pavilion

Use of Town Property Peter McMahon – Baker's Field Pavilion

Use of Town Property Kayla Sibia- Newcomb Hollow Beach

Use of Town Property Murro VanMeter – Food Truck

Order of Taking – Main Street

Agreement with Fuss & O'Neil for Engineering Services

Town Administrator's Report

Meeting Minutes – 5/23 & 5/30/2023



SELECTBOARD

AGENDA ACTION REQUEST
Meeting Date: June 20, 2023

XV

ADJOURNMENT

REQUESTED BY:	Selectboard Chair Ryan Curley
DESIRED ACTION:	To Adjourn
PROPOSED MOTION:	I move to Adjourn the Meeting
ACTION TAKEN:	Moved By: _____ Seconded By: _____ Condition(s):
VOTED:	Yea _____ Nay _____ Abstain _____