

**Nauset Estuary Dredging
Pre-Application Meeting with Regulatory Agencies
January 11, 2019**

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MEMORANDUM

DATE January 17, 2019

JOB NO. 2015-0121

TO Attendees of January 11, 2019 Pre-Application Meeting with Regulatory Agencies
for Nauset Estuary Dredging Project

FROM Leslie Fields
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Meeting Minutes from January 11, 2019 Pre-Application Meeting

Attendees

John Kelly, Tom Daley, Nate Sears, John Jannell, Cathy Doane – Town of Orleans
Alan McClennen, Kevin Galligan, Mark Mathison, Mefford Runyon – Orleans Board of Selectmen
Judith Bruce, Orleans Conservation Commission Member
Betsy Furtney – Orleans Marine and Freshwater Quality Task Force
Jacqueline Beebe, Shana Brogan, Ryan Nolan – Town of Eastham
Aimee Eckman and Alex Cestaro – Eastham Board of Selectmen
Jim Mahala, Dave Hill, Nate Corcoran – MA Department of Environmental Protection (DEP)
Bob Boeri, Stephen McKenna – MA Coastal Zone Management (CZM)
Eve Schluter – MA Environmental Policy Act Office (MEPA)
Amy Hoenig – Natural Heritage & Endangered Species Program (MA Fisheries & Wildlife)
John Logan – MA Division of Marine Fisheries (DMF)
Christine Jacek – U.S. Army Corps of Engineers (USACE)
Charles Harris – Eastham Volunteer
Stephen Smith – Commercial Fisherman
Phil Howarth – Goose Hummock Shop
Charles Carlson – Orleans Resident
Leslie Fields, Adam Finkle, Beth (Hays) Gurney – Woods Hole Group

See attached Meeting Participant List for additional contact information.

Introduction:

All participants introduced themselves.

Opening Remarks from the Towns of Orleans and Eastham:

Alan McClennen (Orleans Selectmen) called the meeting to order on behalf of the Town of Orleans and Board of Selectmen. He explained the Town's interest in the Nauset Estuary Dredging project.



Jacqueline Beebe (Eastham Town Administrator) spoke on behalf of the Town of Eastham. Jacqui explained how the Town has recently become involved with the project and that by attending this meeting, they are hoping to learn more about how the project will be viewed by the regulatory agencies.

Opening Remarks from Local Stakeholders:

Stephan Smith (Commercial Fisherman) described the issues they face when navigating vessels through the Nauset Estuary and out to the Nauset Inlet. While Steve spoke, a video was shown of the Nauset Inlet area showing why boats are moored just inside the Inlet. He is looking to get emergency permits to get boats back to deeper water behind the barrier beach.

Phil Howarth (Owner of the Goose Hummock Shop) spoke about the following:

- His business helps support the economies of both Orleans and Eastham.
- He is seeing less mooring rentals now because boats are having such a hard time getting out to the opening of the Nauset Inlet.
- The decline of boating affects his business, which in turn affects the economies of the Towns.
- He installed an expensive fueling dock, however it is not being utilized as much as he would like due to the decline in boating activity.
- Ron Deschamps of Nauset Marine asked Phil to speak on his behalf. Ron echoes Phil's concerns with navigation and impacts to his business.

Introduction of Project by Woods Hole Group:

Leslie Fields gave a PowerPoint presentation on the following:

- Description of project and need
- Existing environment
- Alternatives for dredging and disposal
- Analysis of Alternatives
- Permitting

Public Commentary:

- Bob Boeri (CZM) asked what the size of the buffer is from the dredge footprint to the back side of the barrier beach area because the slide did not appear to show a buffer.

Response: Leslie said we do not have a set buffer, but we have moved the proposed channel right behind the barrier beach from its original and deepest location, to a more westerly location that forms a buffer. The dredge zone, shown on Slide #12 for Dredging Alternative #2, will therefore need to be revised to show that there is no dredge zone on the eastern side of the proposed channel layout behind the barrier beach.

- Bob Boeri asked if we were going to do a shellfish survey.

Response: Leslie said no since we had identified all the shellfishing areas within the Nauset Estuary with the Orleans and Eastham Shellfish Constables, however we would do one if we were told we needed to.

- Bob Boeri asked, given the dredge volumes and alternatives, do they point out that Alternative #3 (access to/from landings and inlet via Cable Creek) is the best choice for sustainability? He



pointed out that because there is so much overwash behind the barrier beach, it would be hard to keep up with dredging that area using Alternatives 1 or 2. Are these alternatives truly sustainable because of how expensive it would be to dredge this area annually?

Response: Leslie said those were all good points. We recognize the frequency of dredging the channel behind the barrier beach is going to be high. That said, even though it might point to Cable Creek as a good alternative, there are other factors associated with that channel that make it less attractive. It is narrow and there may be impacts to saltmarsh from boat wakes.

- Jim Mahala (DEP) asked if any of the areas shown had been dredged before.

Response: Leslie said that there were not many and that they were for small individual projects within the Nauset Estuary.

- Jim Mahala then stated this project would therefore be for improvement dredging.
- Jim Mahala asked if we knew what species were in the Natural Heritage & Endangered Species Program (NHESP) habitat.

Response: Leslie said shorebirds because the Town of Orleans already has a Conservation & Management Permit (CMP) from NHESP for the Nauset Beach (public beach) area.

- Jim Mahala then stated we need to definitely consult further with NHESP.
- Amy Hoenig (NHESP) stated the following:
 - The current CMP that the Town of Orleans has for Nauset Beach does not come in to play with this Nauset Estuary dredging project because it is for Off Road Vehicle (ORV) use.
 - She would like to see beach nourishment included in the project to create habitat.
 - She would not want to see any existing habitat impacted that would result in a “take”, or else we would need a CMP for this project too.
 - Keep in mind slopes when designing the disposal in order to maintain the nesting shorebird habitat.
 - We should consult with her on the design for the dewatering areas and for the placement of sediment on the beaches and dunes.
- Jim Mahala stated that a portion of the project site is designated as an Outstanding Resource Water (ORW) because it is located within the Cape Cod National Seashore. Because of that, the disposal of material within the ORW is an issue. Jim also stated that there have not been many improvement dredging projects allowed in ORW's., so he was going to check with the DEP/Boston office on how this would be handled.
- John Logan (DMF) stated the following:
 - We would need to perform shellfish surveys, maybe not the entire area, but we should consult with the Town Constables.
 - He asked what the buffer was to the salt marshes.

Response: Leslie said 50 feet or more, except near Cable Creek.

- He asked for more details on the salt marsh enhancement possibility.



Response: Leslie explained the salt marsh enhancement/creation disposal alternative would entail hydraulically pumping dredged material along the edge of current salt marsh, and/or shoreline areas in the vicinity of Hopkins Island and a portion of the west facing shoreline of Town Cove near Hopkins Island. The fill would be contained or held in place by some sort of toe structure. Planting would be implemented and areas would be monitored.

- Regarding the possible red tide cyst smothering, there would be complexities including issues with turbidity.
- Bob Boeri stated the following with regards to salt marsh enhancement:
 - We would need to do more work because there is a very high hurdle for approval.
 - The salt marsh has to be degraded to receive a thin layer of deposition.
 - The Rhode Island projects have been expensive and success has been ambiguous.
 - Talk to Danny Goulet at CRMC.
- Dave Hill (DEP) stated the following:
 - There are definite complexities to salt marsh enhancement.
 - It hard to place fill in intertidal waters.
- Jim Mahala stated the back side of the barrier beach would be an appropriate location for proposing a “dredge zone” for the channel.
- Bob Boeri stated the following:
 - He is concerned about boat wakes behind the barrier beach and destabilizing the barrier.
 - The barrier is going to migrate west so this area is not sustainable.
 - We should consider choosing the Cable Creek alternative because it would be more sustainable.
- Jim Mahala stated Cable Creek is not a good alternative for the main channel to the Inlet because of how close the dredging would be to the salt marsh.
- Bob Boeri stated how expensive it would be to dredge the back side of the barrier, because it would require annual dredging due to the volume of sand overwashing into that area. We would have to clearly explain the project when submitting the Environmental Notification Form (ENF) to MEPA.

Response: Leslie explained that while we would be potentially permitting the entire channel and dredge zone behind the barrier beach, the intent would be to dredge the most shoaled areas and to take the high spots off the channel.

Permitting Strategy:

Leslie talked about the following permitting strategies:

- A joint MEPA/National Environmental Policy Act (NEPA) review.
- Filing an Expanded ENF with a Waiver from having to file an Environmental Impact Report (EIR).
- Special Review Procedures w/ MEPA
- Emergency Dredging



Public Commentary:

- Eve Schluter (MEPA) stated the following:

- If considering filing an Expanded ENF with a Waiver for an EIR, then what is the hardship?

Response: Leslie thought we meet the standards for a Waiver because by not fixing the shoaling, it would be an undue hardship to the Towns and fishermen. She also thought that if we did a good job with submitting an Expanded ENF and avoided impacts to the extent possible, and developed appropriate mitigation, that preparation of an EIR would not serve to protect the environment any more than it would if we just filed the Expanded ENF.

- She has not seen a full Wavier for other projects that included this much improvement dredging.
 - This might be a good opportunity for a Single EIR.
 - We should do a coordinated review with MEPA and the Cape Cod National Seashore, through the MEPA Special Review Procedures, and eventually file a request for a Single EIR.
 - Put as much information as we can into the Expanded ENF so that the agencies can put in writing a scope for the project.
 - We should talk more (and maybe even schedule a pre-filing meeting) with Eve regarding the Special Review Procedures, and establish a timeline and review process.
- Christine Jacek (USACE) stated the following:
 - An eelgrass survey should be done (Leslie stated Woods Hole Group did do an eelgrass survey).
 - We need to nail down the disposal locations.
 - Mitigating for new dredging should not be an issue.
 - We should have a monitoring plan for post construction.
 - We should do an Essential Fish Habitat assessment from the beginning.
 - We would need to mitigate for salt marsh enhancement.

- Steve McKenna (CZM) asked if the hydrodynamic modeling showed any benefits to water quality as a result of the project, and if so, this should be highlighted.

Response: Leslie said the modeling showed the project would have very little beneficial impact on water quality.

- Jim Mahala stated the following regarding the emergency situation:
 - He had not heard enough to justify emergency permits.
 - In Chatham, they had the Coast Guard as one of the reasons for getting approval.
- Dave Hill stated that work done under emergency permits needs to be completed within thirty (30) days of issuance of the permit.
- Jim Mahala stated there would have to be coordination with other agencies on the timing of issuance of the permits so that the 30-day clock starts at the same time, and the project would need to be shovel ready.

Response: Leslie reiterated what Dave and Jim said:

- The work has to be completed within thirty (30) days of issuance of the DEP emergency permit.



- For this project, because we would need emergency permits from many other regulatory agencies, we would need to coordinate the issuance dates with all the agencies.
- The dredge would need to be ready and waiting, and funding pre-approved.

Leslie asked if the disposal site work would also be subject to the 30-day window to complete the work. ????

Response: The agencies were uncertain as to the answer to this questions.

Leslie asked if DMF time of year (TOY) restrictions come into play when issuing emergency permits.

Public Commentary:

- John Logan (DMF) stated the following:
 - TOY's could come into play in the issuance.
 - What is the emergency if we have been studying this for a while?

Response: Mark Mathison (Orleans Selectmen) spoke about why they consider this an emergency and what the fisherman have to endure to go from their landings and out to their boats that are moored just inside the Inlet.

Steve McKenna stated the Barnstable County Dredge would not be able to do this project under an emergency right now because they are not even getting to the work that is scheduled for this winter.

Steve Smith handed out a document from 1949-1950 (see attached) that described an Act providing for the dredging of the channel commonly called Nauset Inlet in the Towns of Eastham and Orleans. Steve then stated the following:

- This Act says we can use sand for shellfish propagation.
- A thin layer of sediment can create shellfish beds on unproductive areas.
- There is a history in both Towns doing this.
- This would be very easy to do and provide a way to dispose of the dredged material.

Response: Leslie said that it might be easy to do, but would not be easy to permit because of the area of impact, potential conversion of resource areas, and potential impacts to navigation.

Response: Amy Hoenig agreed it would not be easy to permit.

(It should be noted that this Act and activity should be researched further if this is an alternative to be pursued.)

Alan McClennen thanked everyone again for participating and adjourned the meeting.

MEETING PARTICIPANT LIST

Nauset Estuary Dredging / Towns of Orleans & Eastham

DATE: January 11, 2019

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Chap. 0485 An Act providing for the dredging of the channel commonly called Nauset inlet in the towns of Eastham and Orleans.

Be it enacted, etc., as follows:

Section 1. Subject to the conditions herein imposed, the department of public works is hereby authorized and directed to dredge the channel running from Nauset harbor to the entrance of the town cove, commonly called the Nauset inlet, the sand or other materials dredged or taken out to be so used or disposed of as to improve for shellfish industry purposes certain flats alongside said channel. No work shall be begun until the towns of Eastham and Orleans has each assumed liability in the manner provided by section twenty-nine of chapter ninety-one of the General Laws for all damages that may be incurred hereunder, nor until each of said towns has paid into the treasury of the commonwealth the sum of nine thousand dollars, which together with such sum not exceeding eighteen thousand dollars that may hereafter be appropriated therefor by the commonwealth, shall constitute a fund for the improvement herein authorized notwithstanding any other provision of law to the contrary, provided that the total cost of such improvement shall not exceed thirty-six thousand dollars; and provided, further, that if any of the last-mentioned sum remains after the completion of said improvement, one fourth of such remainder shall be repaid to each of said towns.

Section 2. This act shall take full effect upon its acceptance before June thirtieth of the year nineteen hundred and fifty by vote of each of said towns at meetings called for the purpose and upon the filing before said June thirtieth of a certified copy of said vote in the office of said department. Approved July 1, 1949.