



Cape Cod Bridges Program

Bourne, Massachusetts

Appendix 5.3

Section 4(f) *De Minimis* Determination for Use of Cape Cod Canal Historic District

SUBMITTED TO:

Federal Highway Administration
Massachusetts Division
220 Binney Street, 9th Floor
Cambridge, MA 02142

PROPONENT:

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

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massDOT
Massachusetts Department of Transportation

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Attachment

Attachment 3: Draft Programmatic Agreement among FHWA - Massachusetts Division, Massachusetts SHPO, Advisory Council on Historic Preservation, New England District of the USACE, and MassDOT for the Cape Cod Bridges Program

Acronyms and Abbreviations

Acronym/Abbreviation	Definition
APE	Area of Potential Effect
CFR	Code of Federal Regulations
FHWA	Federal Highway Administration
MassDOT	Massachusetts Department of Transportation
NRHP	National Register of Historic Places
Program	Cape Cod Bridges Program
SHPO	State Historic Preservation Office

1 Introduction

As a U.S. Department of Transportation (USDOT) financially supported transportation program through the Federal Highway Administration (FHWA), the Cape Cod Bridges Program (Program) is subject to the regulatory requirements of Section 4(f) of the U.S. Department of Transportation Act of 1966 (USDOT Act), as amended.¹ Section 4(f) of the USDOT Act, commonly referred to as Section 4(f), protects publicly owned parks, recreation areas, and wildlife and waterfowl refuges of national, state, or local significance, or any publicly or privately owned historic site listed or eligible for listing in the National Register of Historic Places (NRHP) from “use” by transportation projects that receive funding from or require approval by an agency of the USDOT. FHWA’s regulations for implementing Section 4(f) are available at Title 23 Code of Federal Regulations (CFR) 774.

The demolition of the NRHP-eligible Sagamore and Bourne Bridges and the construction of replacement bridges would affect the NRHP-eligible Cape Cod Canal Historic District through the direct use of land within the district and demolition of two contributing resources.

For historic sites, under 23 CFR 774.17, a *de minimis* impact means that the Administration has determined, in accordance with 36 CFR part 800, that no historic property is affected by the project or that the project will have “no adverse effect” on the historic property in question. The Massachusetts Department of Transportation (MassDOT) has determined that the Program would have “no adverse effect” on the Cape Cod Canal Historic District under 36 CFR part 800 and is seeking concurrence from the Massachusetts State Historic Preservation Office (SHPO).

Pending SHPO’s concurrence, FHWA is proposing a *de minimis* impact determination for the Cape Cod Canal Historic District under Section 4(f). **Appendix 5.3** documents FHWA’s recommended determination in accordance with Section 4(f) and FHWA’s implementing regulations.

2 Description of Cape Cod Canal Historic District

Cape Cod Canal is an approximately 17.4-mile-long deep-water marine navigation canal, with an approximately 9.3-mile-long approach channel and an 8.1-mile-long land cut extending easterly from Buzzards Bay to Cape Cod Bay. Within the land cut portion, the canal has an average width of 540 feet and a depth of 32 feet at mean low water.

Explorations into the concept of a canal to encourage commerce among European colonists and Indigenous tribes date to the early 1600s. After several failed attempts to dig the canal in the late 18th century, the privately owned Boston, Cape Cod and New York Canal Company built Cape Cod Canal from 1909 to 1914. It was later purchased by the U.S. government and substantially improved by the U.S. Army Corps of Engineers (USACE) between 1933 and 1940. The canal had a significant impact on maritime transportation and economic development in New England, as well as an important role in

¹ 49 United States Code (USC) Section 303, 23 USC 138

coastal defense during World War II. **Section 4.16, Cultural Resources**, in the Draft Environmental Impact Statement (DEIS) provides additional details about the historic district.

The 8.1-mile-long land-cut portion of Cape Cod Canal, along with the multiple buildings, structures, features, and sites significant to its construction and history, have been determined eligible for listing in the NRHP. The USACE issued a formal determination of its NRHP-eligibility (along with Sagamore and Bourne Bridges as contributing resources) as part of a Programmatic Agreement with the Massachusetts SHPO, related to the USACE’s Major Rehabilitation Evaluation Report/Environmental Assessment and Finding of No Significant Impact for the Cape Cod Canal Highway Bridges. The USACE signed and fully executed the [Programmatic Agreement](#) on March 11, 2022.² The Cape Cod Canal Historic District is included in the Massachusetts Historical Commission’s Inventory of Historic and Archaeological Assets of the Commonwealth, which is managed through the online Massachusetts Cultural Resources Information System, as BOU.AF/FAL.BG/SDW.Z/WRH.V.

3 Impacts, Use, and Section 4(f) Determination

The proposed construction and operation of new bridges to replace Sagamore and Bourne Bridges on land within the NRHP-eligible Cape Cod Canal Historic District would permanently incorporate land from the historic district. Therefore, it would constitute a use of the Section 4(f)-protected property. Additionally, the Build Alternative would result in the loss of the two historic bridge structures that are contributing resources to the NRHP-eligible Cape Cod Canal Historic District.

In coordination with FHWA and with input from the public, MassDOT selected the replacement bridge type design in part because it has a kinship with the existing historic high-level, through truss bridges and would provide a similar monumental gateway experience across Cape Cod Canal. By incorporating a network arch main span across the canal and maintaining the arched bridge profiles similar to the existing structures, the replacement bridge type would minimize impacts to the feeling and setting of the NRHP-eligible Cape Cod Canal Historic District. MassDOT also determined that the replacement type design would have advantages of constructability, cost, and public preference over the other bridge type options that were evaluated.

In accordance with 36 CFR 800.5(b), MassDOT has determined that the replacement bridge type of the Build Alternative would be compatible with the NRHP-eligible Cape Cod Canal Historic District and would have no adverse effect on the historic district.

By its definition (23 CFR 774.17), a finding of “no adverse effect” to the Cape Cod Canal Historic District would result in a Section 4(f) *de minimis* impact determination. Under FHWA’s Section 4(f) implementing regulations, consideration of avoidance alternatives is not required for a *de minimis* impact determination.

² <https://www.nae.usace.army.mil/Portals/74/docs/Topics/Cape%20Cod%20Canal%20Bridges/Reports/MRER-Appendix-K.pdf>

4 Coordination and Consultation

In accordance with 36 CFR 800.5(b), MassDOT will request written concurrence from the Massachusetts SHPO that the replacement bridge type design would avoid an adverse effect on the Cape Cod Canal Historic District and on historic districts and historic properties within the Program's Viewshed Area of Potential Effects (APE). Per the coordination requirements required for a *de minimis* impact determination, 23 CFR 774.5(b)(1), MassDOT will consult with the Consulting Parties and request written concurrence from the Massachusetts SHPO that the Program would have "no adverse effect" on the Cape Cod Canal Historic District. The final outcome of this consultation will be documented in the combined Final Environmental Impact Statement and Record of Decision. Per 23 CFR 774.5(b)(1)(iii), public notice and comment, beyond that required by 36 CFR part 800, is not required prior to FHWA making a *de minimis* impact determination for historic properties.

5 Conclusion and Approval

Prior to making a *de minimis* impact determination for the replacement of the contributing historic resources with new bridges within the Cape Cod Historic District, FHWA must complete the following actions, as directed in 23 CFR 774.5:

- **Consult with the Consulting Parties identified in accordance with 36 CFR 800.**

Documentation of consultation with Consulting Parties and coordination among the FHWA, SHPO, and the Advisory Council on Historic Preservation (ACHP) is provided in **Section 4.16, Cultural Resources**.

- **Receive written concurrence from the SHPO and ACHP in the finding of "no adverse effect" on the Cape Cod Historic District in accordance with 36 CFR part 800.**

MassDOT is consulting with the SHPO regarding the proposed finding of "no adverse effect" to the Cape Cod Historic District. As part of this consultation, MassDOT will notify the SHPO of FHWA's intent to make a *de minimis* impact determination based on their concurrence in the finding of "no adverse effect" to the NRHP-eligible historic district. The combined Final Environmental Impact Statement and Record of Decision will document the outcome of this consultation process, including any response from the SHPO regarding this proposed finding.

Pending the SHPO's concurrence with the finding of "no adverse effect," FHWA may issue a combined Final Environmental Impact Statement and Record of Decision, which would include a determination that the project facts for the Cape Cod Canal Historic District meet the requirements for a *de minimis* impact determination. Once FHWA determines that a transportation use of the Section 4(f) property results in a *de minimis* impact and documents that determination, the Section 4(f) evaluation process is complete. If the SHPO does not concur with the finding of "no adverse effect," then a *de minimis* impact determination would not be made, and an individual Section 4(f) Evaluation would be required.