

MEMORANDUM of AGREEMENT
AMONG
THE U. S. ARMY CORPS OF ENGINEERS, NEW YORK DISTRICT,
THE NEW YORK STATE OFFICE OF PARKS, RECREATION,
AND HISTORIC PRESERVATION,
REGARDING
DOWNTOWN MONTAUK STABILIZATION PROJECT
MONTAUK, SUFFOLK COUNTY, NEW YORK

WHEREAS, the U. S. Army Corps of Engineers, New York District (District), is undertaking a storm damage reduction project that would address erosion that occurred during Hurricane Sandy and provide protection to Downtown Montauk (Undertaking), Suffolk County, New York (Appendix A, Figure 1); and

WHEREAS, the District is proposing the construction of dune reinforcement, consisting of the installation of geotextile sand containers along 3,100 feet of shoreline (Appendix A, Figure 2). The filled geotextile sand containers will be covered with a minimum of three feet of sand to reduce the likelihood of exposure. The Undertaking requires approximately 51,000 cubic yards (cy) of sand that will be obtained from upland sources and transported to the site via trucks; and

WHEREAS, the Area of Potential Effect (APE) for the Undertaking is defined as Downtown Montauk, including the shoreline as indicated on Figure 1 (Appendix A); and

WHEREAS, there are no historic properties listed on the National Register of Historic Places within the APE, although there are several properties, including the Second House, that are potentially eligible for the National Register located within the APE (Appendix B); and

WHEREAS, a review of the information at the New York State Historic Preservation Office (NYSHPO) indicates the entire APE is mapped as an archaeologically sensitive area; and

WHEREAS, the sand used in the geotextile sand containers will be obtained from a source that operates in compliance with the relevant State and Federal historic preservation regulations and guidelines; and

WHEREAS, the District has determined that the Undertaking will not have an adverse effect on known, potentially eligible historic structures within APE; and

WHEREAS, the District has determined that the installation of the geotextile sand containers may have an adverse effect on archaeological resources that may be located in the project area, if identified; and

WHEREAS, the District has consulted with the New York State Historic Preservation

Office (NYSHPO) pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f); and

WHEREAS, the District has invited the Advisory Council on Historic Preservation (Council), the Montauk Historical Society, the Suffolk County Historical Society, the Suffolk County Archaeological Association, and the Shinnecock Indian Nation to be consulting parties; and

WHEREAS, the Council has elected not to participate in this Memorandum of Agreement (MOA);

NOW, THEREFORE, the New York District, and the NYSHPO agree that the undertaking shall be administered in accordance with the following stipulations to satisfy the District's Section 106 responsibility for this undertaking. The adverse effect caused as a result of this project will be mitigated through the following stipulations:

STIPULATIONS

The New York District shall ensure that the following measures are carried out:

- A. The District shall monitor the excavation of the placement area for the geotextile sand containers. The monitoring will be conducted by a qualified archaeologist, meeting the *Secretary of the Interior Professional Qualifications Standards* (36 CFR 61), to document features, artifacts, etc., that may be located within the APE.
- B. If any features are identified during the monitoring, work will stop in the area of the find to allow for its assessment and determination of significance. If the feature is determined to be eligible for the National Register of Historic Places, a treatment plan will be developed. The results of the assessment, determination of significance and treatment plan, if developed, will be coordinated with the NYSHPO and the consulting parties. The work stoppage will only occur in the area of the find; work activities not associated with the area of the find may continue.
- C. As part of the assessment and treatment plan, a determination regarding the retention and curation of any recovered artifacts will be made in consultation with the NYSHPO and any consulting parties.
- D. Upon completion of all archaeological monitoring, a report detailing the activities conducted and the results of the archaeological monitoring will be prepared. The draft report will be provided to the NYSHPO and the consulting parties for their review. The NYSHPO and consulting parties shall have 30 calendar days to review and submit comments in writing to the District. If comments are not received in 30 calendar days, the District will assume concurrence with the report. The final report will be made available to the public and provided to the NYSHPO, Montauk Point Historical Society, and others.

E. All work will be conducted in accordance with the New York Archaeological Council *Standards for Cultural Resource Investigations and the Curation of Archaeological Collections in New York State* (1994) and *Monitoring Guidelines* (2002) and the *US Army Corps of Engineers Safety and Health Requirements* (EM 385-1-1 2008).

II. ADMINISTRATIVE TERMS

A. UNANTICIPATED DISCOVERY

During the construction of this project, the District will treat unanticipated discoveries in a manner that is in accordance with 36 CFR Part 800.13 "Post Review Discoveries" and in the case of the discovery of human remains; treatment shall follow the "Human Remains Discovery Protocol" of the New York State Office of Parks, Recreation and Historic Preservation. The District shall cease work in the vicinity of the discovery until it can be evaluated and if determined to be eligible the District shall consult with the NYSHPO and others as necessary, to develop a treatment plan. The District shall implement the treatment plan once approved by the NYSHPO, and others as necessary.

B. HUMAN REMAINS

If any human remains and/or grave-associated artifacts are encountered during construction, the District will follow the NYSHPO Human Remains Discovery Protocol (2008; Appendix B) and, as appropriate, develop a treatment plan for human remains that is responsive to the Advisory Council's "Policy Statement on Human Remains" (September 27, 1988), the Native American Graves Protection and Repatriation Act (PL 101-601) and, US Army Corps of Engineers, Policy Guidance Letter No. 57 (1998) Indian Sovereignty and Government-to-Government Relations with Indian Tribes. Any identification of human remains during monitoring and/or construction will be coordinated with the NYSHPO and Shinnecock Indian Nation.

C. TERMINATION

Any signatory to this MOA may terminate it by providing 30 days written notice to the other parties, provided that the parties will consult during the period prior to termination by certified mail to seek agreement on amendments or other actions that would avoid termination.

D. SUNSET CLAUSE

This MOA will continue in full force and effect until the construction of the Undertaking is complete and all terms of this MOA are met, unless the Undertaking is terminated or authorization is rescinded or a period of five years from the execution of this MOA has passed, at which time the agreement may be extended as written provided all signatories concur.

E. AMENDMENT

This MOA may be amended upon agreement in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the Council.

F. ANTI-DEFICIENCY ACT

All requirements set forth in this MOA requiring expenditure of funds by the District are expressly subject to the availability of appropriations and the requirements of the Anti-Deficiency Act (31 U.S.C. 1341). No obligation undertaken by the District under the terms of this MOA shall require or be interpreted to require a commitment to extend funds not appropriated for a particular purpose. If the District cannot perform any obligation set forth in this MOA because of unavailability of funds, that obligation must be renegotiated among the District, the NYSHPO, and the consulting parties, as necessary.

G. DISPUTE RESOLUTION

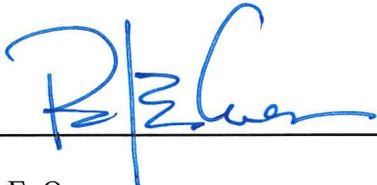
Should the signatories to this agreement object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, the District shall consult with the signatories to resolve the objection. If the District determines that such objection cannot be resolved, the District will:

1. Forward all documentation relevant to the dispute, including the District's proposed resolution, to the Council. The Council shall provide the District with its advice on the resolution of the objection within 30 calendar days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the District shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the Council, signatories and concurring parties, and provide them with a copy of this written response. The District will then proceed according to its final decision.
2. If the Council does not provide its advice regarding the dispute within the 30 calendar day time period, the District may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the District shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA, and provide them and the Council with a copy of such written response.
3. The District's responsibilities to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

Execution and implementation of this MOA evidences that the District has satisfied its Section 106 responsibilities for all individual undertakings of the Project, and that the New York District has afforded the NYSHPO an opportunity to comment on the undertaking and its effects on historic properties.

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United States Army Corps of Engineers, New York District

By:  _____ Date 25 NOV 2014

Paul E. Owen
Colonel, US Army
Commanding

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New York State Historic Preservation Officer

By: Ruth L. Pierpont DSATPO Date: 11/24/14

Ruth L. Pierpont
Deputy Commissioner for Historic Preservation

APPENDIX A – FIGURES

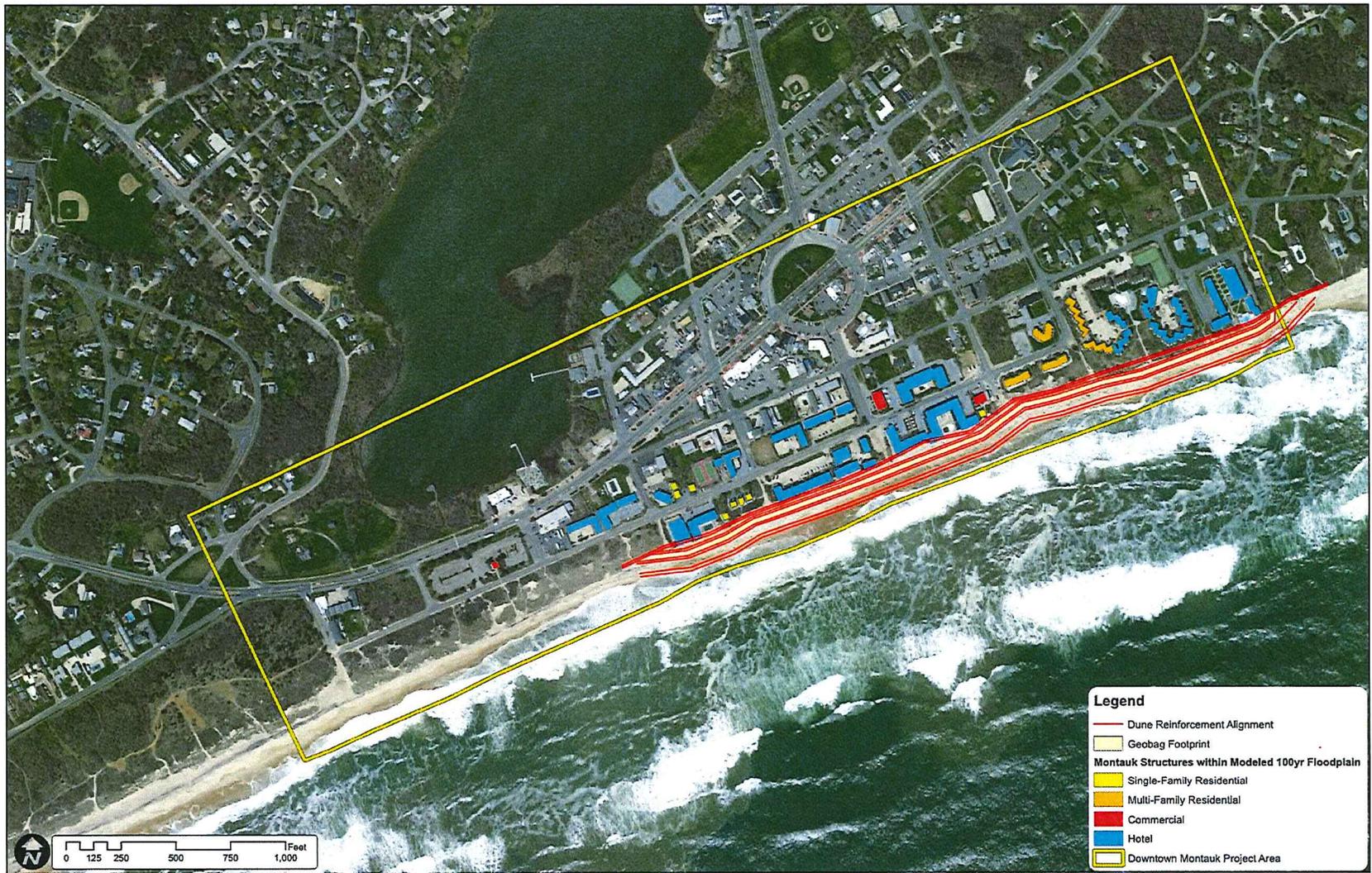


Figure 1: Downtown Montauk Stabilization Project Area and Area of Potential Effect

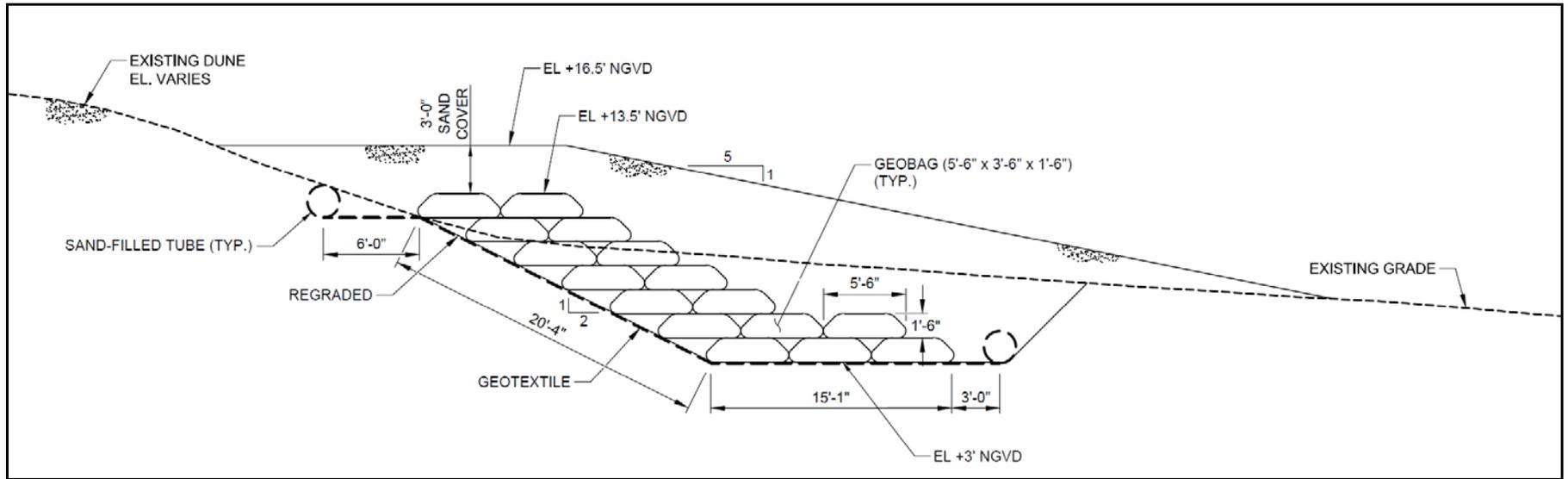


Figure 2: Reinforced Dune Typical Section, Downtown Montauk Stabilization Project

APPENDIX B

**List of Listed, Eligible, and Potentially-Eligible Resources
Downtown Montauk, Suffolk County, New York**

| Site Name | Resource Description | Reference | Determination |
|---|---|--|---|
| AN/FPS-35 Radar Tower and Antenna | | National Register of Historic Places - 2002 #02000615 | No effect; outside APE - located more than a mile east of Downtown Montauk at Montauk Point. |
| Caleb Bragg Estate | Residence with seven contributing buildings, one contributing site and one contributing structure | National Register of Historic Places - 1987 #87001895 | No effect; outside APE - located more than a mile to the north in Lake Montauk. |
| Montauk Association Historic District | 9 buildings on 1000 acres, including seven Shingle Style residences designed by McKim, Mead and White/Frederick Law Olmsted (DeForest Road) | National Register of Historic Places - 1976 #7600182 | No effect; outside APE - located more than a mile east of Downtown Montauk |
| Montauk Manor | 1926 Carl Fisher Hotel/Resort built by Schultze and Weaver | National Register of Historic Places - 1984 #84002995 | No effect; outside APE - located more than a mile away to the north east of Fort Pond. |
| Montauk Point Lighthouse/Station | Light house, keepers house and supporting buildings; Turtle Hill/bluff landscape feature. | National Register of Historic Places/National Historic Landmark - 1969 #69000142 | No effect; outside APE - located more than a mile east at Montauk Point. |
| Montauk Tennis Auditorium/Montauk Playhouse | Building associated with the Montauk Manor; 1928-1929; Tudor Revival style | National Register of Historic Places - 1988 #88000052 | No effect; outside APE - located more than a mile away to the north nearby Montauk Manor at Fort Pond |
| Second House | 18th C. residence now a museum | Potentially eligible? | No effect; possibly within or adjacent to the northwestern end of the APE along the southwest shore of Fort Pond. |
| Third House | residence constructed in the 18th century | Potentially eligible? | No effect; outside the APE - located more than a mile to the east near Montauk Point |