

NAUSET BEACH AGREEMENT

This agreement made this 21th day of April, 2020 by and between the Town of Orleans ("Orleans") and the Town of Chatham ("Chatham") pursuant to the provisions of M.G.L. c. 40 §§4 and 4A, and every other power which they may have, acting by their respective Boards of Selectmen.

WHEREAS, Nauset Beach is a unique conservation and recreation area located in the Town of Orleans and the Town of Chatham;

WHEREAS, the parties desire to provide for the joint patrol and management of Nauset Beach, including, but not limited to, beach patrol, fire protection, rescue services, and endangered shore bird monitoring, within the Town of Orleans and the Town of Chatham from a point south of the Nauset Beach Parking lot to the Chatham Inlet;

NOW THEREFORE, in consideration of the foregoing and the mutual promises and agreements contained herein, the parties agree as follows:

I. Responsibilities.

Chatham agrees to:

Orleans agrees to:

<p>1. Supply qualified personnel to adequately patrol the Chatham portion of Nauset Beach, considering varying seasonal demands and any reasonable contingency which may arise.</p>	<p>1. Supply and maintain a vehicle(s) and qualified personnel to adequately patrol the Orleans portion of Nauset Beach, considering varying seasonal demands and any reasonable contingency which may arise.</p>
<p>2. Enforce the Rules and Regulations of Nauset Beach in the Chatham portion of Nauset Beach.</p>	<p>2. Enforce the Rules and Regulations of Nauset Beach in the Orleans portion of Nauset Beach.</p>
<p>3. Registration-related procedures: a. Inspect all registered Chatham residents' Off Road Vehicles ("O.R.V.") for compliance with the most recently adopted <i>Nauset Beach Rules and Regulations for O.R.V.s</i>; b. Collect registration fees and account for such fees collected; c. Maintain accurate records of vehicles registered in Chatham, including the names of respective owners and provide information to other town; d. Provide an educational movie on the use and management of Nauset Beach for</p>	<p>3. Registration related procedures: a. Inspect all registered O.R.V.s, except those as registered in Chatham, for compliance with the most recently adopted <i>Nauset Beach Rules and Regulations for O.R.V.s</i>; b. Collect registration fees, except for those vehicles registered in Chatham, and account for such fees collected; c. Maintain accurate records of vehicles registered in Orleans and to non-residents, including the names of respective owners and provide information to other town; d. Provide an educational movie on the use and management of Nauset Beach for</p>

<p>showing to all O.R.V.s registered to Chatham residents.</p>	<p>showing to all O.R.V. operators and Orleans Camp Licensees.</p>
<p>4. Supply and install signs, string, posts, wire fencing, and other necessary equipment, materials, and personnel to mark trails, delineate O.R.V. corridors, protect vegetation, and protect shorebird species that are listed as Threatened, Endangered, or of Special Concern in the Chatham portion of Nauset Beach.</p>	<p>4. Supply and install signs, string, posts, wire fencing, and other necessary equipment, materials, and personnel to mark trails, delineate O.R.V. corridors, protect vegetation, and protect shorebird species that are listed as Threatened, Endangered, or of Special Concern in the Orleans portion of Nauset Beach.</p>
<p>5. Provide protection for shorebird species that are listed as Threatened, Endangered, or of Special Concern in the Chatham portion of Nauset Beach, and monitor the protection measures implemented, including, but not limited to, the following:</p> <ul style="list-style-type: none"> a. Cause a qualified person(s) to monitor the Chatham section of Nauset Beach if shorebird species listed as Threatened, Endangered, or of Special Concern are present, as well as provide protective measures for the birds and information to the Town of Chatham in case vehicle closures are needed; b. Supply the Massachusetts Division of Fisheries and Wildlife with data and year-end reports on shorebird protection on the Chatham portion of Nauset Beach; c. Supply and maintain All Terrain Vehicle(s) ("A.T.V.") and/or O.R.V.(s) for the monitoring of shorebirds in the Chatham portion of Nauset Beach as needed. 	<p>5. Provide protection for shorebirds species that are listed as Threatened, Endangered or of Special Concern in the Orleans portion of Nauset Beach, and monitor the protection measures implemented, including, but not limited to, the following:</p> <ul style="list-style-type: none"> a. Cause a qualified person(s) to monitor the Orleans section of Nauset Beach if shorebird species listed as Threatened, Endangered, or of Special Concern are present, as well as provide protective measures for the birds and information to the Town of Orleans in case vehicle closures are needed; b. Supply the Massachusetts Division of Fisheries and Wildlife with data and year-end reports on shorebird protection in the Orleans portion of Nauset Beach.
	<p>6. Provide, maintain, operate, and staff a check booth in the Orleans portion of Nauset Beach, as needed.</p>
	<p>7. Provide printed regulations, applications, permits, stickers, and educational material for both Towns to issue, on a uniform basis, to their residents and other users of the beach.</p>
	<p>8. Provide a trash dumpster(s) at the gate of Nauset Beach in Orleans for the use of all O.R.V. operators, except for use by Orleans</p>

	Camp Licensees, and provide for disposal of the trash collected. Without limiting the generality of the foregoing sentence, Camp Licensees are expressly prohibited from using the dumpster(s) to dispose of any bulky waste, including but not limited to, household trash, propane tanks, building debris, furniture, or the like.
	9. Maintain informational signs at the parking lot of Nauset Beach in Orleans regarding the appropriate use of Nauset Beach south of the parking lot.

General

1. All O.R.V.s, including those of Orleans Camp Licensees, must check "on" or "off" upon entering or leaving Nauset Beach at the check booth provided for in section I.6. above during the season when the check booth is open South of the Nauset Beach parking lot.
 2. All persons, including residents, non-residents, and Orleans Camp Licensees, who seek to register vehicles to use Nauset Beach shall yearly submit complete registration forms and all applicable registration fees, as well as view the educational movie, referred to herein on the use and management of Nauset Beach.
 3. In the event that Nauset Beach is full, visitors to camps may only access the beach provided the Orleans Camp Licensees has delivered a "visitor pass" form, signed by the Orleans Camp Licensees (on a form approved by the Orleans Park Department), to the Orleans gate at least 8 hours in advance. A camp visitor pass will allow vehicle access to the specific camp only. Vehicle access to other areas of the beach is not permitted.
- II. Cross Jurisdiction Patrols. It is agreed that each Town shall be responsible for patrols on their own portion of Nauset Beach.
- III. Annual Review. The Orleans and Chatham Boards of Selectmen shall meet annually to review this Agreement, related fees, and rules and regulations governing Nauset Beach. They may, if deemed appropriate, adopt new fees and/or rules and regulations, revise the provisions contained herein concerning the Responsibilities of each Town (Section I) and Beach Management (Section VIII), and take any other action consistent with this Agreement. Any amendments to this agreement must be expressed in writing and executed by the Boards of Selectmen from both towns.
- IV. Termination. Notwithstanding anything contained herein to the contrary, each Town shall have the right to terminate this Agreement by thirty (30) days prior written notice, at any time during the period from November 1 to February 1 of any year the Agreement is in effect, for any of the following:
1. Material breach by the other Town of any of the provisions contained in this Agreement.

2. Lack of appropriation of funds necessary to fulfill the Town's responsibilities set forth in this Agreement.
3. Physical changes in Nauset Beach resulting in the Town being unable to fulfill its responsibilities set forth in this Agreement.
4. The issuance of a Decision, Order, or Directive from a governmental agency of competent jurisdiction, the effect of which is to prevent the Town from carrying out its responsibilities under this Agreement.

V. Employee Status. Employees of the Town of Orleans and employees of the Town of Chatham shall, while acting pursuant to the provisions of this Agreement, be deemed to be employees of their respective Towns even though they may be working, under the terms of this Agreement, on a portion of Nauset Beach owned by the other Town.

VI. Term/ Duration of Agreement. Unless otherwise terminated under the provisions of Section IV of this Agreement, above, the Agreement shall run for a period of one (1) year from May 1, 2020 to April 30, 2021.

VII. Revenue Distribution. Revenue will be allocated as follows:

1. Chatham keeps all fees charged to Chatham residents and property owners, excluding the Orleans HCP surcharge collected from Chatham residents which shall be paid to Orleans by September 30, 2020.
2. Orleans keeps all fees charged to Orleans residents and Camp Licensees.
3. All non-resident sticker fees charged by Orleans, excluding the Orleans HCP surcharge, shall be allocated 75% to Orleans and 25% to Chatham. Orleans shall pay Chatham its allocated amount by September 30, 2020.
4. Orleans shall be under no obligation to provide special escort services for Chatham property owners.

VIII. Beach Management.

1. Management of that portion of Nauset Beach located in Chatham shall be as set out in Order of Conditions, DEP SE10-3127, issued April 13, 2016. The provisions of the Chatham order of Conditions are incorporated fully herein by reference.
2. Management of that portion of Nauset Beach located in Orleans shall be as set out in Order of Conditions, DEP SE 54-2246, issued June 25, 2014, recorded in the Barnstable Registry of Deeds in Book 28280 Page 185 ("Orleans Order of Conditions"). The provisions of the Orleans Order of Conditions are incorporated fully herein by reference.
3. To the extent that the Chatham Order of Conditions is inconsistent with this Agreement, the provisions of the Chatham Order of Conditions shall control, except that Orleans shall not be required to manage and enforce the Special Conditions contained in Sections F and G.

4. To the extent that the Orleans Order of Conditions is inconsistent with this Agreement, the provisions of the Order of Conditions shall control.
5. To the extent permitted by "*Guidelines For Managing Recreational Use Of Beaches To Protect Piping Plovers, Terns, And Their Habitats In Massachusetts*," (1993) issued by the Massachusetts Division of Fisheries and Wildlife, the entirety of Nauset Beach will be managed to remain open to all O.R.V. traffic, taking into consideration tide and erosion.
6. Recreational and General Vehicular Access.
 - a. Recreational and general public access of vehicles shall be permitted only in authorized areas and trails of the beach as posted.

When a Piping Plover or Least Tern nesting habitat is located and identified, it should be clearly marked with symbolic fencing and warning signs. Plover or tern nests that are located and identified shall be mapped by monitors, and the information shall be shared between the Towns as soon as possible.

When vehicular access infringes upon the nesting habitat, vehicle traffic and parking shall be rerouted, or altered, around the outside edge of the nesting habitat for as long as the nesting habitat is active, to ensure the safety of the plovers or terns. Marking and posting of the habitat shall be performed in accordance with the guidelines set forth in the Management Plan.

As long as adequate provisions have been made to alter the traffic pattern around the habitat area, vehicular access may be continued. However, if no viable rerouting of traffic is possible due to the location of the nesting habitat, vehicles shall be prohibited through, or into the delineated nesting habitat area. Vehicular access shall be prohibited for as long as necessary to ensure the proper fledging of the plovers and terns as set forth in this beach management plan.

Only essential vehicles, described below, shall be permitted to have access into or through the nesting habitat area, and only under the conditions described below.

All vehicular access restrictions, and conditions of access, will be consistent with the Massachusetts Division of Fisheries and Wildlife document, known as, "*Guidelines For Managing Recreational Use Of Beaches To Protect Piping Plovers, Terns, And Their Habitats In Massachusetts*" (1993), utilizing signage, symbolic fencing, use of monitors, and methods that are designed to protect the plover and tern nesting habitat.

- b. Definitions of Essential Vehicles.

Essential Vehicles (Category 1): Public Safety Vehicles used for emergency service purposes belonging to a municipality, county, state, or federal entity for a police agency, fire service or rescue service; vehicles belonging to natural resources, and

public works of the Towns of Orleans or Chatham providing necessary services or maintenance, and vehicles operated for species monitoring and management.

Essential Vehicles (Category 2): Vehicles bearing an Orleans Camp Licensees sticker and belonging to Licensees of "camps" (structural dwellings), their immediate family members and contractors providing emergency repair.

c. Access of Essential Vehicles.

Under restricted conditions, as outlined below, essential vehicles may be permitted to have access into and through a nesting habitat area containing unfledged chicks. Access will take place only during daylight hours, with the exception of emergency situations involving imminent threat to public health and/or safety. Open, 3 or 4-wheel all-terrain vehicles (ATVs) shall be used whenever possible for monitoring and law enforcement because of the improved visibility afforded the operator.

The access of essential vehicles (Category 1) shall be limited by utilizing monitor(s), who, after determining the location of unfledged chicks, shall accompany and walk in front of the vehicle operating at a speed of five (5) miles per hour proceeding through plover or tern nesting habitat. These essential vehicles (Category 1) will be restricted to operate in this manner, through a plover or tern nesting habitat, on a public safety, need-only basis, and will limit the number of trips through the identified area to only the minimum necessary to accomplish the necessary objective.

Town of Chatham public safety essential vehicles operating through the Orleans portion of Nauset Beach will operate in the above described manner, and additionally, shall be required to notify the Town of Orleans Natural Resources Department, in advance, to make arrangements for access through the Orleans section of Nauset Beach. Emergency situations may require provisional arrangements, but will be conducted as closely in this manner as possible.

Vehicular access for essential vehicles (Category 2) shall be required to make arrangements, notifying Orleans in advance, utilizing the above described method. In addition, essential vehicles (Category 2) shall be required to have the Orleans Natural Resources personnel on scene to supervise the method of vehicular access. It is anticipated that such vehicular access will be limited to 1-2 times per day, and limited to one camp owner pass per day, subject to the availability of personnel. It is further anticipated that any escort service will require the hiring of additional personnel. An operator of an essential vehicle (Category 2) shall be responsible for all incremental escort costs, and shall reimburse Orleans as applicable.

Any decision as to providing vehicular access for essential vehicles (Category 2) to restricted areas of the Beach shall be discussed, reviewed, and approved by the Orleans Natural Resource Manager prior to access being granted, subject to the availability of personnel.

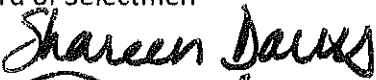

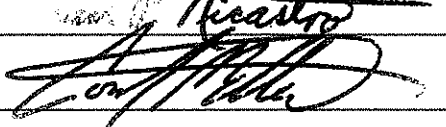
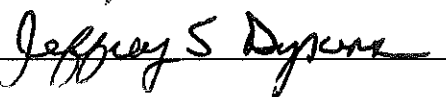
There shall be no vehicular access other than the methods described above, and shall be consistent with the document, "Guidelines For Managing Recreational Use Of Beaches To Protect Piping Plovers, Terns, And Their Habitats In Massachusetts," (1993) issued by the Massachusetts Division of Fisheries and Wildlife.

5. Hold Harmless. Each Town agrees to hold harmless and, to the extent permitted by law, to indemnify the other Town and its representatives, employees and agents, from and against any and all liability, suits, claims, losses, injuries or expenses (including reasonable attorneys' fees) brought by a third party, arising from or with respect to any acts or omissions of the representatives, employees and agents of the indemnitor Town as referenced in, related to and/or arising out of this Agreement.
6. Representations. Each Town warrants and represents that its Board of Selectmen is duly authorized to enter into this Agreement.

This agreement is binding upon on the respective towns as well as their various boards, commission, departments and officers.

Executed as of the day and the year first above written.

TOWN OF CHATHAM
Board of Selectmen





Jeffrey S. Dupont

TOWN OF ORLEANS
Board of Selectmen

