



Appendices

APPENDIX A: SCOPING LETTERS AND RESPONSES

COOPERATING AGENCY CORRESPONDENCE



United States Department of the Interior

NATIONAL PARK SERVICE

Cape Cod National Seashore

99 Marconi Site Road

Wellfleet, MA 02667

508.349.3785

508.349.9052 Fax

IN REPLY REFER TO:
L7617

September 23, 2008

Christine S. Clarke
State Conservationist
USDA Natural Resources Conservation Service
451 West Street
Amherst, Massachusetts 01002

Subject: Request for NRCS to participate as a Cooperating Agency on the EIS/EIR for the Herring River Restoration Project

Dear Ms. Clarke:

The Herring River estuary on lower Cape Cod, Massachusetts, once encompassed over 1100 acres of productive tidal salt marshes and open waters. In 1909, a dike was constructed across the mouth of the River which severely limited tidal exchange. Today, salt-marsh plants are restricted to only eight acres upstream of the dike, invasive non-native plants have invaded much of the former salt marsh, water quality has become significantly degraded, and estuarine finfish and shellfish have been nearly eliminated. This degraded system is within the Towns of Wellfleet and Truro, Massachusetts, and 80 per cent of the flood plain is within the boundary of Cape Cod National Seashore (Seashore).

Seashore scientists and cooperators have been studying the river, assessing the effects and feasibility of tidal restoration, and sharing findings with the local public since the early 1980s. In 2005, The Seashore joined with the Town of Wellfleet to form the Herring River Technical Committee (HRTC), and tasked that group with developing a Conceptual Restoration Plan for the Herring River system. In November 2007, the Seashore, the Town of Wellfleet, and the Town of Truro signed a Memorandum of Understanding establishing our shared desire to restore tide to the Herring River, and to do so through development of an integrated Environmental Impact Statement / Environmental Impact Report (EIS/EIR) prepared in compliance with the National Environmental Policy Act and the Massachusetts Environmental Policy Act. The MOU

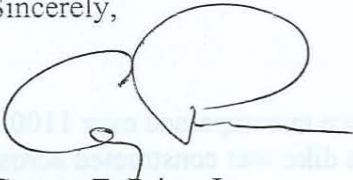
also established the Herring River Restoration Committee (HRRC) to guide development of the EIS/EIR. The HRRC consists of representatives from the two towns, the Seashore, Massachusetts Coastal Zone Management, the National Oceanographic and Atmospheric Administration, the U.S. Fish and Wildlife Service, and the Natural Resources Conservation Service (NRCS). The Seashore is serving as the lead federal agency for the EIS, and the Town of Wellfleet is the lead entity for the EIR.

The NRCS has been an important partner in this effort. An NRCS representative has served on both the HRTC and HRRC, and the NRCS Watershed Plan and Areawide Environmental Impact Statement for the Cape Cod Water Resources Restoration Project (CCWRP), completed in November 2006, identifies the Herring River as a selected priority site. Considering the link between the CCWRP and the current Herring River restoration planning effort, and in light of NRCS's expertise and capabilities, we request that NRCS consider serving as a cooperating agency for the Herring River Restoration Project EIS/EIR. As discussed with your staff, we propose that the NRCS role as a cooperating agency include:

- continuing to participate in the HRRC;
- supporting the project planning and facilitation needed to complete the EIS/EIR process efficiently;
- sharing technical experience on cultural resource issues; and
- sharing technical expertise on sediment transport and other potential effects to shellfish and aquaculture.

The Seashore and the HRRC are grateful for the contributions NRCS has already made to this restoration effort. We look forward to hearing your response to this request.

Sincerely,



George E. Price, Jr.
Superintendent

cc: Gary Joseph, Chair, Herring River Restoration Committee
Carl Gustafson, State Conservation Engineer, NRCS
Dennis Reidenbach, Regional Director, NPS NER
Jacki Katzmire, Regional Environmental Coordinator, NPS NER



Natural Resources Conservation Service
451 West Street
Amherst, MA 01002

United States Department of Agriculture



October 8, 2008

George E. Price, Jr.
Superintendent
National Park Service
Cape Cod National Seashore
99 Marconi Site Road
Wellfleet, MA 02667

Re: Request for NRCS to be a Cooperating Agency under NEPA for the Herring River Restoration Project

Dear Mr. Price:

The Herring River site is an important project to NRCS. In our area-wide EIS completed for the Cape Cod Water Resources Restoration Project (CCWRRP), the Herring River site comprises over half of the estimated benefits attributed to restoring degraded salt marshes. Because of the direct link between the Herring River restoration and the CCWRRP, NRCS agrees to be a cooperating agency on the EIS for the Herring River Restoration Project, and acknowledges that our role as cooperating agency will include:

- Continued participation in the Herring River Restoration Committee;
- Supporting the project planning and facilitation needed to complete the EIS efficiently;
- Providing technical expertise on cultural resource issues; and
- Providing technical expertise on sediment transport effects to shellfish and aquaculture.

We look forward to signing a Memorandum of Understanding with the National Park Service formalizing this agreement. We have also set aside \$65,000 to help fund this planning effort through an agreement with the Coastal America Foundation.

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An Equal Opportunity Provider and Employer

George E. Price, Jr., Herring River

page 2

I am designating Beth Schreier, our state biologist, to be our principal contact for this project. Beth may be reached at:

Beth Schreier
Natural Resources Conservation Service
451 West Street
Amherst, MA 01002
413 253-4393
413 253-4375 fax
beth.schreier@ma.usda.go

Sincerely,



Christine S. Clarke
State Conservationist

B. Schreier, Biologist, NRCS, Amherst
D. Liptack, District Conservationist, NRCS, Hyannis
B. Miller, State Resource Conservationist, Amherst
C. Gustafson, State Conservation Engineer, NRCS, Amherst

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Natural Resources Conservation Service
451 West Street
Amherst, MA 01002

United States Department of Agriculture

413-253-4350
fax 413-253-4375
www.ma.nrcs.usda.gov

November 21, 2008

George E. Price, Jr.
Superintendent, National Park Service
Cape Cod National Seashore
99 Marconi Site Road
Wellfleet, MA 02667

Re: Memorandum of Understanding – Herring River

Dear Mr. Price,

Enclosed please find two signed copies of the Memorandum of Understanding between the National Park Service and the Natural Resources Conservation Service with respect to the preparation of an Environmental Impact Statement for the Herring River restoration project. Please sign both copies, keep one for your records and return the other copy to me at the above address. NRCS looks forward to working with the NPS on this endeavor.

Sincerely,

A handwritten signature in blue ink that reads "Beth Schreier".

Beth Schreier
Soil Conservationist, NRCS

cc: Carrie Phillips, NPS

Helping People Help the Land
An Equal Opportunity Provider and Employer

Memorandum of Understanding (MOU)
Between the
National Park Service
(Lead Federal Agency)
And the
United States Department of Agriculture
Natural Resources Conservation Service
(Cooperating Agency)

This Memorandum of Understanding is established and entered into by and between the National Park Service (hereafter referred to as "NPS") and the United States Department of Agriculture Natural Resources Conservation Service, (hereafter referred to as "NRCS"),

This MOU outlines the roles and responsibilities of the NPS and the NRCS with respect to the preparation of an Environmental Impact Statement (EIS) for the Herring River Restoration project on Cape Cod, Massachusetts.

This MOU does not alter any other written MOUs, cooperative or grant agreements between the above parties and the project sponsors or other government agencies, or parties.

I. BACKGROUND:

The NPS has developed a strong partnership (called Herring River Restoration Committee (HRRC)) with NRCS, the Town of Wellfleet, Town of Truro, US Fish and Wildlife Service, National Oceanic and Atmospheric Restoration Center, and Massachusetts Coastal Zone Management - Wetlands Restoration Program to prepare a plan for the restoration of the 1,100 acre Herring River estuary, the largest such project ever attempted in Massachusetts and the Gulf of Maine. Because of the size and complexity, the Herring River restoration will require an individual Environmental Impact Statement (EIS) under NEPA. The NPS, as Lead Agency, has already committed \$158,000 for the preparation of the EIS.

NRCS completed the Watershed Plan and Areawide EIS for the Cape Cod Water Resources Restoration Project (CCWRRP) in November 2006. One of the three project objectives is to restore degraded salt marshes. The Herring River site comprises over half of the estimated CCWRRP benefits attributed to restoring degraded salt marshes. NRCS is waiting for the CCWRRP to be authorized and funded before proceeding with any site specific planning and design. Because of the direct link between the Herring River restoration and the CCWRRP, NRCS has agreed to be a cooperating agency under NEPA (at the request of the NPS), and has committed funding for the development of a Herring River restoration EIS plan of work, and HRRC meeting facilitation and management.

II. PURPOSE AND BENEFITS:

NPS and NRCS worked together in the development of the CCWRRP. By combining resource efforts for the Herring River EIS, implementation of USDA programs will be improved, interagency coordination and cooperation will be strengthened, and both agencies will improve efficiencies. Therefore, the NPS and the NRCS deem it mutually advantageous to cooperate in the undertaking, and hereby agree as follows:

III. NPS (Lead Federal Agency) RESPONSIBILITIES:

- A. As the lead agency, the NPS has primary responsibility for meeting the requirements of the National Environmental Policy Act (NEPA), including the preparation of the Draft EIS (DEIS) and Final EIS (FEIS) for the Herring River Restoration project.
- B. The NPS will consult with the NRCS regarding the EIS issues of concern, range of EIS alternatives considered, and associated mitigation measures to be analyzed in the EIS.
- C. The NPS will identify NRCS as a cooperating agency in the EIS, and will include in the EIS written material which would allow the NRCS to meet its NEPA compliance requirements.
- D. The NPS will provide NRCS with copies of the preliminary draft(s) of the DEIS and FEIS in a timely manner.

IV. NRCS (Cooperating Agency) RESPONSIBILITIES:

- A. As a cooperating agency, NRCS will participate in the HRRC.
- B. NRCS will provide technical assistance on the cultural resource issues associated with the preparation of the Herring River EIS.
- C. NRCS will provide technical assistance on sediment transport and other potential effects to shellfish and aquaculture associated with the Herring River restoration.
- D. NRCS will review the preliminary draft of the DEIS and provide comments to the NPS within 30 working days (unless a different mutually agreed upon time frame is established) of receipt of the DEIS.
- E. NRCS will review the preliminary draft of the FEIS and provide comments to the NPS within 30 working days (unless a different mutually agreed upon time frame is established) of receipt of the draft FEIS.

V. IT IS MUTUALLY AGREED THAT:

A. The principle contacts for this MOU are:

NPS:

Carrie Phillips
Chief, Natural Resource Management
Cape Cod National Seashore
99 Marconi Site Road
Wellfleet, MA 02667
508 349-3785 x216

NRCS:

Beth Schreier
Soil Conservationist
451 West Street
Amherst, MA 01002
413 253-4393

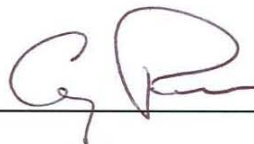
B. This MOU may be modified by the parties hereto by mutual agreement only.
Any modification will be in writing.

C. This MOU is terminated when either the Record of Decision (ROD) is signed
or when written notice is given by a respective agency.

**THE NPS AND THE NRCS AGREE TO THIS MOU AS OF THE LAST DATE
WRITTEN BELOW:**

Date: 12/1/08

By: _____



George E. Price, Jr.
Superintendent, National Park Service
Cape Cod National Seashore
99 Marconi Site Road
Wellfleet, MA 02667

Date: 11/20/08

By: _____



Christine S. Clarke
State Conservationist
USDA Natural Resources Conservation Service
451 West Street
Amherst, MA 01002



United States Department of the Interior

NATIONAL PARK SERVICE
Cape Cod National Seashore
99 Marconi Site Road
Wellfleet, MA 02667

IN REPLY REFER TO:
L7617 (CACO NRM)

May 19, 2010

H. Curtis Spalding
Regional Administrator
EPA New England, Region 1
5 Post Office Square, Suite 100
Mail Code ORA 01-4
Boston, Massachusetts 02109-3912

Subject: Request for EPA to participate as a Cooperating Agency on the EIS/EIS for
the Herring River Restoration Project

Dear Mr. Spalding,

The Herring River estuary on lower Cape Cod, Massachusetts, once encompassed over 1100 acres of productive tidal salt marshes and open waters. In 1909, a dike was constructed across the mouth of the River which severely limited tidal exchange. Today, salt-marsh plants are restricted to only eight acres upstream of the dike, invasive non-native plants have invaded much of the former salt marsh, water quality has become significantly degraded, and estuarine finfish and shellfish have been nearly eliminated. This degraded system is within the Towns of Wellfleet and Truro, Massachusetts, and 80 percent of the flood plain is within the boundary of Cape Cod National Seashore (Seashore).

Seashore scientists and cooperators have been studying the river, assessing the effect and feasibility of tidal restoration, and sharing findings with the local public since the early 1980s. In 2005, the Seashore joined with the Town of Wellfleet to form the Herring River Technical Committee (HRTC), and tasked that group with developing a Conceptual Restoration Plan for the Herring River system. In November 2007, the Seashore, the Town of Wellfleet, and the Town of Truro signed a Memorandum of Understanding establishing our shared desire to restore tide to the Herring River, and to do so through development of an integrated Environmental Impact Statement/Environmental Impact Report (EIS/EIR) prepared in compliance with the National Environmental Policy Act and the Massachusetts Environmental Policy Act. The MOU also established the Herring River Restoration Committee (HRRC) to guide development of the EIS/EIR. The HRRC consists of representatives from the two towns, the Seashore,

Massachusetts Division of Ecological Restoration, National Oceanographic and Atmospheric Administration, U.S. Fish and Wildlife Service, and Natural Resources Conservation Service. The Seashore is serving as the lead federal agency for the EIS, and the Town of Wellfleet is the lead entity for the EIR. In his Certificate date November 7, 2007, Ian Bowles, Secretary of the MA Executive Office of Energy and the Environment, established a Technical Working Group (TWG) to help guide compliance and permitting processes for the project.

The Environmental Protection Agency (EPA) has been an important partner in this effort. An EPA representative has served on the TWG and EPA is a leading proponent and sponsor of salt marsh restoration projects throughout Cape Cod and other parts of Massachusetts. In light of EPA's expertise and capabilities, we request that EPA consider serving as a cooperating agency for the Herring River Restoration Project EIS/EIR. As discussed with your staff, we anticipate that the EPA role as a cooperating agency will include:

- Continuing to participate in the TWG;
- Supporting the project planning and facilitation needed for compliance and permitting processes;
- Sharing technical experience on natural and cultural resource issues; and
- Sharing technical expertise on design of salt marsh restoration projects, wetland permitting, monitoring, and adaptive management.

The Seashore and the HRRC are grateful for the contributions EPA has already made to this restoration effort. We look forward to hearing your response to this request. If you have questions regarding this topic, please contact Tim Smith, Restoration Ecologist, at (508) 487-3262.

Sincerely,



George E. Price, Jr.
Superintendent

cc: Gary Joseph, Chair, Herring River Restoration Committee
Ed Reiner, EPA
Tim Timmerman, EPA
John Sargent, Army Corps
Dennis Reidenbach, Regional Director, NPS NER
Jacki Katzmire, Regional Environmental Coordinator, NPS NER
CACO central files



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MA 02109-3912

June 8, 2010

George E. Price, Superintendent
National Park Service
Cape Cod National Seashore
99 Marconi Site Road
Wellfleet, MA 02667

RE: Request to be a Cooperating Agency for the preparation of an Environmental Impact Statement for the Herring River Restoration Project in Wellfleet and Truro, Massachusetts

Dear Superintendent Price:

Thank you for your recent letter requesting the Environmental Protection Agency (EPA) participation as a cooperating agency during the preparation of the Environmental Impact Statement (EIS) for the Herring River Restoration project. EPA New England looks forward to participation as a cooperating agency during the preparation of the EIS for this important ecological restoration effort.

EPA intends to work as a cooperating agency within the limit of our resources to help define the scope of analysis, identify sources of information and to offer input on how specific issues should be addressed in the EIS. We appreciate the leadership provided to date by Tim Smith of your office during interagency meetings to discuss the EIS and look forward to continued close coordination with the National Park Service and other interested local, state and federal agency representatives as the NEPA process continues.

If you have any questions about this letter or EPA's involvement in the EIS process, please contact Timothy Timmermann at 617-918-1025.

Sincerely,

A handwritten signature in black ink, appearing to read "H. Curtis Spalding", is written over the word "Sincerely,".

H. Curtis Spalding
Regional Administrator

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United States Department of the Interior

NATIONAL PARK SERVICE
Cape Cod National Seashore
99 Marconi Site Road
Wellfleet, MA 02667

IN REPLY REFER TO:
L7617 (CACO-NRM)

May 19, 2010

Mr. John C. Sargent
U.S. Army Corps of Engineers
New England District
696 Virginia Road
Concord, Massachusetts 01742

Subject: Request for Army Corps of Engineers to participate as a Cooperating Agency on the EIS/EIS for the Herring River Restoration Project

Dear Mr. Sargent,

The Herring River estuary on lower Cape Cod, Massachusetts, once encompassed over 1100 acres of productive tidal salt marshes and open waters. In 1909, a dike was constructed across the mouth of the River which severely limited tidal exchange. Today, salt-marsh plants are restricted to only eight acres upstream of the dike, invasive non-native plants have invaded much of the former salt marsh, water quality has become significantly degraded, and estuarine finfish and shellfish have been nearly eliminated. This degraded system is within the Towns of Wellfleet and Truro, Massachusetts, and 80 percent of the flood plain is within the boundary of Cape Cod National Seashore (Seashore).

Seashore scientists and cooperators have been studying the river, assessing the effect and feasibility of tidal restoration, and sharing findings with the local public since the early 1980s. In 2005, the Seashore joined with the Town of Wellfleet to form the Herring River Technical Committee (HRTC), and tasked that group with developing a Conceptual Restoration Plan for the Herring River system. In November 2007, the Seashore, the Town of Wellfleet, and the Town of Truro signed a Memorandum of Understanding establishing our shared desire to restore tide to the Herring River, and to do so through development of an integrated Environmental Impact Statement/Environmental Impact Report (EIS/EIR) prepared in compliance with the National Environmental Policy Act and the Massachusetts Environmental Policy Act. The MOU also established the Herring River Restoration Committee (HRRC) to guide development of the EIS/EIR. The HRRC consists of representatives from the two towns, the Seashore, Massachusetts Division of Ecological Restoration, National Oceanographic and Atmospheric

Administration, U.S. Fish and Wildlife Service, and Natural Resources Conservation Service. The Seashore is serving as the lead federal agency for the EIS, and the Town of Wellfleet is the lead entity for the EIR. In his Certificate date November 7, 2007, Ian Bowles, Secretary of the MA Executive Office of Energy and the Environment, established a Technical Working Group (TWG) to help guide compliance and permitting processes for the project.

The Army Corps of Engineers (Corps) has been an important partner in this effort. A Corps representative has served on the TWG and the Corps is a leading proponent and sponsor of salt marsh restoration projects throughout Cape Cod and other parts of Massachusetts. In light of the Corps' expertise and capabilities, we request that the Corps consider serving as a cooperating agency for the Herring River Restoration Project EIS/EIR. As discussed with your staff, we anticipate that the Corps' role as a cooperating agency will include:

- Continuing to participate in the TWG;
- Supporting the project planning and facilitation needed for compliance and permitting processes;
- Sharing technical experience on natural and cultural resource issues; and
- Sharing technical expertise on design of salt marsh restoration projects, hydraulic modeling, wetland permitting, monitoring, and adaptive management.

The Seashore and the HRRC are grateful for the contributions the Corps has already made to this restoration effort. We look forward to hearing your response to this request. If you have questions regarding this topic, please contact Tim Smith, Restoration Ecologist, at (508) 487-3262.

Sincerely,



George E. Price, Jr.
Superintendent

cc: Gary Joseph, Chair, Herring River Restoration Committee
 Bill Hubbard, Army Corps
 Ed Reiner, EPA
 Tim Timmerman, EPA
 Dennis Reidenbach, Regional Director, NPS NER
 Jacki Katzmire, Regional Environmental Coordinator, NPS NER
 CACO central files



REPLY TO
ATTENTION OF

Regulatory Branch
CENAE-R-NAE-2008-0759

DEPARTMENT OF THE ARMY
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS
696 VIRGINIA ROAD
CONCORD, MASSACHUSETTS 01742-2751

July 12, 2010

George Price
Superintendent
National Park Service
Cape Cod National Seashore
99 Marconi Site Road
Wellfleet, Massachusetts 02667

Dear Mr. Price:

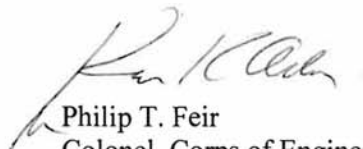
This is in response to your May 19, 2010 letter in which you requested that the Corps of Engineers participate as a cooperating agency in the development of an Environmental Impact Statement for the Herring River Restoration Project in Wellfleet and Truro, Massachusetts.

As set forth by the CEQ regulations [40 CFR 1501.5, 1501.6(a), and 1508.16], and Corps of Engineers regulations 33 CFR 325, we will coordinate with your agency as a cooperating agency.

John Sargent has been assigned as Project Manager for this project. John Sargent has already participated in a number of meetings and site visits. Through John we hope to provide you with sufficient guidance to assure that the upcoming EIS will provide us with adequate documentation to complete our 404 permit evaluation. The Corps will continue to be available to provide support in the permitting process to include participation in the Technical Working Group (TWG) and sharing technical expertise on natural and cultural resource issues.

If you have any further questions concerning this matter, please contact me at (978) 318-8220 or John Sargent of my regulatory staff at (978) 318-8026.

Sincerely,


Philip T. Feir
Colonel, Corps of Engineers
District Engineer

Attachments

Copy Furnished:

Ed Reiner, U.S. Environmental Protection Agency, 5 Post Office Square, Suite 100, Mail Code
ORA 01-4, Boston, Massachusetts 02109-3912



United States Department of the Interior

NATIONAL PARK SERVICE
Cape Cod National Seashore
99 Marconi Site Road
Wellfleet, MA 02667

IN REPLY REFER TO:
L7617 (CACO-NRM)

May 19, 2010

Mr. Chris Doley, Chief
NOAA Restoration Center
1315 East-West Hwy. (F/HC3)
Silver Spring, Maryland 20910

Subject: Request for NOAA to participate as a Cooperating Agency on the EIS/EIS for the
Herring River Restoration Project

Dear Mr. Doley,

The Herring River estuary on lower Cape Cod, Massachusetts, once encompassed over 1100 acres of productive tidal salt marshes and open waters. In 1909, a dike was constructed across the mouth of the River which severely limited tidal exchange. Today, salt-marsh plants are restricted to only eight acres upstream of the dike, invasive non-native plants have invaded much of the former salt marsh, water quality has become significantly degraded, and estuarine finfish and shellfish have been nearly eliminated. This degraded system is within the Towns of Wellfleet and Truro, Massachusetts, and 80 percent of the flood plain is within the boundary of Cape Cod National Seashore (Seashore).

Seashore scientists and cooperators have been studying the river, assessing the effect and feasibility of tidal restoration, and sharing findings with the local public since the early 1980s. In 2005, the Seashore joined with the Town of Wellfleet to form the Herring River Technical Committee (HRTC), and tasked that group with developing a Conceptual Restoration Plan for the Herring River system. In November 2007, the Seashore, the Town of Wellfleet, and the Town of Truro signed a Memorandum of Understanding establishing our shared desire to restore tide to the Herring River, and to do so through development of an integrated Environmental Impact Statement/Environmental Impact Report (EIS/EIR) prepared in compliance with the National Environmental Policy Act and the Massachusetts Environmental Policy Act. The MOU also established the Herring River Restoration Committee (HRRC) to guide development of the EIS/EIR. The HRRC consists of representatives from the two towns, the Seashore, Massachusetts Division of Ecological Restoration, National Oceanographic and Atmospheric Administration (NOAA), U.S. Fish and Wildlife Service, and Natural Resources Conservation

Service. The Seashore is serving as the lead federal agency for the EIS, and the Town of Wellfleet is the lead entity for the EIR.

NOAA has been an important partner in this effort. A NOAA representative has served on both the HRTC and HRRC and NOAA is a leading proponent and sponsor of salt marsh restoration projects throughout Cape Cod and other parts of Massachusetts. In light of NOAA's expertise and capabilities, we request that NOAA consider serving as a cooperating agency for the Herring River Restoration Project EIS/EIR. As discussed with your staff, we anticipate that the NOAA role as a cooperating agency will include:

- Continuing to participate in the HRRC;
- Supporting the project planning and facilitation needed to complete the EIS/EIR process efficiently;
- Sharing technical experience on natural and cultural resource issues; and
- Sharing technical expertise on hydrodynamic modeling, sediment transport, and structural design of various project components.

The Seashore and the HRRC are grateful for the contributions NOAA has already made to this restoration effort. We look forward to hearing your response to this request. If you have questions regarding this topic, please contact Tim Smith, Restoration Ecologist, at (508) 487-3262.

Sincerely,



George E. Price, Jr.
Superintendent

cc: Gary Joseph, Chair, Herring River Restoration Committee
Steve Block, NOAA Restoration Center
Dennis Reidenbach, Regional Director, NPS NER
Jacki Katzmire, Regional Environmental Coordinator, NPS NER
CACO central files



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, MD 20910

APR 19 2011

George E. Price, Jr., Superintendent
Cape Cod National Seashore
National Park Service
99 Marconi Site Road
Wellfleet, MA 02667

RE: L7617 (CACO-NRM) – Request for NOAA's Participation as Cooperating Agency for the
Herring River Restoration Project EIS

Dear Superintendent Price,

The National Oceanic and Atmospheric Administration (NOAA) Restoration Center recognizes the importance of restoring the degraded 1,100-acre Herring River floodplain to a healthy and vital estuary and supports the National Park Service's efforts to do so. Since 2003, Restoration Center's staff have continuously served on the several interagency committees formed to advance that restoration project, and have supported the project with funding through our partnerships with Restore America's Estuaries/Conservation Law Foundation and the Gulf of Maine Council on the Marine Environment.

NOAA accepts your invitation to participate as a Cooperating Agency on the Herring River EIS/EIR. I understand that our role as Cooperating Agency will include:

- Continuing to participate in the Herring River Restoration Committee (HRRC);
- Providing technical support for the project planning and facilitation needed to complete the EIS/EIR process efficiently;
- Sharing technical experience on natural and cultural resource issues;
- Sharing technical expertise on hydrodynamic modeling, sediment transport, and structural design of various project components; and
- Reviewing and providing comments to NPS on draft versions of the EIS.

Please note that our participation on the HRRC and with the preparation of the EIS/EIR does not preclude the necessity of the NPS from having to consult with NOAA on Essential Fish Habitat and Section 7 of the Endangered Species Act. Thank you for extending this Cooperating Agency offer to NOAA, and for your continuing efforts to advance this important restoration project.

Sincerely,

Patricia A. Montanio
Director, Office of Habitat Conservation

cc: John Catena, NOAA
Steve Block, NOAA



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United States Department of the Interior

NATIONAL PARK SERVICE
Cape Cod National Seashore
99 Marconi Site Road
Wellfleet, MA 02667

IN REPLY REFER TO:
L7617 (CACO-NRM)

May 19, 2010

Thomas R. Chapman
Supervisor, New England Field Office
U. S. Fish and Wildlife Service
70 Commercial Street, Suite 300
Concord, New Hampshire 03301

Subject: Request for USFWS to participate as a Cooperating Agency on the EIS/EIS for the Herring River Restoration Project

Dear Mr. Chapman,

The Herring River estuary on lower Cape Cod, Massachusetts, once encompassed over 1100 acres of productive tidal salt marshes and open waters. In 1909, a dike was constructed across the mouth of the River which severely limited tidal exchange. Today, salt-marsh plants are restricted to only eight acres upstream of the dike, invasive non-native plants have invaded much of the former salt marsh, water quality has become significantly degraded, and estuarine finfish and shellfish have been nearly eliminated. This degraded system is within the Towns of Wellfleet and Truro, Massachusetts, and 80 percent of the flood plain is within the boundary of Cape Cod National Seashore (Seashore).

Seashore scientists and cooperators have been studying the river, assessing the effect and feasibility of tidal restoration, and sharing findings with the local public since the early 1980s. In 2005, the Seashore joined with the Town of Wellfleet to form the Herring River Technical Committee (HRTC), and tasked that group with developing a Conceptual Restoration Plan for the Herring River system. In November 2007, the Seashore, the Town of Wellfleet, and the Town of Truro signed a Memorandum of Understanding establishing our shared desire to restore tide to the Herring River, and to do so through development of an integrated Environmental Impact Statement/Environmental Impact Report (EIS/EIR) prepared in compliance with the National Environmental Policy Act and the Massachusetts Environmental Policy Act. The MOU also established the Herring River Restoration Committee (HRRC) to guide development of the EIS/EIR. The HRRC consists of representatives from the two towns, the Seashore, Massachusetts Division of Ecological Restoration, National Oceanographic and Atmospheric

Administration, U.S. Fish and Wildlife Service (FWS), and Natural Resources Conservation Service. The Seashore is serving as the lead federal agency for the EIS, and the Town of Wellfleet is the lead entity for the EIR.

FWS has been an important partner in this effort. A FWS representative has served on both the HRTC and HRRC and FWS is a leading proponent and sponsor of salt marsh restoration projects throughout Cape Cod and other parts of Massachusetts. In light of FWS's expertise and capabilities, we request that FWS consider serving as a cooperating agency for the Herring River Restoration Project EIS/EIR. As discussed with your staff, we anticipate that the FWS role as a cooperating agency will include:

- Continuing to participate in the HRRC;
- Supporting the project planning and facilitation needed to complete the EIS/EIR process efficiently;
- Sharing technical experience on natural and cultural resource issues; and
- Sharing technical expertise on hydrodynamic modeling, sediment transport, monitoring, and adaptive management.

The Seashore and the HRRC are grateful for the contributions FWS has already made to this restoration effort. We look forward to hearing your response to this request. If you have questions regarding this topic, please contact Tim Smith, Restoration Ecologist, at (508) 487-3262.

Sincerely,



George E. Price, Jr.
Superintendent

cc: Gary Joseph, Chair, Herring River Restoration Committee
Eric Derleth, USFWS
Dennis Reidenbach, Regional Director, NPS NER
Jacki Katzmire, Regional Environmental Coordinator, NPS NER
CACO central files



United States Department of the Interior

FISH AND WILDLIFE SERVICE

New England Field Office
70 Commercial Street, Suite 300
Concord, NH 03301-5087
<http://www.fws.gov/newengland>



Re: Herring River Restoration Project
Request for U.S. Fish and Wildlife Service
to become a Cooperating Agency under NEPA

August 23, 2012

George E. Price, Jr., Superintendent
National Park Service
Cape Cod National Seashore
99 Marconi Site Road
Wellfleet, MA 02667

Dear Mr. Price:

The U.S. Fish and Wildlife Service (Service) and the National Park Service (NPS) have been working together, along with other members of the Herring River Restoration Committee (HRRC), to prepare a draft Environmental Impact Statement (EIS) for the potential restoration of the Herring River in Wellfleet and Truro, Massachusetts. It is our understanding that the draft EIS is now scheduled for release in early October 2012. As part of our collective compliance under the National Environmental Policy Act (NEPA), the Service formally accepts your May 2010 invitation to become a cooperating agency for the Herring River Restoration Project EIS without the development of a Memorandum of Understanding, as indicated in our July 2, 2010 response to your original request.

The Service understands that the EIS is being prepared jointly with an Environmental Impact Report (EIR) in compliance with the Massachusetts Environmental Policy Act (MEPA). Since 2005, the Service has participated on the Herring River Technical Committee, which produced a 2007 Conceptual Restoration Plan for the project, and currently participates on the HRRC as it has developed alternatives for the Herring River.

At approximately 1,100 acres, the Herring River Restoration Project has the potential to become the largest estuarine habitat restoration project ever attempted in the northeastern United States, and if completed, would provide significant benefits to Service trust resources, including numerous species of migratory birds and fish. The Herring River Restoration Project also could be highly competitive for future Service funding through one of our habitat restoration programs. The Service acknowledges that our role as a cooperating agency will include:

- continued participation on the HRRC;
- supporting the project planning and facilitation needed to complete the EIS/EIR process efficiently;
- providing technical expertise on natural and cultural resource issues;

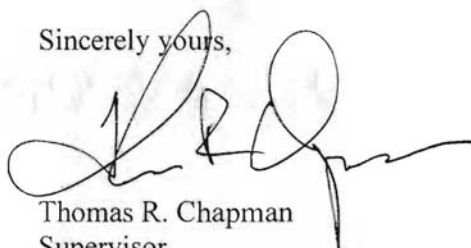
George E. Price, Jr., Superintendent
August 23, 2012

2

- providing technical expertise on hydrodynamic modeling, sediment transport, monitoring and adaptive management; and
- reviewing and providing comments to the NPS on draft versions of the EIS and assisting with responses to public comments during the development of the final EIS.

The Service looks forward to continuing our collaboration with the NPS as we complete our collective responsibilities during the NEPA process. Eric Derleth, the New England Field Office's Partners for Fish and Wildlife Program Coordinator, will continue to represent the Service on the HRRC and will be the principal contact for the project. Mr. Derleth can be reached at the above address, or by phone at (603) 223-2541, and email at eric_derleth@fws.gov.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'T. Chapman', with a large, stylized loop at the end.

Thomas R. Chapman
Supervisor
New England Field Office

AGENCY CONSULTATION



Commonwealth of Massachusetts

Division of Fisheries & Wildlife

Wayne F. MacCallum, *Director*

6/3/2008

Christopher Gajeski
The Louis Berger Group, Inc.
75 Second Ave., Suite 700
Needham MA 02494

RE: Project Location: HERRING RIVER SALT MARSH RESTORATION
Town: WELLFLEET
NHESP Tracking No.: 04-15126

To Whom It May Concern:

Thank you for contacting the Natural Heritage and Endangered Species Program ("NHESP") of the MA Division of Fisheries & Wildlife for information regarding state-listed rare species in the vicinity of the above referenced site. Based on the information provided, this project site, or a portion thereof, is located **within** Priority Habitat 1232 (PH 1232) and Estimated Habitat 821 (EH 821) as indicated in the *Massachusetts Natural Heritage Atlas* (12th Edition). Our database indicates that the following state-listed rare species have been found in the vicinity of the site:

<u>Scientific name</u>	<u>Common Name</u>	<u>Taxonomic Group</u>	<u>State Status</u>
<i>Sterna dougallii</i>	Roseate Tern	Bird	Endangered
<i>Sterna hirundo</i>	Common Tern	Bird	Special Concern
<i>Circus cyaneus</i>	Northern Harrier	Bird	Threatened
<i>Charadrius melodus</i>	Piping Plover	Bird	Threatened
<i>Terrapene carolina</i>	Eastern Box Turtle	Reptile	Special Concern
<i>Malaclemys terrapin</i>	Diamondback Terrapin	Reptile	Threatened
<i>Scaphiopus holbrookii</i>	Eastern Spadefoot	Amphibian	Threatened
<i>Hemidactylium scutatum</i>	Four-Toed Salamander	Amphibian	Special Concern
<i>Catocala herodias gerhardi</i>	Gerhard's Underwing Moth	Butterflies and Moths	Special Concern
<i>Papaipema sulphurata</i>	Water-Willow Stem Borer	Butterflies and Moths	Threatened
<i>Corema conradii</i>	Broom Crowberry	Plant	Special Concern

The species listed above is/are protected under the Massachusetts Endangered Species Act (MESA) (M.G.L. c. 131A) and its implementing regulations (321 CMR 10.00). State-listed wildlife are also protected under the state's Wetlands Protection Act (WPA) (M.G.L. c. 131, s. 40) and its implementing regulations (310 CMR 10.00). Fact sheets for most state-listed rare species can be found on our website (www.nhesp.org).

This evaluation is based on the most recent information available in the NHESP database, which is constantly being expanded and updated through ongoing research and inventory. If you have any questions regarding this letter please contact Amy Coman, Endangered Species Review Assistant, at (508) 389-6364.

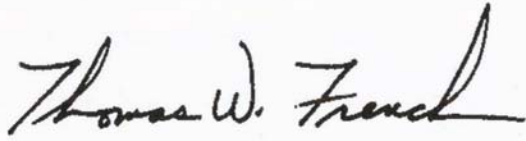
www.masswildlife.org

Division of Fisheries and Wildlife

Field Headquarters, North Drive, Westborough, MA 01581 (508) 389-6300 Fax (508) 389-7891

An Agency of the Department of Fish and Game

Sincerely,

A handwritten signature in black ink that reads "Thomas W. French". The signature is written in a cursive style with a large, stylized 'T' and 'F'.

Thomas W. French, Ph.D.
Assistant Director



The Commonwealth of Massachusetts
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Deval L. Patrick
GOVERNOR

Timothy P. Murray
LIEUTENANT
GOVERNOR

Ian A. Bowles
SECRETARY

Tel: (617) 626-1000
Fax: (617) 626-1181
[http://www.mass.gov/
envir](http://www.mass.gov/envir)

June 20, 2008

CERTIFICATE OF THE SECRETARY OF ENVIRONMENTAL AFFAIRS
ESTABLISHING A SPECIAL REVIEW PROCEDURE

PROJECT NAME : Herring River Restoration Project
PROJECT MUNICIPALITY : Wellfleet and Truro
PROJECT WATERSHED : Cape Cod
EEA NUMBER : 14272
PROJECT PROPONENTS : Town of Wellfleet, Town of Truro, and Cape Cod
National Seashore
DATE NOTICED IN MONITOR : N/A

Pursuant to the Massachusetts Environmental Policy Act (M.G. L. c. 30, ss. 61-62H) and Section 11.09 of the MEPA regulations, I hereby establish a Special Review Procedure to guide the MEPA review of the project.

Project Background and Description

As described in a letter submitted by the proponent, the Herring River Restoration Committee, to the Secretary of Energy and Environmental Affairs on May 29, 2008, the proposed project entails the restoration of ecosystem functions and values to a degraded 1,100-acre tidally restricted estuary. Prior to the 1908 construction of a dike at the mouth of the Herring River, the estuary was dominated by healthy and highly productive salt marsh plant communities. The prime objective of the project is to eventually restore tidal exchange to an extent closely approximating the normal, natural tidal range that occurred prior to diking. Tides will be restored gradually, over a period of several years, with small, incremental opening of adjustable tide gates.

The Herring River Restoration Committee (HRRC), a multi-agency group appointed by the two Towns and the National Seashore, is currently engaged in development of a comprehensive restoration plan for the estuary, building upon work completed by the preceding Town-appointed Herring River Technical Committee (HRTC). With input from the Herring River Stakeholder Group (also appointed by the Wellfleet Selectmen), the HRTC's work culminated with release of the Herring River Conceptual Restoration Plan in November 2007. As described in the Conceptual Restoration Plan, the Herring River Project comprises the following elements:

- Reconstruction of the existing 1908 dike and tide control structure at Chequessett Neck Road with a new structure, incorporating enlarged culverts and adjustable tide gates designed to allow gradual increases to tidal range.
- Replacement of at least seven additional culverts at road crossings upstream of Chequessett Neck Road to allow increased tidal exchange and better fish passage.
- Raising, relocating, or abandoning up to 22,000 linear feet of low-lying roadway occurring within the Herring River floodplain that are vulnerable to flooding from restored tidal range.
- Removal of approximately 600 acres of woody vegetation that has become established within the Herring River floodplain in order to promote recolonization of salt marsh vegetation and support fish passage coincident with restored tidal range.
- Restoration of natural channel sinuosity in the channelized portions of the Herring River system to enhance wetland habitat functions and abate mosquito production.
- Prevention and/or mitigation of flooding impacts to several private properties within the Herring River floodplain, including structures, developed lands, and domestic water wells.

MEPA Jurisdiction and Required Permits

At a minimum, it is expected that the Herring River project will alter at least one acre of salt marsh or bordering vegetated wetlands, triggering the mandatory EIR threshold described at 310 CMR 11.03(3)(a). Although the exact nature and extent of wetland alteration is unknown at this time, it is likely this threshold will be exceeded to a significant extent. In addition, the project area is known to contain both estimated and priority rare species habitat, is adjacent to significant cultural and historic resources, and is located within the Wellfleet Harbor Area of Critical Environmental Concern. The project will require numerous state permits (Chapter 91 Licenses, 401 Water Quality Certification, etc.) and has already received funding from the Massachusetts Office of Coastal Zone Management's Wetlands Restoration Program. Because the project requires a Chapter 91 License, MEPA jurisdiction is broad in scope and extends all aspects of the project with the potential to cause Damage to the Environment.

EEA#14272

Certificate Establishing a Special Review Procedure

6/20/08

SPECIAL REVIEW PROCEDURE

The proponent has requested that I establish of a Special Review Procedure (SRP) for the review of the project under MEPA. The MEPA regulations provide that a Special Review Procedure may be established to provide for “coordination or consolidation of MEPA review with other environmental or development review and permitting processes”. In addition, 301 CMR 11.09 states that “A Special Review Procedure may be appropriate, for example, for reviewing a proposed program, regulations, policy, or other Project in which there is more than one Proponent or more than one Participating Agency with a significant role, or a Project that is undefined or is expected to evolve during MEPA review, or a Project that may benefit the environment if there is early Commencement of a portion of the Project.”

A SRP will enable the MEPA process to build on, rather than duplicate, the extensive analysis that has been and will be conducted by the HRRC. After considering the factors cited in Section 11.09 of the MEPA regulations, I hereby find that the review of the project would benefit from the establishment of a SRP.

Coordination with Other Review Processes

The SRP is largely for administrative convenience, designed to provide an opportunity for coordinated review and to consolidate the MEPA review with other environmental or development review and permitting processes.¹

The Herring River Restoration Project is deemed a Development of Regional Impact (DRI) under the enabling regulations of the Cape Cod Commission and is, therefore, subject to DRI review. Additionally, approximately 80 percent of the project area is located within the Cape Cod National Seashore and, therefore, subject to compliance with the National Environmental Policy Act (NEPA). Because of the complexity, and long-term duration of the project, National Seashore staff and other cooperating federal agencies, have determined that a full Environmental Impact Statement (EIS) is appropriate.

This consolidation and coordination allows these regulatory and public review processes to be conducted in such a way that the public will be able to provide both written and oral comments, within a single timeframe, under the various regional, state and federal regulatory processes.

¹ The term “coordinated review” as used in this Certificate and in the MEPA regulations refers to the practice of allowing a single set of documents to serve simultaneously for more than one environmental review process, concurrent with that conducted under MEPA. In common usage, the practice is sometimes referred to as “joint review,” although this term is misleading since federal and state agencies retain independent authority to judge the adequacy of the information submitted pursuant to their respective statutory and regulatory responsibilities.

EEA#14272

Certificate Establishing a Special Review Procedure

6/20/08

Citizens Advisory Committee

The MEPA regulations at 310 CMR 11.09(3) allow for the establishment of a Citizen's Advisory Committee (CAC) to assist with public and agency review and comment. For the Herring River Restoration Project, I hereby designate the Herring River Restoration Committee as the CAC. In addition to the Towns of Wellfleet and Truro and the Cape Cod National Seashore, the HRRC includes representatives from Office of Coastal Zone Management's Wetlands Restoration Program; the National Oceanic and Atmospheric Administration Restoration Center; the U.S. Fish and Wildlife Service; and the Natural Resources Conservation Service. All of these agencies were also represented on the former Herring River Technical Committee (HRTC) and have been meeting at least monthly, either as the HRTC or HRRC, since September 2005. As directed by a Memorandum of Understanding (signed in November 2007) between the two Towns and the National Seashore, the HRRC will prepare a detailed, comprehensive restoration plan, pursue funding, and obtain permits. Though actual implementation and oversight of the restoration activities may be directed by a successor committee, it is expected that any future committee will be similarly comprised.

As the CAC, the HRRC, or its successor, would continue to meet regularly as the project advances. At a yet-to-be determined frequency, the HRRC would hold meetings with regulatory agencies including, but not limited to, the MEPA Office; the Department of Environmental Protection (MassDEP); the Natural Heritage and Endangered Species Program (NHESP); the Department of Conservation and Recreation (DCR); the U.S. Army Corps of Engineers (ACOE); the Cape Cod Commission (CCC); and the local Conservation Commissions, to review project plans and designs. As the project advances to the implementation stages, these meetings also would include review of monitoring data; outcomes of prior restoration actions; and consensus-driven decision-making regarding future actions. As a publicly-appointed body, the HRRC meetings are open to the public and this will continue under the SRP. It is anticipated that additional meetings focused more directly on specific public stakeholder concerns will be held on a regular basis. The HRRC will also conduct a wide-ranging outreach campaign, including regular updates via a newsletter, a dedicated project web-site, educational programs, site walks, and other events.

Under this proposed SRP, these agency consultations and public meetings would meet the compliance and reporting requirements of MEPA and allow the Herring River Restoration Project to proceed under Adaptive Management guidelines, which acknowledge uncertainty and rely on iterative, science-based, and incremental management decisions. However, it is expected that individual restoration activities, e.g. culvert replacements and road relocations, will most likely require separate permits.

Environmental Notification Form (ENF)

As requested by the HRRC, I hereby waive the specific requirement to submit the form usually required as part of the Environmental Notification Form (ENF) submission. While the HRRC intends to submit a document that would serve as the ENF for the MEPA review of the

EEA#14272

Certificate Establishing a Special Review Procedure

6/20/08

project, the use of the form itself would be problematic because the project's impacts cannot be quantified at this time. In its place, the HRRC will submit a document summarizing all of the basic information on the project, including a concise narrative that will identify how and to what extent the project may exceed each of the review thresholds. I expect that the Environmental Impact Report(s) for the project will contain more detailed information on the project's environmental impacts and benefits, particularly as the HRRC identifies preferred alternatives during the course of the environmental review process.

The proponent's signature below indicates consent to the establishment of a Special Review Procedure and the specific provisions outlined in this Certificate.

June 20, 2008

Date



Ian A. Bowles
Secretary of Energy and Environmental Affairs

June 30, 2008

Date



Gary Joseph
Chair, Herring River Restoration Committee

RWG/RB/rb



CAPE COD COMMISSION STAFF REPORT

Date: August 8, 2008

To: DRI Subcommittee
Frank Hogan, Chair, Joy Brookshire, Roslyn Garfield,
Peter Graham, Roger Putnam, Elizabeth Taylor (alt.),
Royden Richardson (alt.)

Proposed Project: **Herring River Tidal Restoration Project**
DRI—MEPA Joint Review
(#ENF08009)

Commission Staff: Stacey Justus, Project Planner, Gabriel Belfit, Glenn
Cannon, Sarah Korjeff, Heather McElroy and Scott
Michaud

INTRODUCTION

The above referenced project comes before the Commission as a joint review with MEPA. The Herring River Restoration Committee (HRRC), chaired by Gary Joseph, is the project applicant.

The first public hearing on this project is to be held next Thursday, 8/14/08, 2:00 pm at the Wellfleet Senior Center. This hearing will serve as the joint scoping meeting with MEPA intended to allow public comment on the project to inform your letter to MEPA on the Environmental Notification Form (ENF). Next week will also serve the National Park Service as required public outreach under the NEPA process. Similarly, it will serve MEPA as their public scoping meeting. The format will accommodate all three processes.

Two documents were sent to you previously, including the ENF and the Conceptual Restoration Plan. Also being sent to you is the Joint DRI/MEPA Review Application filed with the Commission on July 25, 2008.

ENVIRONMENTAL NOTIFICATION FORM (ENF)

An ENF was prepared and noticed in the Environmental Monitor on July 9, 2008. Comments on the ENF are due to MEPA by October 31, 2008. As a mandatory EIR is required, this project will be a DRI as well.

I anticipate that after this hearing the Subcommittee will need to hold meeting(s) in order to develop and finalize your comments on the EIR/DRI scoping and to discuss how to review this project under the RPP. The applicant seeks specific comments on the information needed to complete a DRI application and facilitate your DRI review.

Attached to this report is a section from the Commission's Joint Review Application that nicely explains the CCC/MEPA joint review process (see **Attachment A** below).

MEPA / NEPA Review

Prior to the ENF filing, the applicant applied to MEPA for a Special Review Procedure (SRP), which was granted by the Secretary on 6/20/08. This SRP is primarily to facilitate the NEPA/CCC/MEPA process and to identify the Herring River Restoration Committee as a Citizens Advisory Committee that is responsible for assisting with public and agency review and comment. According to the National Park Service, they do anticipate a joint EIR/EIS/DRI filing. The SRP may also enable the regular MEPA timeframes to be adjusted.

PROJECT DESCRIPTION

The proposed project entails the restoration of ecosystem functions and values to a degraded 1,100-acre tidally restricted estuary. The project area is located within the Wellfleet Harbor Area of Critical Environmental Concern. Most of the project area is located within the town of Wellfleet and the boundary of the Cape Cod National Seashore. Should full tidal restoration ultimately be achieved, lands within the town of Truro will be affected as well.

The prime objective of this project is to eventually restore tidal exchange to an extent closely approximating the normal, natural tidal range that occurred prior to diking at Chequessett Neck Road in 1908. Tides will be restored gradually, over a period of several years, with small, incremental opening of adjustable tide gates.

As described in the Conceptual Restoration Plan, the Herring River project comprises the following elements:

- Reconstruction of the existing 1908 dike and tide control structure at Chequessett Neck Road with a new structure, incorporating enlarged culverts and adjustable tide gates designed to allow gradual increases to tidal range.
- Replacement of at least seven additional culverts at road crossings upstream of Chequessett Neck Road to allow increased tidal exchange and better fish passage.

- Raising, relocating, or abandoning up to 22,000 linear feet of low-lying roadway occurring within the Herring River floodplain that are vulnerable to flooding from restored tidal range.
- Removal of approximately 600 acres of woody vegetation that has become established within the Herring River floodplain in order to promote recolonization of salt marsh vegetation and support fish passage coincident with restored tidal range.
- Restoration of natural channel sinuosity in the channelized portions of the Herring River system to enhance wetland habitat functions and abate mosquito production.
- Prevention and/or mitigation of flooding impacts to several private properties within the Herring River floodplain, including structures, developed lands, and domestic water wells.

Four preliminary project alternatives are described in the ENF, including:

1. No action alternative
2. Modified tidegate control at Chequessett Neck Road dike
3. Open bridge with upstream tidegate controls
4. Complete opening of the existing culverts

Ultimately, the Commission should provide comments to MEPA and the Applicant on each of these alternatives in terms of their relative consistency with the RPP.

RPP MINIMUM PERFORMANCE STANDARD CONSISTENCY REVIEW

Staff has considered the project as proposed in the ENF and Conceptual Restoration Plan in the context of the issue areas of the 2002 Regional Policy Plan. **Attachment B (RPP Minimum Performance Standards Relevant for DRI Review, Preliminary Staff Analysis – August 8, 2008)** presents tables that begin to identify the standards that will be relevant to this project review. Based on the information provided to date, staff believes that the issues areas of Water Resources, Coastal Resources, Wetlands, Wildlife and Plant Habitat, and Heritage Preservation are relevant to the project as proposed.

Attachment B provides a list of applicable MPSs, the project's consistency with them, questions/comments to focus analysis, and information requested for DRI review. We expect that as the project alternatives analysis develops this chart will be revised.

CONCLUSION

Commission staff supports the HRRC goal of addressing the tidal restriction in the Herring River system. As the project develops we look forward to reviewing it in the context of the 2002 Barnstable County Regional Policy Plan and working with the Subcommittee throughout the DRI review.

Cc: Gary Joseph, HRRC Chair
c/o Hillary Greenberg
220 West Main St.
Wellfleet, MA 02667

Craig Woods, PWS
The Louis Berger Group
75 Second Ave., Suite 700
Needham, MA 02494

Charlene Greenhalgh, Truro DRI Liaison

Rex Peterson, Wellfleet DRI Liaison

Carrie Phillips
Chief, Natural Resource Management
Cape Cod National Seashore
99 Marconi Site Road
Wellfleet, MA 02667

ATTACHMENT A

(Excerpt from Attachment 6: Request of Joint Review/DRI Review from the DRI application)

STEP THREE: JOINT REVIEW OF ACCEPTED APPLICATIONS

ENF Process

Once a Joint Review application has been submitted and accepted, a public hearing/scoping session will be scheduled within 20 days of the publication of the ENF in the *Environmental Monitor* (published by MEPA). The public hearing/scoping session is intended to allow interested persons to comment on the project and is held during the required ENF comment period for the project. Commission staff will prepare a Staff Report in advance of the public hearing/scoping session to provide comment on the project information submitted and contained in the ENF.

Following the public hearing/scoping session, and prior to the ENF comment period ending, the subcommittee will meet to decide on its comments to MEPA. The subcommittee then sends a comment letter to MEPA that includes a recommended scope for the Joint Review process. It should be noted that the Commission's scope of review may be broader than the MEPA jurisdiction.

Following the close of the ENF comment period, the Secretary of Environmental Affairs (Secretary) will issue a certificate for the project. If the Secretary does not require an EIR, the joint Commission/MEPA process concludes. However, the Commission DRI process continues if a mandatory threshold is exceeded and a town referral is received (see Attachment 1 for the applicable DRI review process). If the Secretary requires an EIR, the scope is detailed in the Secretary's certificate and the Joint Review process continues with the preparation of a Draft EIR.

Draft EIR Process

A Draft EIR is prepared and submitted to MEPA that responds to the scope of the Secretary's ENF certificate. The preparer should also submit 12 copies of the Draft EIR to the Commission. The preparer of the Draft EIR should ensure that all materials required for the Commission's DRI review be included in the document based on the ENF scoping letter submitted by the Commission subcommittee. During the public comment period on the Draft EIR, the Commission may hold a public hearing to receive input from the public on the document. Prior to the closing of the public comment period, a Commission subcommittee submits a letter to MEPA commenting on whether the Draft EIR adequately responds to the EIR scope. Following the close of the Draft EIR comment period, the Secretary issues a certificate on the adequacy of the Draft EIR and either requires the preparation of a supplemental Draft EIR or a Final EIR.

Final EIR Process

The proponent prepares a Final EIR that may be limited to aspects of the project or issues that require further description or analysis. The Final EIR also contains a response to comments raised by the Commission and others. The preparer submits the Final EIR to MEPA and 12 copies of the Final EIR to the Commission. During the public comment period for the Final EIR, the Commission may hold a public hearing to receive input from the public on the document. Prior to the closing of the public comment period, a Commission subcommittee will submit a letter to MEPA commenting on whether the Final EIR is adequate. Following the close of the Final EIR

comment period, the Secretary issues a certificate on the adequacy of the Final EIR and either requires the preparation of a supplemental Final EIR or determines the Final EIR to be adequate. Once the Secretary issues a certificate that determines the Final EIR to be adequate, the state environmental review process concludes and the Commission's statutory timeframes begin.

Commission DRI Review Process

The Commission must open a public hearing within 45 days of the date of the certificate issued by the Secretary indicating that the Final EIR is adequate. Additional hearings may be held as necessary throughout the Commission's review process.

Before a substantive public hearing can be held, all information required for a complete DRI application must be submitted, included in the EIR or waived by the Executive Director. If the DRI application is incomplete at the conclusion of the environmental review process, a hearing officer may be required to open the public hearing for procedural purposes. The required submittals and required number of plans for a DRI application are itemized in "*Attachment 1: DRI Application Filing Procedures & Requirements*" that may be obtained from Commission staff or the Commission's web site (www.capecodcommission.org). Additional information may be required by the Commission to address any remaining issues. The Commission reviews a proposed project for its consistency with the Cape Cod Commission Act, the Regional Policy Plan, Districts of Critical Planning Concern, local regulations, and certified Local Comprehensive Plans.

Herring River Restoration Project – Joint MEPA/DRI Review
 RPP Minimum Performance Standards Relevant for DRI Review
 Preliminary Staff Analysis – August 8, 2008

ATTACHMENT B

RPP Issue Areas: Wetlands and Wildlife and Plant Habitat

Minimum Performance Standard	Applicable (Yes/No)	Consistent (Yes/No/ Uncertain)	Comments/Questions to focus analysis (Bullet what is needed to know in order to determine consistency)	Information requested
Wetlands Goal 2.3.1 To preserve and restore the quality and quantity of inland and coastal wetlands	Yes	Yes	While the project will restore various wetland and habitat values, some values will be lost or changed.	Quantify the nature of the changes, positive and negative, by wetland resource area, to the extent possible.
MPS 2.3.1.1 Wetland alteration shall not be permitted except as provided herein and in MPS 2.3.1.3. As an exception, where there is no feasible alternative, water-dependent projects involving wetland alteration with appropriate mitigation may be permitted subject to the approval of all permitting authorities. (more)	Yes	Yes	As a water dependent wetland restoration, this project may likely be found to comply with the standard. But the Commission will have to find that the alteration is the minimum necessary to accomplish the goals of the project, and presumably that the benefits of the restoration outweigh the impacts to the existing functions of the wetlands involved.	Quantify the nature of the changes, positive and negative, by wetland resource area, to the extent possible.
MPS 2.3.1.2 Vegetated, undisturbed buffer areas of at least 100 ft in width shall be maintained and/or provided from the edge of coastal and inland wetlands including isolated wetlands, to protect their natural functions. (more)	Yes	No	While a literal interpretation of this standard will result in noncompliance due to the possible alteration of buffers to wetlands, compliance with the standard may be waived through use of the Flexibility Clause, and/or demonstration that the habitat values have been improved. Mitigation could be required if there is a finding of adverse impacts to buffers.	Quantify the nature of the changes, positive and negative, by wetland resource area, to the extent possible.
ODRP 2.3.1.5 measures to restore altered or degraded inland and coastal wetlands, including... restoration of tidal flushing should be encouraged; however, such areas should not be used as mitigation banking for wetland alteration projects.	Yes	Yes	This standard is not a minimum performance standard, but more of a best management practice. It is included in the RPP as a demonstration of the RPP's support of wetland restoration projects. However, it should be noted that compliance with the MPSs is primary.	Catalogue, consistent with much of the research that has been completed to date, the multiple benefits to ecology, economy, etc. known or expected from the project. To the extent these benefits may be quantified, provide quantities.

Herring River Restoration Project – Joint MEPA/DRI Review
 RPP Minimum Performance Standards Relevant for DRI Review
 Preliminary Staff Analysis – August 8, 2008

ATTACHMENT B

Minimum Performance Standard	Applicable (Yes/No)	Consistent (Yes/No/ Uncertain)	Comments/Questions to focus analysis (Bullet what is needed to know in order to determine consistency)	Information requested
Wildlife and Plant Habitat MPS 2.4.1.1 Applications for DRIs that propose to alter undeveloped areas shall contain a natural resources inventory. (more)	Yes		The NEPA/MEPA/DRI document should provide a natural resources inventory consistent with RPP requirements	See the NRI Technical Bulletin 92-002
MPS 2.4.1.2 Clearing of vegetation and alteration of natural topography shall be minimized, with native vegetation planted as needed to enhance or restore wildlife habitat. (more)	Yes	Uncertain	Clearing associated with the CYCC reconfiguration, relocating low-lying roadways, and other clearing and grading associated with the various alternatives should strive to minimize impacts to existing topography and habitat.	
MPS 2.4.1.4 The Natural Heritage and Endangered Species Program (NHESP) has agreed to review DRIs proposed within critical wildlife and plant habitat areas... DRIs that would adversely affect habitat of local populations of rare wildlife and plants shall not be permitted. Development may be permitted where the proponent can demonstrate that such development will not adversely affect such habitat. (more)	Yes	Uncertain	The proponents should continue to work directly with the NHESP to ensure that proposed changes are consistent with the Massachusetts Endangered Species Act, and may be permitted by NHESP.	Evidence of work with the NHESP and response to their concerns.
MPS 2.4.1.5 Where a project site is located adjacent to a vernal pool... development shall be prohibited within a 350 ft undisturbed buffer around these wetland resources.	Unsure	Uncertain	The NRI should evaluate whether there are any vernal pools within the proposed project area.	NRI, delineation of pools, as necessary, provision of 350 ft buffer.
MPS 2.4.1.6 Development on sites where a NRI identifies the presence of invasive plant species shall provide and implement a management and restoration plan detailing the management of and where possible, the eradication of the invasive species present, and for	Yes	Yes	The project will restore areas where invasive species are present. A full-scale management plan for the project area is impractical, but the benefits of areas where invasive species may be removed due to increased flooding or other development activities should be itemized as a benefit of the project.	Quantify, to the extent practicable, areas of invasive species to be restored, either through flood inundation or grading/vegetation activities (i.e. road and golf course relocation)

Herring River Restoration Project – Joint MEPA/DRI Review
 RPP Minimum Performance Standards Relevant for DRI Review
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Minimum Performance Standard	Applicable (Yes/No)	Consistent (Yes/No/ Uncertain)	Comments/Questions to focus analysis (Bullet what is needed to know in order to determine consistency)	Information requested
revegetating the site with native species. ODRP 2.4.1.7 measure to restore altered or degraded upland habitat areas should be encouraged where ecologically appropriate.	Unsure	Uncertain	To the extent that upland areas may be restored through this project, they should be identified as a project benefit.	Quantify extent and nature of restoration.

RPP Issue Area: Water Resources

Minimum Performance Standard	Applicable (Yes/No)	Consistent (Yes/No/ uncertain)	Comments/Questions to focus analysis (Bullet what is needed to know in order to determine consistency)	Information requested
MPS 2.1.1.2.A5: Development and redevelopment shall adopt a turf and landscape management plan that incorporates water conservation measures and minimizes the amount of pesticides and chemical fertilizers through best management practices.	Yes	uncertain	This might apply to the golf course reconstruction if it was part of the review.	
2.1.1.3 Development and redevelopment shall identify their proposed wells and existing private wells on abutting properties within 400 feet and assess the impact of the development on the water quality of these wells and all other existing wells that may potentially be affected by the proposed development. Septic systems and other sources of contamination shall be sited to avoid contamination of existing or proposed wells.	Yes	uncertain	How will changes in the water table and salt water fresh water interface affect the water quality in private wells as well as the functioning of septic systems?	Plans for relocation of wells and septic system and hydrodynamic modeling results with detail in area where wells and septic systems impact is projected.
2.1.3.1 New direct discharge of untreated stormwater, parking-lot runoff, and/or wastewater into marine and fresh surface water and natural wetlands shall not be	Yes	uncertain	How will stormwater runoff be handled after the roadway is altered?	Plans for upgrading stormwater discharges from new roadways

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Minimum Performance Standard	Applicable (Yes/No)	Consistent (Yes/No /uncertain)	Comments/Questions to focus analysis (Bullet what is needed to know in order to determine consistency)	Information requested
permitted.				
2.1.3.2 Stormwater shall be managed and infiltrated on site to minimize runoff and maximize water quality treatment. Stormwater treatment designs shall be based upon a 25-year 24-hour storm and attain 80% total suspended solids removal and at a minimum be consistent with Massachusetts Stormwater Policy Guidelines.	Yes	uncertain	What are the specific stormwater disposal designs for the new roadways?	Plans for upgrading stormwater discharges from new roadways
2.1.3.3 Development and redevelopment shall use best management practices such as vegetated swales and non-structured wetland detention basins for treatment prior to infiltration. Non-structured wetland detention basins and vegetated swales may be counted as open space within Wellhead Protection Areas.	Yes	uncertain	What are the specific stormwater disposal designs for the new roadways?	Plans for upgrading stormwater discharges from new roadways
2.1.3.5 Infiltration basins or other stormwater leaching structures shall maintain a two-foot separation between maximum high water table and point of infiltration.	Yes	uncertain	What are the specific stormwater disposal designs for the new roadways? How will the alteration of the water table affect the separation distance from existing stormwater discharge locations.	Plans for upgrading stormwater discharges from new roadways. Results of hydrodynamic modeling in relation to existing and proposed stormwater discharge locations.

RPP Issue Area: Heritage Preservation

Minimum Performance Standard	Applicable (Yes/No)	Consistent (Yes/No /uncertain)	Comments/Questions to focus analysis (Bullet what is needed to know in order to determine consistency)	Information requested
RPP Goal 6.1 To protect and preserve	Yes	uncertain	This project may have impacts on historic and	

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Minimum Performance Standard	Applicable (Yes/No)	Consistent (Yes/No/ uncertain)	Comments/Questions to focus analysis (Bullet what is needed to know in order to determine consistency)	Information requested
the important historic and cultural features of the Cape landscape and built environment that are critical components of Cape Cod's heritage and economy.			archaeological resources. It will require federal historic resource review under Section 106 of the National Historic Preservation Act, which requires federal agencies involved to identify any historic or archaeological resources that may be impacted and to consider ways to avoid adverse impacts. The project will also require review by the Massachusetts Historical Commission in a process that mirrors the federal review.	
MPS 6.1.1 An historic structure's key character-defining features, including the relationship to its site and setting shall be preserved. (more) Removal or alteration of distinguishing original stylistic features or examples of skilled craftsmanship of historic or aesthetic significance shall be prohibited unless. (more).	Yes	uncertain	Protection of historic structures: The ENF states that there are no known National Register-listed historic structures located in the Herring River Estuary, but there may be historic structures that have not been inventoried or listed.	A survey of structures that will be impacted, including the dike itself and privately owned buildings that may need to be relocated due to tide level increases, should identify any that are historically significant. If any significant structures will be impacted by the project, their key character-defining features shall be preserved.
MPS 6.1.3 Where development is proposed on or adjacent to known archaeological sites or sites with high archaeological sensitivity as identified by the MHC or Local Historical Commission during the review process, it shall be configured to maintain and/or enhance such resources where possible. (more)	Yes	uncertain	Protection of archaeological resources: The proposed project area encompasses archaeologically sensitive areas and several known archaeological sites. Where development is proposed on or adjacent to known archaeological sites or sites with high archaeological sensitivity, it shall be configured to maintain and/or enhance such resources. Sites determined eligible for listing on the National Register of Historic Places shall be preserved and protected from disturbance. In a letter from Massachusetts Historical Commission (MHC) dated June 24, 2008, additional information was requested to better define the areas that will be affected by the project and determine a scope for survey work. MHC's letter also noted that archaeological review of the associated golf course redevelopment project should be conducted in conjunction with this undertaking. While a permit application to conduct archaeological work in the golf course area was received in 2007, no archaeological survey permit was issued for this area.	

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RPP Issue Area: Coastal Resources

Minimum Performance Standard	Applicable (Yes/No)	Consistent (Yes/No/ uncertain)	Comments/Questions to focus analysis (Bullet what is needed to know in order to determine consistency)	Information requested
Public Access Coastal Resources Goal 2.2.1: To protect public and traditional maritime interests in the coast and rights for fishing, fowling, and navigation, to preserve and manage coastal areas so as to safeguard and perpetuate their biological, economic, historic, maritime, and aesthetic values, and to preserve, enhance and where appropriate expand public access to the shoreline.	Yes	Yes	The ENF p.18 discusses public access improvements that will result from this project	
MPS 2.2.1.1 Development and redevelopment along the coastline shall not interfere with existing public access and traditional public rights of way to and environmentally appropriate use of the shoreline.	Yes	Uncertain	Materials indicate that these interests will be expanded. (Conceptual Restoration Plan p. 72-47)	Project plans
ODRPs 2.2.1.5 and 2.2.1.8	Yes	Uncertain	There may be opportunity to enhance public access that should be part of the preferred alternative and project design	Construction design details of dike and Chequessett Neck Road or other locations as appropriate to these ODRPs
Hazard Mitigation Coastal Resources Goal 2.2.2: To limit development in areas subject to coastal storm flow, particularly high-hazard areas, in order to minimize human casualties and property or environmental damage resulting from storms, flooding, erosion, and relative sea level rise.	Yes	Uncertain	Restoring the natural floodplain would likely minimize storm-induced damage. However, over time development has occurred in the floodplain upstream of the dike. How will the restoration change flood heights and what development will be affected?	Project plans showing existing and projected flood elevations for each alternative.
MPS 2.2.2.1 – 2.2.2.3 (see text regarding development in flood zones)	Maybe	Uncertain	Depending on where development (Chequessett Neck golf course redevelopment, road relocations, etc) is ultimately proposed, these standards may become relevant	Project plans with resource delineations
MPS 2.2.2.4 No new non-water dependent development shall be	Maybe	Uncertain	Is the CYCC proposed reconfiguration area on coastal bank?	Project plans with resource delineations

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Minimum Performance Standard	Applicable (Yes/No)	Consistent (Yes/No/ uncertain)	Comments/Questions to focus analysis (Bullet what is needed to know in order to determine consistency)	Information requested
permitted within 100 feet of the top of a coastal bank, dune crest, or beach.				
MPS 2.2.2.6 No new public infrastructure or expansion of existing infrastructure shall be made in flood hazard zones unless it is shown that there is an overriding public benefit provided, and provided that such infrastructure will no promote new growth and development in flood hazard areas.	Yes	Likely		
MPS 2.2.2.7 Where land subject to coastal storm flow serves to control floods and prevent storm damage, no activity shall increase the existing site elevations or the velocity of flood waters (more)	Yes	Uncertain	Will fill be needed for any component?	Narrative
MPS 2.2.2.8 New development or redevelopment shall not impede the landward migration of resources areas within the 100-year floodplain (more)	Yes	Likely		
MPS 2.2.2.9 New structures...new or proposed expansions of coastal engineering structures, and new septic systems shall be prohibited within the V zone of a beach, dune, barrier beach, or coastal bank.	Yes	Likely	Would this be considered an expansion of a coastal engineering structure?	Flood zone mapping (existing and projected changes due to increased tidal range) and resource delineation overlay
MPS 2.2.2.11 Monitoring and maintenance plans shall be required of all projects proposing to place dredged material on public or private beaches for nourishment of eroding features. (more)	Maybe	Uncertain	Is there dredging and disposal as part of this proposal? Will there be dredging done that will be considered new/improvement dredging?	Narrative
MPS 2.2.2.12 Wherever feasible dredge materials shall be used for nourishment on public beaches subject to erosion. (more)	Maybe	Uncertain	Is there dredging and disposal as part of this proposal? Will there be dredging done that will be considered new/improvement dredging?	Narrative
Coastal Resources Goal 2.2.3 To maintain and improve coastal water quality to allow shell fishing and/or	Yes	Likely		

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swimming in all coastal waters as appropriate, and to protect coastal ecosystems that support protected species and shell fish and fin fish habitat.				
MPS 2.2.3.2 No new direct, untreated stormwater discharges shall be permitted into any coastal waters or wetlands (more).	Yes	Likely	Will new stormwater systems be proposed for relocated roadways or Chequessett Neck Road?	Stormwater plan
MPS 2.2.3.3 The design and construction of stormwater management systems proposed in V-zones shall incorporate the historic rate of relative sea-level rise in Massachusetts (more)	Uncertain	Likely	Where is the V-Zone and are any stormwater systems proposed in them?	Narrative
MPS 2.2.3.6 New dredging shall be prohibited except when new dredging is necessary to accomplish a substantial public benefit and no feasible alternative exists.	Uncertain	Likely	If there is new dredging it is likely that a case can be made for the project being of substantial public benefit.	
MPS 2.2.3.7 Development shall have no significant direct or indirect adverse effects to eelgrass beds, unless there is no feasible alternative location or design for the project and the project is necessary to accomplish a public benefit.	Uncertain	Likely	Is there any affected eelgrass in the estuary system?	Eel grass survey if necessary
MPS 2.2.3.8 Development and redevelopment shall be designed and constructed to minimize direct and secondary impacts to fish, shellfish, and crustaceans.	Yes	Likely		Narrative
MPS 2.2.3.11 Undisturbed buffer areas of at least 100 feet in width surrounding coastal wetlands and/or landward of the mean high water mark of coastal water bodies shall be protected in accordance with MPS 2.3.1.2	Yes	No	While a literal interpretation of this standard will result in noncompliance due to the possible alteration of buffers to wetlands, compliance with the standard may be waived through use of the Flexibility Clause, and/or demonstration that the habitat values have been improved. Mitigation could be required if there is a finding of adverse impacts to buffers.	Quantify the nature of the changes, positive and negative, by wetland resource area, to the extent possible.

MEMORANDUM

TO: Deirdre Buckley, Environmental Reviewer, MEPA Unit

THROUGH: Jonathan Hobill, Acting Deputy Regional Director,
Bureau of Resource Protection
Brenda Chabot, Deputy Regional Director, ADMIN
David Johnston, Acting Regional Director
Millie Garcia-Serrano, Deputy Regional Director, BWSC

CC: Elizabeth Kouloheras, Chief, Wetlands and
Team Leader, Cape Cod Watershed
Patti Kellogg, Wetlands Cape Cod Watershed Coordinator
Richard Keith, Chief, Municipal Services

FROM: Sharon Stone, SERO MEPA Coordinator

DATE: October 31, 2008

RE: ENF EOEEA #14272 – TRURO/WELLFLEET – Herring River Tidal
Restoration Plan

"For Use in Intra-Agency Policy Deliberations"

The Southeast Regional Office of the Department of Environmental Protection (MassDEP) has reviewed the Environmental Notification Form (ENF) for the proposed Herring River Tidal Restoration Plan, to be located in the Towns of Truro and Wellfleet, Massachusetts (EOEEA #14272). The project proponent provides the following information for the project:

“The project consists of the re-establishment of tidal flow to the 1,100-acre Herring River estuary and floodplain. The project is being proposed by the Herring River Restoration Committee (HRRC), a multi-agency group appointed by the Towns of Wellfleet and Truro and the National Seashore. Proposed restoration activities include reconfiguration of the Chequessett Neck Road Dike, replacement of additional upstream culverts, additional upstream tidal control structures and mitigation for low-lying roadways, structures and private properties. Tides will be restored gradually with small, incremental opening of adjustable tide gates.

At a minimum, it is expected that the Herring River project will alter at least one acre of salt marsh or bordering vegetated wetlands, triggering the mandatory EIR threshold described at 310 CMR 11.03(3)(a). Although the exact nature and extent of wetland alteration is unknown at this time, it is likely this threshold will be exceeded to a significant extent. In addition, the project area is known to contain both estimated and priority rare species habitat, is adjacent to significant cultural and historic resources, and is located with the Wellfleet Harbor Area of Critical

Environmental Concern (ACEC). The project will require numerous state permits (Chapter 91 Licenses, 401 Water Quality Certification, etc.) and has already received funding from the Massachusetts Office of Coastal Zone Management's Wetlands Restoration Program. Because the project requires a Chapter 91 License, MEPA jurisdiction is broad in scope and extends all aspects of the project with the potential to cause Damage to the Environment.

The project is also subject to review under the National Environmental Policy Act (NEPA) and the Cape Cod Commission Act. A Certificate Establishing a Special Review Procedure (SRP) was issued on June 20, 2008 to provide for coordination of MEPA review with other environmental and developmental review and permitting processes. The Scoping Session will also serve as a scoping session for the NEPA process and a Cape Cod Commission hearing.”

The Cape Cod Watershed Team/Wetlands and Waterways Program has reviewed the document and indicates the following comments.

The project consists of the re-establishment of tidal flow to the 1,100-acre Herring River estuary and floodplain. The project is being proposed by the Herring River Restoration Committee (HRRC), a multi-agency group appointed by the Towns of Wellfleet and Truro and the National Seashore.

Proposed restoration activities include reconfiguration of the Chequessett Neck Road dike, replacement of additional upstream culverts, additional upstream tidal control structures and mitigation for low-lying roadways, structures and private properties. The project area is known to contain both estimated and priority rare species habitat, is adjacent to significant cultural and historic resources, and is located within the Wellfleet Harbor Area of Critical Environmental Concern (ACEC).

The Herring River Conceptual Restoration Plan includes several preliminary alternatives for restoring tidal flow to the Herring River. Therefore, the exact nature and extent of the impacts are not known at this time. However, it is expected that the project will alter at least 1 acre of salt marsh or bordering vegetated wetlands. The alteration of one or more acres of salt marsh or BVW or any alteration requiring a variance in accordance with the Wetlands Protection Act requires a mandatory EIR. Greater detail of the impacts of the alternatives will be required in the EIR.

Several potential plan components could alter coastal and inland wetlands. The project will require numerous state permits including authorization under the WPA, Chapter 91, 401 Water Quality Certification, and compliance with the Town of Wellfleet's Coastal Wetlands Restriction Order [310 CMR 12.00 and MGL c 130 s. 105]. Since the project is located within the Wellfleet Harbor Area of Critical Environmental Concern, the project must meet the standards relative to ACEC in 310 CMR 10.00 and 314 CMR 9.00 and 4.00.

The waters in and adjacent to the Cape Cod National Seashore within 1,000 feet seaward of mean low water are considered outstanding resource waters (ORW) pursuant to 314 CMR 4.06. Should the project result in a discharge to an ORW, a Major 401 Quality Certification will be required. A 401 WQC will require an alternatives analysis demonstrating avoidance, minimization and mitigation of any adverse impacts. Portions of the project are located on lands subject to the Department's Order of Restriction adopted April 19, 1982. This Order contains specific prohibitions, including substantially altering existing patterns of tidal flow. The proponent is advised to contact the Department to conduct a review of the land restricted pursuant to the Order to determine if an amendment or modification to the Order of Restriction is required.

There are known design concerns particularly for low lying roads and properties. Culvert replacements will need to be reviewed and permitted either by the local conservation commission, the Massachusetts Department of Environmental Protection (§401 Water Quality Certification), the US Army Corp of Engineers, or a combination of the three. Additional separate permits may be required for culvert replacements and road relocations. Culverts shall meet the MA Rivers and Stream Crossing Standards and stormwater management standards shall apply to any culvert replacements or road repairs that will result in a stormwater discharge. Higher standards apply to discharges to ORW. A redevelopment project must meet the stormwater standards to the maximum extent practicable.

For work effecting the Riverfront Area (the mouth of the Herring River for Riverfront Area designation is the dike at Chequessett Neck Road), the applicant shall prove by a preponderance of the evidence that there are no practicable and substantially equivalent economic alternatives to the proposed project with less adverse effects on the interests identified in M.G.L. c.131 § 40 and that the work, including proposed mitigation, will have no significant adverse impact on the riverfront area to protect the interests identified in M.G.L. c. 131 § 40.

As part of the EIR, the proponent should identify the specific resource areas, referenced in 310 CMR 10.25 to 10.35 and 310 CMR 10.54 to 10.57, to be impacted by the project. Evaluation of resource impacts should include the development of a map at an appropriate scale which identifies the square footage and/or linear footage of impacts to each resource area. For each resource area to be impacted by the project, the applicant should identify how the performance standards for each resource area will be achieved. Emphasis should be placed on evaluating the impacts to the flood plain and effects on the interests of the Act, particularly storm damage prevention and flood control. At a minimum, any activity in a resource area or buffer zone shall be designed and constructed using best practical measures so that adverse effects are minimized.

Although projects that restore or rehabilitate a salt marsh or bordering vegetated wetlands may be permitted pursuant to 310 CMR 10.32 (5) and 310 CMR 10.53 (4), projects located within an ACEC are subject to the provisions of 310 CMR 10.24 (5), requiring no adverse effect on the interests of the Act.

If a variance is sought for the application of any regulation, the applicant should be requested to develop the appropriate information necessary to evaluate the criteria to be considered in the issuance of a variance. (See: 310 CMR 10.36 or 310 CMR 10.58.) In order to receive a variance the applicant is required to show that there is an overriding public interest in the project, that no other reasonable alternative exists, and that mitigation efforts will be undertaken to minimize the project impacts.

The applicant should also be required to identify and discuss all reasonable alternatives which have been considered for the present project in order to avoid wetland impacts. The Applicant should be required to state why those alternatives which meet performance standards have been found to be unreasonable or why the alternatives which do not meet performance standards are less desirable for wetlands protection than the proposed alternative.

Finally, the Applicant should be required to provide a full description of the mitigation measures which are proposed for this project. The discussion of mitigation measures should detail the extent of wetlands resource impacts, the functions associated with those resources, and the mitigation measures which will minimize resource impacts and/or restore resource functions.

The applicant should be advised that if the above information is not thoroughly presented as part of the EIR process, the request for this information will be required as part of the variance review process by the Department of Environmental Protection. Since the issuance of variance decisions has, in the past, taken considerable time, it is critical that the applicant consider the standards for a variance and address informational requirements during the project planning process. The incorporation of the above information in the EIR process will save the applicant considerable time and may save the cost of the variance filing fee if a variance does not appear likely following the full assessment of the project as part of the EIR.

Construction Activities - EPA

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>

BWSC Comments

Based on the information provided in the ENF, the Bureau of Waste Site Cleanup (BWSC) searched its database for disposal sites and release notifications. There is one former disposal site located in the vicinity of the project. Release Tracking Number (RTN) 4-16352, located at the Chequessett Brush Dump Area, submitted a Class A2 RAO on November 14, 2001.

The Project Proponent is advised that, if oil and/or hazardous material is identified during the implementation of this project, notification pursuant to the Massachusetts

Contingency Plan (310 CMR 40.0000) must be made to MassDEP, if necessary. A Licensed Site Professional (LSP) may be retained to determine if notification is required and, if need be, to render appropriate opinions. The LSP may evaluate whether risk reduction measures are necessary or prudent if contamination is present. The BWSC may be contacted for guidance if questions regarding cleanup arise.

The MassDEP Southeast Regional Office appreciates the opportunity to comment on this proposed project. If you have any questions regarding these comments, please contact Sharon Stone at (508) 946-2846.



Deval L. Patrick
GOVERNOR

Timothy P. Murray
LIEUTENANT GOVERNOR

Ian A. Bowles
SECRETARY

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November 7, 2008

CERTIFICATE OF THE SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS
ON THE
ENVIRONMENTAL NOTIFICATION FORM

PROJECT NAME : Herring River Restoration Project
PROJECT MUNICIPALITY : Wellfleet and Truro
PROJECT WATERSHED : Cape Cod
EOEA NUMBER : 14272
PROJECT PROPONENT : Town of Wellfleet, Town of Truro and Cape Cod National
Seashore
DATE NOTICED IN MONITOR : July 23, 2008

Pursuant to the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-62I) and Section 11.06 of the MEPA regulations (301 CMR 11.00), I hereby determine that this project **requires** the preparation of an Environmental Impact Report (EIR).

This project has the potential to re-introduce up to 1,000 acres of salt marsh to the Herring River floodplain and estuary. This is the largest salt marsh restoration project in Massachusetts and represents an ambitious undertaking by the Cape Cod National Seashore (CCNS), the Town of Wellfleet and the Town of Truro. The Nature Conservancy and Mass Audubon have expressed their strong support for the project. Comments on the project, including comments from the US Environmental Protection Agency (EPA), the Natural Heritage and Endangered Species Program (NHESP) and the Areas of Critical Environmental Concern (ACEC) Program and other state resource agencies, identify support for the goals of the project. Comments from residents that could be affected by the project stress the importance of planning the project carefully to avoid unintended consequences and to minimize impacts of the project on private property.

EEA# 14272

ENF Certificate

November 7, 2008

Project Description

The project consists of the re-establishment of tidal flow to the 1,100-acre Herring River estuary and floodplain to an extent closely approximating the natural tidal range that occurred prior to diking at the Chequesset Neck Road. The ecological goal of the project is to restore the full natural tidal range throughout as much of the Herring River floodplain as practicable, including up to the 100-year flood level (9.1 feet NAVD88). In certain areas where tidal flooding must be limited to protect existing land uses, the goal is to restore the maximum high tide up to the mean spring high-tide level (9.1 feet NAVD88). The project proponents plan to use an adaptive management strategy to restore tides gradually with small, incremental openings of adjustable tide gates over a period of several years allowing floodplain characteristics to be monitored and adjusted in response to these actions.

Project planning has been guided by the Herring River Restoration Committee (HRRC), a multi-agency group appointed by the towns of Wellfleet and Truro and the CCNS. The HRRC, with input from stakeholders, prepared the Herring River Conceptual Restoration Plan (November 2007) which was provided to the MEPA Office as a supplement to the ENF.

Proposed restoration activities include reconfiguration of the Chequesset Neck Road dike, replacement of additional upstream culverts, additional upstream tidal control structures and mitigation for low-lying roadways, structures and private properties.

The ENF indicates that the project will include some or all of the following activities:

- Reconstruction of the existing dike and tide control structure at Chequesset Neck Road.
- Construction of several tidegate control structures upstream of Chequesset Neck Road to protect existing land uses.
- Replacement of several culverts upstream of Chequesset Neck Road to allow increased tidal exchange and better fish passage.
- Reconfiguration of the CYCC golf course to maintain a playable layout given increased tide heights.
- Raising, relocating, or removing up to 22,000 linear feet of low-lying roadway occurring within the Herring River floodplain which would be vulnerable to flooding from a restored tidal range.
- Removal of approximately 600 acres of woody vegetation that has become established within the Herring River floodplain in order to promote recolonization of salt marsh vegetation and support fish passage coincident with restored tidal range.
- Restoration of natural channel sinuosity to enhance wetland habitat functions and abate mosquito production.
- Prevention and/or mitigation of flooding impacts to several private properties within the Herring River floodplain, including structures and domestic water wells.
- Public access improvements including additional canoe/kayak put-in locations and fishing piers.

EEA# 14272

ENF Certificate

November 7, 2008

Project Site

The project site includes the Herring River floodplain within Wellfleet and Truro. The Herring River extends from Wellfleet Harbor at the Chequesset Neck Road dike northeast about four miles to Herring Pond in Wellfleet, and to the northwest a similar distance to Ryder Beach in south Truro. Approximately 80% of the floodplain is within and is managed by the CCNS. The Chequesset Neck Diike, which was constructed in 1908, consists of three 6-foot wide culverts, two of which allow river outflow into Wellfleet Harbor, but block the inflow of seawater, while the third has a partially open sluice gate that allows some inflow of seawater. According to the ENF, the estuary was dominated by healthy and highly productive salt marsh plant communities prior to the construction of the dike. The result of the diking and subsequent drainage of the estuary has led to the conversion of hundreds of acres of intertidal salt marsh to upland vegetation, eliminating habitat for estuarine animals, including shellfish and finfish. Approximately 13.6 acres of saltmarsh remain upstream of the dike. In addition, surface waters have been acidified, toxic metals have been leached from native clays, and dissolved oxygen depletions are common, which have contributed to fish kills in the river. The dike has restricted the normal tidal range of 10 feet (ranging from 5 below to 5 feet above NAVD88) within Wellfleet Harbor just seaward of the dike to approximately 2 feet (ranging from 1.1 feet below to .9 feet above NAVD88) above the dike. Drainage has caused the wetlands upstream of the dike to subside by nearly 3 feet.

The project area contains both estimated and priority rare species habitat, contains important fisheries and shellfishery resources, is adjacent to significant cultural and historic resources, and is located with the Wellfleet Harbor Area of Critical Environmental Concern (ACEC). According to the NHESP 13th Edition of the MA Natural Heritage Atlas, the project will occur within or in the vicinity of the habitat of the following state-listed species: Roseate Tern (*Sterna dougallii*), Common Tern (*Sterna hirundo*), Northern Harrier (*Circus cyaneus*), Piping Plover (*Charadrius melodus*), Eastern Box Turtle (*Terrapene carolina*), Diamond-backed Terrapin (*Malaclemys terrapin*), Eastern Spadefoot (*Scaphiopus holbrookii*), Gerhard's Underwing Moth (*Catocala herodias gerhardi*), Water-Willow Stem Borer (*Papaipema sulphurata*) and Broom Crowberry (*Corema conradii*). Diadromous fish species (Alewife and Blueback herring) use all or part of the river for passage, spawning, nursery and forage habitat. Various life stages of numerous other finfish species transit and/or inhabit the river during the year including American eel, white perch and lamprey. Oyster beds are located within the Herring River and seaward of the Chequesset Neck Road Diike. The ENF indicates that the project area is adjacent to and includes significant cultural resources. In addition, the project area includes private property including the CYCC and private residences.

Permits and Jurisdiction

At a minimum, it is expected that the Herring River project will alter at least one acre of salt marsh or bordering vegetated wetlands (BVW), triggering the mandatory EIR threshold described at 310 CMR 11.03(3)(a). The exact nature and extent of wetland alteration is unknown at this time; however, it is likely this threshold will be exceeded to a significant extent. In addition, the project may exceed other mandatory EIR thresholds including 310 CMR 11.03

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(a)(1) because it will alter more than 50 acres of land and 310 CMR (3)(a)(2) because it may require a variance in accordance with the Wetlands Protection Act. The project will require Chapter 91 Licenses and 401 Water Quality Certifications from the Department of Environmental Protection (MassDEP). It may require a Conservation and Management Permit from the Natural Heritage and Endangered Species Program (NHESP). It will require Federal Consistency Review by the Coastal Zone Management (CZM) Office. It will require review by the Massachusetts Historical Commission (MHC). In addition, the project will require Orders of Conditions from the local conservation commissions.

The project has received funding from the CZM Wetlands Restoration Program. Because the project includes state funding, MEPA jurisdiction is broad in scope and extends to all aspects of the project that may cause Damage to the Environment as defined by the MEPA regulations. These include water quality, wetlands, coastal/marine resources, rare species habitat and cultural resources.

The project may require a National Pollutant Discharge Elimination System (NPDES) General Construction Permit for Stormwater from the US Environmental Protection Agency (EPA) and will require Section 404/Section 10 permits from the US Army Corps of Engineers (ACOE) and it will require Section 106 Review. The project is also subject to review under the National Environmental Policy Act (NEPA) and the Cape Cod Commission Act as a Development of Regional Impact (DRI).

Coordinated Review/Special Review Procedure

The proponent has committed to filing one set of documents that fulfill the requirements of NEPA, MEPA, and CCC. Both NEPA and MEPA regulations allow (and encourage) the preparation of joint EIS/EIR documents. Coordinated review will allow maximum public and agency understanding of the project and ensure that review by regulatory agencies is as efficient as possible. A Certificate Establishing a Special Review Procedure (SRP) was issued on June 20, 2008 to provide for coordination of MEPA review with these environmental and developmental review and permitting processes. The public meeting held on August 14, 2008 served as the scoping session for the NEPA and MEPA process and as the hearing for the Cape Cod Commission. An additional public meeting was held on September 12, 2008. The consolidation and coordination will allow these regulatory and public review processes to be conducted in such a way that the public will be able to provide both written and oral comments, within a single timeframe, under the various regional, state and federal regulatory processes. This project has been subject to extended review under the MEPA process to align with the NEPA public comment period.

As part of the SRP, the HRRC was identified as the Citizens Advisory Committee (CAC) to assist with public and agency review and comment as allowed by the MEPA regulations at 310 CMR 11.09(3). In addition to the Towns of Wellfleet and Truro and the CCNS, the HRRC includes representatives from CZM's Wetlands Restoration Program; the National Oceanic and Atmospheric Administration (NOAA) Restoration Center; the U.S. Fish and Wildlife Service; and the Natural Resources Conservation Service (NRCS).

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In addition, the SRP waived the specific requirement to submit the form usually required as part of the Environmental Notification Form (ENF) submission. The ENF submitted on this project summarizes basic information regarding the project, including a narrative that identifies how and to what extent the project may exceed each of the review thresholds.

SCOPE

The EIR should follow the general guidance for outline and content contained in section 11.07 of the MEPA regulations, as modified by this Certificate. The Cape Cod Commission provided a comment letter on this project identifying information that will be relevant to this project's review as a DRI. Because the proponent will file a Draft EIR/EIS/DRI, I am incorporating the comment letter from the CCC into the Scope by reference.

Project Description

The Draft EIR should include a thorough description of the project and all project elements and construction phases. The Draft EIR should include an existing conditions plan illustrating resources, including the existing floodplain, structures and abutting land uses for the entire project area and a proposed conditions plan (or plans) illustrating proposed floodplain elevations, structures and access roads. The Draft EIR should include sufficient baseline data to allow a full characterization of existing conditions and natural resources and support a meaningful analysis of feasible alternatives. The Draft EIR should identify all project related activities including structural modifications, dredging, fill and removal of vegetation. The Draft EIR should identify where and how public access will be improved or introduced.

Project Permitting and Consistency

The Draft EIR should briefly describe state permits required for the project and should describe how the project will meet applicable performance standards or where regulatory flexibility will be requested based on the stated public purpose of the project. In accordance with section 11.01 (3)(a) of the MEPA regulations, the Draft EIR should discuss the consistency of the project with any applicable local or regional land use plans. The Draft EIR should also address the requirements of Executive Order 385 (Planning for Growth).

I am recommending the formation of a Technical Working Group (TWG), comprised of state and federal agency representatives, to support effective and coordinated consultation throughout the review of this project. The TWG will assist the proponent in developing appropriate study methodologies and protocols and should review interim studies, plans and analysis prior to inclusion in the Draft EIR to ensure that the proponent's efforts adequately address the analysis and data requirements of required permits and approvals. In addition, the TWG should assist in the development of benchmarks and criteria for environmental monitoring. Representatives from CZM, Division of Marine Fisheries (DMF), NHESP, ACEC Program,

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MassDEP, MHC and representatives from EPA and US ACOE will be asked to participate in the TWG.

Adaptive Management/Environmental Monitoring

The ENF indicates that tidal restoration will be restored gradually over time using an adaptive management approach that relies on iterative, science-based and incremental management decisions. The nature and timing of specific activities will be implemented based on the results of environmental monitoring and the response of the ecosystem to tidal flow as well as technical and public review of project progress. This project will include major project elements such as redesign of the Chequesset Neck Road opening to the Herring River and many discrete elements that will include installation of new tidal controls, replacement or maintenance of existing culverts and tidal controls, reconstruction, or realignment of roadways and management of vegetation. The environmental review of this project may result in phasing of the project into a number of coordinated but discrete actions that will be implemented based on adaptive management as well as funding availability and other factors.

The Draft EIR should identify how adaptive management will be employed throughout the project and include a comprehensive Environmental Management Plan that incorporates a monitoring program for pre-construction, construction and post-constructions phases that will provide sufficient information to adequately assess progress towards project goals, identify impacts and inform the development of adaptive management strategies. The Plan should identify what will be monitored, how monitoring will be conducted and the proposed duration of monitoring. At a minimum, monitoring should include water quality, rare species, fisheries, shellfish, sediment transport and vegetation.

At this conceptual stage of the project while several distinct alternatives are under consideration, it would be premature to establish phasing; however, once a Preferred Alternative is identified and phasing can be considered in more detail, the SRP may be amended to establish a process for subsequent review within an adaptive management framework under the aegis of the CAC/HRRC.

Alternatives Analysis

As noted previously, this project has the potential to restore up to 1,100 acres of salt marsh. It is a large and ambitious undertaking. Although this is an environmental restoration project and its clear intention is to improve and strengthen the ecosystem of the Herring River, MEPA imposes a requirement on project proponents to understand and fully disclose the potential impacts of a project, both positive and negative; to study feasible alternatives to a project; and to avoid, reduce, or mitigate environmental impacts to the maximum extent feasible. The environmental review process should create a strong foundation for planning and implementation of this project. The review will include consideration of alternatives to achieve the project goals and will require a straightforward analysis of environmental impacts and benefits.

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The primary emphasis of the Draft EIR will be to evaluate potential alternatives. The alternatives analysis should identify benefits, impacts and mitigation associated with each alternative and provide information, data and analysis necessary for state resource agencies to evaluate the alternatives. Various regulatory programs may require the submission of an alternatives analysis as part of permitting or as a requirement for regulatory flexibility. I encourage the proponent to prepare the alternatives analysis so that it will address the needs of these regulatory processes. If a Preferred Alternative is identified in the Draft EIR, the Draft EIR should provide adequate information to support this selection and discuss mitigation approaches.

The Draft EIR should evaluate the following four alternatives:

No Action Alternative: Existing tidegates would remain in place and tide levels would be managed under existing conditions.

Modified Tidegate Control at Chequesset Neck Road: Existing dike would be replaced with a new structure with an opening 100 – 130 feet wide consisting of culverts arch spans or a bridge. The structure would be fitted with sluice gates to allow full tidal control and management.

Open Bridge with Upstream Tidegate Controls: An open bridge span would be constructed at the site of the Chequesset Neck Road dike. The bridge would not have any tidal control. Tidal control would be established at upstream locations with several smaller structures to regulate the limit of tidal flooding.

Hybrid of Modified Tidegate Control at Chequesset Neck Road with Upstream Tidegate Controls: A combination of controlling tides at the neck of the river and at upstream locations.

The Draft EIR should investigate all feasible methods of restoring salt marsh while avoiding, reducing or minimizing negative impacts, in particular impacts to private properties. The alternative analysis should include a clear comparison (quantified to the extent feasible) of the impacts of each alternative and its project components. For each alternative, the Draft EIR should quantify the amount of land altered, quantify the amount of impervious surfaces created, quantify wetlands impacts, identify impacts to rare species, identify associated dredging and identify impacts to cultural resources. The Draft EIR indicates that two-dimensional hydraulic/hydrologic modeling will be used to analyze alternatives. The results of the modeling should be included in the Draft EIR including the tidal ranges, expansion of the floodplain, salinities and velocities at road crossings and other impediments to tidal exchange. The Draft EIR should identify criteria that will be used to select a Preferred Alternative and the Draft EIR should clearly explain why certain alternatives are selected and others ruled out for further consideration. The Draft EIR should fully explain any trade-offs inherent in the alternatives analysis, such as increased impacts on some resources to avoid impacts to other resources.

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The alternatives analysis should identify alternatives for avoiding impacts to private properties within each sub-basin. In particular, it should include a detailed discussion of alternatives for addressing the Chequessett Yacht and Country Club (CYCC) golf course which is located in Mill Creek adjacent to the Chequessett Neck Road dike. Portions of five holes within this nine-hole golf course were constructed in the floodplain. The majority of comments made during public meetings identify concerns with the impact of this project on the CYCC. Commentors have requested that these impacts be carefully evaluated and that the proponent work cooperatively with the CYCC to identify alternatives. In addition, some comments identify efforts the CYCC has made to address this problem and identify alternatives. The ENF indicates that the proponent and CYCC have discussed several potential alternatives including filling of this area to raise it above the floodplain or re-location of holes within land owned by the CYCC. The alternatives must consider and balance the private property concerns of the CYCC with potential impacts to wetlands, historic resources and rare species habitat.

The ENF indicates that several structures, wells and septic systems are located on private property and are at elevations low enough to be directly affected by tidal restoration up to the spring high tide elevation of 5.1 feet (NAVD88). The Draft EIR should address alternatives that will protect structures, public and private water supplies and septic systems from flooding and/or saltwater intrusion.

Land Alteration

The Draft EIR should quantify the amount of land alteration associated with the project. The Draft EIR should clearly identify how land will be altered, where vegetation will require removal and identify objectives and measures that will be included in the vegetation management program to minimize impacts and maximize the effectiveness of the project.

Wetlands

Wetlands impacts will include alterations to wetland resources associated with construction, reconstruction or maintenance of structural elements of the project and impacts associated with the introduction of tidal flow. The re-introduction of tidal flow will convert some wetland resource areas such as upland wetlands to salt marsh and introduce wetland resources to areas that are currently non-jurisdictional.

The Draft EIR should characterize wetland resources throughout the site, identify and quantify wetland alterations associated with each alternative and identify how negative impacts will be minimized consistent with the Performance Standards of the Wetlands Regulations (310 CMR 10.00). The Draft EIR should include plans at an appropriate scale that illustrate impacts to resource areas. The analysis should demonstrate how the project will support the interests of the Wetlands Protection Act and how it may impact those interests, particularly storm damage prevention and flood control. In addition, the Draft EIR should illustrate where new resource areas will be created and identify associated buffer zones. The proponent should consult with the

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TWG and the Wellfleet and the Truro Conservation Commissions regarding the preparation of wetlands information for the Draft EIR.

MassDEP comments indicate that portions of the project are located on lands subject to the Town of Wellfleet's Coastal Wetlands Restriction Order (310 CMR 12.00 and MGL c 130 s. 105) adopted April 19, 1982. This Order contains specific prohibitions, including substantially altering existing patterns of tidal flow. The proponent should consult with MassDEP to conduct a review of the land restricted pursuant to the Order and to determine if an amendment or modification to the Order of Restriction is required.

If MassDEP determines that the project requires a variance in accordance with the Wetlands Protection Act or the proponent chooses to seek a variance, the Draft EIR should provide the information required as part of a variance request. This includes:

1. a description of alternatives explored that would allow the project to proceed in compliance with 310 CMR 10.21 through 10.60 and an explanation of why each is unreasonable;
2. a description of the mitigating measures to be used to contribute to the protection of the interests identified in M.G.L. c. 131, § 40; and
3. evidence that an overriding public interest is associated with the project which justifies waiver of 310 CMR 10.21 through 10.60.

MassDEP comments identify additional regulatory requirements the project may be subject to. The proponent should carefully review the MassDEP comment letter and take note of the requirements and standards identified within it.

Tidelands/Chapter 91

The reconstruction of the existing dike and upstream culvert crossing will likely require Chapter 91 licenses. The Draft EIR should identify project elements associated with each alternative that would require Chapter 91 licensing. The Draft EIR should include an analysis of the project's compliance with the Waterways Regulations. The Draft EIR should assess the project's impacts, positive and negative, on the public's right to access, use and enjoy tidelands that are protected by Chapter 91 and identify measures to avoid, minimize or mitigate any adverse impact on these rights.

Pursuant to Chapter 168 of the Acts of 2007, I am required to conduct a public benefit review for this project because it requires a license under Section 18 of Chapter 91 and is required to file an EIR. The Draft EIR should include detailed information concerning benefits to the public trust rights in tidelands or other associated rights, including but not limited to, benefits provided through community activities on site, environmental protection and preservation, public health and safety and the general welfare. In weighing the benefit to the public trust rights in tidelands, I will apply a preference for a benefit on-site that promotes access to, and use and enjoyment of, the waterfront.

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Dredging

The Draft EIR should identify any dredging associated with project alternatives, estimate the amount of material to be dredged and describe the soils to be dredged. Potential impacts associated with dredging and fill activities include increased turbidity, mobilization of pollutants and downstream sediment deposition. It should identify measures that can be employed to avoid release of sediments into the river environment and to protect downstream shellfish beds.

Rare Species/Wildlife Habitat

As noted previously, the site includes habitat for many rare species. Restoration of salt marsh will alter habitats for some of these species and expand habitat for others. Comments from NHESP indicate that portions of the proposed project may qualify for a Habitat Management Exemption in accordance with the Massachusetts Endangered Species Act (MESA) (321 CMR 10.14 (11)), while other portions may require a Conservation & Management Permit. The Draft EIR should include detailed hydrologic/hydraulic models and impact analyses for all proposed alternatives to assist the NHESP in making a determination regarding the appropriate approach to permitting. Analyses should address impacts to state-listed species for both the proposed restoration efforts, as well as for any associated upland projects such as the relocation of roads or relocation of the CYCC holes. The Draft EIR should address how each alternative could be designed to avoid, minimize, and mitigate impacts to state-listed species. The proponent should consult with NHESP through the TWG regarding permitting approaches and the development of additional rare species surveys.

The Draft EIR should identify how overall habitat within the floodplain will be monitored and evaluated consistent with adaptive management goals.

Fisheries

This section should summarize the benefits of the project to fisheries and shellfish and provide projections regarding growth. It should identify temporary impacts to fish and shellfish during construction and identify measures to avoid, minimize and mitigate these impacts, including consideration of time-of-year (TOY) restrictions identified by the Division of Marine Fisheries (DMF). It should identify how restoration of tidal flow to the Herring River at Chequesset Neck Road will be designed to optimize fish passage.

Water Quality

The Draft EIR should identify baseline water quality data that measures salinity, pH and metals, dissolved oxygen and fecal coliform, identify how project alternatives will affect water quality and identify how water quality will be monitored. The Draft EIR should identify impacts on public and private water supplies and septic systems associated with each alternative. It should provide a more detailed discussion of the relationship between the restoration of tidal flow and groundwater. The Draft EIR should identify how the project will be conducted

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consistent with water quality standards associated with the 401 Water Quality Certification. In addition, the Draft EIR should discuss short- and long-term changes in rates and volumes of sediment transport associated with each alternative and related impacts on the river and the harbor.

Historic/Archaeological Impacts

The Draft EIR should identify historic properties and archaeological sites within the project area and its vicinity and identify potential impacts to these sites. MHC comments indicate that it will consult with the National Park Service (NPS) under Section 106 of the National Historic Preservation Act of 1966 during their review of the project under NEPA regarding the scope of work for the cultural resources survey and development of the area of potential effect (APE) for this project. Also, MHC comments indicate that it previously reviewed a portion of this project in 2006 and 2007 including a Project Notification Form (PNF) for the CYCC redevelopment and indicate that any redevelopment of the CYCC will be reviewed as part of the Herring River Restoration Project.

Greenhouse Gas Emissions

The project is subject to the EEA Greenhouse Gas Policy and Protocol because it requires an EIR and MEPA has full scope jurisdiction. This is an environmental restoration project that will not result in the emissions of Greenhouse Gases (GHG) and therefore falls within the de minimis exception of the policy. The proponent is not required to prepare an analysis of GHG emissions or identify measures to mitigate GHG emissions. The ENF indicates that the project will serve to minimize the impacts of climate change by providing additional protection from flooding and storm surges and expanding habitat for wildlife. In addition, the structure at Chequesset Neck could be designed to incorporate tidal power. The Draft EIR should identify how the impacts of climate change, including sea level rise, are being incorporated into the analysis of this project, how the project will provide protection from the impacts of climate change and whether the Chequesset Neck Dike could be designed to incorporate tidal power while balancing other project goals including improved habitat for fisheries and recreational access.

Construction Period Impacts

The Draft EIR should include a discussion of construction phasing, evaluate potential impacts associated with construction activities and propose feasible measures to avoid or eliminate these impacts. The proponent should implement measures to alleviate dust, noise, and odor nuisance conditions, which may occur during the construction activities.

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Mitigation

The Draft EIR should include a separate chapter on mitigation measures. This section should form the basis of the proposed Section 61 Findings that will be presented in the Final EIR. Draft Section 61 Findings for all state permits should include a clear commitment to mitigation, an estimate of the individual costs of the proposed mitigation, the identification of the parties responsible for implementing the mitigation and a schedule for the implementation of mitigation, based on the construction phasing of the project.

Comments

To ensure that the issues raised by commenters are addressed, the Draft EIR should include a response to comments section. This directive is not intended to, and shall not be construed to, enlarge the scope of the Draft EIR beyond what has been expressly identified in this Certificate. A copy of each comment letter should be included in the Draft EIR. I defer to the proponent as it develops the format for this section, but the Response to Comments section should provide clear answers to questions raised.

Circulation

The Draft EIR should be circulated in compliance with Section 11.16 of the MEPA regulations and copies should also be sent to the list of “comments received” below and to local officials in Wellfleet and Truro. A copy of the Draft EIR should be made available for public review at the Wellfleet and Truro public libraries. The proponent should provide a hard copy of the Draft EIR to each state agency and town department from which the proponent will seek permits or approvals.

November 7, 2008

Date



Ian A. Bowles

EEA# 14272

ENF Certificate

November 7, 2008

Comments Received¹:

10/31/08	Massachusetts Department of Environmental Protection/Southeast Regional Office (MassDEP/SERO)
10/31/08	Department of Conservation and Recreation/Areas of Critical Environmental Concern Program (DCR/ACEC)
10/14/08	Division of Marine Fisheries (DMF)
10/28/08	Division of Fisheries and Wildlife/Natural Heritage Endangered Species Program (DFW/NHESP)
7/29/08	Massachusetts Historical Commission (MHC)
10/31/08	US Environmental Protection Agency (EPA)
10/23/08	Cape Cod Commission (CCC)
10/31/08	Mass Audubon
8/14/08	Chequesset Yacht and Country Club
10/15/08	Chequesset Yacht and Country Club (second letter)
10/23/08	The Nature Conservancy (TNC)
8/14/08	Nancy Deppen
10/21/08	Dale and Lee Ann Fanning
9/10/08	P. Faxon
8/20/08	Doug Franklin
9/24/08	Bill Dahl
9/26/08	Douglas E. Franklin
8/26/08	Katherine Gilmour
8/14/08	Kathryn Hubby
8/15/08	David Kew
10/1/08	Sarah Nickerson
8/16/08	John & Linda Riehl
9/24/08	Elliot Paul Rothman
9/6/08	Laura Runkel
10/21/08	Nancy N. Ryder
8/28/08	Harvey F. Schwallie
9/24/08	Marc Stahl
8/14/08	Paula Tasha
8/14/08	Jack Whalen
11/3/08	Wellfleet resident

IAB/CDB/cdb

¹ MEPA, NPS and CCC agreed that any letter submitted to one of the agencies/organizations would be accepted by each as a comment letter. I have reviewed all comment letters submitted including the transcripts from the August 14 scoping session and the September 24, 2008 public meeting, as I am authorized under 301 CMR 11.06 (2), and they have factored into this decision to the extent that the issues raised fall within MEPA jurisdiction.



United States Department of the Interior

NATIONAL PARK SERVICE
Cape Cod National Seashore
99 Marconi Site Road
Wellfleet, MA 02667
508.349.3785
508.349.9052 Fax

IN REPLY REFER TO:

H42

October 5, 2011

Ms. Brona Simon
State Historic Preservation Officer
Massachusetts Historical Commission
220 Morrissey Boulevard
Boston, Massachusetts 02125

Subject: Phase IA Archeological Background Research and Sensitivity Assessment,
Herring River Tidal Restoration Project, Wellfleet, Truro, MA. MHC
#RC.44488.

Dear Ms. Simon:

In 2008, the National Park Service (NPS) at Cape Cod National Seashore (CCNS) notified you that it was in the early stages of developing a Draft Environmental Impact Statement (DEIS) to evaluate the proposed restoration of the Herring River estuary in Wellfleet and Truro. Work on the DEIS has advanced and we are planning to release it for agency and public review in Spring 2012. Prior to release of the DEIS, we would like to update you on the progress made to begin identifying potential cultural resources within the area of potential effect (APE) for the project.

Public Archeology Lab, Inc. (PAL) has completed a Phase 1A research and assessment report which we have enclosed for your review and comment. The survey was performed at a generalized level in order to identify the known and most likely locations for archeological resources to be present within the project area, and to make recommendations regarding the need for and probable scope of additional archeological investigations. The survey documents several known and potential pre and post-contact period archeological resources within and adjacent to the Herring River Tidal Restoration Project area. Sites are located in the uplands as well as some at or near the wetland margins. These are detailed in the Conclusions and Recommendations section beginning on page 75, and seven major proposed construction areas are identified beginning on page 77. The preliminary APE has been revised as a result of hydrodynamic modeling which has determined that the maximum inundation levels will be lower than first projected, which is illustrated on page 88, Figure 5-20.

Given the complexity of the project and the ongoing refinement of the APE, the NPS suggests that a programmatic agreement executed pursuant to 36CFR 800.14 be developed in order to allow for a phased process to conduct identification and evaluation efforts as we move forward. In developing the agreement, several specific issues should be addressed, such as the level of archeological investigation necessary when project impacts in specific areas of the APE are limited to changes in water level and where potential historic features have already been identified. Please notify us if this approach is acceptable, and if so, we will prepare a draft programmatic agreement for your office to review and comment on.

If you have any questions, please contact William Burke, Section 106 Coordinator, at (508) 255-3421, ext 14.

Sincerely,



George E. Price, Jr.
Superintendent

Enclosure

cc:

Wampanoag Tribe of Gay Head-Aquinnah
Mashpee Wampanoag Tribe
Advisory Council for Historic Preservation
Wellfleet Historical Commission
Wellfleet Historical Society
Truro Historical Commission
Truro Historical Society
Secretary Ian A. Bowles, EEA, Attn: Holly Johnson, MEPA Unit
Hunt Durey, MA Division of Ecological Restoration
Bob Boeri, MA Coastal Zone Management
Vic Mastone, MA Board of Underwater Archaeological Resources
Liz Koulaheras, DEP-SERO, Wetlands
John Sargent, US Army Corps of Engineers
Tim Timmerman, US Environmental Protection Agency
Steve Block, NOAA
Charleen Greenhalgh, Town of Truro
Hillary Greenberg, Town of Wellfleet
Eric Derleth, USFWS
Jacklyn Bryant, Louis Berger Group
Mark Husbands, NPS Environmental Quality Division



United States Department of the Interior

NATIONAL PARK SERVICE
Cape Cod National Seashore
99 Marconi Site Road
Wellfleet, MA 02667
508.349.3785
508.349.9052 Fax

IN REPLY REFER TO:

H42

October 5, 2011

Mashpee Wampanoag Tribe
483 Great Neck Road
Post Office Box 1048
Mashpee, MA 02649

Subject: Phase IA Archeological Background Research and Sensitivity Assessment, Herring River
Tidal Restoration Project, Wellfleet, Truro, MA. MHC #RC.44488.

Dear Mashpee Wampanoag Tribe:

In 2008, the National Park Service (NPS) at Cape Cod National Seashore (CCNS) notified you that it was in the early stages of developing a Draft Environmental Impact Statement (DEIS) to evaluate the proposed restoration of the Herring River estuary in Wellfleet and Truro. Work on the DEIS has advanced and we are planning to release it for agency and public review in Spring 2012. Prior to release of the DEIS, we would like to update you on the progress made to begin identifying potential cultural resources within the area of potential effect (APE) for the project.

Public Archeology Lab, Inc. (PAL) has completed a Phase 1A research and assessment report which we have enclosed for your review and comment. The survey was performed at a generalized level in order to identify the known and most likely locations for archeological resources to be present within the project area, and to make recommendations regarding the need for and probable scope of additional archeological investigations. The survey documents several known and potential pre and post-contact period archeological resources within and adjacent to the Herring River Tidal Restoration Project area. Sites are located in the uplands as well as some at or near the wetland margins. These are detailed in the Conclusions and Recommendations section beginning on page 75, and seven major proposed construction areas are identified beginning on page 77. The preliminary APE has been revised as a result of hydrodynamic modeling which has determined that the maximum inundation levels will be lower than first projected, which is illustrated on page 88, Figure 5-20.

Given the complexity of the project and the ongoing refinement of the APE, the NPS suggests that a programmatic agreement executed pursuant to 36CFR 800.14 be developed in order to allow for a phased process to conduct identification and evaluation efforts as we move forward. In developing the agreement, several specific issues should be addressed, such as the level of archeological

investigation necessary when project impacts in specific areas of the APE are limited to changes in water level and where potential historic features have already been identified. Please notify us if this approach is acceptable, and if so, we will prepare a draft programmatic agreement for your office to review and comment on.

If you have any questions, please contact William Burke, Section 106 Coordinator, at (508) 255-3421, ext 14.

Sincerely,



George E. Price, Jr.
Superintendent

Enclosure

cc:

MA Historical Commission
Wampanoag Tribe of Gay Head-Aquinnah
Advisory Council for Historic Preservation
Wellfleet Historical Commission
Wellfleet Historical Society
Truro Historical Commission
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Secretary Ian A. Bowles, EEA, Attn: Holly Johnson, MEPA Unit
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Vic Mastone, MA Board of Underwater Archaeological Resources
Liz Koulaheras, DEP-SERO, Wetlands
John Sargent, US Army Corps of Engineers
Tim Timmerman, US Environmental Protection Agency
Steve Block, NOAA
Charleen Greenhalgh, Town of Truro
Hillary Greenberg, Town of Wellfleet
Eric Derleth, USFWS
Jacklyn Bryant, Louis Berger Group
Mark Husbands, NPS Environmental Quality Division



United States Department of the Interior

NATIONAL PARK SERVICE

Cape Cod National Seashore
99 Marconi Site Road
Wellfleet, MA 02667
508.349.3785
508.349.9052 Fax

IN REPLY REFER TO:

H42

October 5, 2011

Ms. Bettina Washington
Tribal Historic Preservation Officer
Wampanoag Tribe of Gay Head-Aquinnah
20 Black Brook Road
Aquinnah, MA 02535

Subject: Phase IA Archeological Background Research and Sensitivity Assessment, Herring River
Tidal Restoration Project, Wellfleet, Truro, MA. MHC #RC.44488.

Dear Ms. Washington:

In 2008, the National Park Service (NPS) at Cape Cod National Seashore (CCNS) notified you that it was in the early stages of developing a Draft Environmental Impact Statement (DEIS) to evaluate the proposed restoration of the Herring River estuary in Wellfleet and Truro. Work on the DEIS has advanced and we are planning to release it for agency and public review in Spring 2012. Prior to release of the DEIS, we would like to update you on the progress made to begin identifying potential cultural resources within the area of potential effect (APE) for the project.

Public Archeology Lab, Inc. (PAL) has completed a Phase 1A research and assessment report which we have enclosed for your review and comment. The survey was performed at a generalized level in order to identify the known and most likely locations for archeological resources to be present within the project area, and to make recommendations regarding the need for and probable scope of additional archeological investigations. The survey documents several known and potential pre and post-contact period archeological resources within and adjacent to the Herring River Tidal Restoration Project area. Sites are located in the uplands as well as some at or near the wetland margins. These are detailed in the Conclusions and Recommendations section beginning on page 75, and seven major proposed construction areas are identified beginning on page 77. The preliminary APE has been revised as a result of hydrodynamic modeling which has determined that the maximum inundation levels will be lower than first projected, which is illustrated on page 88, Figure 5-20.

Given the complexity of the project and the ongoing refinement of the APE, the NPS suggests that a programmatic agreement executed pursuant to 36CFR 800.14 be developed in order to allow for a phased process to conduct identification and evaluation efforts as we move forward. In developing the agreement, several specific issues should be addressed, such as the level of archeological

investigation necessary when project impacts in specific areas of the APE are limited to changes in water level and where potential historic features have already been identified. Please notify us if this approach is acceptable, and if so, we will prepare a draft programmatic agreement for your office to review and comment on.

If you have any questions, please contact William Burke, Section 106 Coordinator, at (508) 255-3421, ext 14.

Sincerely,

A handwritten signature in black ink, appearing to read "George E. Price, Jr.", with a stylized flourish at the end.

George E. Price, Jr.
Superintendent

Enclosure

cc:

MA Historical Commission
Mashpee Wampanoag Tribe
Advisory Council for Historic Preservation
Wellfleet Historical Commission
Wellfleet Historical Society
Truro Historical Commission
Truro Historical Society
Secretary Ian A. Bowles, EEA, Attn: Holly Johnson, MEPA Unit
Hunt Durey, MA Division of Ecological Restoration
Bob Boeri, MA Coastal Zone Management
Vic Mastone, MA Board of Underwater Archaeological Resources
Liz Koulaheras, DEP-SERO, Wetlands
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IN REPLY REFER TO:

H42

October 5, 2011

Mr. Reid Nelson
Director, Officer of Federal Agency Programs
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue, NW
Suite 803
Washington, DC 20004

Subject: Phase IA Archeological Background Research and Sensitivity Assessment, Herring River
Tidal Restoration Project, Wellfleet, Truro, MA. MHC #RC.44488.

Dear Mr. Nelson:

In 2008, the National Park Service (NPS) at Cape Cod National Seashore (CCNS) notified you that it was in the early stages of developing a Draft Environmental Impact Statement (DEIS) to evaluate the proposed restoration of the Herring River estuary in Wellfleet and Truro. Work on the DEIS has advanced and we are planning to release it for agency and public review in Spring 2012. Prior to release of the DEIS, we would like to update you on the progress made to begin identifying potential cultural resources within the area of potential effect (APE) for the project.

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Sincerely,



George E. Price, Jr.
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