

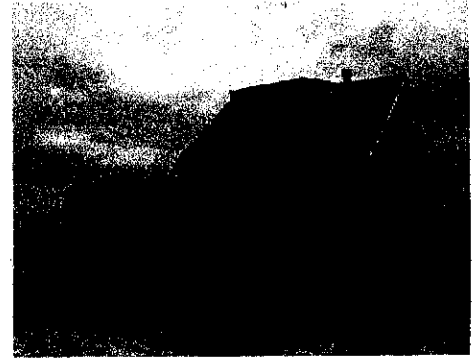
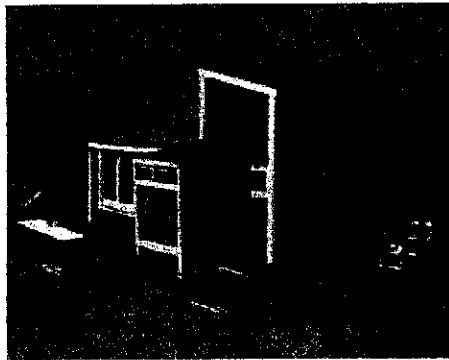
National Park Service
U.S. Department of the Interior



Cape Cod National Seashore

Cape Cod National Seashore

Dune Shack Historic District Preservation and Use Plan/ Finding of No Significant Impact



Finding of No Significant Impact

Dune Shacks of Peaked Hill Bars Historic District Preservation and Use Plan Cape Cod National Seashore Massachusetts May 8, 2012

INTRODUCTION

The National Park Service (NPS) proposes to implement a plan for preservation and use of the Dune Shacks of Peaked Hills Historic District (historic district), which is located within Cape Cod National Seashore (national seashore). The historic district occupies approximately 1,960 acres within the national seashore and was determined eligible for the National Register of Historic Places in 1989. A National Register nomination was prepared by the NPS in 2011 and was forwarded to the Keeper of the National Register in early 2012. The district was formally listed on March, 15, 2012. Eighteen of the 19 dune shacks are owned by the NPS and are currently occupied by different groups and individuals under a variety of administrative instruments. The purpose of taking action is to establish a plan for the preservation and use of the historic district that provides clear direction and consistency for NPS managers, dune shack dwellers, users, and advocates. Action is needed at this time to provide for the long-term protection of the historic district as a whole, including the structures, cultural landscape, and natural environment. A sustainable plan is needed that is economically feasible, conforms to applicable law and NPS policies, and can be implemented with available federal administrative instruments. Examples of these instruments are long-term leases up to 20 years, medium-term leases of 3 to 10 years, and agreements of 5 to 10 years. The objectives of this Environmental Assessment/Assessment of Effect (EA/AoE), which support the purpose and need, are to:

- continue to provide the opportunity for contemplative solitude in support of art and literature;
- support the unique and long-term relationships as highlighted in Robert Wolfe's report, *Dwelling in the Dunes: Traditional Use of the Dune Shacks of the Peaked Hill Bars Historic District, Cape Cod*;
- provide appropriate opportunities for the public to experience the themes and resource values of the historic district;
- take advantage of partnership opportunities where appropriate;
- minimize interference with the natural dune processes that are part of the overall dune system;
- establish preservation maintenance practices and consultation processes between the national seashore and dune shack occupants that will protect the historic structures and cultural landscapes and adhere to the *Secretary of the Interior's Standards for the Treatment of Historic Properties*.

The EA/AoE for this proposal was initially released on April 27, 2011 for a 30-day agency and public review period in accordance with the National Environmental Policy Act of 1969, as amended (NEPA), the implementing regulations of the Council on Environmental Quality (40

CFR 1500-1508.9) (CEQ), and NPS Director's Order #12: *Conservation Planning, Environmental Impact Analysis and Decision-Making* (DO-12) and accompanying DO-12 Handbook (2001). The initial deadline for comments was June 10, 2011; however, at the request of the Provincetown Board of Selectmen the public review period was extended to June 17, 2011. As part of the public review process a public meeting was held on May 10, 2011 to discuss the plan. The EA/AoE described the goals of the project; presented a range of reasonable alternatives, including the no-action alternative; analyzed the effects of each alternative on the human environment; and solicited agency and public comments on the proposed action.

SELECTED ALTERNATIVE

Based on the analysis presented in the EA/AoE, the NPS has selected Alternative B: Limited Mix of Use and Occupancy (NPS Preferred Alternative) for implementation. The selected alternative is described on pages 21-29 of the EA/AoE.

The selected alternative will meet the purpose and need of the project by including guidance to provide for the long-term care and commitment to the historic district including, but not limited to:

- maintaining the cultural significance of the historic district through living and sharing the dune experience, and the traditions, stories, and memories;
- maintaining and preserving the dune shack structures;
- maintaining and preserving the cultural and natural landscape;
- maintaining the district's historic connection to the development of art and literature in America.

Occupancy and Use

The selected alternative will encourage frequent occupancy of the shacks in a combination of residential, programmatic and public, and/or recurrent caretaker use. It is anticipated that dune shack use will be distributed as approximately 40 percent long-term residential, 20 percent medium-term residential or nonprofit organizations (with 3-10 year rotations), and 40 percent nonprofit organizations serving a range of appropriate programmatic and public uses. Mixed use within individual dune shacks and for the shacks as a whole will be supported.

In addition to considering current dune shack use, decisions about the use of particular shacks will be guided by recognition of what is most suitable, given a particular shack's history, size, location, and condition.

Management Instruments and Selection Criteria

A variety of management instruments will be used for preserving and allocating use of the dune shacks. Leasing will be favored for long-term residential stewards, and agreements or leases would be favored for nonprofits for public and programmatic uses. The selected alternative establishes a list of criteria that the national seashore will consider when selecting stewards for the dune shacks. In addition to criteria defined in NPS leasing law (36CFR Part 18), separate and distinct criteria will be established to guide decisions related to long-term residential occupancy (up to 20 years), medium-term stewardship and occupancy (3-10 years), and

programmatic/public stewardship and occupancy. During the leasing process, the national seashore will advocate for a technical advisor from the national seashore to be present to advise the evaluation panel.

Transition Procedures

The selected alternative also establishes specific procedures for transitions in stewardship of a dune shack. Distinct protocols will be provided to guide the following situations:

- transition from current special year-to-year permits to longer term arrangements;
- predictable expiration of terms of an existing agreement, lease, or stipulation of use;
- unpredictable expiration of terms of an existing agreement, lease, stipulation, or reservation of use (death of person, failure to comply with lease, sudden vacancy, or failure of an organization).

The permit selection process will include evaluation standards consistent with those outlined under "Management Instruments and Selection Criteria."

Public Access

Consistent with the national seashore's broad interpretation of public access to include both physical and intellectual access to the historic district's resources and themes, public access encompasses opportunities for intellectual, experiential, and interactive access. All stewards of the dune shacks, including leaseholders and agreement holders, will be encouraged to contribute to public understanding and access (including intellectual access) to the historic district through a range of diverse, low-impact opportunities for access that reflect the unique nature and sensitive resources, and the need for privacy to experience the values of dwelling in the dunes. Such contributions will include opportunities for education, outreach, and experiential activities and will be carefully considered to ensure the level of use is consistent with preserving the qualities of the historic district. Some, but not all, shacks will provide public access via short-term occupancy (defined as one to three weeks in residency in a specific shack). As described in the selected alternative, examples of short-term occupancy are: artist or writer residencies or other competitive programs, fair allocation of time via lottery or other means, caretakers, or occupancy made available by residential leaseholders.

The selected alternative will include day access for the general public through guided, programmed ranger walks and authorized dune taxi tours. In addition to programmed day visits, independent walk-in day visitors will be allowed. To preserve the environment of solitude and contemplation recognized in the eligibility of the historic district, the national seashore will provide minimal, effective, clear signage about the privacy of the shacks that will also encourage resource sensitive behavior. Additionally, the NPS will work with historic district stakeholders to encourage the use of traditional paths and roads, and to reduce and minimize the creation of new footpaths or trails that infringe on the shack dweller's opportunity for solitude or erode the natural landscape.

The national seashore and dune dwellers will work collaboratively to improve the current over-sand driving instructional video and/or develop new training strategies specifically about inner-

dune driving to reinforce etiquette and care of the resource. Vehicle traffic will continue to be minimized in the historic district, outside of access to the shacks by residents, national seashore maintenance and visitor and resource protection staff, and permitted dune taxi tours. The NPS will consider implications of parking areas on historic district access and impact.

To clarify and simplify the expectation for maintenance, upkeep, and repair of the dune shacks, the national seashore will distribute to dune shack stewards "A Quick User's Guide to Dune Shack Maintenance and Repair" to provide guidance on acceptable repair methods and the list of compatible and incompatible materials for rehabilitation and repair. Stewards also will receive materials, such as applicable portions of the Historic Structures Report (HSR) and Cultural Landscape Report (CLR) and the list of character-defining features for their shack to help them clearly identify the character-defining features that should not be radically changed, obscured, damaged, or destroyed when making decisions regarding maintenance, rehabilitation, and repairs to shacks.

Four levels of maintenance actions, with different levels of documentation and review, will be established to account for the following:

- routine preservation;
- minor maintenance and repair;
- replacement and repairs with in-kind materials;
- replacement and repairs that use different materials or otherwise make dramatic changes.

In the event of a true emergency (e.g., window or door blows out in a storm, major roof leak), dune shack occupants will be permitted to make the necessary repairs, in compliance with NPS policies, and consult with national seashore staff as soon as possible.

Although the experience of the shacks implies a simpler, rustic lifestyle, certain amenities including heating, water retrieval and disposal (sink, shower, and toilet), lighting, and food storage and preparation mechanisms have been incorporated into several of the dune shacks. The national seashore will maintain the existing variety of amenity levels as appropriate to the use. Where possible, the present and historic level of amenities will be the basis for any decision regarding modernization or addition of amenities. Wherever possible the addition of amenities placed on the exterior of a shack will be discreet or hidden (minimally visible, if at all) and will be removable without disturbing the historic fabric of the structure. The national seashore will clarify expectations regarding amenities on a shack-by-shack basis during the leasing process.

The selected alternative will encourage the use of sand fencing for erosion control, instead of plastic fencing, wooden pallets, erosion matting, or hay bales. Fencing of more than 1,000 feet will require consultation with the NPS. Additionally, beach grass plantings will be encouraged, instead of salt spray rose or other nonnative species and/or the use of imported fill. Plantings of 0.25 acres or more will require NPS consultation.

OTHER ALTERNATIVES CONSIDERED

One other alternative was considered in the EA/AoE, which was Alternative A: No-Action Alternative (Continued Existing Management), described on pages 19-21 of the EA/AoE. Under this alternative, current management, operations, and conditions would continue within the historic district. Decisions about dune shack occupancy would still be made on a case-by-case basis, without a comprehensive, systematic decision-making approach. Current uses of the 18 NPS-owned dune shacks would continue, as stipulated in existing management instruments.

Visitor experiences would be much the same as today. For example, day visitors would still access the historic district on foot or with a private tour vendor. The national seashore would continue to use its website and visitor centers to educate visitors about the protection of dune resources. Vehicle access to the historic district would still be limited to NPS staff, emergency vehicles, dune shack dwellers, organizations occupying the dune shacks, and authorized dune taxis.

Under the no-action alternative, maintenance of the dune shacks would continue to be carried out by the current dwellers. The cultural landscape would be managed under current policies. Some traditional activities that have been allowed in the historic district, such as planting small gardens and installing plastic fencing, would likely be curtailed in response to CLR recommendations.

Alternative A was not chosen as the selected alternative because it does not meet the purpose and need of the proposed action. Alternative A would not establish guidelines for the preservation and use of the historic district to ensure clear direction for NPS managers, dune shack dwellers, users, and advocates. Decisions would continue to be made on a case-by-case basis, making consistency difficult. The case-by-case approach could also lead to more modern improvements to the shacks, diminishing the rustic and isolated nature of the historic district.

ENVIRONMENTALLY PREFERRED ALTERNATIVE

In accordance with the DO-12 Handbook, the NPS identifies the environmentally preferable alternative in its NEPA documents for public review and comment (Sect. 4.5 E(9)). The environmentally preferable alternative is the alternative that causes the least damage to the biological and physical environment and best protects, preserves, and enhances historical, cultural, and natural resources. The environmentally preferable alternative is identified upon consideration and weighing by the responsible official of long-term environmental impacts against short-term impacts in evaluating what is the best protection of these resources. In some situations, such as when different alternatives impact different resources to different degrees, there may be more than one environmentally preferable alternative (43 CFR 46.30).

Based on the analysis of environmental consequences of each alternative presented in chapter 4 of the EA/AoE, Alternative B is the environmentally preferred alternative. This alternative best protects and preserves the cultural and natural resource of the historic district by establishing guidelines for use and maintenance of the dune shacks that would not only preserve the structures, but also preserve the experiential activities that are so closely linked to the historic district.

MITIGATION MEASURES

The selected alternative does not include any specific mitigation measures.

It is NPS practice to comply with or exceed local and state water quality and erosion and sediment control regulations. Any soil-disturbing activities will take place in accordance with relevant federal, state, and local regulations and best management practices.

WHY THE SELECTED ALTERNATIVE WILL NOT HAVE A SIGNIFICANT EFFECT ON THE HUMAN ENVIRONMENT

As defined in 40 CFR § 1508.27, significance is determined by examining the following criteria.

1) Impacts that may have both beneficial and adverse aspects and which on balance may be beneficial, but that may still have significant adverse impacts that require analysis in an Environmental Impact Statement (EIS).

Implementation of the selected alternative will result in both beneficial and minor, adverse impacts; however, no major or significant impacts were identified that will require analysis in an EIS. Impacts of the selected alternative on soundscapes, use and experience, dune shack dweller experience, historic district/structures, cultural landscapes, and dune processes were identified and are described in detail in chapter 4 of the EA/AoE.

The selected alternative continues the existing use of area trails and dune shacks as residences, as well as motorized access, shack maintenance, and generator use. This use will result in a localized, long-term, minor adverse impact on the natural soundscape. A long-term, localized, minor to moderate beneficial change to the visitor experience within the historic district will occur as a result of added opportunities for visitors, such as new education opportunities, ranger-guided tours, and opportunities to meet dune shack dwellers. A localized, long-term, moderate beneficial impact to the dune shack dweller experience will result because dune shack dwellers will be able to better plan their future occupancy of their shacks and visitor use of the district will be better integrated into dune shack dweller experience. The selected alternative will result in a long-term, localized, moderate beneficial effect on the structures and features of the historic district because any changes to the historic structures or cultural landscape will be guided by the HSR and CLR. A localized, long-term, moderate beneficial effect on the structures and features of the cultural landscape will occur by preserving the shacks in the landscape. A long-term, localized, minor beneficial effect on dune ecosystems will occur as a result of implementing measures such as encouraging the planting of native grasses and providing dune shack dwellers with guidance regarding fencing and maintenance practices. On balance, the selected alternative will have beneficial impacts and none of the adverse impacts are significant that require analysis in an EIS. The NPS will continue to consult with the Massachusetts State Historic Preservation Officer (SHPO) and federally recognized tribes as the project is implemented.

2) The degree to which public health and safety are affected.

The selected alternative will not have an impact on public health and safety.

3) Any unique characteristics of the area (proximity to historic or cultural resources, wild and scenic rivers, ecologically critical areas, wetlands or floodplains, and so forth).

As described on page 1 of the EA/AoE, and considered throughout the document, the Dune Shacks of Peaked Hill Bars Historic District is itself a historic resource. Detailed information about the historic district is included in the July 2010 *Cape Cod National Seashore Advisory Commission Report on the Preservation and Use Plan/Environmental Assessment for the Dune Shacks of the Peaked Hill Bars Historic District*. The 18 NPS-owned dune shacks that comprise the historic district are described on pages 47-48 of the EA/AoE, including the year each was built and a summary of the unique features associated with the dune shack. The cultural landscape of the historic district is described on page 49 of the EA/AoE. Character-defining features of the landscape include a circulation network of vehicle trails, driveways, and footpaths that connect the shacks to each other and to the historic district boundary, adjacent features, and the ocean. Broad views within the district include the open dune landscape, ocean, Pilgrim Monument, Provincetown water tower, and in some locations, neighboring shacks and the Province Lands Visitor Center.

The selected alternative does not include modifications to the cultural landscape and will consider shack history, size, location, and condition when making decisions about the occupancy, appropriate use, and other treatments to the dune shacks. Specific procedures will be followed for transitions in shack stewardship. Additionally, changes to the historic structures and cultural landscape will be guided by the HSR and CLR and the *Secretary of Interior's Standards for the Treatment of Historic Properties*. Impacts associated with the selected alternative are not expected to be significant, and the NPS will continue to consult with the Massachusetts SHPO, federally recognized tribes, and other consulting parties.

As described on page 15 of the EA/AoE, based on Flood Insurance Rate Maps created by the Federal Emergency Management Agency (FEMA), the historic district is within 100-year and 500-year flood boundaries as well as an area of minimal flooding. However, the selected alternative is not expected to modify or influence existing floodplains.

Also described on page 15 of the EA/AoE, while dune slack wetlands occur within the boundaries of the historic district, the selected alternative will not result in impacts to those wetlands.

The coastal dune system is a unique resource, and the selected alternative will maintain a situation in which the historic district and visitor use can be preserved without interfering with or degrading natural processes.

There were no wild and scenic rivers, ecologically critical areas, or prime farmland identified within the project area.

4) The degree to which impacts are likely to be highly controversial.

As measured by public comment on the EA/AoE, the environmental effects of this project are not likely to be highly controversial. During agency and public review and comment period, comments were received from one state agency and the Board of Selectmen of Provincetown, and over 45 comments were received from private individuals and organizations. Generally the

comments were supportive of continuing preservation of the shacks and access as described under the selected alternative. Comments included individual recollections about associations with use of the dune shacks. A more detailed discussion of the comments from the Board of Selectmen of Provincetown is described below under "Public Involvement."

5) The degree to which the potential impacts are highly uncertain or involve unique or unknown risks.

No highly uncertain, unique, or unknown risks were identified during preparation of the EA/AoE or the public review period.

6) Whether the action may establish a precedent for future actions with significant effects, or represents a decision in principle about a future consideration.

The selected alternative neither establishes NPS precedent for future actions with significant effects nor represents a decision in principle about a future consideration. Future actions will be evaluated through additional, project-specific planning processes that incorporate requirements of NEPA, Section 106 of the National Historic Preservation Act, and NPS policies.

7) Whether the action is related to other actions that may have individual insignificant impacts but cumulatively significant effects. Significance cannot be avoided by terming an action temporary or breaking it down into small component parts.

Impacts of the selected alternative on soundscapes, use and experience, dune shack dweller experience, historic structures, cultural landscapes, and dune processes were identified in the EA/AoE. As described in chapter 4 of the EA/AoE, cumulative impacts were defined by combining the impacts of the selected alternative with the impacts of other past, present, and reasonably foreseeable future actions.

The selected alternative will contribute an imperceptible to noticeable beneficial impact on cumulative actions for all resources except soundscapes, to which the selected alternative will contribute an imperceptible adverse increment through continuation of existing uses. The overall cumulative impact on resources ranges in intensity from negligible to moderate but does not result in significant cumulative impacts.

8) The degree to which the action may adversely affect historic properties in or eligible for listing in the National Register of Historic Places, or other significant scientific, archeological, or cultural resources.

As discussed on page 13 of the EA/AoE, the dune shacks and the dune landscape surrounding them are contributing elements to the historic district, which is listed on the National Register of Historic Places because they represent a rare and fragile property type and have associations with the historic development of American art, literature, and recreation. The selected alternative was developed to provide management strategies specifically to preserve the dune shacks.

Pages 58-62 of the EA/AoE describe the defined management approach for the cultural resources of the historic district associated with the selected alternative. The HSR and CLR recommendations and standards for shack maintenance by current lease or agreement holders will better preserve the character-defining features of the structures and the historic district. After applying the Advisory Council on Historic Preservation (Advisory Council) regulations 36 CFR

800, the NPS found that the selected alternative will have no adverse effect on the historic structures or the cultural landscape.

Pursuant to 36 CFR 800.4(d)(1) and 36 CFR 800.5(b), the Massachusetts Historical Commission (MHC) received a copy of the EA/AoE, and NPS requested a concurrence in the finding of no adverse effect. During the course of consultation with the MHC additional information was provided by the NPS. The MHC has not objected to the determination; however, to date, the MHC has not concurred with the NPS determination of no adverse effect. On January 25, 2012 the NPS provided additional information to MHC but did not receive a response. The NPS assumes MHC concurrence based on the lack of response.

Copies of the correspondence are contained in appendix B.

Copies of the EA/AoE were provided to the Mashpee Wampanoag Tribe, the Wampanoag Tribe of Gay Head-Aquinnah, and the Advisory Council. No comments were received from any party.

9) The degree to which an action may adversely affect an endangered or threatened species or its habitat.

The presence of endangered and threatened species, and associated habitat, is described on pages 15-16 of the EA/AoE. The piping plover (*Charadrius melodus*) may be found within the historic district and occasionally nest in the interdunal areas. The national seashore currently adheres to the existing piping plover protection guidelines which are designed to avoid adverse effects to piping plovers. As such, the selected alternative will conform to these guidelines and implementation of the selected alternative is not likely to adversely affect the threatened piping plover. The U.S. Fish and Wildlife Service (USFWS) provided comments concurring with this approach. A copy of the correspondence is included in appendix B.

In addition to the piping plover, state-listed species known to exist in the general location of the historic district include the Eastern spadefoot toad (*Scaphiopus holbrookii*) and the diamond-backed terrapin (*Malaclemys terrapin*). The Eastern spadefoot toad is known to inhabit the Outer Cape where the vast sand dunes and many shallow, temporary ponds create an ideal habitat. The diamond-backed terrapin primarily inhabits salt marshes, but females move into adjacent sandy, dry, upland areas for nesting. The selected alternative does not involve any construction or other activities that will disturb the existing habitat of these species, therefore, these species and their habitat will not be impacted by the selected alternative.

10) Whether the action threatens a violation of federal, state, or local law or requirements imposed for the protection of the environment.

The selected alternative does not violate federal, state, or local environmental protection laws.

IMPAIRMENT OF PARK RESOURCES OR VALUES

By enacting the NPS Organic Act of 1916 (Organic Act), Congress directed the U.S. Department of Interior and the NPS to manage units "to conserve the scenery and the natural and historic objects and wildlife therein and to provide for the enjoyment of the same in such a manner and by such a means as will leave them unimpaired for the enjoyment of future generations" (16

USC § 1). Congress reiterated this mandate in the Redwood National Park Expansion Act of 1978 by stating that NPS must conduct its actions in a manner that will ensure no “derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress” (16 USC 1a-1).

NPS *Management Policies 2006*, Section 1.4.4, explains the prohibition on impairment of park resources and values:

While Congress has given the Service the management discretion to allow impacts within parks, that discretion is limited by the statutory requirement (generally enforceable by the federal courts) that the Park Service must leave park resources and values unimpaired unless a particular law directly and specifically provides otherwise. This, the cornerstone of the Organic Act, establishes the primary responsibility of the National Park Service. It ensures that park resources and values will continue to exist in a condition that will allow the American people to have present and future opportunities for enjoyment of them.

The NPS has discretion to allow impacts on park resources and values when necessary and appropriate to fulfill the purposes of a park (NPS 2006 sec. 1.4.3). However, the NPS cannot allow an adverse impact that would constitute impairment of the affected resources and values (NPS 2006 sec 1.4.3). An action constitutes an impairment when its impacts “harm the integrity of Park resources or values, including the opportunities that otherwise would be present for the enjoyment of those resources or values” (NPS 2006 sec 1.4.5). To determine impairment, the NPS must evaluate “the particular resources and values that would be affected; the severity, duration, and timing of the impact; the direct and indirect effects of the impact; and the cumulative effects of the impact in question and other impacts” (NPS 2006 sec 1.4.5). A determination on impairment for the selected alternative is attached to this Finding of No Significant Impact (FONSI) (appendix A).

PUBLIC INVOLVEMENT

On October 8, 2009, the national seashore released a public scoping brochure for the EA/AoE for public review and comment. The national seashore also issued a press release and created a project webpage on the NPS Planning, Environment and Public Comment (PEPC) website (<http://parkplanning.nps.gov/caco>) to post information, announce meetings, and provide a location for the public to make comments electronically. Information was also provided to the public on the park’s website (<http://www.nps.gov/caco/parkmgmt/dune-shacks-of-the-peaked-hill-bars-historic-district.htm>). The public was invited to submit comments on the scope of the planning process, issues, concerns and potential alternatives through November 12, 2009. During the scoping period, a public scoping meeting was co-sponsored by the national seashore and the Cape Cod National Seashore Advisory Commission. This meeting was held at the Provincetown Center for Coastal Studies in Provincetown, MA, on October 19, 2009. The meeting presented information about the development of the plan and planning processes. NPS personnel were present to answer questions, provide additional information to meeting participants, and record public input. During the scoping period, 77 pieces of correspondence were received.

The EA/AoE was made available for public review and comment beginning April 27, 2011. A press release announcing the document's availability was published in local newspapers and on the NPS website. Copies of the press release announcing the EA/AoE's availability were sent to interested parties. The EA/AoE was posted on the park's and the NPS's PEPC websites, and hard copies were placed in national seashore visitor centers and headquarters buildings, town offices in Provincetown and Truro, and libraries in Truro and Provincetown. The EA/AoE was distributed to federal, state, and local regulatory agencies; towns; and interested individuals for their review.

A public meeting to discuss the EA/AoE was held on May 10, 2011 at the Province Lands Visitor Center in Provincetown, MA. The meeting was announced via press release sent to the media, towns, and interested parties, and advertised on the NPS's PEPC webpage as well as on the park's website. Twenty-six people attended the meeting. Individuals were invited to ask questions and present concerns during the meeting. Most speakers had technical questions about future leasing/permit requirements and standards. One speaker expressed a concern that the EA/AoE did not incorporate more language concerning preservation of ethnographic values.

During the public review and comment period, over 45 comments were received from interested individuals. These comments were received on the park's PEPC website, by e-mail, and via US mail. Most comments favored retention of the shacks for the public and continued use by organizations and individuals. Comments were also received about the unique nature of visits to the national seashore and the need to continue the opportunity for overnight stays at the dune shacks. The majority of the comments supported alternative B.

A letter from the Board of Selectmen of Provincetown expressed several concerns about future dune shack use and management. The letter from the Board of Selectmen and the NPS response are contained in appendix C.

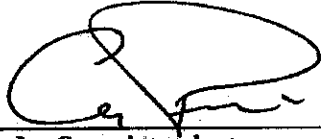
No public or agency comments were received requiring a change in the analysis of alternatives.

FINDING OF NO SIGNIFICANT IMPACT

The NPS has selected Alternative B: Limited Mix of Use and Occupancy. The selected alternative is described on pages 21-29 of the EA/AoE. The selected alternative will not constitute an action that normally requires preparation of an EIS. The selected alternative will not have a significant effect on the human environment. Negative environmental impacts that could occur are minor or moderate in intensity. There are no significant impacts on public health, public safety, threatened or endangered species, sites or districts listed in or eligible for listing in the National Register of Historic Places, or other unique characteristics of the region. No highly uncertain or controversial impacts, unique or unknown risks, significant cumulative effects, or elements of precedence were identified. Implementation of the selected alternative will not violate any federal, state, or local environmental laws.


Based on the foregoing, it has been determined that an EIS is not required for this action and thus will not be prepared.

Recommended: _____


George E. Price, Jr., Superintendent
Cape Cod National Seashore

5/10/12
Date

Approved: _____


Dennis R. Reidenbach, Regional Director
Northeast Region, National Park Service

5/18/12
Date

APPENDIX A: FINAL IMPAIRMENT DETERMINATION

The NPS has developed *Interim Guidance for Impairment Determinations in NPS NEPA Documents*. That guidance builds upon the statutory direction of the NPS Organic Act to manage resources “unimpaired for future generations” and the interpretation by the NPS of legislative direction in the *NPS Management Policies 2006*.

The *NPS Management Policies 2006*, Section 1.4.4, explains the prohibition on impairment of park resources and values:

While Congress has given the Service the management discretion to allow impacts within parks, that discretion is limited by the statutory requirement (generally enforceable by the federal courts) that the Park Service must leave park resources and values unimpaired unless a particular law directly and specifically provides otherwise. This, the cornerstone of the Organic Act, establishes the primary responsibility of the National Park Service. It ensures that park resources and values will continue to exist in a condition that will allow the American people to have present and future opportunities for enjoyment of them.

WHAT IS IMPAIRMENT?

NPS Management Policies 2006, Section 1.4.5, *What Constitutes Impairment of Park Resources and Values*, and Section 1.4.6, *What Constitutes Park Resources and Values*, provide an explanation of impairment.

Impairment is an impact that, in the professional judgment of the responsible NPS manager, would harm the integrity of park resources or values, including the opportunities that otherwise would be present for the enjoyment of those resources or values.

The NPS has discretion to allow impacts on park resources and values when necessary and appropriate to fulfill the purposes of a park (NPS 2006 sec. 1.4.3). However, the NPS cannot allow an adverse impact that would constitute impairment of the affected resources and values (NPS 2006 sec 1.4.3).

Section 1.4.5 of *Management Policies 2006* states:

An impact to any park resource or value may, but does not necessarily, constitute impairment. An impact would be more likely to constitute impairment to the extent that it affects a resource or value whose conservation is:

- necessary to fulfill specific purposes identified in the establishing legislation or proclamation of the park;
- key to the natural or cultural integrity of the park or to opportunities for enjoyment of the park, or;
- identified as a goal in the park's general management plan or other relevant NPS planning documents as being of significance.

An impact would be less likely to constitute impairment if it is an unavoidable result of an action necessary to preserve or restore the integrity of park resources or values and it cannot be further mitigated.

Per Section 1.4.6 of *Management Policies 2006*, park resources and values that may be impaired include:

- the park's scenery, natural and historic objects, and wildlife, and the processes and conditions that sustain them, including, to the extent present in the park: the ecological, biological, and physical processes that created the park and continue to act upon it; scenic features; natural visibility, both in daytime and at night; natural landscapes; natural soundscapes and smells; water and air resources; soils; geological resources; paleontological resources; archeological resources; cultural landscapes; ethnographic resources; historic and prehistoric sites, structures, and objects; museum collections; and native plants and animals;
- appropriate opportunities to experience enjoyment of the above resources, to the extent that can be done without impairing them;
- the park's role in contributing to the national dignity, the high public value and integrity, and the superlative environmental quality of the national park system, and the benefit and inspiration provided to the American people by the national park system; and
- any additional attributes encompassed by the specific values and purposes for which the park was established.

Impairment may result from NPS activities in managing the park, visitor activities, or activities undertaken by concessioners, contractors, and others operating in the park. Impairment may also result from sources or activities outside the park, but this would not be a violation of the Organic Act unless the NPS was in some way responsible for the action.

HOW IS AN IMPAIRMENT DETERMINATION MADE?

Section 1.4.7 of *Management Policies 2006* states, "[i]n making a determination of whether there would be an impairment, an NPS decision-maker must use his or her professional judgment. This

means that the decision-maker must consider any environmental assessments or environmental impact statements required by the National Environmental Policy Act of 1969 (NEPA); consultations required under Section 106 of the National Historic Preservation Act (NHPA); relevant scientific and scholarly studies; advice or insights offered by subject matter experts and others who have relevant knowledge or experience; and the results of civic engagement and public involvement activities relating to the decision.”

Management Policies 2006 further define “professional judgment” as “a decision or opinion that is shaped by study and analysis and full consideration of all the relevant facts, and that takes into account the decision-maker’s education, training, and experience; advice or insights offered by subject matter experts and others who have relevant knowledge and experience; good science and scholarship; and, whenever appropriate, the results of civic engagement and public involvement activities relation to the decision.”

The Dune Shacks of Peaked Hill Bars Historic District Preservation and Use Plan/Environmental Assessment/Assessment of Effect analyzes impacts to the following resources: soundscapes, use and experience, dune shack dweller experience, historic districts and structures, cultural landscapes, and dune resources. NPS guidance provides that:

impairment findings are not necessary for visitor experience, socioeconomics, public health and safety, environmental justice, land use, and park operations, etc. because impairment findings relate back to park resources and values, and these impact areas are not generally considered to be park resources or values according to the Organic Act, and cannot be impaired the same way that an action can impair park resources and values.

As a result, for purposes of this document, impairment findings are required for soundscapes, historic districts and structures, cultural landscapes, and dune resources.

IMPAIRMENT DETERMINATION FOR THE SELECTED ALTERNATIVE

This determination on impairment has been prepared for the selected alternative described on pages 21-29 of the EA/AoE. An impairment determination is made for all relevant resource impact topics analyzed for the selected alternative. An impairment determination is not made for use and experience, dune shack dweller experience, or operations and infrastructure because impairment findings relate back to park resources and values, and these impact areas are not generally considered to be park resources or values according to the Organic Act, and cannot be impaired in the same way that an action can impair park resources and values.

SOUNDSCAPES

Within the Dune Shacks of Peaked Hill Bars Historic District, natural sounds predominate. Occasional noise intrusion exists from the nearby highways, airport, and other uses outside of the historic district. The uses proposed for the historic district will not result in activities that will

impact the natural soundscape. Visitors and dune shack users will make occasional noise above natural ambient sound levels through use of hiking trails and use of dune shacks as residences. Limited motorized access as well as generator use will continue to cause noise slightly above the ambient sound levels. Maintenance of the natural soundscape is a recognized value in planning documents for the national seashore and in the National Register nomination for the historic district. As a result of the management structure established under the selected alternative, new uses contributing to impacts to the natural soundscapes are unlikely and the existing condition where natural sounds predominate will be perpetuated. Impacts to soundscapes will not result in impairment.

HISTORIC DISTRICTS, STRUCTURES, AND CULTURAL LANDSCAPES

The selected alternative is structured to continue the preservation and use of the dune shacks within the historic district and the cultural landscape. Provisions of the alternative provide for predictable cooperative management of the shack structures and seek to maintain a continuity of use within the historic district. Proposed changes to the structures will be subject to appropriate levels of review both within the national seashore and under Section 106 of the National Historic Preservation Act and the regulations of the Advisory Council on Historic Preservation. This review process is designed to provide for continuing use of the dune shacks while allowing for acceptable modifications for maintenance and adaptive use. The historic resources of the district, including structures and landscapes, are recognized within the general management plan for the national seashore and in the National Register nomination for the historic district. The selected alternative will minimize impacts to the cultural resources of the historic district while continuing use of the dune shack structures in an isolated setting. Impacts to the historic district, structures, and cultural landscapes will not result in impairment.

DUNE PROCESSES

The selected alternative allows for continuing use of the dune shacks within the dynamic setting of the dunes of Cape Cod. Some measures will be allowed to provide a level of minimal protection for the dune shacks. The management approach for the dune shacks will encourage beach grass plantings and use of other native species to stabilize dunes. Use of invasive plants will be discouraged and steps taken to remove selected exotic species. Improved interpretation and trail designation will lessen off-trail use and increase understanding of the need to protect sensitive dune vegetation. Improved maintenance practices, landscaping, and plantings will result in a decreased risk of blowouts and damage to dune processes. Preservation of dune resources and processes is recognized in the enabling legislation for the national seashore and within planning documents, including the general management plan. Impacts resulting from implementation of the selected alternative will result in a beneficial effect to dune resources and will not constitute impairment.

**APPENDIX B: CORRESPONDENCE
WITH AGENCIES AND
FEDERALLY-RECOGNIZED TRIBES**



United States Department of the Interior

FISH AND WILDLIFE SERVICE

New England Field Office

70 Commercial Street, Suite 300

Concord, New Hampshire 03301-5087

<http://www.fws.gov/northeast/newenglandfieldoffice>



RECEIVED
NOV 12 4:23
NATIONAL SEASHORE
OFFICE

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

Dear Mr. Price:

This is in response to your October 7, 2010 letter requesting that we review the Peaked Hill Bars Historic District in Provincetown and Truro, Massachusetts, for information on the presence of federally endangered or threatened species in preparation of a proposed Environmental Assessment (EA) for a Dune Shack District Preservation and Use Plan. Our comments are provided in accordance with section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1533).

Federally threatened piping plovers (*Charadrius melodus*) primarily nest on the outer sandy beaches of the Province Lands; however, plovers and their broods have occasionally been observed using the inner dunes and dune slack wetlands. The inner dune road at Province Lands, consisting of two non-contiguous sand roads, may be crossed by plovers while moving between the outer beach and inner dune habitat, or may be used as a travel corridor. In a July 7, 2007 letter, our office concurred with a "not likely to adversely affect" determination for essential vehicle management of this road based on a number of protective measures proposed in your May 30, 2007 letter requesting our concurrence.

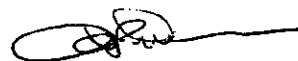
Essential vehicle use or proposed construction activities that are identified in the Dune Shack District Preservation and Use Plan should include the protective measures outlined in your May 30, 2007 letter in order to avoid adversely affecting piping plovers. Additionally, to avoid disturbing breeding piping plovers, time-of-year restrictions should be identified for proposed construction activities that may occur near or within piping plover breeding habitat.

Based on information currently available to us, no other federally listed or proposed species or critical habitat under the jurisdiction of the U.S. Fish and Wildlife Service are known to occur in the project area.

George E. Price, Jr.
November 8, 2010

Thank you for your cooperation. Please contact Susi von Oettingen of this office at 603-223-2541, extension 22, if you have any questions or need additional assistance.

Sincerely yours,



Atch 5/1
Thomas R. Chapman
Supervisor
New England Field Office



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:

H30

May 3, 2011

Mashpee Wampanoag Tribe

Tribal Council

Box 1048

Mashpee, MA

Subject: Dune Shack Historic District Preservation and Use Plan/Environmental
Assessment/Assessment of Effect, Cape Cod National Seashore, Provincetown and Truro

Dear Tribal Council:

Under the terms of the National Environmental Policy Act (NEPA), the National Park Service (NPS) at Cape Cod National Seashore (CCNS) has prepared an Environmental Assessment (EA) for the preservation and use of the Dune Shacks of Peaked Hill Bars Historic District at Cape Cod National Seashore. 36 CFR 800.8 and the Servicewide Programmatic Agreement, allow the National Park Service to coordinate the Section 106 process with NEPA. We request your review of the project and our finding of no adverse effect.

The purpose of this EA is to establish a Dune Shack Historic District Preservation and Use Plan that provides clear direction and consistency for NPS managers, dune shack dwellers, users, and advocates. Action is needed at this time to provide for the long-term protection of the historic district as a whole, including the structures, cultural landscape, and natural environment.

The EA addresses stewardship, access, and occupancy of the historic district. Under the preferred alternative, the public would continue to have daytime access to the historic district on foot, with vehicle tour operators, and on guided ranger programs. Off-district venues, such as park visitor centers and art galleries would be used to communicate the district's values to the public. Non-profit groups would continue to provide opportunities for overnight stays by the general public. To perpetuate historic district traditions, private residential use would continue under the NPS competitive leasing program. Periods of occupancy by individuals and non-profit groups would range from three to twenty years depending on the type of administrative instrument selected. The objective would be to achieve a balanced mix of uses, in which approximately 40% of the shacks would be used as private residences; 40% would be used by non-profits with opportunities for public overnight stays; and the remaining 20% would be allocated to either

category. Individuals or groups that occupy the shacks would continue to perform preservation maintenance and bear the maintenance costs. Preservation maintenance practices would be prescribed for the historic buildings and the landscape. The addition of amenities, such as solar panels, septic systems, and electricity would be evaluated on a case-by-case basis. The park superintendent would be responsible for making decisions for the historic district, and a standing committee of the commission would assist the National Park Service in carrying out the plan.

The EA briefly discusses several alternatives that were considered but subsequently dismissed from detailed analysis. These include: operating the shacks as bed and breakfast businesses; using all the shacks as private residences and eliminating overnight use by the public; vacating the buildings and interpreting the district as a museum; using the shacks as backcountry shelters; using volunteers to maintain the shacks in exchange for occupancy.

The EA also includes a No Action alternative, in which decisions about historic preservation, occupancy, and public access would continue to be made on a case-by-case basis.

CCNS held a public scoping meeting in Provincetown on October 19, 2009 to discuss the planning process, and public input was taken. Between November 2009 and July 2010 the CCNS Advisory Commission's Dune Shack Subcommittee met 11 times to discuss alternatives. All of the meetings were publicly noticed, and members of the public attended every meeting. The subcommittee included representatives of the towns of Truro and Provincetown; long-time dune dwelling families; non-profit organizations that provide artist in residence programs and overnight stays by the public; a private vehicle tour operator; and Friends of the Cape Cod National Seashore.

In May, 2010 the subcommittee presented its draft report at a public meeting, and input was taken. In July, 2010, the full commission adopted the subcommittee's report. The report forms the basis for the EA's preferred alternative.

We look forward to your review of this proposal to ensure that cultural resources are adequately considered in the EA. If you have any questions, please contact William Burke, Section 106 Coordinator, at (508) 255-3421 ext. 14.

Sincerely,



George E. Price, Jr.
Superintendent

cc:

Massachusetts Historical Commission--State Historic Preservation Officer
Wampanoag Tribe of Gay Head (Aquinnah)
Provincetown Historical Commission
Pilgrim Monument and Provincetown Museum
Truro Historical Commission



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:

H30

May 3, 2011

Bettina Washington
Tribal Historic Preservation Officer
Wampanoag Tribe of Gay Head (Aquinnah)
20 Black Brook Road
Aquinnah, MA 02535

Subject: Dune Shack Historic District Preservation and Use Plan/Environmental
Assessment/Assessment of Effect, Cape Cod National Seashore, Provincetown and Truro

Dear Ms. Washington:

Under the terms of the National Environmental Policy Act (NEPA), the National Park Service (NPS) at Cape Cod National Seashore (CCNS) has prepared an Environmental Assessment (EA) for the preservation and use of the Dune Shacks of Peaked Hill Bars Historic District at Cape Cod National Seashore. 36 CFR 800.8 and the Servicewide Programmatic Agreement, allow the National Park Service to coordinate the Section 106 process with NEPA. We request your review of the project and our finding of no adverse effect.

The purpose of this EA is to establish a Dune Shack Historic District Preservation and Use Plan that provides clear direction and consistency for NPS managers, dune shack dwellers, users, and advocates. Action is needed at this time to provide for the long-term protection of the historic district as a whole, including the structures, cultural landscape, and natural environment.

The EA addresses stewardship, access, and occupancy of the historic district. Under the preferred alternative, the public would continue to have daytime access to the historic district on foot, with vehicle tour operators, and on guided ranger programs. Off-district venues, such as park visitor centers and art galleries would be used to communicate the district's values to the public. Non-profit groups would continue to provide opportunities for overnight stays by the general public. To perpetuate historic district traditions, private residential use would continue under the NPS competitive leasing program. Periods of occupancy by individuals and non-profit groups would range from three to twenty years depending on the type of administrative instrument selected. The objective would be to achieve a balanced mix of uses, in which approximately 40% of the shacks would be used as private residences; 40% would be used by non-

profits with opportunities for public overnight stays; and the remaining 20% would be allocated to either category. Individuals or groups that occupy the shacks would continue to perform preservation maintenance and bear the maintenance costs. Preservation maintenance practices would be prescribed for the historic buildings and the landscape. The addition of amenities, such as solar panels, septic systems, and electricity would be evaluated on a case-by-case basis. The park superintendent would be responsible for making decisions for the historic district, and a standing committee of the commission would assist the National Park Service in carrying out the plan.

The EA briefly discusses several alternatives that were considered but subsequently dismissed from detailed analysis. These include: operating the shacks as bed and breakfast businesses; using all the shacks as private residences and eliminating overnight use by the public; vacating the buildings and interpreting the district as a museum; using the shacks as backcountry shelters; using volunteers to maintain the shacks in exchange for occupancy.

The EA also includes a No Action alternative, in which decisions about historic preservation, occupancy, and public access would continue to be made on a case-by-case basis.

CCNS held a public scoping meeting in Provincetown on October 19, 2009 to discuss the planning process, and public input was taken. Between November 2009 and July 2010 the CCNS Advisory Commission's Dune Shack Subcommittee met 11 times to discuss alternatives. All of the meetings were publicly noticed, and members of the public attended every meeting. The subcommittee included representatives of the towns of Truro and Provincetown; long-time dune dwelling families; non-profit organizations that provide artist in residence programs and overnight stays by the public; a private vehicle tour operator; and Friends of the Cape Cod National Seashore.

In May, 2010 the subcommittee presented its draft report at a public meeting, and input was taken. In July, 2010, the full commission adopted the subcommittee's report. The report forms the basis for the EA's preferred alternative.

We look forward to your review of this proposal to ensure that cultural resources are adequately considered in the EA. If you have any questions, please contact William Burke, Section 106 Coordinator, at (508) 255-3421 ext. 14.

Sincerely,



George E. Price, Jr.
Superintendent

cc:

Massachusetts Historical Commission--State Historic Preservation Officer
Mashpee Wampanoag Tribe
Provincetown Historical Commission
Pilgrim Monument and Provincetown Museum
Truro Historical Commission



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:

H30

May 3, 2011

Brona Simon
Executive Director
Massachusetts Historical Commission
220 Morrissey Boulevard
Boston, MA 02116

Subject: Dune Shack Historic District Preservation and Use Plan/Environmental
Assessment/Assessment of Effect, Cape Cod National Seashore, Provincetown
and Truro

Dear Ms. Simon:

Under the terms of the National Environmental Policy Act (NEPA), the National Park Service (NPS) at Cape Cod National Seashore (CCNS) has prepared an Environmental Assessment (EA) for the preservation and use of the Dune Shacks of Peaked Hill Bars Historic District at Cape Cod National Seashore. 36 CFR 800.8 and the Servicewide Programmatic Agreement, allow the National Park Service to coordinate the Section 106 process with NEPA. We request your review of the project and our finding of no adverse effect.

The purpose of this EA is to establish a Dune Shack Historic District Preservation and Use Plan that provides clear direction and consistency for NPS managers, dune shack dwellers, users, and advocates. Action is needed at this time to provide for the long-term protection of the historic district as a whole, including the structures, cultural landscape, and natural environment.

The EA addresses stewardship, access, and occupancy of the historic district. Under the preferred alternative, the public would continue to have daytime access to the historic district on foot, with vehicle tour operators, and on guided ranger programs. Off-district venues, such as park visitor centers and art galleries would be used to communicate the district's values to the public. Non-profit groups would continue to provide opportunities for overnight stays by the general public.

To perpetuate historic district traditions, private residential use would continue under the NPS competitive leasing program. Periods of occupancy by individuals and non-profit groups would range from three to twenty years depending on the type of administrative instrument selected. The objective would be to achieve a balanced mix of uses, in which approximately 40% of the shacks would be used as private residences; 40% would be used by non-profits with opportunities for public overnight stays; and the remaining 20% would be allocated to either category. Individuals or groups that occupy the shacks would continue to perform preservation maintenance and bear the maintenance costs. Preservation maintenance practices would be prescribed for the historic buildings and the landscape. The addition of amenities, such as solar panels, septic systems, and electricity would be evaluated on a case-by-case basis. The park superintendent would be responsible for making decisions for the historic district, and a standing committee of the commission would assist the National Park Service in carrying out the plan.

The EA briefly discusses several alternatives that were considered but subsequently dismissed from detailed analysis. These include: operating the shacks as bed and breakfast businesses; using all the shacks as private residences and eliminating overnight use by the public; vacating the buildings and interpreting the district as a museum; using the shacks as backcountry shelters; using volunteers to maintain the shacks in exchange for occupancy.

The EA also includes a No Action alternative, in which decisions about historic preservation, occupancy, and public access would continue to be made on a case-by-case basis.

CCNS held a public scoping meeting in Provincetown on October 19, 2009 to discuss the planning process, and public input was taken. Between November 2009 and July 2010 the CCNS Advisory Commission's Dune Shack Subcommittee met 11 times to discuss alternatives. All of the meetings were publicly noticed, and members of the public attended every meeting. The subcommittee included representatives of the towns of Truro and Provincetown; long-time dune dwelling families; non-profit organizations that provide artist in residence programs and overnight stays by the public; a private vehicle tour operator; and Friends of the Cape Cod National Seashore.

In May, 2010 the subcommittee presented its draft report at a public meeting, and input was taken. In July, 2010, the full commission adopted the subcommittee's report. The report forms the basis for the EA's preferred alternative.

We look forward to your review of this proposal to ensure that cultural resources are adequately considered in the EA, and we ask you to concur with our finding of no adverse effect. If you have any questions, please contact William Burke, Section 106 Coordinator, at (508) 255-3421 ext. 14.

Sincerely,



George E. Price, Jr.
Superintendent

I concur with the above stated determination of No Adverse Effect for the Dune Shack Historic District Preservation and Use Plan.

Massachusetts Historic Preservation Officer

Date

cc:

Mashpee Wampanoag Tribe

Wampanoag Tribe of Gay Head (Aquinnah), Tribal Historic Preservation Officer

Provincetown Historical Commission

Pilgrim Monument and Provincetown Museum

Truro Historical Commission



June 2, 2011

The Commonwealth of Massachusetts
William Francis Galvin, Secretary of the Commonwealth
Massachusetts Historical Commission

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

RECEIVED
201 JUN -6 PM 12:43
CAPE COD
NATIONAL SEASHORE

RE: Dune Shack Historic District Preservation and Use Plan; MHC# RC.1335

Dear Mr. Price:

The Massachusetts Historical Commission (MHC) is in receipt of the *Dune Shack Historic District Preservation and Use Plan/Environmental Assessment/Assessment of Effect* for the Dune Shacks, received at this office on May 4, 2011. The MHC is also in receipt of your "determination of effect" pursuant to 36 CFR 800.4(d)(1) and 36 CFR 800.5(b), which was received at this office on May 4, 2011.

The MHC understands that the alternative preferred by the National Park Service (NPS) is Alternative B. According to the Environmental Assessment (EA), Alternative B was developed in collaboration with the Dune Shack Subcommittee. The Dune Shack Subcommittee was comprised of long-time dune dwelling families, representatives of Truro and Provincetown, three arts and residential non-profit entities, Art's Dune Tours, a dune taxi concession, Friends of the CCNS, and the national seashore historian (p. 21, *Dune Shack Historic District Preservation and Use Plan/Environmental Assessment/Assessment of Effect*).

The intent of Alternative B is to foster long-term, localized, moderate impacts to the dune dweller experience and to the historic structures within the Historic District. Under Alternative B, "decisions about the occupancy, appropriate use, and other treatments to the dune shacks would factor in each shack's history, size, location and condition. Specific procedures would be followed for transitions in shack stewardship....changes to the historic structures and cultural landscape would be guided by the HSR and CLR..." (p. 59, *Dune Shack Historic District Preservation and Use Plan/Environmental Assessment/Assessment of Effect*).

At this time, the MHC requests the following additional information. In accordance with 36 CFR 800.5(c), MHC requests copies of any comments you have received from consulting parties concerning the *Dune Shack Historic District Preservation and Use Plan/Environmental Assessment/Assessment of Effect*.

These comments are offered to assist in compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (36 CFR 800).

Sincerely,

Brona Simon
State Historic Preservation Officer
Executive Director
Massachusetts Historical Commission

xc: Kelly Fanizzo, Advisory Council on Historic Preservation
Provincetown and Truro Historical Commissions
Provincetown Board of Selectmen
Peter Clemons

220 Morrissey Boulevard, Boston, Massachusetts 02125
(617) 727-8470 • Fax: (617) 727-5128
www.sec.state.ma.us/mhc



United States Department of the Interior

NATIONAL PARK SERVICE

Cape Cod National Seashore

99 Marconi Site Road

Wellfleet, MA 02667

508.771.2144

508.349.9052 Fax

IN REPLY REFER TO:

H32

June 3, 2011

John Fowler, Executive Director
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue NW, Suite 803
Old Post Office Building
Washington, D.C. 20004

Re: Dune Shack District Preservation and Use Plan/Environmental Assessment for the
Dune Shacks of Peaked Hill Bars Historic District

Dear Mr. Fowler:

Under the terms of the National Environmental Policy Act (NEPA) and Section 106 of the National Historic Preservation Act, the National Park Service (NPS) at Cape Cod National Seashore (the park) has prepared an Environmental Assessment/Assessment of Effect (EA/AoE) for the development of a Dune Shack District Preservation and Use Plan for the Dune Shacks of Peaked Hill Bars Historic District. We are pleased to provide you with a copy of the EA/AoE. Specifically, pages 58-62 discuss the No Adverse Effect finding for the historic structures in the district and for the cultural landscape. Pages 16-17 discuss the Impact Topics Dismissed from Further Analysis, which includes archeology, museum objects and ethnographic resources. Pages 30-31 contain the preferred alternative.

The park is very proud of its successful collaboration with the Cape Cod National Seashore Advisory Commission, its dune shack subcommittee, and the Consensus Building Institute (CBI) to facilitate public input and develop a range of alternatives. The park is using this EA/AoE plan for review and comment as part of the 106 consultation process. A public meeting was held on May 10, 2011, in Provincetown to solicit input on the EA/AoE and to kick-off the public comment period, which runs until June 17. Copies of the EA/AoE have been sent to consulting parties, including the Massachusetts Historical Commission, the Mashpee Wampanoag Tribe,

and the Wampanoag Tribe of Gay Head-Aquinnah. The EA/AoE is also available in hard copy on request for the public and is available electronically on the park's website.

If you have any questions regarding the project, please contact Bill Burke, Cultural Resources Program Manager, at bill_burke@nps.gov or (508) 255-3421, ext 14.

Sincerely,

George E. Price, Jr.
Superintendent

Enclosure



United States Department of the Interior

NATIONAL PARK SERVICE

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

IN REPLY REFER TO:

H30

June 20, 2011

Brona Simon
Executive Director
Massachusetts Historical Commission
220 Morrissey Boulevard
Boston, MA 02116

Subject: Dune Shack Historic District Preservation and Use Plan/Environmental
Assessment/Assessment of Effect, Cape Cod National Seashore, Provincetown
and Truro; MHC# RC.1335

Dear Ms. Simon:

Per your correspondence dated June 2, 2011, here is a copy of comments we received from the Town of Provincetown concerning the *Dune Shack Historic District Preservation and Use Plan/Environmental Assessment/Assessment of Effect*. The public comment period ended on June 17, 2011. We have not received comments from the other consulting parties: Town of Truro, Wampanoag Tribe of Gay Head (Aquinnah), and Mashpee Wampanoag Tribe.

We are beginning the process of analyzing the town's comments, as well as those received from the public.

We look forward to your final review of this proposal to ensure that cultural resources are adequately considered in the EA, and we ask you to concur with our finding of no adverse effect. If you have any questions, please contact William Burke, Section 106 Coordinator, at (508) 255-3421 ext. 14.

Sincerely,

George E. Price, Jr.
Superintendent

I concur with the above stated determination of No Adverse Effect for the Dune Shack Historic District Preservation and Use Plan.

Massachusetts Historic Preservation Officer

Date



The Commonwealth of Massachusetts
William Francis Galvin, Secretary of the Commonwealth
Massachusetts Historical Commission

July 20, 2011

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

RE: Dune Shack Historic District Preservation and Use Plan; MHC# RC.1335

Dear Mr. Price:

The Massachusetts Historical Commission (MHC) is in receipt of your submittal of comments that you have received concerning the *Dune Shack Historic District Preservation and Use Plan/Environmental Assessment/Assessment of Effect* for the Dune Shacks. The MHC is also in receipt of your determination of "no adverse effect" pursuant to 36 CFR 800.4(d)(1) and 36 CFR 800.5(b), received on June 22, 2011.

The comments from the Town of Provincetown Board of Selectmen indicate that they are concerned that the future of the Dune Shacks does not include sufficient input or involvement of the local government and the public. These concerns will need to be addressed by the Cape Cod National Seashore. The MHC looks forward to receiving additional information from the Seashore that responds to the Town's and the public's comments.

In addition, the MHC would like to know if the Seashore has notified the Advisory Council on Historic Preservation to see if the Council wishes to comment.

These comments are offered to assist in compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (36 CFR 800).

Sincerely,

Brona Simon
State Historic Preservation Officer
Executive Director
Massachusetts Historical Commission

xc: Kelly Fanizzo, Advisory Council on Historic Preservation
Provincetown and Truro Historical Commissions
Provincetown Board of Selectmen
Peter Clemons

Scanned
RECEIVED
2011 JUL 21 PM 12:43
CAPE COD
NATIONAL SEASHORE

cc: -Board of Selectmen
Town Manager Sharon Lynn
Ronald Kaufman, Chairman, CCNS Advisory Commission
Senator Edward M. Kennedy
Representative William Delahunt
Paul Loether, National Register, NPS
Janet Matthews, Keeper of the National Register
Brona Simon, Deputy State Historic Preservation Officer, Commonwealth of Massachusetts
Chuck Smythe
Robert J. Wolfe
T.J. Ferguson
Truro Board of Selectmen
Kelly Fanizzo, Advisory Council on Historic Preservation
Representative Raul Grijalva, Chairman, House Subcommittee on National Parks
Representative Rob Bishop, Ranking Member, House Subcommittee on National Parks
Senator Daniel K. Akaka, Senate Subcommittee on National Parks
Republican on the Committee, Senate Subcommittee on National Parks c/o Tom Lillie
Senator John F. Kerry
Representative Sarah Peake
Dirk Kempthorne, Secretary of the Department of the Interior
Chrysandra Walter, Acting Regional Director, Northeast Region, National Park Service
John Thomas
Kerry Adams
Gail Cohen



United States Department of the Interior

NATIONAL PARK SERVICE

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

IN REPLY REFER TO:

H30

August 5, 2011

Brona Simon
State Historic Preservation Officer
Executive Director, Massachusetts Historical Commission
220 Morrissey Boulevard
Boston, MA 02125

Re: Dune Shack Historic District Preservation and Use Plan; MHC#RC.1335

Dear Ms. Simon:

The National Park Service (NPS) is in receipt of your correspondence dated July 20, 2011 regarding comments received by the NPS from the Town of Provincetown about the *Dune Shack Historic District Preservation and Use Plan/Environmental Assessment/Assessment of Effect (Plan/EA/AOE)*. You characterize the Provincetown Board of Selectmen as being "concerned that the future of the dune shacks does not include sufficient input or involvement of the local government or the public." I would like to respond to that concern by providing some additional background information on what we consider to be an exceptional collaborative effort by all parties involved to resolve the long-standing dispute over future management of the dune shack district.

The Plan/EA/AOE, which provides a framework for future decision-making about the historic district, was developed with significant public and local government involvement. The Cape Cod National Seashore Advisory Commission's Dune Shack Subcommittee, which crafted the report upon which the Plan/EA/AOE's Preferred Alternative is based, included appointees from the Towns of Truro and Provincetown; non-profit organizations currently associated with the historic district; long-time dune dwelling families; Arts Dune Tours; and Friends of the Cape Cod National Seashore. In addition, the National Seashore's Chief of Interpretation and Cultural Resources, Historian, the Project Manager from the NPS Denver Office, and I attended nearly every meeting to provide dialogue and clarification to the ongoing discussion as needed.

Over the course of eight months the subcommittee held 11 meetings that were publicly noticed, and members of the public attended every meeting. In addition, the NPS held a public scoping meeting to initiate the NEPA process in October 2009; a public progress meeting in May 2010; and a public comment meeting in May 2011.

In July 2010 the Cape Cod National Seashore Advisory Commission, which includes representation by all Outer Cape towns, including Truro and Provincetown, plus Barnstable County, the Commonwealth of Massachusetts, and the Secretary of the Interior, accepted the report from its subcommittee. In recommending the report to the Superintendent, the Advisory Commission made minor changes, such as reinforcing the importance of maintaining the essence/spirit of the District's historic association with the development of the arts and literature, and its traditionally simplistic lifestyle; respecting and protecting the solitude and privacy of people occupying the shacks; and allowing for public access consistent with the National Seashore's designation as a unit of the National Park System.

The Plan/EA/AOE establishes and describes processes for decision-making. While the Superintendent of Cape Cod National Seashore is responsible for most decisions regarding the historic district, NPS policies do not allow for some decisions, particularly the selection of lessees, to be made at the Park level. We understand that the Town of Provincetown may wish for more local decision-making regarding lease terms and the selection of lessees; however, we cannot advance a plan that does not adhere to agency policy. Additionally, the correspondence from Provincetown references the Town's belief in the early and mid-2000s that the historic district is eligible for additional significance as a Traditional Cultural Property (TCP). In 2007 the Keeper of the National Register determined that the district does not meet the criteria for this additional significance as a TCP. Even so, the Plan/EA/AOE provides for the continuation of traditions described by Dr. Robert Wolfe in his report, "*Dwelling in the Dunes*," such as provisions for long-term leasing (up to 20 years) and special leasing criteria weighted towards those who have some association with the historic district.

The Plan/EA/AOE outlines how the district's cultural resources will be treated and preserved in the future. It includes references to the *Secretary of Interior's Standards for the Treatment of Historic Properties* and procedures for cultural compliance aimed at protecting the resources. The preferred alternative will result in a long-term, localized, moderate beneficial effect on the historic district's historic structures and cultural landscape, with no adverse effect upon the district.

Enclosed is our response to the Town of Provincetown regarding their concerns. On June 6, 2011 we sent a copy of the Plan/EA/AOE to the Advisory Council on Historic Preservation for their information.

In earlier correspondence we requested that you concur with our finding of no adverse effect. We hope that this letter has been responsive to your concerns and that you are now able to concur with our finding.

Sincerely,



George B. Price, Jr.
Superintendent

I concur with the determination of No Adverse Effect for the Dune Shack Historic District Preservation and Use Plan/Environmental Assessment/Assessment of Effect.

Massachusetts Historic Preservation Officer

Date

cc: Advisory Council on Historic Preservation
 Provincetown and Truro Historical Commissions
 Provincetown Board of Selectmen
 Peter Clemons



The Commonwealth of Massachusetts
William Francis Galvin, Secretary of the Commonwealth
Massachusetts Historical Commission

September 7, 2011

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

RECEIVED
SEP 12 PM 12:10
CAPE COD
NATIONAL SEASHORE

RE: Dune Shack Historic District Preservation and Use Plan; MHC# RC.1335

Dear Mr. Price:

The Massachusetts Historical Commission (MHC) is in receipt of your submittal of the National Park Service's response to the Provincetown Board of Selectmen concerning the *Dune Shack Historic District Preservation and Use Plan/Environmental Assessment/Assessment of Effect* for the Dune Shacks. The MHC is also in receipt of your second determination of "no adverse effect" pursuant to 36 CFR 800.4(d)(1) and 36 CFR 800.5(b), received on August 8, 2011.

It has come to MHC's attention that interested parties and the public have submitted comments to the National Park Service. The MHC has only received the above referenced response to the Board of Selectmen. Please forward copies of the comments from the public and interested parties as well as your response to these comments for MHC review.

In addition, the MHC would like to know if the Seashore has notified the Advisory Council on Historic Preservation to see if the Council wishes to comment.

These comments are offered to assist in compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (36 CFR 800).

Sincerely,

A handwritten signature in cursive script that reads "Brona Simon".

Brona Simon
State Historic Preservation Officer
Executive Director
Massachusetts Historical Commission

xc: Kelly Fanizzo, Advisory Council on Historic Preservation
Provincetown and Truro Historical Commissions
Provincetown Board of Selectmen
Peter Clemons



United States Department of the Interior

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

IN REPLY REFER TO:
H30

September 30, 2011

Brona Simon
State Historic Preservation Officer
Executive Director
Massachusetts Historical Commission
220 Morrissey Boulevard
Boston, Massachusetts 02125

Dear Ms. Simon:

The National Park Service (NPS) is in receipt of your letter dated September 7, 2011 requesting copies of comments from the public and interested parties regarding the *Dune Shack Historic District Preservation and Use Plan/Environmental Assessment/Assessment of Effect (Plan/EA/AOE)*, and our responses. We previously provided your office with a copy and response to the only consulting party comment we received, which was a letter from the Town of Provincetown. As we stated in our August 5, 2011 letter to your office, we sent a copy of the Plan/EA/AOE to the Advisory Council on Historic Preservation on June 6, 2011.

Enclosed are all of the public comments received on the above-referenced plan. Names and addresses have been redacted for those who asked to have their privacy protected. Under National Environmental Policy Act (NEPA) regulations and NPS policy, our Finding of No Significant Impact (FONSI), which is the decision document for this Plan/EA/AOE, will include a summary of and response to comments received. The NPS does not respond to individual comments, but addresses them directly in the FONSI summary if they are substantive. Under NPS policy, a comment is considered substantive if it questions, with reasonable basis, the accuracy of the information in the plan; if it questions, with reasonable basis, the adequacy of environmental analysis; if it presents reasonable alternatives other than those presented in the plan; or if it causes changes or revisions to the preferred alternative. Comments in favor of or against the proposed action or alternative, or comments that only agree or disagree with NPS policy are not considered substantive.

Enclosed is the draft summary of and response to comments received, which will be included in the FONSI.

We hope that this letter has been responsive to your concerns and that you will concur with our No Adverse Effect finding.

Sincerely,



George E. Price, Jr.
Superintendent

I concur with the determination of No Adverse Effect for the Dune Shack Historic District Preservation and Use Plan/Environmental Assessment/Assessment of Effect.

Massachusetts Historic Preservation Officer

Date

Enclosures

cc: Advisory Council on Historic Preservation
Provincetown and Truro Historical Commissions
Provincetown Board of Selectmen
Peter Clemons

PUBLIC INVOLVEMENT

Internal scoping for this project was initiated in July 2009 with a meeting that included park staff and resource specialists, NPS Northeast Regional Office staff, and staff from the NPS Environmental Quality Division (EQD). During this meeting, the interdisciplinary team developed draft purpose, need and objectives statements for the project, identified likely issues and concerns, and described the relationship of this project to other planning efforts at the national seashore.

On October 8, 2009, the national seashore released a public scoping brochure for the plan/EA/AoE for public review and comment. The national seashore also issued a press release and created a project webpage on the NPS *Planning, Environment and Public Comment* (PEPC) website (<http://parkplanning.nps.gov/caco>) to post information, announce meetings, and provide a location for the public to make comments electronically. Information was also provided to the public on the park's web site. The public was invited to submit comments on the scope of the planning process, issues, concerns and potential alternatives through November 12, 2009. During the scoping period, a public scoping meeting was co-sponsored by the national seashore and the commission. This meeting was held at the Center for Coastal Studies in Provincetown, MA, on October 19, 2009. The meeting presented information about the development of the plan and planning processes. NPS and consultants were on hand to answer questions, provide additional information to meeting participants, and record public input. During the scoping period, 84 pieces of correspondence were entered into the NPS PEPC system either from direct entry by the commenter or by uploading hard copy letters received by the NPS. Seven of the pieces of correspondence were duplicates where the commenter entered his or her comments directly into PEPC and also sent the same comments in a letter to the NPS. Thus 77 original correspondences were received.

The EA/AoE was made available for public review and comment beginning April 27, 2011. A press release announcing the document's availability was published in local newspapers and on the NPS website. Copies of the press release announcing the EA's availability were sent to interested parties. The EA/AoE was posted on the park's and the NPS's PEPC websites and hard copies were placed in national seashore visitor centers and headquarters buildings, town offices in Provincetown and Truro, and libraries in Truro and Provincetown. The EA/AoE was distributed to federal, state, and local regulatory agencies; towns; and interested individuals for their review.

A public meeting to discuss the EA/AoE held on May 10, 2011 at the Province Lands Visitor Center in Provincetown, MA. The meeting was announced via press release sent to the media, towns, and interested parties, and advertised on the NPS's PEPC webpage as well as on the park's website. Twenty-six people attended the meeting. Individuals were invited to ask questions and present concerns during the meeting. Most speakers had technical questions about future leasing/permit requirements and standards. One speaker expressed a concern that the assessment did not incorporate more language concerning preservation of ethnographic values.

DRAFT

During the public review and comment period approximately 45 individual letters and e-mails were received from interested parties. These comments were received on the park's PEPC website as well as through regular and e-mail. The comments primarily expressed opinions in favor of retention of the shacks for public and continuing use by organizations and individuals. Comments were also received about the unique nature of visits to the seashore and the opportunity for overnight stays at the dune shacks, supporting the uses described in Alternative B. Several of these comments indicated a desire to provide opportunities for public access and use of the shacks rather than exclusive use to a limited number of people. One comment recounted the past actions of the NPS in administering the shacks and expressed an opinion that the shack use should be returned to the original users, relatives, or associates. Two comments indicated disagreement with the NPS decision to not consider "ethnographic resources" as an impact topic. As described within the environmental assessment, the dune dweller traditions have been taken into account in the development of the plan/EA/AoE. There are no formally recognized ethnographic resources within the historic district as defined within NPS policies or within the qualifications of Traditional Cultural Properties. The NPS believes that the protection of appropriate cultural and ethnographic values is contained within the management provisions and resulting impacts as described within the EA.



The Commonwealth of Massachusetts
William Francis Galvin, Secretary of the Commonwealth
Massachusetts Historical Commission

November 1, 2011

RECEIVED
2011 NOV -4 PM 1:53
CAPE COD
NATIONAL SEASHORE

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

RE: Dune Shack Historic District Preservation and Use Plan; MHC# RC.1355

Dear Mr. Price:

The Massachusetts Historical Commission (MHC) is in receipt of your submittal of the National Park Service's response to the Provincetown Board of Selectmen concerning the *Dune Shack Historic District Preservation and Use Plan/Environmental Assessment/Assessment of Effect* for the Dune Shacks. The MHC is also in receipt of your determination of "no adverse effect" pursuant to 36 CFR 800.4(d)(1) and 36 CFR 800.5(b), received on October 3, 2011.

MHC has reviewed the extensive public comment received concerning the EA. A common opinion expressed by approximately 45 individual commenters is that a preservation and use plan should ensure continued and increased public access to the dune shacks.

The MHC understands that the NPS notified the Advisory Council concerning your determination of effect. It remains unclear whether or not the Advisory Council has replied at this time (36 CFR 800.2(b)(2)).

These comments are offered to assist in compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (36 CFR 800).

Sincerely,

Brona Simon
State Historic Preservation Officer
Executive Director
Massachusetts Historical Commission

xc: Kelly Fanizzo, Advisory Council on Historic Preservation
Provincetown and Truro Historical Commissions
Provincetown Board of Selectmen
Peter Clemons



United States Department of the Interior

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

IN REPLY REFER TO:

H32

January 25, 2012

Brona Simon
State Historic Preservation Officer
Executive Director
Massachusetts Historical Commission
220 Morrissey Boulevard
Boston, MA 02125

Re: Dune Shack Historic District Preservation and Use Plan; MHC#RC.1335

Dear Ms. Simon:

The National Park Service (NPS) is in receipt of your letter dated November 1, 2011 concerning the *Dune Shack Historic District Preservation and Use Plan/Environmental Assessment/Assessment of Effect* (Plan/EA/AoE) for the dune shacks.


You note that 45 individual comments expressed the opinion that the plan should ensure continued and increased public access to the dune shacks. Under the mix of uses described in the preferred alternative, at least 40 percent of the shacks would have an element of public access. This is an increase over the "no action" alternative.

On June 6, 2011 the Advisory Council on Historic Preservation (ACHP) was sent a copy of the Plan/EA/AoE. In addition, ACHP has been copied on all subsequent correspondence between the NPS and your office. We have received no comments from ACHP.

We hope this letter has been responsive to your concerns, and that you concur with our "No Adverse Effect" determination. We are completing our Finding of No Significant Impact (FONSI), which is the Plan/EA/AoE's decision document.

We look forward to implementing this plan, which will ensure continued preservation of the historic district's structures, landscape, and traditions.

Sincerely,



George E. Price, Jr.
Superintendent

I concur with the determination of No Adverse Effect for the Dune Shack Historic District Preservation and Use Plan/Environmental Assessment/Assessment of Effect.

Massachusetts Historic Preservation Officer

Date

cc: Katry Harris, Advisory Council on Historic Preservation
Provincetown and Truro Historical Commissions
Provincetown Board of Selectmen
Peter Clemons

**APPENDIX C: CORRESPONDENCE
BETWEEN NPS AND
PROVINCETOWN BOARD
OF SELECTMEN**



RECEIVED

2011 JUN 15 PM 12:43

CAPE COD
NATIONAL SEASHORE

Board of Selectmen

Town Hall, 260 Commercial Street
Provincetown, Massachusetts 02657

Telephone (508) 487-7003

Facsimile (508) 487-9560

June 13, 2011

George Price, Superintendent
Cape Cod National Seashore
99 Marconi Site Road
Wellfleet, MA 02667

Dear Superintendent Price:

The Provincetown Board of Selectmen herein forwards its public comments on the "Cape Cod National Seashore Dune Shack Historic District Preservation and Use Plan / Environmental Assessment / Assessment of Effect" ("the Plan").

The Provincetown Board of Selectmen thanks the staff of the Cape Cod National Seashore and all the volunteers, including members of the Cape Cod National Seashore Advisory Commission and its Dune Shack Subcommittee, for their work so far on this matter.

One of our primary concerns is that control of these resources should be on the local level. We recognize that federal management is an evolutionary process, and we request that as mechanisms and tools for management are developed, our preference is that those that would maximize local decisionmaking and control would be applied to the dune shacks.

The Plan was preceded by the Cape Cod National Seashore Advisory Commission Report on the Preservation and Use Plan / Environmental Assessment for the Dune Shacks of the Peaked Hill Bars Historic District ("the Report").

The Cape Cod National Seashore ("CCNS") News Release dated April 27, 2011, states that "the report is the basis for the preferred alternative evaluated in the EA."

As noted herein (and in the "Notes" attached as Exhibit A), the Board believes that the Plan has significantly diluted the contents of the Report, so much so that the continuation of a unique cultural resource – the human dune shack community (individuals, families, non-profit organizations) – is at clear risk.

In its letter dated May 14, 2003,¹ the Board wrote that the dune shack community is "remarkable... for the courage its members have shown in building and living in such basic homes at the edge of the backshore, for the tenacity of its members in ensuring the community's continuation through storms of climate and politics, and for their continued desire to remain a community set somewhat apart, despite the encroachments of modern life and government regulations all around us." The Board also stated that research undertaken by the Town's Cape Cod National Seashore General Management Plan Implementation Advisory Committee ("CCNSGMPIAC") "indicates that relevant congressional and National Park Service (NPS) statutes, regulations, rules, guidelines, procedures, protocols and other materials appear to support the concept that some, perhaps all, dune shack dwellers are a protected cultural resource, and that the Cape Cod National Seashore (CCNS) has legal obligations to manage this cultural resource in the way that best maintains, perpetuates, and strengthens this cultural group's continued access to and use of the dune shacks in which they live."

As a result of the Board's May 14, 2003 letter (including a detailed analysis of existing law), NPS/CCNS undertook an extensive ethnological review of the dune shack community, which resulted in two significant documents, the first authored by Dr. Robert J. Wolfe ("the Wolfe Report")² and the other by Wolfe and T.J. Ferguson ("the Wolfe/Ferguson Report")³ (both of whom were employed by NPS/CCNS to produce the Reports). The Wolfe/Ferguson Report concluded that the Dune Shacks of the Peaked Hill Bars Historic District are "a traditional cultural property eligible for the National Register of Historic Places" and that the area "has a long-standing cultural significance for the local residents who constitute the living culture of the Provincetown-Lower Cape community, and whose traditional use has sustained the district for more than a century."

In its letter dated November 27, 2006,⁴ the Board noted its agreement with the content and conclusions in the Wolfe Report and the Wolfe/Ferguson Report and the conclusion that "the dune shacks are 'traditional cultural property' and that there are 'traditionally associated peoples' connected to that property." The Board acknowledges that, despite the Massachusetts Historical Commission's endorsement of the two Reports, NPS obtained a determination from the Keeper

¹ Attached as "Exhibit B".

² "Dwelling in the Dunes: Traditional Use of the Dune Shacks of the Peaked Hill Bars Historic District, Cape Cod", published in August 2005 as the Final Report for the Research Project titled "Traditional Cultural Significance of the Dune Shacks Historic District, Cape Cod National Seashore" (No. P4506040200), as commissioned by the National Park Service.

³ "Traditional Property Assessment: Dune Shacks of the Peaked Hill Bars Historic District, Cape Cod National Seashore" (National Park Service Grant No. P4506040200), May 3, 2006.

⁴ Attached as "Exhibit C".

of the National Register that the District did not meet the criteria for a "traditional cultural property".⁵

On July 12, 2010, the Board of Selectmen voted unanimously (5-0) "to accept the Report of the Cape Cod National Seashore Advisory Commission Dune Shack Subcommittee and request the Town's representative on the Advisory Commission to accept the report without deletion or addition; and to note the board's concerns about the limitations of the report." Although a few portions of the Subcommittee's text were moved to footnotes, the Advisory Commission otherwise voted to accept the Subcommittee's work as its Report.

A comparative review of the Report and the Plan by members of this Board and the CCNSGMPIAC has resulted in the attached "Notes" that provides additional detailed public comment in support of its position that the Plan significantly dilutes the Report in ways that further endanger the continuation of the culturally unique human dune shack community of the Peaked Hill Bars Historic District (be they individuals, families, and/or non-profit organizations).

The Board looks forward to a detailed response by NPS/CCNS on each of its public comments on the Plan.

Sincerely,



Elaine Anderson, Chairperson
Provincetown Board of Selectmen

cc: caco_superintendent@nps.gov
CCNS Advisory Commission
Town of Truro
U.S. Senator John Kerry, Massachusetts
U.S. Senator Scott Brown, Massachusetts
U.S. Representative William Keating, Massachusetts
State Senator Dan Wolf, Massachusetts
State Representative Sarah Peake, Massachusetts
Brona Simon, Executive Director, Massachusetts Historical Commission

⁵ See also our letter to you dated June 28, 2007 (attached as "Exhibit D").

EXHIBIT A

Notes on

Cape Cod National Seashore Dune Shack Historic District Preservation and Use Plan / Environmental Assessment / Assessment of Effect ("the Plan")

THE DILUTION/ELIMINATION OF "ETHNOGRAPHIC VALUES"

The concept, importance, and significance of "ethnographic values" – a key part of the Cape Cod National Seashore Advisory Commission Report on the Preservation and Use Plan / Environmental Assessment for the Dune Shacks of the Peaked Hill Bars Historic District ("the Report") – has been deleted from the Plan, thus further eroding the protections under existing federal law for existing dune shack dwellers (whether they are families, individuals with long-term residence, or non-profit organizations).

In the Report:

p. 2 – a key objective is to "Support long-term relationships as ethnographic values highlighted in Robert Wolfe's 2005 report *Dwelling in the Dunes: Traditional Use of the Dune Shacks of the Peaked Hill Bars Historic District, Cape Cod* and the related Wolfe and Ferguson 2006 report *Traditional Cultural Property Assessment, Dune Shacks of the Peaked Hill Bars Historic District, Cape Cod National Seashore*.

In the Plan:

p. 2 – the corresponding objective states only "Support the unique and long-term relationships as highlighted in Robert Wolfe's report, "Dwelling in the Dunes: Traditional Use of the Dune Shacks of the Peaked Hill Bars Historic District, Cape Cod".

Analysis:

By deleting the term "ethnographic values" as well as the equally important Wolfe and Ferguson 2006 report, the Plan dilutes the concept to the more vague "unique and long-term relationships".

///

Atp. 7-10, one of the important documents excluded in "Relevant Laws, Policies, and Planning Studies / Relationship of Proposal to Other Planning Projects" is "Guidelines for Evaluating and Documenting Traditional Cultural Properties," U.S. Department of the Interior, National Park Service, National Register, History and Education, Bulletin 38 (1990, revised 1992 & 1998). Known in NPS vernacular as "Bulletin 38", this is the seminal document – still current law – setting out the guidelines for Traditional Cultural Properties ("TCP") (and "Traditionally Associated Peoples" ("TAP"). Bulletin 38 is cited in detail in the Report at p. 6 n. 4. This is a significant document because it provides guidance for the NPS to protect TCP and TAP whether or not they are eligible for the

National Register. Bulletin 38 is extensively cited in the 2005 Wolfe and 2006 Wolfe and Ferguson reports.

///

Further, the Plan states that "ethnographic resources" is one of the "Impact Topics Dismissed from Detailed Analysis" (pp. 14-18). See pp. 16-17: "the historic district does not meet the qualifications of a Traditional Cultural Property (TCP) with reference to criterion A." This is too narrow a view of the issue; the decision that the dune shacks were not eligible as a TCP for listing in the National Register does not prohibit NPS from treating the dune shacks (and their traditional inhabitants, be they individuals, families, or non-profit organizations) as TCPs and TAPs in management decisions.

///

Note that the CCNS Advisory Commission Dune Shack Subcommittee ("the Subcommittee"), as endorsed by the CCNS Advisory Commission ("the Advisory Commission"), states that "[t]he cultural significance and history of the District is embodied in the continuity of living communities" and recommends as a key criteria for long-term residential stewardship and occupancy "[a]ssociation with the ethnographic values and traditions that contribute to the shack's history and the cultural significance of the District". (The Report, p. 27)

Question: Why does the Plan delete the "ethnographic values" designation and state that the criteria should include "[a]ssociation with the values and traditions that contribute to the shack's history and the cultural significance of the historic district". (The Plan, p. 23)

Note: As part of the NPS/CCNS response to public comment, the Board of Selectmen requests that NPS/CCNS address all information in this document titled "Notes" (as well as its letter) and not limit its responses to the paragraphs titled "Questions" in this document.

///

Question: Why is there no mention, and in fact reference is missing entirely in the Plan, of any text from an entire chapter of the Report describing the spirit and essence the dune shacks and the human beings (and non-profit organizations) associated with them. See "Chapter 3: Dune Shack Traditions" (pp. 19-21 of the Report).

Note: As part of the NPS/CCNS response to public comment, the Board of Selectmen requests that NPS/CCNS address all information in this document titled "Notes" (as well as its letter) and not limit its responses to the paragraphs titled "Questions" in this document.

THE SUBCOMMITTEE'S TIME FRAME

While it is true that the CCNS Advisory Commission Dune Shack Subcommittee met eleven times between November 2009 and July 2010, and that the CCNS Advisory Commission adopted the Subcommittee's report in early July 2011, many (perhaps a majority) of the Subcommittee wanted to continue meeting to resolve several important issues. However, the group was informed that it would not be permitted to extend its timeframe because NPS was committed to publishing the Plan in autumn 2010. After the Subcommittee complied with this timeline, NPS delayed publication of the EA until late April 2011, half a year later. (See the Plan, pp. 10-11).

See p. 3 of the Report: "members of the Subcommittee believe that they could have benefited from additional time to meet and discuss the issues at hand, given the decades-long challenges of managing the Historic District to broad stakeholder satisfaction, and that the level and detail of their work is a reflection of this eight-month time frame."

ISSUES OF CONCERN AMONG SUBCOMMITTEE MEMBERS (AND THE ADVISORY COMMISSION) NOT MENTIONED IN THE PLAN

"Some members of the Subcommittee are concerned that existing legal limitations, legislation, policies and/or regulation may be insufficient..." (The Report, p. 30 n. 10).

"A number of members of the Subcommittee are also concerned that the current length of terms of mechanisms... may be insufficient to ensure the continuance of cultural values and traditions, effective maintenance, stewardship, and commitment to the District." (The Report, p. 30 n. 10) The NPS has the power to grant leases of up to 60 years. (The Report, p. 26 n. 7).

The Subcommittee "strongly recommends that CCNS send a technical advisor with extensive knowledge of the uses and historical and cultural significance of the District to advise the panel during the RJP process." (The Report, p. 26). This is because all leasing decisions will be made at the NPS regional office in Philadelphia, and the CCNS will have no power in the selection process beyond having a CCNS advisor present. "The Subcommittee believes that... leases... determined under the auspices of the Regional Office is considered to not serve the best interests of preserving the cultural values of the District." (The Report, p. 30 n. 10). This is a unanimous Subcommittee (and Advisory Commission) view, that the Provincetown Board of Selectmen also supports.

Question: How will we be notified to appoint a representative to participate with the panel during the RJP process? We request that a mechanism and tools for management are developed to maximize local decisionmaking and control for the dune shacks.

Note: As part of the NPS/CCNS response to public comment, the Board of Selectmen requests that NPS/CCNS address all information in this document titled "Notes" (as well as its letter) and not limit its responses to the paragraphs titled "Questions" in this document.

Existing federal regulations allow each NPS unit to specify evaluation criteria for RFP (request for proposal) processes that reflect the specific needs and requirements of that area. (The Report, p. 27 n. 9) See text on p. 27. The specific findings of the Subcommittee and Advisory Commission are diluted in the Plan (and they already had been diluted in the Report based on restrictions placed on the Subcommittee by NPS staff).

EXHIBIT B



Board of Selectmen
Town Hall, 260 Commercial Street
Provincetown, Massachusetts 02657
Telephone (508) 487-7003
Facsimile (508) 487-9560
May 14, 2003

Chairman Brenda Boleyn
Cape Cod National Seashore
99 Marconi Site Road
Wellfleet MA 02667

SUBJ: Dune Shack Subcommittee Report

Dear Chairman Boleyn:

Thank you for giving the Town of Provincetown the opportunity to provide informal public comment on the Dune Shack Subcommittee Report dated January 2003. We appreciate and agree with your comment in your letter dated March 28, 2003 that acknowledges "the complex issues associated with the remarkable dune-shack community." The Provincetown Board of Selectmen believes that this community is remarkable, as well: for the courage its members have shown in building and living in such basic homes at the edge of the backshore, for the tenacity of its members in ensuring the community's continuation through storms of climate and politics, and for their continued desire to remain a community set somewhat apart, despite the encroachments of modern life and government regulations all around us.

In view of the significant issues raised herein, the Provincetown Board of Selectmen voted on May 12, 2003 to request that the Advisory Commission remand the January 2003 report back to its Subcommittee for further review and public input.

We reserve our right to continue to participate in this process when a formal public comment period begins pursuant to the requirements of law.

To date, research undertaken by our Cape Cod National Seashore General Management Plan Implementation Advisory Committee (IAC) indicates that relevant congressional and National Park Service (NPS) statutes, regulations, rules, guidelines, procedures, protocols and other materials appear to support the concept that some, perhaps all, dune shack dwellers are a protected cultural resource, and that the Cape Cod National Seashore (CCNS) has legal obligations to manage this cultural resource in the way that best maintains, perpetuates, and strengthens this cultural group's continued access to and use of the dune shacks in which they live.

The IAC research indicates that, subsequent to the time that various settlements were finalized among various occupiers of the dune shacks, the NPS was charged with new, refined, and expanded legal obligations that require CCNS to take a careful and fresh look at the dune shack dwellers themselves as a protected cultural resource.

When the NPS Chief of Registration for the National Register of Historic Places determined, by memorandum dated May 12, 1989, that the Dune Shacks of Peaked Hill Bars Historic District was eligible for inclusion in the Register, she referenced "supporting review comments which explain our conclusion". Those comments were based on existing law at the time, which tended to justify protection of structures that had a certain national significance. In the case of the dune shacks, such significance existed because various people well known to certain national artistic circles had created cultural products (plays, novels, paintings, music) while living in the dune shacks. (The Keeper of the Register noted "significant associations of the dune cottages with the historic development of American art, literature and theater.")

By the late 1980s, the local and national advocates' fight for the survival of the dune shacks and its people, and the continuing determination of prior CCNS administrators to destroy them, reached a temporary climax in large part because the National Register of Historic Places designation was the best option at the time to stop culturally adverse NPS policies and maintain a sort of détente that prevented further destruction of the dune shacks. (We urge CCNS, in its written and oral documentation and interpretation, to acknowledge this fact to avoid the unintended impression that CCNS, in addition to maintaining the dune shacks, also "saved" them from destruction.)

Even so, the Dune Shack Subcommittee, in its final report dated May 29, 1992 to the CCNS Advisory Commission, in seeking "to ensure the continuing legacy" of the dune shacks, designed a "Philosophy of Use" that provides a more complete description of the cultural resource: "While the area may be Historic because of the noted artists and writers who worked there, those occupied in more ordinary pursuits contributed to the structures, themselves, and to the environment that proved so inspirational, as is the case in other Historic Districts." Thus, the Subcommittee's Resolutions included recommendations that dune shack dwellers should understand "[t]he main element of dune life: Respect for the rights of others and the ability to live compatibly within the district", and have "[k]nowledge of the cultural significance and history of the district".

Meanwhile, in the late 1980s, various consultants and experts within the NPS were maintaining in written reports and articles that "vernacular landscapes" -- those which have no national significance or structures but do have great significance to local people in their cultural traditions -- merited protection and continued use and access by such people.¹

¹ Melody Webb, in her article "Cultural Landscapes in the National Park Service" (*The Public Historian*, vol. 9, no. 2, spring 1987), writes that, although NPS personnel typically have attempted to avoid dealing with cultural landscapes, the concept "that clearly recognized the connections between people and land" extends as far as the fifth century A.D.

Webb notes that "[s]ome of the new parklands traditionally supported people with cultures or ways of life that featured particular attitudes toward and relationships with the land. They used the land and left their imprint on it -- in roads and pathways, in fields and fences, in various structures, and in myriad place names. Thus the land has historical or cultural value in its portrayal of a particular human use, and it gains added value if the people are still there using the land in a traditional way."

Since at least 1966, with the creation of the National Historic Preservation Act, there has been a mounting responsibility for the NPS to recognize and deal with cultural landscapes.

In 1979, NPS Chief Historical Architect Hugh C. Miller created a pilot project to better understand all types of cultural landscapes. Professor Robert Z. Melnick, a landscape architect at Kansas State University, directed the effort.

Webb describes Melnick's approach: "Melnick viewed the landscape as a whole. He identified components that included the broad patterns of spatial organization, circulation networks, boundary demarcations, land use, and individual structural components. He did not emphasize buildings, but recognized them as

As early as 1990, the NPS was engaged in a major expansion of cultural resource management (CRM), especially those areas known as "traditional cultural properties" (TCP). The NPS National Register Bulletin titled "Guidelines for Evaluating and Documenting Traditional Cultural Properties" (known as Bulletin 38), defines TCP as: "[a place] that is eligible for inclusion in the National Register because of its association with cultural practices or beliefs of a living community that (a) are rooted in that community's history, and (b) are important to maintaining the continuing identity of the community."² (A co-author of Bulletin 38 has written that TCP protections actually pre-date the 1990 Guidelines; that they are not limited to Native American sites; that they are not limited to ethnic communities; and that they protect even areas without continuous use.)³

Two of Bulletin 38's examples of TCP directly prove that at least some, and perhaps all, of the traditional dune shack community, are an essential part of a traditional cultural property: "a rural community whose organization, buildings and structures, or patterns of land use reflect the cultural traditions valued by its long-term residents; . . . [or] a location where a community has traditionally carried out economic, artistic, or other cultural practices important in maintaining its historic identity."⁴

Further, Bulletin 38 finds support for TCP in Section 106 of the National Historic Preservation Act (16 U.S.C. 470(b)(2)) (NHPA), which establishes that "the historical and cultural foundations of the Nation should be preserved as a living part of our community life in order to give a sense of orientation to the American people". The cultural foundations of America's ethnic and social groups, be they Native American or historical immigrant, merit recognition and preservation, particularly where the properties that represent them can continue to function as living parts of the communities that ascribe cultural value to them."⁵

The website of the National Preservation Institute notes that, although Section 106 alone may not provide protection for TCP (a position with which Thomas F. King, co-author of Bulletin 38, disagrees), the National Environmental Policy Act (NEPA), enacted in 1969, does provide protection for TCP and their use by traditional peoples:

components within the matrix of the whole. As a result, the continuity and tradition of cultural lifeways took on deeper significance than they had before. Formed by an ever-changing culture and nature, cultural landscapes also had to change."

Thus, Webb — and eventually the NPS — understood that "continuity and dynamic change" and significance "representative of cultural lifeways or associated with intangible qualities of a culture" were valid characteristics of cultural landscapes. In other words, a cultural landscape was not exclusively defined by whether an historic building existed, but by whether the intangibles of local culture existed there.

² Parker, Patricia L. and King, Thomas F., *Guidelines for Evaluating and Documenting Traditional Cultural Properties*, U.S. Department of the Interior, National Park Service, National Register, History and Education, Bulletin 38 (1990, revised 1992 & 1998), Introduction: What Are Traditional Cultural Properties?

³ King, Thomas F., *Thinking About Cultural Resource Management* (AltaMira Press 2002), pp. 112-19.

⁴ Parker and King, NPS Bulletin 38, Introduction: What Are Traditional Cultural Properties?

⁵ Id., Conclusion.

Note that Section 106 does not deal with impacts on all types of cultural resources, or all cultural aspects of the environment; it deals with impacts on properties included in or eligible for the National Register of Historic Places. Other authorities, such as the American Indian Religious Freedom Act and Executive Order 12898, may require consideration of other cultural resource types, and NEPA itself provides for considering all aspects of the cultural environment — for example, the cultural use of natural resources. So complying with Section 106 does not guarantee that all impacts on all cultural resource types have been addressed in NEPA analysis.⁶

.....

The term "cultural resource" is not defined in NEPA or any other Federal law. However, there are several laws and executive orders that deal with particular kinds of "resources" that are "cultural" in character.

NEPA itself, and the CEQ regulations, require that agencies consider the effects of their actions on all aspects of the "human environment." Humans relate to their environment through their culture, so the cultural aspects of the environment — for example, cultural uses of the natural environment, the built environment, and human social institutions — obviously must be considered in NEPA analyses.

What is the "Human Environment?"

"Human environment" shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment (40 CFR 1508.14).

NEPA's concern is with the "human environment," defined as including the natural and physical (e.g. built) environment and the relationships of people to that environment. A thorough environmental analysis under NEPA should systematically address the "human" — social and cultural — aspects of the environment as well as those that are more "natural," and should address the relationships between natural and cultural.

Culturally valued aspects of the environment generally include historic properties, other culturally valued pieces of real property, cultural use of the biophysical environment, and such "intangible" sociocultural attributes as social cohesion, social institutions, lifeways, religious practices, and other cultural institutions. These impacts are usually analyzed either as impacts on "cultural resources," or as "social impacts," or as both — but many such impacts actually fall into the cracks between the "cultural resource" and "social impact" categories as usually defined.⁷

⁶ www.npi.org/nepa/sect106.html

⁷ www.npi.org/nepa/whatare.html

The Advisory Council on Historic Preservation (ACHP)⁸ has issued a policy statement calling for "resource management and conflict resolution on Federally owned public lands that achieves balance between natural and cultural values... to ensure that cultural values are afforded equal consideration."⁹ The 20-page document provides a specific and detailed roadmap that strongly supports the requirement that CCNS consider the dune shack dwellers and their relationship to their homes in a fresh light.¹⁰

First, the ACHP policy statement notes that NPS Management Policies 2001 and NPS Cultural Resource Management Guideline (Director's Order #28) require "a broad, open-minded approach toward identifying, evaluating, and caring for cultural resources". In regard to NEPA, the document states: "Initiating or completing environmental analysis after a decision has been made, whether formally or informally, is a violation of both the spirit and the letter of the law. NEPA's intent is to encourage planning for conservation and resource management and integration of scientific and technical information into management decisions, rather than an after-the-fact 'compliance' effort"

Second, the ACHP policy statement fully recognizes:

The Service must therefore be respectful of these ethnographic resources, and carefully consider the effects that NPS actions may have on them. . . . Continued access to and use of ethnographic resources is often essential to the survival of family, community, or regional cultural systems, including patterns of belief and sociocultural . . . life.

* * *

The Board of Selectmen believes that CCNS needs to do much more work investigating its own statutes, regulations, rules, guidelines, procedures, protocols and other relevant materials before it truly begins any process that will affect the current dune shack dwellers. We believe that the Dune Shack Subcommittee's mission to date has been premised on pre-fabricated questions that assume that current dune shack dwellers lose all rights under law on the occurrence of a specific date or death in the family. We have cited sufficient authority (and there is much more to be had) that directly disputes this assumption. Furthermore, as has been well documented, the absence of any representation of dune shack dwellers on the Subcommittee (which nevertheless included

⁸ "A small U.S. government agency that advises the president and Congress on historic preservation matters and oversees the "Section 106 Process" that provides review of federal, federally assisted, and federally licensed actions to control their effects on historic properties." King, Thomas F., *Thinking About Cultural Resource Management* (AltaMira Press 2002), p. xix n. 1.

⁹ Susan Moynihan, CCNS Chief of Interpretation and Cultural Resources, provided this document by mail to the IAC on September 12, 2002.

¹⁰ We note that, according to the CCNS GMP's Final Environmental Impact Statement Record of Decision (printed on pages 182-191 of the GMP and executed by CCNS Superintendent Maria Burks and NPS Northeast Region Director Marie Rust), the NPS has a Programmatic Agreement with the ACHP (as well as the National Conference of State Historic Preservation Officers) that requires NPS to "complete[] the consultation review steps related to general management planning" as well as "[a]dditional consultation requirements to comply with section 106 of the National Historic Preservation Act of 1966, as amended".

representatives of all of the entities that manage shacks that no longer have traditional people associated with them) is a violation of the spirit and letter of the law.

* * *

We would like to respond at this time to one of the questions assigned to the Subcommittee. Question 5 asks: "If the National Park Service were to retain use of one or two dune shacks for administrative purposes (i.e. research opportunities, opportunity to utilize dune shack for focused and uninterrupted work, etc.) and maintain the shack(s), which shacks would be most appropriate?" Our answer is: NPS has no right to retain use of any of the shacks. The Town has been quite clear (and on record) in our strong view that "using pre-existing structures for NPS administrative purposes (including employee quarters) is contrary to preservation of local ways of life."¹¹

In the interest of forging a collaborative future, however, we suggest that -- with a consensus of the current dune shack dwellers -- CCNS staff might be permitted to build a shack, provided that they do it with the guidance of dune shack dwellers; the reconstructed shack's amenities are consistent with all guidelines under which current dune shack dwellers must live; and that it is used in traditional ways (which would exclude government work). Perhaps, if the dune shack dwellers agree, the new shack might be built in the same location where CCNS staff bulldozed Charlie Schmidt's shack prior to 1989.

We look forward to a continued dialogue with you and the public on this essential part of our local ways of life.

Sincerely,
BOARD OF SELECTMEN


Mary Jo Avellar
Chairman

cc: CCNS Superintendent Maria Burks
Town of Truro Board of Selectmen
Town of Wellfleet Board of Selectmen
Town of Eastham Board of Selectmen
Town of Orleans Board of Selectmen
Town of Chatham Board of Selectmen
U.S. Senator Edward F. Kennedy
U.S. Senator John Kerry
U.S. Congressman William Delahunt
State Senator Robert O'Leary
State Representative Shirley Gomes
CCNS GMP IAC Chair John W. Thomas
Town Manager Keith A. Bergman
CCNS Advisory Commission Provincetown Representative Alix Ritchie

¹¹ This view is documented in "The Town of Provincetown Responds to the General Management Plan for Cape Cod National Seashore", printed within the CCNS GMP on pages 180-81.

EXHIBIT C



Board of Selectmen

Town Hall, 260 Commercial Street
Provincetown, Massachusetts 02657
Telephone (508) 487-7003
Facsimile (508) 487-9560

November 27, 2006

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

Re: Dune Shacks

Dear Superintendent Price:

Please know that, at its meeting last night, the Provincetown Board of Selectmen unanimously voted to state on the record the following points regarding the current status of the dune shack ethnographic study and related matters.

The Board strongly disagrees with CCNS' decision to reject the conclusions of two studies that it requested regarding the dune shacks. Specifically, the Board agrees with the content and conclusions in the Dr. Robert J. Wolfe document titled "Dwelling in the Dunes: Traditional Use of the Dune Shacks of the Peaked Hill Bars Historic District, Cape Cod" published in August 2005 as the Final Report for the Research Project titled "Traditional Cultural Significance of the Dune Shacks Historic District, Cape Cod National Seashore" (No. P4506040200), as commissioned by the National Park Service. Additionally, the Board agrees with the content and conclusions in the Robert J. Wolfe and T.J. Ferguson document titled "Traditional Property Assessment: Dune Shacks of the Peaked Hill Bars Historic District, Cape Cod National Seashore" (National Park Service Grant No. P4506040200), dated May 3, 2006.

The Wolfe/Ferguson document confirms that the dune shacks are "traditional cultural property" and that there are "traditionally associated peoples" connected to that property. Furthermore, the Wolfe/Ferguson document confirms that, as such, the dune shacks are eligible for the National Register under Criteria A, B, and C and other protections under the guidelines described in National Register Bulletin 38 (Parker and King 1998).

The Board makes particular note of the extensive description in the Wolfe/Ferguson report (see pp. 12-14) of the ways in which the Cape Cod National Seashore, through its administrative practices, has in many cases destroyed continuity of use by traditionally associated peoples in the dune shacks. We note this disturbing history, now authenticated by an NPS-

sanctioned document, for the purpose of cautioning CCNS in taking any further steps that would serve to injure or eliminate these fragile and significant human connections.

The Board agrees with the conclusions reached by Brona Simon, Deputy State Historic Preservation Officer of the Massachusetts Historical Commission, which were sent to you in her letter dated October 20, 2006. In that letter, Ms. Simon states: "I am unable to agree with your determination that the Dune Shack long-term family residents are not a community, and therefore the Dune Shacks cannot be considered a TCP."

The Board is of the opinion that CCNS' decision to withhold from public view the Wolfe/Ferguson document dated May 3, 2006 (which was supplied to Ms. Simon on or about September 21, 2006) until the first week of November is a violation of CCNS' professed intention pursuant to the current General Management Plan to forge a collaborative future.

Furthermore, CCNS' decision to forward a so-called "informal opinion" from Patrick Andrus, a staff member at the National Register in Washington, DC, to Ms. Simon, yet to withhold production of this document from the public, also violates CCNS' supposed intention to forge a collaborative future with Provincetown and other interested parties.

The Board has become aware that Chuck Smythe and others at NPS are preparing a document commenting on (and likely rejecting) the Wolfe and Wolfe/Ferguson documents that CCNS intends to forward to the National Register for its ultimate determination on this issue.

The Board hereby strongly requests:

1. that you forward to the Board a copy of the Andrus "informal opinion" that you already sent to Ms. Simon;
2. that, in the spirit of the GMP's emphasis on transparency, collaboration, and consultation, you forward to the Board a copy of any other documents related to this issue that you have sent to Ms. Simon or any other party outside of NPS;
3. that you forward to the Board a copy of any documents related to this issue (in particular the pending Smythe-authored report) at the same time that you release them to the National Register or to any other non-NPS entity or individual; and
4. that, in the spirit of the GMP's emphasis on transparency, collaboration, and consultation, you forward any other documents now existing or to be created that are related to this issue for the Board's review and consideration.

Additionally, the Board is of the opinion that Mr. Andrus, having already written an informal opinion that rejects the Wolfe and Wolfe/Ferguson documents, should not participate in any final determination made by the National Register on this paramount cultural issue.

Finally, the Board is of the opinion that the ultimate determination of this issue must be part of an Environmental Assessment and/or Environmental Impact Statement process, which is the only way that the public can participate fully in this issue. The Board is of the opinion that your preference to resolve this issue through the Cape Cod National Seashore Advisory Commission Dune Shack Subcommittee is not sufficient, especially given the criteria that CCNS used in creating the membership of that group so as to exclude traditional dune shack dwellers and others whose views are essential to this issue.

We invite you to meet with us if you would like to discuss this matter further.

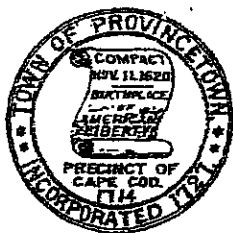
Thank you.

Sincerely,

Sarah K. Peake
Vice-Chairman

cc: Ronald Kaufman, Chairman, Cape Cod National Seashore Advisory Commission
Senator Edward Kennedy
Representative William Delahunt
John Roberts, National Register of Historic Places, National Park Service
Janet Snyder Matthews, Keeper of the National Register
Brona Simon, Deputy State Historic Preservation Officer, MA. Historic Commission
Charls W. Smythe, Ethnography Program Manager, Northeast Region, NPS
Robert J. Wolfe, Ph.D, Robert J. Wolfe & Associates
T.J. Ferguson
Truro Board of Selectmen
Chrysandra Walter, Acting Regional Director (Philadelphia), National Park Service
Mary Bomar, Director, National Park Service, Washington, D.C.
Dirk Kempthorne, Department of the Interior Secretary
Kelly Fannizo, Advisory Council on Historic Preservation

EXHIBIT D



Board of Selectmen

Town Hall, 260 Commercial Street
Provincetown, Massachusetts 02657
Telephone (508) 487-7003
Facsimile (508) 487-9560

June 28, 2007

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

Re: Dune Shacks

Dear Superintendent Price:

As you are aware, the dune shacks in the backshore of the Provincelands and adjacent areas are one of the most important cultural resources to the people and town of Provincetown.

We write to express our strong disagreement with the decision of the Cape Cod National Seashore ("CCNS") and National Park Service ("NPS") to manufacture a controversy in rejecting two thorough ethnological reports by your own hired experts¹ that concluded that there is a living and vibrant community of "traditionally associated peoples" in relation to the "traditional cultural property" of the dune shacks.²

Further, we strongly disagree with the May 24, 2007 written decision of the Keeper of the National Register of Historic Places that concluded – contrary to the ethnological reports and the determination of the Massachusetts Historic Commission – that the dune shacks are not protected as traditional cultural property pursuant to National Register Bulletin 38 titled "Guidelines for Evaluating and Documenting Traditional Cultural Properties" (co-authored by Patricia L. Parker and Thomas F. King, originally published 1990, revised 1992 and 1998).

We believe that the process that resulted in the Keeper's rejection is biased and unfairly weighted in favor of NPS' desires. The Keeper, as a Washington DC unit within the NPS, is inherently subjective and cannot be relied on to make balanced and objective determinations in situations such as this one where CCNS/NPS has a strong interest in ensuring that no humans have a legal right to any possessory interest in any of the dune shacks.

We also question whether the Keeper's determination has any legally binding authority.

¹ See: Dr. Robert J. Wolfe's "Dwelling in the Dunes: Traditional Use of the Dune Shacks of the Peaked Hill Bars Historic District, Cape Cod" published in August 2005 as the Final Report for the Research Project titled "Traditional Cultural Significance of the Dune Shacks Historic District, Cape Cod National Seashore" (No. P4506040200), as commissioned by the National Park Service; and Robert J. Wolfe's and T.J. Ferguson's "Traditional Property Assessment: Dune Shacks of the Peaked Hill Bars Historic District, Cape Cod National Seashore" (National Park Service Grant No. P4506040200), dated May 3, 2006.

² We previously expressed our disagreement in our letter dated November 27, 2006 to you.

We pledge to continue to support efforts of the dune shack dwellers and their advocates to require CCNS/NPS to recognize their legal and moral rights to continue to have sufficient access to the dune shacks to maintain a way of life that is so essential to our Town's cultural fabric. We note here that the United States Congress instructed the NPS, in the "Introduction" to the legislation that created CCNS, to "preserve the way of life" that "the people who have lived and are living" on lower Cape Cod "have established and maintained on the cape." The history of CCNS/NPS' management of the dune shacks -- and many other culturally related matters -- is in large part a record of negligence and intentional disregard of the congressional mandate.

We are aware that CCNS/NPS intends to reconvene the CCNS Advisory Commission Dune Shack Subcommittee for the purpose of conducting an Environmental Assessment that may result in a sustainable long-term plan for the dune shacks and their human use. We have forwarded to you the names of the people who will sit at the designated Provincetown seats on the Subcommittee.

We insist that the Subcommittee process be fully public, including the opportunity for public comments at each meeting, with no private or closed meetings and that all meetings be publicly announced at least several weeks before such meetings. You previously agreed to this when you met with us.

We insist that CCNS/NPS staff will present to the Subcommittee for their consideration all the possible varieties of leases, stipulations, special use permits, and any other agreements in place in every NPS unit that might be of benefit to the traditional dune shack dwellers. We note here that it was this Board of Selectmen and not the CCNS/NPS hierarchy that made public the existence of National Register Bulletin 38 in 2003 at a time when CCNS was keeping secret from the Subcommittee such information that had a direct bearing on the traditional dune shack dwellers. We do not expect this kind of negligent work ethic to continue.

Furthermore, we must insist that CCNS/NPS extend all dune shack leases, stipulations, special use permits, and any other similar arrangements whether they are finite in time or based on a life estate until a final dune shack management plan is in place. If CCNS/NPS cannot agree to this simple request to maintain the cultural status quo, then it will become even more difficult for the public to have the faith and confidence in the Subcommittee process that CCNS/NPS claims to want.

The CCNS/NPS actions to date regarding the dune shacks and their traditionally associated peoples have not earned our trust. We challenge you and the staff at CCNS/NPS to act henceforth in a manner that does so.

We invite you to meet with us if you would like to discuss this matter further.

Thank you.

Sincerely,

Mary Jo Avellar
Chairperson

251

cc: -Board of Selectmen
Town Manager Sharon Lynn
Ronald Kaufman, Chairman, CCNS Advisory Commission
Senator Edward M. Kennedy
Representative William Delahunt
Paul Loether, National Register, NPS
Janet Matthews, Keeper of the National Register
Brona Simon, Deputy State Historic Preservation Officer, Commonwealth of Massachusetts
Chuck Smythe
Robert J. Wolfe
T.J. Ferguson
Truro Board of Selectmen
Kelly Fanizzo, Advisory Council on Historic Preservation
Representative Raul Grijalva, Chairman, House Subcommittee on National Parks
Representative Rob Bishop, Ranking Member, House Subcommittee on National Parks
Senator Daniel K. Akaka, Senate Subcommittee on National Parks
Republican on the Committee, Senate Subcommittee on National Parks c/o Tom Lillie
Senator John F. Kerry
Representative Sarah Peake
Dirk Kempthorne, Secretary of the Department of the Interior
Chrysandra Walter, Acting Regional Director, Northeast Region, National Park Service
John Thomas
Kerry Adams
Gail Cohen

12/27



United States Department of the Interior

NATIONAL PARK SERVICE

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

IN REPLY REFER TO:

H30

August 4, 2011

Board of Selectmen
Town Hall, 260 Commercial Street
Provincetown, MA 02657
Attn: Elaine Anderson, Chairperson

Dear Ms. Anderson:

Thank you for your letter dated June 13, 2011 containing comments about Cape Cod National Seashore's Dune Shack Historic District Preservation and Use Plan/Environmental Assessment/Assessment of Effect.

This letter responds to your comments, notes, and questions, in order of appearance in your letter.

1. *Concern: Control of these resources should be on the local level.* We understand your desire to ensure decisions are made at the local level for the leasing program. The plan outlines criteria for leasing with elements that attempt to ensure the understanding and protection of the dune shacks and the historic district by future occupants. Under the current National Park Service (NPS) leasing program, final leasing decisions are made at the regional level (Philadelphia). Seashore management staff will keep vigilant for changes in program requirements which might provide an opportunity for more local management input.
2. *Concern: The Board believes that the Plan has significantly diluted the contents of the report.* Although some language was changed to meet the National Environmental Policy Act (NEPA) framework, we believe the retention of such words as "values" and "traditions," as well as the selection criteria for allocating use found on pages 23-24 of the plan retain the essence of the report's intent.
3. *Concern: Deletion of the term "ethnographic values" dilutes the concept.* We believe that "unique and long-term relationships" retains the essence of the report's intent.
4. *Concern: The plan excludes National Register Bulletin 38.* Since the historic district is not a Traditional Cultural Property (2007 decision, Keeper of the National Register), National Register Bulletin 38 was not a relevant document in the preparation of this plan. Robert W. Wolfe's *Dwelling in the Dunes* and the *Traditional Cultural Property Assessment* are relevant because they document traditions and values that are described in the plan as important to maintain.

5. *Concern: Ethnographic resources was dismissed as an impact topic.* In 2007 the historic district was determined by the Keeper of the National Register to not meet the criteria for additional significance as a Traditional Cultural Property. Even so, dune dweller traditions have been described in detail and have been taken into account in the plan with regards to selection criteria for use. An impacts analysis would not substantively change plan alternatives. The existence of resources does not compel impacts analysis. For example, even though the Federally-threatened piping plover is found within the district, endangered species was dismissed as an impact topic because the plan alternatives are not likely to adversely affect the bird. Similarly, wetlands was also dismissed from analysis because none of the actions proposed in the document would result in impacts to dune slack wetlands found in the historic district.
6. *Concern: Why is there no mention of the dune shack traditions described in the report, pp. 19-21?* The plan appendix contains the entire report, including this chapter.
7. *Concern: The subcommittee wanted to continue meeting to resolve several important issues.* The subcommittee indicated that all of the substantive issues had been addressed by the end of the scheduled period for meetings and submittal of a final report to the full Advisory Commission. One or two members expressed a desire to extend the subcommittee's work in order to revisit issues raised earlier in the process, but the vast majority of the subcommittee felt it was unnecessary to do so. At the start of the process, the subcommittee was informed of the timeframe for completing its work. There were 11 full-group meetings and several working group meetings, even though the NPS contract with the Consensus Building Institute (CBI) outlined fewer meetings. Additional meetings were scheduled by the parties in response to the needs of the process. At the end of the scheduled period, significant work had been done and the contract with CBI was near its end. The process was extended slightly to permit the subcommittee to present the report to the full Advisory Commission in May in order to have a vote by the Commission in July. A special Commission meeting was held for this purpose.
8. *Concern: The NPS delayed publication of the EA:* The schedule was affected by the delay of the Advisory Commission vote until July, 2010. At that time, the NPS began working with the contractor to write the plan. Because of the delayed vote and the time required to write the plan, under the revised schedule the public comment period would have occurred in late December. The NPS did not believe this timeframe would work with the public and consulting parties, and determined that May was a better time to release the plan for comment. The plan was written between late summer 2010 and March 2011.
9. *Concern: Insufficiency of legal limitations, legislations, policies, regulation.* The NPS must work within the agency's legal framework. There currently are limits to all management instruments, including agreements and leases. No management instruments allow private use of public lands in perpetuity.

10. *Concern: Current lengths of terms may be insufficient.* 36CFR, Part 18 specifies that leases shall be for as short a term as possible. During subcommittee meetings I stated many times that I believe 20 years is a sufficient lease term for dune shacks, and I will advocate with the Washington Office of the NPS for 20-year leases. Additionally, we are aware that 20-year leases for small properties that don't require extensive improvements will fall outside of typical lease terms. The most recent park property that was leased (2009) required \$150,000.00 in improvements by the lessee. That property has a 20-year lease and annual rent of over \$7,000, and the lessee completed improvements valued at \$150,000. during the first year of the lease. Our argument for 20-year leases for some dune shacks will be based on the importance of maintaining historic district traditions.
11. *Concern: There should be a technical advisor to participate in lease awards.* As we begin to implement the plan I will continue to advocate for park staff involvement in the development of requests for proposal and the awarding of leases.
12. *Concern: How will representatives be appointed to participate with the panel during the RFP process?* As we begin to implement the plan I will advocate for the park Historian and Chief of Interpretation and Cultural Resources Management to serve on panels that review lease proposals.
13. *Concern: Leasing criteria developed by the subcommittee and Advisory Commission are diluted.* In addition to the standard leasing criteria found in 36CFR, Part 18, the criteria developed by the subcommittee and stated in the plan are quite specific, including "experience or history of involvement with the historic district, which may include association with the traditions and living history of the shack," and "association with the values and traditions that contribute to the shack's history and the cultural significance of the historic district."

I hope I have been responsive to your concerns. We look forward to implementing this plan to provide for the long-term preservation of the historic district's traditions, buildings, landscapes, and natural environment, while accommodating appropriate public use.

Sincerely,



George E. Price, Jr.
Superintendent

cc:

Cape Cod National Seashore Advisory Commission
Town of Truro
U.S. Senator John Kerry
U.S. Senator Scott Brown
U.S. Representative William Keating
State Senator Dan Wolf
State Representative Sarah Peake
Brona Simon, Executive Director, Massachusetts Historical Commission