

Minutes
Herring River Executive Council (HREC)
Thursday, March 9, 2017
Truro Community Center
7 Standish Way
Truro, MA
1:00 – 3:00pm

Members Present: Helen Miranda Wilson, Dennis Murphy, Paul Wisotzky, Robert Weinstein, Dan Hoort, Rae Ann Palmer, George Price

Others Present: Margo Fenn, Tim Smith, Don Palladino, Peter Herridge, Kathy Tevyaw, Martha Craig, Christine Odiaga, Carole Ridley, Kelly Clark, Beth Chapman, Tom Flynn, Ron Gabel, Susan Baumgarten, Michael Burbank

Welcome and Introductions: Members of the HREC and other meeting participants introduced themselves.

Public Comments: Carole Ridley announced two upcoming meetings related to the Restoration Project. On March 23, 2017, Friends of Herring River (FHR) and the Wellfleet Shellfish Advisory Board (SAB) will co-sponsor a forum at the Wellfleet Council on Aging from 7:00 to 9:00 pm to present the science behind the Herring River Restoration Project's benefits for shellfish resources. On April 12, 2017 at 6:00 pm, there will be a public information meeting about the Restoration Project in the Selectmen's Meeting Room in Truro Town Hall.

Approval of Minutes: The HREC unanimously approved the minutes of the January 9, 2017 meeting.

Meeting Logistics and Coordination: The HREC members reviewed a preliminary draft set of policies to guide the HREC's operations. Members stressed their desire for openness and transparency in their procedures, and there were a number of suggestions for additions and clarifications to the draft policies. The document with the highlighted suggested changes is attached as Appendix A to these minutes.

The group discussed the process for posting agendas and meeting materials. Margo Fenn agreed to send the agenda and meeting materials to the town administrators'/managers' offices at least 48 business hours prior to the meetings, so that the full package of meeting materials can be posted on the town websites. Meeting materials will also be posted on the FHR website.

There will be a designated time for public comment during each HREC meeting. Paul Wisotzky suggested that the following language be included on each HREC agenda: *"Any discussion of an issue not on the agenda that is raised in the public comment section shall be limited to whether that issue should be placed on a future agenda."* Helen Miranda Wilson noted that members of the public are welcome to talk to individual

HREC members at any time, but deliberations among HREC members can only take place during a posted meeting.

Update on Restoration Project: Don Palladino reported to the HREC that FHR and the HRRC are working to prepare permit applications, and hope to have the package of submissions ready to file later this year. The Towns of Wellfleet and Truro will be the applicants for the state, regional and local permits. The Towns and Cape Cod National Seashore will be applicants for the federal permits.

Vegetation Management Update: Herring River Restoration Committee (HRRC) members Tim Smith and Eric Derleth provided the HREC with a presentation on the HRRC's proposed approach to vegetation management. The overall goals of vegetation management are to:

- Remove woody trees and shrubs that would impede the recovery of native salt and brackish marsh plants;
- Avoid expansion of non-native common reed (*Phragmites*) throughout the floodplain;
- Encourage re-vegetation of native estuarine plants.

Tim Smith presented maps showing the existing vegetation types throughout the estuary. The plan is to remove the woody plants and shrubs prior to inundation with tidal flow, and to carefully monitor invasives, like common reed (*Phragmites*) to prevent them from spreading upstream. This work will likely be phased, as incremental tide gate openings begin.

There are a number of different ways that woody vegetation could be removed, including cutting trees by hand or heavy equipment, mowing, hand-cutting or pulling shrubs, and burning, chipping and/or removal of firewood or biofuel. The appropriate methods for removal in specific locations will be evaluated based on relative impacts and costs, as part of the Project's Adaptive Management Plan. The National Park Service (NPS) Fire Management Program will likely oversee this work, since most of the area to be managed is NPS land. Work on private land in the floodplain would happen only if landowners consent to it.

Tim Smith and Eric Derleth explained the proposed approach to managing *Phragmites*, noting that there are only limited stands of *Phragmites* in the estuary now, mostly located in the Lower Herring River basin. These stands in the lower basin will likely be killed by saline waters when the tidal restoration begins, but *Phragmites* could colonize upstream in more brackish waters. The Project will develop a robust monitoring program to identify areas vulnerable to *Phragmites* invasion, and track changes in soil and water salinity and vegetation change in these areas. If conditions warrant active management—such as when *Phragmites* is impeding re-vegetation of salt marsh grasses, or the flow of salt water, or fish passage—then management actions would be taken.

There may be other areas where *Phragmites* could be tolerated—and could provide interim benefits, such as helping with sediment deposition, or maintaining nesting areas for rare

birds. Decisions about management in these areas would be coordinated with the MA Department of Fish and Game and the Natural Heritage and Endangered Species Program.

Eric Derleth presented the following written statement and recommendation on behalf of the Herring River Restoration Committee:

HRRC Vegetation Management Recommendation
3-8-17

Phragmites management is an important element of the Herring River Restoration Project (Project) because the plant is an aggressive, non-native invasive species that can rapidly displace salt marsh and other native vegetation. Re-establishing native estuarine plant communities is a primary Project objective. These native communities provide critical food and habitat for estuarine birds, animals, fish, shellfish and other wildlife. Numerous scientific studies have identified significant impairments associated with Phragmites invasion in estuarine settings, including declines in habitat quality and diversity for plants, fish and wildlife, and disruptions to biogeochemical cycles.

Tidal restoration and saltwater inundation are expected to eliminate the majority of existing stands of Phragmites in the Project area, which are located in the lower and middle basins of the Herring River system.

Phragmites has the potential to expand or colonize in upstream areas of the Project where salinity levels will be high enough to stress freshwater wetland vegetation, but too low to stop Phragmites growth, which can tolerate salinity up to approximately 20 parts per thousand.

Methods of Phragmites control that do not include the use of herbicides, such as cutting, burning, and flooding, can be used during implementation of the Project to reduce and prevent the spread of Phragmites. The efficacy of these methods will be evaluated as part of the Project's monitoring program.

The HRRC acknowledges the significant community concerns and questions about herbicide treatment of Phragmites in Herring River and that Town Meetings in Wellfleet and Truro will consider articles directing the Selectmen not to sign any permit applications for the Project that include potential herbicide use.

Therefore:

The Herring River Restoration Committee (HRRC) recommends to the Herring River Executive Council (HREC) that the permit applications seeking authorization to implement the Project not include the use of any herbicides in the Herring River Restoration Project area. These permit applications will specify other non-chemical methods of Phragmites control.

The HRRC requests that the HREC make a determination on this matter, so that the HRRC may move forward in preparing permit applications.

Helen Miranda Wilson stated that she was happy to get this recommendation from the HRRC, and noted that much research and thought had gone into it. Other HREC members concurred. Paul Wisotzky suggested that Margo Fenn poll the HREC members for their views on this matter. All members of the HREC spoke in support of the recommendation of the HRRC and therefore directed that HRRC and FHR prepare the permit applications with this proposed condition. George Price noted that while the National Park Service sometimes uses herbicides to control invasive species in other parts of Cape Cod National Seashore, this is done under the strict supervision of the NPS's Integrated Pest Management (IPM) program. He supports the HRRC recommendation as it applies to the Herring River Project.

Ron Gabel asked if the public would have an opportunity to comment on the vegetation management plan. Margo Fenn said yes, but the process for doing that has not yet been determined.

Establishment of a Stakeholders Group: The HREC members discussed a draft proposal to establish a stakeholders group, which was distributed prior to the meeting (attached as Appendix B to these minutes). Robert Weinstein noted that the July 15, 2016 Certificate of the MA Secretary of Environmental Affairs stipulated that there will be a stakeholders group formed to represent community interests and concerns during Restoration Project implementation. This group would represent the broad interests of the community including, but not limited to, potentially affected landowners and business owners, recreational users of the Herring River flood plain, shellfishermen, and conservation and environmental advocates.

HREC members discussed the potential make-up and functions of such a group. Dennis Murphy suggested that the Wellfleet Harbormaster be included, and George Price suggested that there be a member appointed from the Cape Cod National Seashore Advisory Commission. Susan Baumgarten suggested that the group include some members "at large", perhaps on a rotating basis. Dennis Murphy suggested that members have specific terms of service, in order to insure adequate time to get educated about the Project.

Paul Wisotzky suggested that the HREC outline a more specific charge for the stakeholders group, and develop a process for interested persons to apply. He asked who would staff such a group. Helen Miranda Wilson noted that many volunteer committees in town post their own meetings and take their own minutes, and suggested that this group could do so, as well. Dan Hoort said that it would be important that members of the stakeholders group provide a two-way flow of communication between stakeholder groups they represent and the Project managers.

HREC members agreed that the stakeholders group should operate under the MA Open

Meeting law, posting agendas and minutes. George Price noted that it might be important for the group to have recorded votes, and allow for both majority and minority reports, if the group does not all agree on an issue. The HREC agreed that a subcommittee should refine the proposal and process for creating the stakeholder group, and bring it back to the HREC at its next meeting. Margo Fenn will work with Rae Ann Palmer and Dan Hoort to follow up on this.

Wrap-up and Next Steps: The HREC agreed to meet again on June 7, 2017 from 5:00 to 7:00 pm, location to be determined.

Margo Fenn will prepare draft minutes of the HREC meeting. Members asked that copies of the minutes be distributed to all members of the Wellfleet and Truro Boards of Selectmen.

George Price noted that this would be his last HREC meeting, as he is retiring from the National Park Service. He expressed his strong support for the Restoration Project, calling it one the most important legacy projects in his NPS experience. Other HREC members thanked him for his many years of service and support, and wished him well in his retirement.

The meeting was adjourned at 3:15 pm.

Appendix A
Revised Preliminary Draft Policies for Herring River Executive Council (HREC)
Business
3/142-27-17

Formatted: Left

The following principles shall guide the Council's operations:

1. THE HREC shall operate by consensus decision-making (agreement among the two towns and CCNS).
2. The HREC shall operate in compliance with the MA Open Meeting law (MGL Chapter 30A) and the MA Conflict of Interest law (MGL Chapter 268A).
3. The HREC shall seek recommendations from the Herring River Restoration Committee (HREC) and its technical consultants regarding scientific and engineering evaluations and operational decisions.
- 3.4. The HREC may consult other individuals or organizations, as needed, such as stakeholder groups and/or science advisors.
- 4.5. The HREC shall act collectively; members shall possess no individual authority to set goals, priorities or positions on behalf of HREC.
- 5.6. Any HREC member may request that an item be placed on the agenda for an upcoming meeting.
- 6.7. HREC members shall declare any conflicts of interest between their personal or professional interests and their position on the HREC, and avoid participating in issues that could be a conflict of interest.
- 7.8. HREC members shall respectfully listen to and interact respectfully with ~~to~~ other Council members and members of the public.

Formatted: Font: Cambria

Meeting Logistics:

1. The HREC will meet quarterly or as needed. All meetings will be posted in compliance with the MA Open Meeting Law.
2. Meeting agendas and materials will be made available to HREC members by email and shall be posted in the town halls and on the town websites at least 48 hours (excluding weekends and holidays) prior to the meetings.
3. Friends of Herring River (FHR) will also provide space on its website to post HREC agendas, minutes and meeting materials.
4. Contingent on available funding, FHR will provide a facilitator for HREC meetings and establish an email address for HREC administration.
5. The meeting facilitator will develop draft agendas for the HREC review prior to posting the official agendas.
6. Meeting agendas will include a specified time for public comment. Any discussion of an issue not on the agenda that is raised in the public comment section shall be limited to whether that issue should be placed on a future agenda.
7. Draft meeting minutes will be prepared and circulated to the HREC prior to its next scheduled meeting.

8. A quorum of the HREC is required to conduct business. A quorum is defined as the presence of at least one representative of each of the Project partners (Town of Truro, Town of Wellfleet and Cape Cod National Seashore) plus at least one other member, for a total of four.

~~8.9.~~ In the event that there is dissent among the representatives of one of the towns, they shall determine among themselves the town's position. The Wellfleet representatives will vote to determine the Town's position.

DRAFT

Appendix B

I. Proposed Concept for Stakeholder Group

A. Background

The Herring River Restoration Project FEIR Certificate contemplates that a stakeholder group would be established by the Herring River Executive Council (HREC) to represent community interests and concerns during implementation of the Project. This group would represent the broad interests of the community including, but not limited to, potentially affected landowners and business owners, recreational users of the Herring River flood plain, shellfishermen, and conservation and environmental advocates.

MOU III ratifies the restoration plan set forth in the FEIR, enables activities necessary to implement the agreed-upon plan, and sets forth roles and responsibilities of an intergovernmental team and supporting independent organization to carry out implementation activities.

MOU III establishes the HREC to coordinate implementation activities, provide policy direction, review and approve the adaptive management plan and ensure compliance with applicable laws. In fulfilling its responsibilities, according to MOU III, the HREC may consult with individuals and organizations such as a stakeholder group and/or science advisors.

B. Designation

In consideration of the foregoing, and to ensure that the HREC has the benefit of input from diverse interests within the community, a Herring River Stakeholder Group (HRSG) is proposed. As required under the FEIR Certificate, the HRSG should represent community interests and concerns during project implementation.

C. Duties and Responsibilities

The HRSG would be advisory to the HREC. They would be charged with communicating community input to the HREC on key implementation issues, such as:

- vegetation management
- traffic management
- recreational access
- environmental monitoring
- adaptive management

D. Membership

The HREC would appoint the members of the HRSG, and designate one member to serve as chair. Membership could be constituted as follows:

- Shellfishing(3)
 - Wellfleet SAB
 - Truro Shellfish Advisory Committee

- Wellfleet and/or Truro Shellfish Constables
- Conservation/Environmental Advocates (4)
 - Wellfleet Open Space Committee
 - Wellfleet Natural Resources Advisory Board
 - Truro Open Space Committee
 - APCC
- Business (2)
 - Wellfleet Chamber
 - Truro Chamber
- Recreational Users (1)
- Chequessett Yacht and Country Club (1)
- Residential Flood Plain Property Owners (3)
 - Wellfleet
 - Truro
- Cape Cod Mosquito Control (1)
- Ex-Officio representative of the HRRC to facilitate communications between the groups

E. Term and Vacancies

Appointments to the HRSG would be for two years. Any vacancy would be filled in the same manner in which the original appointment was made.

F. Administration

The HRSG would meet quarterly or as needed.

A majority of members appointed at the time of any meeting would constitute a quorum.

Members should represent the concerns and views of their constituent organizations, rather than personal views.

The HRSG may report its input to the HRRC and the HREC orally and/or in writing.

Background Information for Formation of a HR Stakeholder Group:

MOU I: The 2005 Herring River Memorandum of Understanding (MOU I) set up a stakeholders group as follows:

“The stakeholder group will be composed of individuals selected by the Town and shall include the Park Service Superintendent or designee. Potential participants could also include representatives of the Congressional District, the Wellfleet Town representative to the CCNS Advisory Commission, private landowners potentially affected by a restoration, Chequessett Neck Yacht and Country Club representatives, members of the shellfishing/fishing community, Cape Cod Mosquito Control, Division of Marine Fisheries, Natural Resources Conservation Service, National Oceanic and Atmospheric Administration

Restoration Center, members of the Wellfleet Forum and other interested parties. The stakeholder group will:

- a. Ensure that the technical committee understands the stakeholders direct interests and concerns and considers these perspectives in their recommendation process.
- b. Communicate with diverse interests within the Town to ensure public and private concerns are well represented and considered by the technical committee in their review process and in the development of their recommendations to the Town.
- c. Provide a forum by which the technical committee's findings can be communicated to the larger community.

Should some level of restoration be deemed appropriate and with the Board of Selectmen's concurrence, the stakeholder group shall continue to be responsible for providing community input into a draft restoration plan."

July 2016 Certificate of the Secretary of Environmental Affairs on the Final Environmental Impact Report (FEIR) for the Herring River Restoration Project: The MEPA Certificate includes the following statement about the formation of a stakeholder group:

"When MOU III is formally executed, a new stakeholder group will be established by the HREC to represent community interests and concerns during project implementation. This group will work with the HRRC, HREC and ROG. It should represent the broad interests of the community including, but not limited to, potentially affected landowners and business owners, recreational users of the Herring River flood plain, shellfishermen, and conservation and environmental advocates. Additional opportunities for public input and comment will be provided during permitting processes including the CCC Development of Regional Impact (DRI) review process. The CCC comment requests additional project information be provided for the DRI review, including the potential impact on the Town of Wellfleet landfill, project budgeting and funding, private property impacts and proposed flood proofing measures."

Further Guidance from MEPA Analyst, Holly Johnson (1-31-17 email):

"The MEPA Certificate directs the Herring River Executive Council (HREC) to establish a forum for stakeholder input during Project implementation. MOU III provides for consultation with stakeholder groups, as needed. The language in the MOU enables the HREC, as an entity, to engage with various groups, including a stakeholder group. This provision of the MEPA Certificate was predicated on subsequent HREC formation of a stakeholder group to provide continued public input subsequent to MEPA review and appropriate given the given the scope and scale of the project and its implementation through adaptive management.

I understand that the HREC has been appointed and is beginning its work. The HREC will determine a process for how interest groups – including, but not limited to, potentially affected landowners and business owners, recreational users, shell-fishermen, and

conservation and environmental advocates - can communicate their concerns to the Herring River Restoration Committee (HRRC), the Regulatory Oversight Group and the HREC. I would encourage the HREC to develop a process for stakeholder input early on in your deliberations to support public engagement and participation.”