

**Draft Minutes**  
**Herring River Executive Council (HREC)**  
**Wednesday, June 7, 2017**  
**Truro Community Center**  
**7 Standish Way**  
**Truro, MA**

**Members Present:** Helen Miranda Wilson, Dennis Murphy, Paul Wisotzky, Robert Weinstein, Dan Hoort, Rae Ann Palmer, Kathy Tevyaw

**Others Present:** Margo Fenn, Tim Smith, Don Palladino, Nita Tallent, Martha Craig, Christine Odiaga, Carole Ridley, Kelly Clark, Beth Chapman, Alana McGovern, Susan Baumgarten, Martin Nieski, Patricia Barry, Steve Spear, Laura Runkel, Steve Oliver, Karen Larocque, John Marshall, Alexander Marshall, Ann Marshall, Harriet Hobbes, Abbe Seldin, John O'Hara, Barbara Boone, Paul Faxon

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

**Approval of Minutes:** The minutes of the March 9, 2017 HREC meeting were approved by consensus.

**Operating Policies:** Margo Fenn provided the HREC with a revised version of the operating policies that the group reviewed in March. The group agreed that the changes captured the suggestions from the March meeting and by consensus, the HREC approved the operating policies.

**Update on the Restoration Project:**

**Memorandum of Understanding between the Herring River Restoration Committee (HRRC) and the Chequessett Yacht and Country Club (CYCC):** Margo Fenn provided the HREC with a brief overview of the non-binding MOU that has been developed between the HRRC and CYCC. She noted that this MOU was the culmination of many years of talks between CYCC representatives and the HRRC. The MOU is a statement of intent of both parties to allow for restoration of the Herring River ecosystem, including Mill Creek, while providing flood protection that reconstructs portions of CYCC's golf course. The MOU includes the following elements:

- HRRC and CYCC have agreed upon a design plan for raising and renovating portions of the golf course. Under this plan, the Project would raise the lower fairways of the golf course above planned tidal water elevations, install new irrigation, upgrade tees and greens throughout the course, and develop a new practice area in an upland area of the CYCC property. The upland area would also serve as a source of fill material (sand and gravel) to elevate the low portions of the course.

- HRRC has agreed to seek up to the estimated cost of the golf course reconstruction work, presently estimated as \$5 million, as part of the overall funding request for the Project. The funds would cover \$3.3 million in flood prevention construction costs, as well as an estimated \$1.7 million in CYCC operating losses resulting from golf course closure during construction. HRRC and CYCC recognize the costs will need to be updated prior to specific funding requests.
- CYCC has agreed to provide on-site fill material to reduce flood mitigation costs.
- HRRC has agreed to seek permits and funding for the golf course work as part of the first phase of the Project.
- CYCC has agreed to provide additional in-kind public benefits estimated at \$1.1 million to offset costs of proposed work on areas of the golf course that would not be directly impacted by tidal flooding but must be upgraded to be compatible with the newly-elevated golf holes. This contribution could be met in a number of ways, such as providing fill needed for off-site Project construction activities, and providing oversight and management of the golf course construction work. CYCC has also agreed to commit to a restriction to ensure that the filled portions of the golf course remain as open space for active recreational use in perpetuity.

The MOU is non-binding in that it is not legally enforceable and not a contract. However, it lays out a mutually agreed framework for moving forward. A number of the concepts and commitments would become binding via various permits and contracts in the future.

Bob Weinstein read an excerpt from MOU III between the Towns of Truro and Wellfleet and Cape Cod National Seashore, which outlines the responsibilities of the Herring River Executive Council, as follows: “The Towns and Cape Cod National Seashore shall form a Herring River Executive Council (HREC) to: coordinate project implementation activities; serve as a forum for establishing and providing policy direction; review and approve the Adaptive Management Plan; monitor progress; and ensure compliance with laws, policies and regulations of member towns and the CCNS, project permits and agreements and other applicable legal regulations.” He noted that there are many important legal and economic questions about the Restoration Project that the HREC needs to address and that he wants to hear from all people about their concerns. He said that a HREC representative should participate in all Project activities.

Helen Miranda Wilson reported that she attends most of the HRRC meetings. She noted that MOU III requires that policy decisions be made by the HREC, only after receiving a recommendation from the HRRC. Margo Fenn noted that any binding agreements with CYCC would have to be approved by the HREC. Dennis Murphy noted that the towns should be involved in any decisions involving liability issues. Bob Weinstein commented that administrative procedures and legal requirements need to be clarified as the Project moves forward. Rae Ann Palmer noted that many of these issues will be addressed in the permitting process.

**Status of Design and Permit Applications:** Martha Craig, Project Manager at Friends of Herring River (FHR) provided the HREC with a brief update on Project activities. She noted that permit-ready design plans for the proposed tide control infrastructure at Chequessett Neck Road, Mill Creek and Pole Dike Road are nearing completion. FHR is working with its environmental consultants to prepare the permit applications. The first permit application submitted will be to the Cape Cod Commission for a Project of Community Benefit Hardship Exemption. That application will be submitted this summer with other applications to the MA Department of Environmental Protection expected sometime in the fall. Once the Cape Cod Commission review process is completed, Notices of Intent with the Wellfleet and Truro Conservation Commissions will follow. That will likely happen sometime in 2018.

**Discussion of Joint Legal Representation between Wellfleet and Truro:** The HREC discussed the idea of the towns sharing legal counsel for purposes of permitting and implementation of the Herring River Restoration Project. Both Towns use KP Law for town counsel and there could be benefits and efficiencies in sharing legal counsel for the Project. Truro representatives were supportive of this idea, noting that they had done it in other instances where there were common interests between the town and its neighboring towns.

Helen Miranda Wilson pointed out that there may be some legal issues that only affect Wellfleet and suggested that Truro should not have to pay for legal counsel on these matters. Rae Ann Palmer noted that KP Law could do individual billing to address that concern. Dennis Murphy commented that he wanted to make sure that the towns get the best possible representation, especially relating to liability questions. Bob Weinstein advocated for joint legal counsel by KP Law, noting that all parties want a successful project and prompt attention to legal issues will curtail liability concerns.

The Wellfleet Board of Selectmen will review this matter at its June 13, 2017 meeting. Truro representatives suggested that if consent to joint representation is approved by the Wellfleet Board of Selectmen, then Truro could bring the consent question to its Board on June 27, 2017.

**Establishment of a Stakeholders Group:** The HREC reviewed and discussed a revised proposal to establish a Herring River Stakeholders Group (HRSG), which was distributed to the HREC members prior to the meeting. The group discussed again the proposed make-up of the HRSG and agreed upon a few changes, including:

- Adding the Wellfleet Harbormaster
- Making the business representatives more general (not only Chamber of Commerce representatives)

This would make the HRSG a group of 19 members, with a quorum of 10.

Paul Wisotzky suggested some edits to the Stakeholder Group proposal to clarify

that the FEIR Certificate “requires” that a stakeholder group be established, and to add “general community concerns” to the list of key implementation issues upon which the HRSG will advise. He also suggested some language to be added to the Stakeholder Group charge as follows:

*“The HRSG acts as a whole and its positions are articulated through a vote of its membership.*

*No individual member of the HRSG carries any individual authority unless designated to do so through a vote of the membership.*

*The HRSG is advisory in nature. While the HREC will make every effort to account for the input of the HRSG, it is under no obligation to follow the advice or recommendations of the group.”*

Other HREC members concurred with these proposed changes and additions.

The HREC then opened the floor to comments from the public on the Stakeholder Group proposal. John O’Hara said that he thought the HRSG should have more power, not just be an advisory group to the HREC. Paul Faxon suggested that the HREC consider creating an abutters’ group to represent the interest of private landowners. Barbara Boone asked how the HRSG would interact with the HREC. She suggested that it would be good to create two-way communication between the groups. Susan Baumgarten said that there was a stakeholder group created in 2006. That group generated a list of questions about the Restoration Project, which she felt had not yet been answered. Laura Runkel asked when the HRSG would be appointed.

The HREC discussed the process for seeking candidates for the HRSG and agreed that the town administrator and town manager would gather nominations and submit a slate of proposed HRSG members to the full HREC at its next meeting.

**Other Public Comment:** Martin Nieski expressed concern about what effect the Restoration Project would have on his house and property in Mill Creek. He noted that the HRRC and FHR had worked with him to develop a flood berm design for his property but that plan was not acceptable to him. Susan Baumgarten asked questions about property owner notification/permission prior to permitting. Abbe Seldin asked why there is no money set aside to address unexpected impacts on private properties. Steve Oliver asked if pesticides or insecticides would be used as part of the Project. Harriet Hobbes asked why the HRRC didn’t send certified letters to all the abutters of the estuary.

The HREC members responded briefly to some of the public comments. Bob Weinstein reiterated his concerns about unanswered legal questions. Dennis Murphy noted that he is an abutter to the estuary and has had some of the same concerns, but is reassured by the proposed approach to implementing the project, which will be cautious, incremental, with careful monitoring. Helen Miranda Wilson

noted that there are liability risks with the existing dike, given its age and condition. Kathy Tevyaw noted that the permitting process for the Project is the forum for exploring and resolving many of these issues.

HREC members reminded the meeting participants that, in compliance with the Open Meeting law, issues that are not listed in the agenda, but are raised in the public comment section cannot be substantively discussed until they are placed on a future agenda. Susan Baumgarten asked how to request that an item be included in a future agenda. Margo Fenn noted that FHR has set up the following email address where the public can communicate with the HREC: [ContactHREC@gmail.com](mailto:ContactHREC@gmail.com)

**Wrap-up and Next Steps:** The HREC agreed to meet again on Monday, July 24, 2017 from 4:00-6:00 pm at a location to be determined. The meeting adjourned at 7:10 pm.

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