

**Minutes**  
**Herring River Executive Council (HREC)**  
**Monday, September 25, 2017**  
**Wellfleet Council on Aging**  
**Wellfleet, MA**

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

**Others Present:** Margo Fenn, Tim Smith, Don Palladino, Martha Craig, Christine Odiaga, Carole Ridley, Susan Baumgarten, Steve Spear, Steve Oliver, Karen Larocque, John O'Hara, Laurie Warner, Bill Biewenga, Alice Iacuessa, Sylvia Smith, Gail Ferguson, Barbara Brennessel, Shawn Mulligan, Teresa Parker, Dave Koonce, John Cumbler, Bob Prescott, Katie Lavallee

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

**Review of Requested Agenda Items:** Margo Fenn reported that there had been two requests by email for possible HREC agenda items including the following items:

- Private landowner/abutter property rights
- Permitting strategy-i.e. Project sequencing/phasing and permitting
- Project financing and budgeting
- Status of the Stakeholder Group

Fenn noted that the Project permitting/phasing and the appointment of the Stakeholder Group were on the agenda for today's meeting. She asked how the HREC would like to handle the other matters. Helen Miranda Wilson requested that HREC members be notified of any agenda item requests in advance of future meetings. Other members concurred and suggested that private landowner property rights and Project financing and budget be addressed at a future meeting of the HREC. Bob Weinstein and Janet Reinhart noted that KP Law might need to weigh in on the questions regarding landowner property rights.

**Approval of Minutes:** The minutes of the June 7, 2017 HREC meeting were approved by consensus.

**Presentation on Restoration Project Phasing:** Tim Smith provided the HREC with a presentation on Project phasing. He briefly reviewed the background on how the Chequessett Neck Road dike has constricted tidal range in the river, and the ongoing effects of tidal restriction including:

- closed shellfishing areas due to high levels of fecal coliform
- degraded habitat for river herring
- poor water quality/low dissolved oxygen and acidification of the water
- loss of estuarine productivity

Recent data collected in 2017 confirm the degraded condition of the estuary, particularly in regard to water quality. The proposed approach to restoration is

controlled removal of tidal restrictions and incremental restoration of tidal flow to restore salinity, water quality and estuarine plant and animal communities. The preferred alternative presented in the Final Environmental Impact Statement/Report includes several different types of activities including:

- Reconstruction of tidally restrictive structures;
- Preventing impacts to low-lying roads and structures; and
- Marsh habitat management.

Tim Smith presented a map and described the elements of the Project's Phase 1 activities including:

- Rebuilding the Chequessett Neck Road dike and tide gates;
- Installing a new dike with tide gates at Mill Creek;
- Implementing a flood prevention plan for the CYCC golf course and four other private properties;
- Removing the High Toss Rd. culvert and restoring the natural channel;
- Removing a section of High Toss Rd. crossing the floodplain;
- Elevating and regrading low portions of High Toss Rd.;
- Elevating and regrading low sections of Pole Dike Rd. and installing a tide gate;
- Elevating and regrading Bound Brook and Old County Rds. with enlarged culverts; and
- Vegetation management and channel/marsh improvements.

A phased approach to the Project is warranted because it is a highly conservative and risk-adverse approach, consistent with the FEIS/EIR. Phasing would allow construction of the major project infrastructure and allow tidal restoration to a large part (approximately 64%) of the full Project area while minimizing effects on private land. The vast majority of the land affected (95%) in Phase 1 is owned by the National Park Service. The two basins where most of the private properties are located (Mill Creek and Upper Pole Dike Creek) will be protected with secondary tide control structures. Phasing requires a regulatory stopping point, limiting water elevations to stipulated levels until further permits are sought. This affords the opportunity to collect detailed data on real project outcomes and improve predictive models and projections to support permitting of subsequent phases.

During Phase 1, the Chequessett Neck Road tide gates would be opened incrementally to a specified maximum high tide level. The Mill Creek tide gates would be opened to provide a limited tide range in the Mill Creek sub-basin. The Mill Creek tide gates would be actively managed and closed during severe high tides. The Pole Dike Road tide gates would be set for drainage only; there would be no tidal restoration in Upper Pole Dike Creek. Comprehensive monitoring will be conducted in all sub-basins to track the system's response to restoration and detect any unforeseen effects before they cause adverse impacts.

Tim Smith reviewed the hydrologic extent of Phase 1 tidal restoration, showing proposed maximum monthly mean spring tide water levels and acres restored for

each of the sub-basins of the estuary. He noted that while maximum tide elevations in Lower Herring River could reach approximately 4.2 feet relative to average sea level (NAVD88) (restoring approximately 147 acres in that sub-basin), maximum water levels would be more limited in Mill Creek (approximately 2.5 feet NAVD, allowing restoration of approximately 21 acres in that sub-basin and avoiding any impact to privately owned structures). There would be no tidal flow (therefore no restoration and no impacts) in Upper Pole Creek during Phase 1. A total of at least 566 acres will be restored during Phase 1 with the proposed limits on maximum tidal levels. Recent hydrodynamic analysis incorporating severe combined coastal storm and rainfall events demonstrate that all water levels can be kept below the elevation of the lowest sensitive structures in Mill Creek and Upper Pole Dike Creek.

Of the approximately 566 acres proposed for Phase 1 restoration, 535 acres (95%) are owned by the National Park Service. There are 31 acres of private land affected, including:

- 10 acres owned by the Chequessett Yacht and Country Club (CYCC)
- 8.7 acres owned by the Wellfleet Conservation Trust
- 12.3 acres on private residential properties, all which is currently regulated wetlands, subject to the jurisdiction of the MA Wetlands Protection Act and town environmental bylaws.

The 12.3 acres of privately owned wetland includes portions of 17 residential lots that would be restored from non-tidal to tidal wetlands.

The 17 affected properties include five with structures requiring mitigation, including:

- The CYCC golf course (conceptual agreement with CYCC is in place)
- One land transfer being negotiated with the National Park Service
- One well relocation
- Elevation and regrading of three driveways and associated access roads
- One building needing a minor flood prevention barrier

The HRRC and Friends of Herring River are actively working with the owners of all these properties.

Beyond Phase 1, further public review and new permits/modifications to existing permits would be required in order to allow for further restoration. Planning and outreach to landowners with low properties will continue, and some additional low road mitigation may be needed. The long-term goal is to fully open the CNR bridge, increase tidal restoration in Mill Creek, and allow for some level of restoration in Upper Pole Dike Creek. However, in order to complete the full restoration goals of the FEIS/EIR, the Project must reach agreement with additional structurally affected property owners, and get approval for permit modifications or new permits.

Don Palladino provided the HREC with an overview of the Project's outreach efforts over the past ten years. The HRRC and FHR have held more than 50 public meetings with community stakeholders on the Project. They have had more than 100

meetings with individual property owners, and participated in 125 different technical meetings about various aspects of the Restoration Project.

There is an ongoing commitment to protect all private properties from structural impacts. The HRRC has sent written notifications to all the affected property owners, notifying them about the EIS/EIR process and the status of the Project. FHR has prepared survey plans for properties with low-lying structures, and has met one-on-one with property owners to discuss potential impacts and specific flood prevention solutions for their properties.

Project proponents have reached conceptual agreement with the Chequessett Yacht and Country Club on a plan to raise the lower fairways of the CYCC golf course. FHR has also prepared engineering plans to protect all structures that could be affected during Phase 1 of the Project, and is having ongoing discussions with property owners to refine and reach agreement on mitigation plans, which will be permitted and funded as part of the overall Project design.

The HREC members asked some questions about the presentation. Helen Miranda Wilson asked about how far salt water will penetrate into the estuary. Tim Smith noted that the headwaters of the system had always been freshwater and that a natural gradient of salt, brackish, and freshwater habitat would occur with restoration. But, with increased tidal flushing, water quality and other estuarine habitat functions would be improved throughout the project area.

Bob Weinstein asked if the Town of Wellfleet had done any engineering evaluations on the condition of the existing Chequessett Neck Road dike and alternative ways to remedy conditions, with costs. He asked if Wellfleet had planned for long-term maintenance costs. Helen Miranda Wilson responded that MA DOT had done a report on the existing dike in recent years, that showed that the existing tide gates are deteriorated and not functioning properly. She also noted that a benefit of the Project is that the Town will avoid the cost of repair or replacement. Dan Hoort noted that the Seashore would own the Mill Creek dike; and the Town of Wellfleet owns the current Chequessett Neck Road dike and would own the new bridge and tide gates, and long-term would be responsible for maintaining them. However, it is expected that during the active management phase of the Restoration Project, which could extend from five to twenty-five years after construction, the designated management entity for the Project would be responsible for operations and maintenance of the tide control infrastructure.

Paul Wisotzky asked what are the largest obstacles to beginning construction. Tim Smith noted that the permitting process will likely take 1-2 years to complete, and fundraising for construction will also be a challenge. Friends of Herring River is in the process of developing the fundraising strategy; that effort will begin while the permitting process continues. It is likely that construction would not begin until 2020.

Questions from the audience: Susan Baumgarten asked for the presentation slides to be included in the meeting minutes. She asked which property owners must sign the permit applications. Don Palladino responded that those property owners who need physical mitigation work on their land (e.g. moving a well, raising a driveway) will be asked to sign the Notices of Intent to the Town Conservation Commissions. Ms. Baumgarten also asked about how much water levels would change on individual properties. Tim Smith explained that the maximum water levels that he described in his presentation are water surface elevations in feet relative to mean sea level (NAVD88). These numbers do not indicate water depth on individual properties; they are average water surface level across each sub-basin, not the depth of water.

Susan Baumgarten read some personal notes from her phone conversation with a MA Department of Environmental Protection (DEP) official and questioned whether the Project would be permissible under the provisions of the MA Wetlands Protection Act and MGL Chapter 91.

**Appointments to Stakeholder Group:** On June 7th the HREC approved the structure of a Herring River Stakeholders Group (HRSG) to (1) communicate with stakeholder interests within the Towns to ensure public and private concerns are well represented and considered by the HREC in its decision making process during project implementation; and (2) provide advisory input to the HREC on key implementation issues such as vegetation management, traffic management, recreational access, environmental monitoring, adaptive management and general community concerns.

The approved HRSG structure called on the HREC to appoint members to nineteen categories representing the broad interests of the community, and to designate one member to serve as Chair. The charge also directed the Wellfleet Town Administrator and Truro Town Manager to gather nominations and submit a slate of proposed HRSG members and Chair to the full HREC for consideration.

#### Solicitation of Applications

Twelve of the nineteen positions on the HRSG are intended to represent specific town committees or organizations. The leadership of each respective committee or organization was contacted and requested to designate an individual to participate on the HRSG. In all cases the organization or committee complied with this request.

The remaining seven positions were not tied to a particular committee or organization. These include: Wellfleet businesses, Truro businesses, Upper Pole Dike Creek sub-basin, Mill Creek sub-basin, Upper Bound Brook sub-basin, recreational users, and an at-large member. To solicit applications for these positions, an application form was posted and publicized in a prominent position on the respective town websites. The forms were available on each town website for more than sixty days.

Multiple applications were received for four positions. In reviewing nominations, priority consideration was given to (1) whether or not the applicant was an abutter to the project and (2) the applicant's demonstrated ability to represent the interests of the group for which they applied.

#### Recommended Slate

Rae Ann Palmer explained the process for seeking candidates for the Herring River Stakeholder Group (HRSG) and presented the recommended slate of appointments. (see list attached as part of these minutes). Helen Miranda Wilson noted that she would like to see the candidates' applications and possibly interview them. Bob Weinstein initially concurred. Paul Wisotzky commented that the recommended slate is a strong, balanced group of individuals representing a broad range of interest, perspectives and experience. Kathy Tevyaw and Janet Reinhart agreed and said they were ready to endorse the slate as presented. The HREC agreed to take a brief break to allow the Wellfleet and Truro representatives to confer among themselves. After the break, it was the consensus of the full HREC to approve the slate of stakeholder candidates, as presented. Bob Weinstein asked that all the members of the HRSG be invited to attend the next HREC meeting so that they can be briefed on their charge and responsibilities. Dan Hoort said that he would provide the HREC members with copies of the candidates' applications.

**Process for Convening and Organizing the Stakeholder Group:** HREC members discussed the idea of having a third party neutral facilitator assist with start-up of the HRSG. The Consensus Building Institute (CBI), a nationally recognized not-for-profit organization that provides neutral services, including assessment, facilitation, and mediation, would be available to help convene and facilitate the start-up of the HRSG. CBI has facilitated numerous stakeholder group processes for Barnstable County and individual towns and organizations on Cape Cod.

Helen Miranda Wilson questioned the need for a professional facilitator. Kathy Tevyaw commented that it would be a way to help to plan and facilitate initial meetings and help the HRSG develop ground rules to guide their on-going meetings. Paul Wisotzky said that this could be a good investment in the effectiveness of the group. Dan Hoort said that while he supported this idea, he did not want to force this approach on the HRSG. He suggested that the HRSG Chair determine whether an outside facilitator would be helpful. Other HREC members concurred with this suggestion.

The Council discussed the terms for each of the HRSG members and decided that the Stakeholder Group charge should be amended to give all HRSG members two-year terms.

**Public Comment:** Carole Ridley provided clarification on two issues mentioned during the meeting. First, she noted that planning for fundraising is well underway and on track. FHR is refining a construction budget and meeting with legislators, foundations and other funders to begin the process of raising funds for construction

and implementation. Second, regarding permitting, she noted that the Phase 1 elements described in Tim Smith's presentation are what will be proposed to permitting agencies, and that process is also on track. Any restoration beyond water levels specified for Phase 1 would require additional regulatory review for permit amendments or new permits. She also noted that the ecological restoration limited project status under the Wetlands Protection Act allows regulators to authorize projects that restore tidal flow to degraded wetlands as long as structures are protected and other provisions of the Wetlands Protection Act are met.

Susan Baumgarten said that MA DEP is still interpreting the regulations as they will be applied to the Herring River Project. She said that she wanted to talk further about Chapter 91 issues.

Attachments:

- Project Phasing Presentation Slides in pdf format
- List of Stakeholder Group appointments