

Meeting packet for
Herring River Executive Council
October 24th, 2 pm
Wellfleet Fire Department, 10 Lawrence Road, Wellfleet

1. Agenda for October 24, 2019
2. Minutes of May 16, 2018
3. Executed copy of MOU IV
4. HREC Operating Protocols with proposed amendments to reflect MOU IV
5. HRSG Charge and list of current HRSG appointees

Agenda (revised 10-18-19)
Herring River Executive Council (HREC)
Thursday, October 24, 2019
Wellfleet Fire Department
10 Lawrence Road
Wellfleet, MA
2:00 – 4:00pm

- Welcome and Introductions
- Approval of Minutes: May 16, 2018
- MOU IV and Review of HREC Operating Procedures
- Herring River Restoration Project Update
- Report from Herring River Stakeholders Group Chair
- Public Comment (15 minutes) *
- Wrap-up and Next Steps

Upcoming HREC meetings (proposed):

Thursday, January 16, 2020 from 3:00 to 5:00 pm

Thursday, April 16, 2020 from 1:00 to 3:00 pm

Thursday, July 16, 2020 from 3:00 to 5:00 pm

** 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.*

Draft Minutes
Herring River Executive Council (HREC)
Wednesday, May 16, 2018
Truro Community Center
North Truro, MA

Members Present: Helen Miranda Wilson, Janet Reinhart, Dan Hoort, Rae Ann Palmer, Brian Carlstrom, Maureen Burgess (sitting in on behalf of the Truro Selectmen)

Members of Herring River Stakeholders Group (HRSG) Present: Bill Biewenga, Barbara Cary, Al Kraft, Mark Wisotzky, Jake Ketchum, Paul Faxon, Laura Runkel, Fred Gaechter, Zach Dixon, Mark Borrelli, Bob Prescott

Others Present: Margo Fenn, Patrick Field, Kathy Tevyaw, Tim Smith, Martha Craig, Christine Odiaga, Carole Ridley, Steve Spear, Steve Oliver, Karen Larocque, Sylvia Smith, Gail Ferguson, Pat Barry, Beth Chapman

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

Approval of Minutes: By consensus, the HREC members approved the minutes of the September 25, 2017 meeting.

Herring River Stakeholder Group Start-up: By consensus, the HREC members approved two new appointments to the HRSG: Jake Ketchum will represent the Chequessett Yacht and Country Club (CYCC) and Zach Dixon will represent the Wellfleet Shellfish Advisory Board (SAB).

Dan Hoort recommended Bill Biewenga to serve as Chair of the HRSG. Mr. Biewenga introduced himself to the group. By consensus, the HREC approved the appointment of Bill Biewenga as Chair of the HRSG.

Margo Fenn introduced Pat Field from the Consensus Building Institute (CBI). Friends of Herring River (FHR) has contracted with CBI to help facilitate the start-up and operations of the HRSG. Pat Field reported that he had conducted interviews with most of the members of the HRSG in early April. He noted that it is a talented and diverse group of people. He was impressed by both the level of interest and the healthy questions that he heard during the interviews.

Mr. Field reviewed with the HREC the substance of draft operating protocols that CBI is proposing for the HRSG. The protocols were developed using the basic Stakeholder Group charge from the HREC. He reviewed the key sections including:

- Purpose and Scope of the HRSG
- Membership and Participation
- Meeting Ground Rules

- Decision Making
- Roles and Responsibilities of the Chair, Facilitator, HRRC and FHR
- Media and Public Communications

He noted that the HRSG is advisory to the HREC. He stressed that there should be two-way communication between the HRSG members and the constituent groups they represent. Members should represent the interests and views of their constituent organizations rather than personal views. The HRSG will operate according to the MA Open Meeting Law, with adequate public notice of meetings, postings of minutes etc.. The HRSG will meet quarterly or as needed.

To the greatest extent possible, the HRSG will operate by consensus, seeking to find common ground in its recommendations. The Chair and the Facilitator will enforce the groundrules and help the participants resolve their differences. The HRRC will provide technical presentations and information and FHR will provide logistical support for meetings.

Helen Miranda Wilson notes that minutes will be important to document the nature of the discussions, especially if there is disagreement. She asked that all members of the HRSG be provided with a copy of the MA Open Meeting Law. She also asked that HREC members be copied on agendas, meeting notices and minutes.

Pat Field reviewed proposed agendas for the first two meetings of the HRSG. He suggested that the first meeting should include an overview presentation on the Restoration Project, a discussion of roles and responsibilities among the HREC, HRRC, and HRSG, and a discussion of the proposed operating protocols. The second meeting could focus on adaptive management and modeling and review of potential topics proposed by the HRSG's constituent groups.

HREC members had a number of suggestions to the HRSG. Rae Ann Palmer encouraged the members to check with their constituents in formulating questions and comments. Maureen Burgess suggested that there be a "check-in" meeting between the HREC and HRSG annually. Helen Miranda Wilson asked that there be a mailing list established for other interested parties to be notified about HRSG meetings.

Update on the Restoration Project: Carole Ridley provided the HREC with an update on Project activities. She noted that at the September 2017 meeting, HRRC presented information about project phasing, and indicated that project permit applications would seek permission for Phase 1 of restoration.

Phase 1 encompasses 570 acres of restoration area.

- All of this land is currently regulated wetlands.
- 95% of this area is owned by the Cape Cod National Seashore.

Phase 1 includes all major infrastructure elements:

- The Chequessett Neck Rd (CNR) dike and tide gates
- The Mill Creek dike and tide gates
- Elevating low-lying portions of Pole Dike Road and installing tide gates
- Elevating low-lying sections of Old County and Bound Brook Roads and installing upgraded culverts
- Removing the portion of High Toss Road that crosses the estuary and blocks tidal flow, and elevating an upland portion of that same road to maintain access to all private properties
- Completing flood protection measures at CYCC and specified private properties.

The tide gate at Pole Dike Road would be configured to allow outflow only, and would not allow any tidal restoration. Tide gates at Mill Creek would allow partial restoration. Any restoration of tidal flow beyond what is proposed in Phase 1 would require permit amendments or new permits, and agreements with any landowners for any necessary flood protection measures.

Tidal flow will be restored incrementally over a number of years through the CNR and Mill Creek tide gates while system responses are carefully monitored.

Carole Ridley reviewed the benefits of tidal restoration, including:

- Vastly improved water quality and habitat for fish, shellfish and coastal wildlife
- Re-opening and expanding harvestable shellfish beds which is a benefit to the local economy and help to sustain jobs in that industry
- Restoring tidal marsh, and the many benefits provided
- Removing barriers to fish passage
- Reconnecting the river system to Cape Cod Bay and the Gulf of Maine
- Improving views and recreational opportunities
- Reducing mosquito breeding habitat
- Generating spending in the local economy from construction and implementation of the restoration
- Road improvements alone are expected to save Wellfleet millions in needed road repair

Permitting: Carole Ridley reported that the Project has secured approval of its federal and state Final Environmental Impact Statement/Report in 2016 and is now seeking environmental permits and financing. The HRRC and FHR are working on the development of permit applications. The first of these will be submitted to the Cape Cod Commission, for a Project of Community Benefit Hardship Exemption from the Development of Regional Impact designation under the Cape Cod Commission Act and regulations. This application should be submitted early this summer. Subsequent permit applications to local, state and federal agencies will follow. It is

expected that permitting activity will proceed over the next two years.

Ms. Ridley also provided the HREC with a brief update on the Project's public outreach activities.

Public Comment: Steve Oliver asked about the status of sign-offs from owners of affected low-lying private structures. Carole Ridley responded, noting that the Project has identified five private properties as having structures that may require flood protection measures under Phase 1 restoration: Chequessett Yacht and Country Club (which has entered into a conceptual agreement for flood protection); one property owner currently in negotiations with the Cape Cod National Seashore for a land exchange; and three other property owners with structures that may require flood protection measures. The Project team has engaged these three owners with the goal to develop mutually agreeable flood protection plans for their structures. Two of these property owners indicated that they would not consent to having onsite flood protection measures proposed for their respective properties described in permit applications. As a result, alternative flood protection measures are being incorporated into the project design that fully protect structures on these two properties and do not require work to be performed on the properties. A third owner has consented to having flood protection measures on their property described in permit applications. The measures, if agreed to, would be funded by the Project and be completed prior to a change in water level that could affect those properties.

Steve Oliver also questioned how high Old County Road would have to be raised to be above the floodplain. Martha Craig described existing and proposed road elevations, and invited Mr. Oliver to come to the FHR office to review the road design plans.

Gail Ferguson asked if other members of the public would be able to attend and participate in the HRSG meetings. All meetings will be open to the public, and participation by non-members would be at the discretion of the Facilitator and/or Chair. Pat Field noted that the HRSG could set aside a time on agendas for public comment.

Paul Faxon asked if the HRSG could set up subcommittee meetings with constituent groups. HREC members did not support setting up official subcommittee meetings, noting that all the HRSG members should all be privy to the same information. Pat Field said that he would work with Bill Biewenga to explore how best to organize outreach meetings for different constituent groups.

Laura Runkel requested that the risk management memo that was developed by the HRRC for the HREC be provided to HRSG members.

Wrap-up and Next Steps: The HREC briefly discussed when to schedule upcoming meetings. Margo Fenn agreed to provide a Doodle poll to identify future meeting

dates. The meeting was adjourned at 3:00 pm.

MEMORANDUM OF UNDERSTANDING IV BETWEEN
THE NATIONAL PARK SERVICE AND THE TOWN OF WELLFLEET
Herring River Restoration Project
June 25, 2019

This fourth successive Memorandum of Understanding ("MOU IV" or the "Agreement") is entered into by and between the NATIONAL PARK SERVICE ("NPS"), a bureau of the United States Department of Interior, acting through the Superintendent of the Cape Cod National Seashore ("CCNS"), and the TOWN OF WELLFLEET, MASSACHUSETTS, a municipal corporation, with its primary address of 300 Main Street, Wellfleet, Massachusetts, 02667 (the "Town" or "Wellfleet"), acting through its Selectboard, on this 25th day of June, 2019.

RECITALS

WHEREAS, the Herring River is a tidal river located in Wellfleet, Massachusetts that, through a large tidal estuary system and floodplain, connects to the Cape Cod Bay;

WHEREAS, the Herring River estuary includes lands and waters in Wellfleet, the Town of Truro ("Truro"), and the CCNS;

WHEREAS, the NPS administers and manages the CCNS, located partially within the Wellfleet and Truro and including the Herring River floodplain; and CCNS, as a unit of the National Park System, is legally authorized by 54 U.S.C. §§ 100101 *et seq.* and 16 U.S.C. § 459b-6 to regulate and conserve CCNS lands by entering into this Agreement to facilitate the restoration of tidal flow to the Herring River estuary;

WHEREAS, Wellfleet owns the Chequessett Neck Road ("CNR") Dike, which currently controls tidal flow to the Herring River system, and the CNR Dike has included since, approximately 1909, tidal gates that artificially restrict tidal flow in and out of the Herring River;

WHEREAS, the artificial restriction of tidal flow has impaired the waters of the Herring River and the proper functioning of the tidal estuary system, including tidal wetland habitat and salt marsh;

WHEREAS, to prevent ongoing degradation of the Herring River estuary, reclaim its ecological and environmental benefits, and replace a 40-year old waterfront structure with resilient infrastructure, Wellfleet and CCNS wish to remove the existing CNR Dike and tide gates at the CNR Dike and replace them with a bridge with tide gates that can restore the natural tidal flow over time, and to take other appropriate steps to rebuild infrastructure and provide mitigation as necessary to facilitate this goal (the "Herring River Restoration Project" or the "Project");

WHEREAS, through three previous Memoranda of Understanding ("MOUs"), Wellfleet, Truro, and CCNS have worked together, as well as with National Oceanic and Atmospheric Administration's Restoration Center, the U.S. Fish and Wildlife Service, the U.S. Department of

Agriculture's Natural Resources Conservation Service, and the Massachusetts Division of Ecological Restoration (collectively, the "Project Partner Agencies") towards planning the Project;

WHEREAS, on December 18, 2018, the Truro Board of Selectmen voted to cease its role in the Project's planning and to not participate in the future design and implementation of the Project as a proponent, permit applicant, or party to contracts, and to instead take on the role of interested municipal stakeholder; and

WHEREAS, following the Truro Board of Selectmen's vote, Wellfleet and CCNS agree that it is in the public interest to enter into this MOU IV to restate and reaffirm their efforts towards Project planning, engineering, funding, construction, implementation and operation, to clarify governance and decision making responsibilities concerning the Project, and to supersede existing MOUs concerning the Project.

WHEREAS, the following is a list of acronyms used herein:

ADR: Alternative Dispute Resolution
CCNS: Cape Cod National Seashore
CNR: Chequessett Neck Road
HREC: Herring River Executive Council
HRSG: Herring River Stakeholder Group
HRTT: Herring River Technical Team
MEPA: Massachusetts Environmental Policy Act
MOU: Memorandum of Understanding
NPS: National Park Service

AGREEMENT

NOW THEREFORE, in consideration of the foregoing, Wellfleet and CCNS (collectively, the "Parties") agree as follows:

1. Superseded MOU. This Agreement supersedes the three existing MOUs concerning the Project: MOU I (August 2005), MOU II (November 2007), and MOU III (2016), as those MOUs are amended. Notwithstanding the foregoing, this MOU IV does not supersede, disturb, or invalidate declarations of Project support expressed in earlier agreements, prior MOUs, and in Truro's December 18, 2018 vote. Rather, in light of Truro's December 2018 vote to exit from MOU II and MOU III (to which Truro was a party), this MOU IV updates the status of the Project, identifies next steps, and clarifies governance structures going forward. Nothing in this MOU IV is intended to alter the validity of terms established, affirmations given, or decisions made under previous MOUs, but instead to build on those decisions as the Project moves forward. All Project activities and decisions hereafter shall be undertaken by Wellfleet and CCNS, consistent with this MOU IV, and shall no longer include Truro, unless as an interested municipal stakeholder.

2. Project Status. To date, the Parties, in concert with the Project Partner Agencies, have performed several significant actions in support of the Project, including but not limited to the following:
 - a. Developing Conceptual and Detailed Restoration Plans for the Project;
 - b. Undertaking comprehensive data collection, modeling and ecological assessments necessary to establish and characterize pre- and post-restoration conditions;
 - c. Completing review under the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.* and the Massachusetts Environmental Policy Act ("MEPA"), M.G.L. Chapter 30, §§ 61-62I in July 2016;
 - d. Developing conceptual and detailed plans for Project-related construction and mitigation;
 - e. Obtaining in March 2019 a Scoping Decision from the Cape Cod Commission concerning Development of Regional Impact Review;
 - f. Conducting numerous Project-related meetings and public outreach with Project abutters and the community; and
 - g. Developing, as needed, mitigation plans to protect all public and private structures from any potential adverse effects related to the restoration of tidal flow.

3. Next Steps and Approach. To complete and operate the Project, the Parties agree that they will work together cooperatively, and in concert with Project Partner Agencies, to take the following steps, subject to the terms of this Agreement:
 - a. Make all significant decisions concerning Project development, implementation, and operation;
 - b. Compete for, receive, and administer funding from appropriate federal, state, local, and private entities to perform the Project and related mitigation, and to take the next steps identified in this Agreement;
 - c. Develop in further detail policies and plans for governance of Project construction and Project operation;
 - d. Further refine and review the Project's Adaptive Management Plan, and implement that Adaptive Management Plan seeking the technical advice of Project Partner Agencies through the Herring River Technical Team ("HRTT");
 - e. Facilitate agreements with landowners that the Project may potentially affect;
 - f. Draft, review, and submit all Project permits to appropriate federal, state, and local entities;

- g. Ensure compliance with all permit conditions, noticing requirements, and other environmental compliance obligations;
- h. Prepare and advertise bid solicitation packages, manage and oversee competitive bidding processes, select and manage contractors, oversee construction activities, pay invoices, and comply with funder and contractor stipulations subject to the provisions of M.G.L. Chapters 30, 30B and 149, if applicable;
- i. Provide and manage professional level technical and administrative staff necessary for the completion of all Project elements;
- j. Conduct operations and maintenance of public infrastructure as stipulated in any contract agreement(s);
- k. Monitor Project progress; and
- l. Perform public outreach and education activities.

These actions may be undertaken by one or many of the Parties or Project Partner Agencies, or their designees. These actions may be accomplished through separate contracts for services or cooperative agreements, or through the services of an independent third-party organization including, but not limited to, Friends of Herring River. Recognizing, however, that each Party shall undertake contracting responsibilities pursuant to their individual obligations and requirements and neither intends to assign or delegate such authority by this Agreement to any entity described or established herein or otherwise. Additionally, any activities on federally owned property conducted by other than federal employees will require a separate agreement, license, or contract so authorizing.

- 4. Ownership of Project Infrastructure. Implementation of the Project may require development of new infrastructure and modification of existing infrastructure. The owners¹ of existing infrastructure shall continue to own any modifications, replacements or improvements to it, and the owners of the underlying land shall own any new components of Project infrastructure (as described in Project planning and permitting documents) as follows:
 - a. *CNR Water Control Structures:* Wellfleet shall continue to own any improved or new CNR water control structures;
 - b. *Pole Dike Road:* Wellfleet shall continue to own Pole Dike Road and any modifications or improvements to it;
 - c. *Pole Dike Water Control Structures:* If a water control structure(s) is installed at Pole Dike Road, Wellfleet shall own that structure(s);

¹ The ownership described throughout this Section is not intended to affirm a particular legal status and, with respect to roads, no distinction has been made between ownership of an underlying fee versus ownership of a right of way interest.

- d. *Old County Road/Culverts*: Wellfleet shall continue to own Old County Road and its culverts, except those that are located in Truro, and any modifications or improvements to them;
- e. *Bound Brook Road/Culverts*: Wellfleet shall continue to own Bound Brook Road and its culverts and any modifications or improvements;
- f. *High Toss Road*: High Toss Road and related improvements or modifications shall continue in its present ownership and maintenance status; and
- g. *Mill Creek Water Control Structures*: If a water control structure(s) is installed at Mill Creek, the NPS shall own the new structure(s).

Notwithstanding the foregoing, this provision is not intended to and does not purport to allow or provide for a *change* in land or property ownership as a result of modification of existing infrastructure.² The Parties agree that they may revisit the proposed ownership structure set forth in this Section 4 as the Project is developed, permitted, and implemented.

- 5. Operation of Project Infrastructure. The owners (Wellfleet or CCNS) of the different elements of Project infrastructure set forth in Section 4 may wish to engage the services of third-party entities to construct, operate and maintain Project infrastructure, or the owners may wish to perform these functions through their established governmental structures. The Project will consult with Truro to determine the preferred method to perform any Project-related work affecting public infrastructure in Truro. Long-term operation and maintenance responsibilities should be the responsibility of the owner of each element of Project infrastructure. The Parties agree that they may revisit the proposed operation structure set forth in this Section 5 as the Project is developed, permitted, and implemented.
- 6. Project Governance.
 - a. Herring River Executive Council.
 - i. Purpose and Responsibilities. The Herring River Executive Council ("HREC") shall function as the executive group that approves all major Project decisions and activities. The HREC's responsibilities include, but are not limited to, establishing and providing policy direction; reviewing and approving the Project's Adaptive Management Plan; monitoring Project progress; modifying or altering Project infrastructure water control structure openings (after receiving advice and recommendations from the technical staff, including those of the Project Partner Agencies, through

² For example, if an existing road must be modified and expanded beyond the boundaries of the existing right of way in order to implement the project, such expansion and modification does not result, by operation of this provision, in the owner of the right of way acquiring ownership of the expanded area. Neither Party can, through this Agreement, nor does hereby release its rights or interests in its existing real and personal property.

the HRTT); and ensuring compliance with laws, policies and regulations of Wellfleet and CCNS.

ii. Membership and Decision-making. The HREC shall meet as it may deem necessary or appropriate and shall consist of five members as follows:

- a) The Wellfleet Town Administrator and two members of the Wellfleet Selectboard, or alternatively, up to three designee(s) appointed by the Selectboard;
- b) The Superintendent of the CCNS or his/her designee, and one additional CCNS designee.

The HREC shall by-and-large operate by a consensus decision-making process or from time-to-time by taking a vote. A quorum of three members may make decisions if HREC wishes. Members of the HREC may, in their discretion, make a motion during a meeting for a vote on a particular topic or decision to be taken, at which point the HREC members will vote whether to take a vote. Voted decisions are effective only through unanimous vote of the members present, provided that such unanimous vote includes at least one vote by a member or designee of each Party.

The Parties shall seek Project Partner Agency input as to how and to what extent they wish to coordinate efforts and provide advice regarding Project decisions. The HREC may seek technical guidance and assistance from the expert technical personnel of the Parties and Project Partner Agencies individually as members of the HRTT.

Individual HREC members shall not possess any authority to set goals, priorities, or positions on behalf of the HREC.

The Parties recognize that decisions made by HREC may require or warrant further votes, approvals, reviews, or appropriations from Wellfleet and/or NPS in order to effectuate HREC decisions, and that neither Party is obligated to implement or move forward with any HREC decision that is inconsistent with or has not received such required or warranted further votes, approvals, reviews or appropriations.

The Parties further recognize that in emergency situations or unforeseen circumstances, Wellfleet and CCNS may each make emergency decisions regarding Project infrastructure as provided for in their applicable laws and authorities concerning Project elements or property owned by each governmental entity. Both parties shall make every reasonable attempt to communicate in an emergency.

iii. Term. Each representative on the HREC shall serve until their designating entity notifies the HREC of a change in designation.

- iv. Public Meetings. The HREC shall conduct its meetings consistent with the Massachusetts Open Meeting Law, M.G.L. Chapter 30A, §§ 18-25.

7. Technical Advice and Input.

a. Herring River Technical Team.

- i. Purpose and Responsibilities. The Herring River Technical Team (“HRTT”) shall function as an informal, sounding board composed of intergovernmental technical staff to provide technical input for Project-related decisions as necessary or appropriate. These opportunities for input include, but are not limited to planning, permitting, engineering, technical, operational and scientific coordination for the Project. The HRTT will coordinate with the Regulatory Oversight Group (which was established through Project’s July 15, 2016 MEPA Certificate) consistent with the provisions of that MEPA Certificate.
- ii. Membership and Decision-making. The HRTT shall have no set number of members, it meets as needed or desired, and may consist of staff members from the following federal, state, and local governmental entities: Wellfleet, CCNS, the National Oceanic and Atmospheric Administration, the U.S. Fish and Wildlife Service, the Massachusetts Division of Ecological Restoration, the U.S. Natural Resources Conservation Service, and other entities with appropriate technical knowledge to assist the Project. Participating staff members shall be designated at the sole discretion of any participating agency.

The HRTT shall have no quorum requirement and is not a tribunal making governmental decisions. The HRTT does not possess any authority to make decisions that bind the Project, Wellfleet, the CCNS, or the Project Partner Agencies; is not empowered by any Party to act collectively; and does not have any power to take actions for the Project. The Parties disclaim any intention to create in the HRTT a public body for purposes of the Massachusetts Open Meeting Law or the federal or Massachusetts Public Records Act.

8. Consultation with Stakeholder Groups and Others. In accordance with the MEPA Certificate, the HREC has formed a Herring River Stakeholder Group (“HRSG”) to provide advisory input on Project implementation issues. The HREC may consult the HRSG or other individuals or organizations for advisory input, as needed, to develop, permit, and administer the Project.

9. Governmental Provisions.

- a. Governmental Authority. As used in this Agreement, the “Town” or “Wellfleet” shall mean the Town of Wellfleet as a municipal corporation, including its Selectboard members, employees, agents, and consultants. “CCNS” shall mean the Cape Cod National Seashore, including its employees, agents, and consultants.

Project Partner Agencies, other governmental entities, non-profit groups affiliated with the Project and their employees, agents, and consultants shall not be deemed to represent Wellfleet or CCNS, and Wellfleet and CCNS make no representations or warranties that they possess any authority to bind such entities to any of the obligations set forth in this Agreement.

Nothing in this Agreement shall be construed as (i) in any way impairing the authority of the NPS or Wellfleet to supervise, regulate, and administer its respective property and concerns under applicable laws, regulations, and management plans or policies as they may be modified from time-to-time, or (ii) inconsistent with or contrary to the purpose or intent of any Act of Congress.

- b. Finance and Approvals. No terms in this Agreement shall be construed to obligate either party or the United States of America to: (i) take any actions or approve any actions that would violate the requirements of federal, state, or local laws; (ii) approve any permit or approval applications submitted to federal or Town departments or boards in furtherance of the Project; (iii) commit any current or future funding or staffing resources to fulfill the obligations of this Agreement in advance of appropriate appropriation, administrative allocation, approval and/or vote; or (iv) spend any funds on any particular project or purpose, even if funds are available.
- c. Costs of Participation. Each party shall bear its own costs associated with its participation in this MOU IV and Project-related activities without reimbursement, and nothing contained herein shall be interpreted as obliging any payment by one party to the other, unless specifically authorized through appropriate procedures of Wellfleet or the CCNS.
- d. Disclaimers of Government Endorsement. Neither Wellfleet, nor any other Project Partner, shall publicize or circulate materials (such as advertisements, solicitations, brochures, press releases, speeches, pictures, movies, articles, manuscripts, or other publications), suggesting, expressly or implicitly, that the United States of America, the Department, NPS, CCNS or any government employee endorses any business, brands, goods, services, or activities, without the express approval of the NPS. In addition, any non-Federal entity must obtain prior written approval for any public information releases that refer to the Department of Interior, any bureau, park unit, or employee (by name or title), or to this Agreement. The specific text, layout, photographs, etc., of the proposed release must be submitted with the request for approval. The NPS will make a good-faith effort to expeditiously respond to such requests.
- e. Intellectual Property. Neither party of this Agreement shall use any intellectual property (including, without limitation, trademarks, service marks, logos, and corporate and brand identification and indicia) of the other party for any purpose without the prior written consent of the other party, which consent may be withheld in such other party's sole discretion.

- f. Compliance with Law. The obligations of the Wellfleet and CCNS under this MOU IV are subject to all current and future laws, regulations, and policies governing each governmental entity.
- g. Federal Congressional Provisions.
 - i. Pursuant to 41 U.S.C. § 22, no Member of, Delegate to, or Resident Commissioner in, Congress shall be admitted to any share or part of any contract or agreement made, entered into, or adopted by or on behalf of the United States, or to any benefit to arise therefrom, unless the share or part or benefit is for the general benefit of a corporation or company.
 - ii. In carrying out, supporting, or pursuing actions under this Agreement, Wellfleet will not undertake activities, including lobbying for proposed Town or NPS projects or programs, that seek to either (1) alter the appropriation of funds included in the President's budget request to Congress for the Department of the Interior or another federal agency that holds funds for the sole benefit of the NPS under Congressionally authorized programs, including the Federal Lands Highway Program; or (2) alter the allocation of such appropriated funds by NPS or another Federal agency. Nothing in this paragraph is intended to preclude Wellfleet or another Project Partner from applying for and obtaining a competitive or non-competitive grant of Federal financial assistance from a Federal agency, or from undertaking otherwise lawful activities with respect to any Town or NPS activity, project or program included in the President's budget request to Congress. Nothing in this paragraph should be construed as NPS requesting, authorizing or supporting advocacy by nonfederal entities before Congress or any other government official. Except as provided herein and in applicable laws, nothing in this paragraph shall be construed to curtail Wellfleet's ability to interact with elected officials.
- 10. Dispute Resolution. If Wellfleet and CCNS do not agree regarding any aspect of the Project, Wellfleet and CCNS shall work cooperatively to resolve any disagreement, including but not limited to use of alternative dispute resolution ("ADR"), should they so agree.
- 11. Termination. Either party may terminate this Agreement at any time by providing ninety (90) days written notification consistent with the Notice provisions of Section 12.d. below.
- 12. Miscellaneous Provisions.
 - a. Amendments. This Agreement may be amended only by written agreement signed by authorized representatives of both Parties. It shall remain in effect until superseded by a further MOU or inter-governmental agreement(s) to implement its purposes or terminated by either party as described above.

- b. Merger. This Agreement constitutes the Parties' entire agreement and understanding with respect to its subject matter, except as otherwise noted in Section 1.
- c. No Third-Party Beneficiaries. The Parties are the sole and exclusive beneficiaries of the Agreement, subject to its terms and to all applicable law.
- d. Notices. All notices to be given pursuant to this Agreement shall be provided by email or U.S. mail. Notice shall be deemed to have been received at the time of actual receipt of any email or three (3) business days after the date of any properly addressed notice sent by mail as set forth below:

If to Wellfleet: Daniel R. Hoort
 Town Administrator
 Town of Wellfleet
 300 Main Street
 Wellfleet, MA 02667
 Dan.Hoort@wellfleet-ma.gov

Wellfleet Selectboard
 300 Main Street
 Wellfleet, MA 02667

With a copy to: Gregor I. McGregor, Esq.
 Olympia Bowker, Esq.
 McGregor & Legere, P.C.
 15 Court Square, Suite 500
 Boston, MA 02108
 gimcg@mcgregorlaw.com

If to CCNS: Brian Carlstrom
 Superintendent, Cape Cod National Seashore
 99 Marconi Site Road
 South Wellfleet, MA 02667
 brian_carlstrom@nps.gov

With a copy to: Melissa Boness, Esq.
 Attorney Advisory, Boston Office
 Office of the Solicitor
 U.S. Department of the Interior
 15 State Street, 8th Floor
 Boston, MA 02109
 Melissa.boness@sol.doi.gov

- e. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

- f. Severability. If any provision of this Agreement or its application to any circumstances is declared invalid or unenforceable by the final ruling of a court of competent jurisdiction, the remaining provisions and their application to other circumstances shall not be affected. In place of such invalid or unenforceable provision, there shall be substituted a valid and enforceable provision that most nearly accomplishes the Parties' original intention.
- g. Authority. The signatories below represent that they are duly authorized to sign on behalf of and bind their respective parties.

IN WITNESS WHEREOF, the Parties have caused this MOU IV to be executed by their respective duly authorized representatives on the day and year indicated.

[Signature page to follow]

Policies for Herring River Executive Council (HREC) Business
Approved 6-7-17 (suggested revisions to reflect MOU IV 10-24-19)

The following principles shall guide the Council's operations:

1. THE HREC shall by-and-large operate by a consensus decision-making process or from time-to-time by taking a vote. A quorum of three members may make decisions if HREC wishes. Members of the HREC may, in their discretion make a motion during a meeting for a vote on a particular topic or decision to be taken, at which point the HREC members will vote whether to take a vote. Voted decisions are effective only through unanimous vote of the members present, provided that such unanimous vote includes at least one vote by a member or designee of each Party.
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 may seek technical guidance and assistance from the expert technical personnel of the Parties and Project Partner Agencies individually as members of the Herring River Technical Team.
4. The HREC may consult other individuals or organizations, as needed, such as stakeholder groups and/or science advisors.
5. The HREC shall act collectively; members shall possess no individual authority to set goals, priorities or positions on behalf of HREC.
6. Any HREC member may request that an item be placed on the agenda for an upcoming meeting.
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.
8. HREC members shall respectfully listen to and interact with other Council members and members of the public.

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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 hall, and on the town website, 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

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

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Deleted: 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.

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Revised Proposal for Herring River Stakeholder Group

9-26-17

I. Background

The Herring River Restoration Project Final Environmental Impact Report (FEIR) Certificate requires 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.

The 2016 Memorandum of Understanding (MOU III) between the Towns of Truro and Wellfleet and Cape Cod National Seashore 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.

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 hereby established. As required under the FEIR Certificate, the HRSG is designed to represent community interests and concerns during project implementation.

II. HRSG Charge

The duties and responsibilities of the HRSG are as follows:

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 during project implementation.
2. Provide advisory input to the HREC on key implementation issues, such as:
 - vegetation management
 - traffic management
 - recreational access
 - environmental monitoring
 - adaptive management
 - general community concerns

Revised Proposal for Herring River Stakeholder Group

III. Membership

The HREC shall appoint the members of the HRSG, and designate one member to serve as its chair. The Wellfleet Town Administrator and Truro Town Manager shall gather nominations and submit a slate of proposed HRSG members and Chair to the full HREC for consideration.

Membership shall be constituted as follows:

- Shellfishing (2)
 - Wellfleet Shellfish Advisory Board
 - Truro Shellfish Advisory Committee
- Wellfleet Herring Warden (1)
- Wellfleet Harbormaster (1)
- Conservation/Environmental Advocates (5)
 - Wellfleet Conservation Trust
 - Truro Conservation Trust
 - APCC Restoration Center
 - MA Audubon Wellfleet Sanctuary
 - Center for Coastal Studies
- Business Representatives (2)
- Recreational Users (1)
- Chequessett Yacht and Country Club (1)
- Flood Plain Property Owners (3)
 - Upper Pole Dike Creek sub-basin
 - Mill Creek sub-basin
 - Upper Bound Brook sub-basin
- Cape Cod Mosquito Control (1)
- Cape Cod National Seashore Advisory Commission (1)
- At-Large Member (1)

An Ex-Officio representative of the HRRC shall attend HRSG meetings to facilitate communications between the groups. The Ex Officio member shall not be a voting member of the HRSG.

IV. Term and Vacancies

Upon initial appointment, all of the members shall serve on the HRSG for a term of two years. Thereafter, upon appointment or re-appointment, members shall serve for a term of two years. Members may serve no more than three consecutive two-year terms.

Any vacancy would be filled in the same manner in which the original appointment was made.

Revised Proposal for Herring River Stakeholder Group

V. Administration

The HRSG shall meet quarterly or as needed. All meetings shall be posted in conformance with the Massachusetts Open Meeting Law. Minutes shall be taken and approved by the HRSG, and submitted to the Town Clerks of Truro and Wellfleet and the Superintendent of the Cape Cod National Seashore.

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.

Any recommendation by the HRSG to the HREC should be in the form of a vote of a duly constituted quorum of voting members recorded at a posted public meeting.

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

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.

Herring River Stakeholder Group

Created by and reporting directly to the [Herring River Executive Council](#), the Herring River Stakeholder Group's purpose is to communicate with stakeholders within the towns of Wellfleet and Truro to ensure that their respective interests and views are well represented and considered by the HREC. The Group also provides 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.

MEMBERS

Group: Wellfleet Shellfish Advisory Board

Representative: Zach Dixon
zackwellfleet@gmail.com

Group: Truro Shellfish Advisory Committee

Representative: Mark Wisotzky
markwisotzky@gmail.com

Group: Wellfleet Conservation Trust

Representative: Barbara Cary
barbc122@gmail.com

Truro Conservation Trust

Representative: Fred Gaechter
fredgaechter@comcast.net

Group: APCC Restoration Center

Representative: April Wobst
awobst@apcc.org

Group: MA Audubon Sanctuary

Representative: Bob Prescott
rprescott@massaudubon.org

Group: Center for Coastal Studies

Representative: Mark Borelli
mborelli@coastalstudies.org

Group: National Seashore Advisory Commission

Representative: Maureen Burgess
maureenb@protonmail.com

Group: Cape Cod Mosquito Control

Representative: Gabrielle Sakolsky
gsakolsky@ccmcp.net

Group: Wellfleet Herring Warden

Representative: Ethan Estey
ethanestey@comcast.net

Group: Chequessett Yacht & Country Club

Representative: Jake Ketchum

Group: Wellfleet Harbormaster

Representative: Mike Flanagan
michael.flanagan@wellfleet-ma.gov

Recreational User of the Herring River

Representative: Bill Biewenga (Chair)
billbiewenga@gmail.com

Upper Pole Dike Creek Sub-basin

Representative: Laura Runkel
laurarunkel@comcast.net

Mill Creek Sub-basin

Representative: Alfred Kraft
alfredkraft@gmail.com

Upper Bound Brook Sub-basin

Representative: Edouard Fontenot
fontenot@post.harvard.edu

Member at Large

Representative: R. Paul Faxon
pfaxon@rpfaxonlaw.com

Business Community Representatives

Judith Newcomb Stiles
stilesjudith@gmail.com
Moe Barocas
ablyoyo1@aol.com