

HRRC-CYCC Memorandum of Understanding (MOU)

April 27, 2017

This MOU is a declaration of intent by the Herring River Restoration Project (HRRC) and the Chequessett Yacht and Country Club (CYCC) (together, the “parties”) to undertake sustained, good faith efforts and actions to advance the Herring River Restoration Project, including CYCC golf course mitigation, according to the terms outlined below. While reflective of the parties’ shared intent, the agreement is not enforceable against either party. Enforceable agreements and commitments will be captured in future agreement instruments and permitting documents issued by various regulatory agencies.

I. INTRODUCTION

A. History and Context

1. The *Chequessett Yacht and Country Club* (CYCC) is a semi-private club located in the Mill Creek sub-basin of the Herring River. The club includes a golf course, built in 1929, as well as tennis courts, a sailing club, and clubhouse facilities for weddings and special events, all of which are open to the public. Today, roughly two-thirds of the club’s revenue comes from members of the public. The club provides public recreational opportunities to residents and visitors to the Outer Cape, and employs 46 to 55 local people during the summer season (and a lesser number year-round). It also supports a number of local businesses that provide catering services, wedding services, flowers, tents, and various other local services to the club and to the many functions and ceremonies that take place there. Currently, the Chequessett Golf course faces occasional flooding by groundwater and surface water in the area of Mill Creek. Because of the golf course’s location, restoration of tidal flow to the Mill Creek sub-basin of the Herring River would cause tidal flooding of the lower fairways of the golf course, unless flood prevention measures are taken.
2. The *Herring River Restoration Committee* (HRRC) is a multi-agency committee created by the Cape Cod National Seashore and the Towns of Wellfleet and Truro, Massachusetts in November 2007. Cape Cod National Seashore and the Towns of Wellfleet and Truro comprise the Project proponents pursuant to two Memoranda of Understanding (MOU II 2007 and MOU III 2016) HRRC recognizes the environmental and

socioeconomic benefits of restoring the tidally restricted and degraded estuarine system of the Herring River on the Outer Cape and has developed a comprehensive restoration plan for the estuary that addresses environmental and social concerns. HRRC consists of representatives from the towns of Wellfleet and Truro, the NOAA Restoration Center, the US Fish and Wildlife Service, Cape Cod National Seashore, the US Department of Agriculture Natural Resources Conservation Service, and the Massachusetts Division of Ecological Restoration. The partner agencies represented on the HRRC have provided much of the planning and design funding for the Project to date.

3. HRRC recently completed a Final Environmental Impact Statement/Report (Final EIS/EIR) for the Restoration Project. The Proposed Action (Alternative D) in the Final EIS/EIR includes construction of the primary dike at the mouth of the Herring River, a secondary dike with adjustable tide gates at the mouth of Mill Creek, raising the five low holes of CYCC golf course above proposed maximum water elevations, and restoring partial tidal flow to the Mill Creek sub-basin, along with associated other activities such as roads, flood proofing and vegetation management.
4. Alternative D encompasses all elements of the Project as described in the Final EIS/EIR. The Project will be designed, permitted, and funded in phases, and with distinct classes of work as specified below:
 - **Phase 1** – will propose tidal restoration up to a specified maximum water level, including partial restoration of tides in the Mill Creek sub-basin. Phase 1 will exclude tides from the Upper Pole Dike Creek sub-basin. All infrastructure, low property mitigation, and other work necessary to achieve Phase 1 maximum water levels will be proposed as part of Phase 1.
 - **Future Phases** – may propose to increase water levels above the maximum water level authorized in Phase 1 and may include increasing / initiating tidal restoration in the Mill Creek and Upper Pole Dike Creek sub-basins.
 - **Class 1** – encompasses all infrastructure and flood prevention work that will be proposed for regulatory authorization and implementation under Phase 1. This work includes construction of dikes with water control structures at Chequessett Neck Road, the mouth of Mill Creek, and Upper Pole Dike Creek; removal of a portion of High Toss Road that crosses the floodplain; and elevation of certain low road sections above maximum Phase 1 water levels. Class 1 also includes all low property mitigation work necessary to achieve maximum Phase 1 water levels, including elevation of the CYCC golf course to allow

partial tidal restoration in the Mill Creek sub-basin. Class 1 work will be described in the initial permit submittals with detailed plans and information, and will be proposed for authorization without subsequent regulatory review, subject to the provisions of Appendix B ¶6.c.

- **Class 2** – encompasses potential secondary management actions on the marsh plain that are, at the time of permit submittals, unknown if, when, where, and/or how they will be specifically proposed. These actions include drainage improvements, vegetation management, and sediment supplementation to increase marsh elevation. Uncertainties about the implementation details of these actions will be resolved as tidal restoration progresses and the response of the system is evaluated under the project-wide adaptive management program.
- **Class 3** – encompasses potential infrastructure and low property flood prevention work that may be proposed in future project phases after Phase 1 implementation commences. This potential work may include construction of flood berms, land elevation, raising structures, replacing culverts, and elevating roads and driveways that are necessary to allow tidal restoration that exceeds Phase 1 authorization. Future decisions to propose Class 3 work for implementation will be determined based on system response to Phase 1 implementation, future landowner negotiations, and outcomes of fundraising and regulatory reviews.

B. Purpose and Intent

5. For a number of years, HRRC and CYCC have engaged in a dialogue to develop a detailed flood prevention plan that is acceptable to all parties. Throughout this process, they have been motivated by two shared goals: (1) to see the restoration project succeed; and (2) to protect the Club from potential harm.
6. The restoration of tidal flow to the Mill Creek sub-basin will result in more acres of restoration than otherwise would be possible, resulting in a public benefit. The parties acknowledge that this public benefit must be sufficient to justify any outlay of public funds. The parties also acknowledge that in order to achieve this benefit, the CYCC is both offering benefits (such as the use of fill on-site to reduce flood mitigation costs, decrease road and traffic risks, and air emissions) and taking on a risk to its operations in order to advance the public interest.

7. Both parties have worked in good faith and expended significant time, energy, and resources in pursuit of a mutually beneficial agreement. Efforts include:
 - a. A working subcommittee of the CYCC Board has engaged for a number of years in collaborative discussions with HRRC and others. CYCC has engaged legal counsel to assist in those efforts; has hired expert hydrologists to review existing and proposed conditions and advise the Board; and has hired expert appraisers, land planners, and consultants to create a viable and workable land plan to dovetail with the restoration project.
 - b. HRRC's partner agencies have expended over \$250,000 to date of public funds for support and studies in order to develop a flood prevention plan for the golf course, along with related surveying, engineering, land planning, and appraisals. Over the past several years, the Project has funded development of a more detailed design plan to raise the lower fairways of the golf course, install new irrigation, replace tees and greens throughout the course, and develop a new golf practice area in the upland portion of the CYCC property that will also serve as a source of fill material.
8. For these reasons, the parties have sought an agreement that upholds the following four principles:
 - a. Maximizes the environmental benefit to the Herring River basin and surrounding areas, through acres of tidal restoration and other means, in a way that can be justified to the public and to funding agencies.
 - b. Does not and will not harm the CYCC, either through increasing flooding on the golf course now or in the future, or through damaging or creating undue risk regarding the club's financial viability.
 - c. Addresses costs that will include design, permitting, and construction of the redesigned golf course as well as the loss of CYCC revenue due to closure of the course while it is being flood-proofed.
 - d. Is as efficient as possible, minimizing the risks and costs for the environmental and other public benefits achieved.

II. CONCEPTUAL AGREEMENTS

A. General

9. The parties agree to undertake sustained, good faith efforts and actions to uphold the following terms of agreement in the coming months and years, recognizing that formal agreements and commitments will come at later stages through permits, contracts, and other legal means. However, nothing in these terms of agreement constrain, limit or waive either party's legal rights.

10. Having agreed that the Water Level Review Threshold, referenced in ¶¶ 6.c. and 7.c. of the attached Appendix B, is to be +0.15 feet NAVD88 in the lower Herring River basin, the parties further agree to the following commitments.

B. Implementation of Alternative D

HRRC Commitments

11. HRRC will recommend to agencies and funders, and pursue vigorously and in a sustained way, the implementation of Alternative D activities that include restoring tidal flow to the Mill Creek sub-basin and raising the five low holes of the CYCC golf course above proposed maximum water elevations, as outlined in the Final EIS/EIR.

12. HRRC will include the CYCC portion of the overall restoration in all Phase 1 / Class 1 design, permitting, and funding requests. The Phase 1 scope will be defined by designated Class 1 activities proposed for implementation in the initial permit applications as described in Section 5.3 of the Final EIS/EIR.

13. HRRC will use best efforts¹ to permit and raise funds for golf course flood prevention plans, and to implement those plans in a timely manner, with other project Phase 1 / Class 1 activities.

¹ "Best efforts," as applied to HRRC and Project partner agencies, means that HRRC and Project partner agencies will work with consultants, experts, and other appropriate persons or entities to prepare and submit complete and adequately supported permitting and funding applications to regulators and funding entities that will incorporate the golf course flood prevention plans contemplated in Sections 11-27 of this MOU; work to raise funds for, and if funds are successfully raised, implement those plans in a timely manner (recognizing potential construction contingencies); and take in good faith all reasonable steps to achieve the objectives of this MOU. HRRC and Project partner agencies shall exercise such best efforts on a continuing basis and at all times until funding is obtained to implement the golf course flood prevention plans. "Best efforts" shall not

14. HRRC will seek funding for CYCC up to the estimated cost of the golf course flood prevention work and business shutdown costs, as part of an overall funding request for the Project. The estimated cost for those aspects of the Project as of 2015 was \$5 million, based on the plan by Howard Maurer² (see cost assumptions in *Appendix A*). The parties recognize the costs will need to be updated prior to specific funding requests.
15. HRRC will coordinate with and support CYCC if CYCC elects in its sole discretion to pursue conservation of its undeveloped land.
16. HRRC will seek funding from its Project partner agencies³ to pay for the preparation of any necessary encumbrances, instruments, and/or conservation restrictions on filled golf holes agreeable to CYCC, including but not limited to technical, legal and administrative costs.
17. HRRC will authorize expenditure of funds from its Project partner agencies to complete permit-level design plans and narratives for the golf course construction work during 2017.⁴
18. HRRC will work with CYCC to develop a scope of services and coordinate on implementation of the remaining technical work needed to finalize golf course flood prevention design plans and technical information sufficient for permitting.

require HRRC or Project partner agencies to (i) appeal any permits or approvals on the basis that they are inconsistent with this MOU; (ii) pursue any federal, state, or local legislative or executive relief, other than required permits, to achieve the goals of this MOU; (iii) guarantee the outcome of any votes or approvals from public bodies necessary to accomplish the goals of this MOU; or (iv) delay implementation of tidal restoration in the main Herring River basin, in the event that adequate funding for that work is secured prior to securing funds necessary to implement the golf course flood prevention plans.

² Chequessett Yacht and Country Club Construction Budget Analysis, Howard Maurer Golf Course Design, LLC, June 3, 2015

³ As used herein, "Project partner agencies" refers to those agencies represented on the Herring River Restoration Committee, including the Towns of Wellfleet and Truro, the National Park Service, the U.S. Fish and Wildlife Service, the Natural Resources Conservation Service, the National Oceanic and Atmospheric Administration, and the MA Division of Ecological Restoration.

⁴ After the Phase 1 / Class 1 Mill Creek elements of the restoration project are permitted and implementation funding is secured, HRRC will authorize expenditure of funds to hire consultants to complete final construction-level golf course flood prevention design plans and specifications (100% design) and fund implementation of the golf course flood prevention work.

19. HRRC will authorize expenditure of funds from its Project partner agencies to retain a legal firm with expertise in tax accounting to evaluate and advise HRRC regarding flood prevention funding and administration options and mechanisms for landowners, including analysis of private and corporate landowner tax implications. The HRRC will make this evaluation available to CYCC in writing before submittal of any permit application.
20. HRRC will not seek to impose any conservation restriction or flood easement or initiate any other measure that would require CYCC's property to be publicly accessible beyond the scope of the public's existing rights under G.L. c. 91.

CYCC Commitments:

21. CYCC will support the Herring River Restoration Project Alternative D in the federal, state, regional and local permitting processes, as well as in the fundraising process, contingent on CYCC's participation in the development of and input on related permit and funding applications to ensure consistency with this conceptual agreement.
22. CYCC will provide a written estimate of business shut down costs prior to submittal of any permit applications and updated and revised documentation of such business shutdown costs at the time the work is undertaken, which may affect the funding amount referenced in ¶14. The updated and revised estimate should be supported by typical annual financials prepared by the CYCC's CPA and signed off by the CYCC's Board Treasurer.
23. CYCC will document its current best management practices to reduce nutrient loading, minimize pesticide and fertilizer use, and protect and enhance wildlife and shellfish habitat, and provide information regarding the best management practices it plans to implement after completion of the Project to achieve the same goals. If permitting agencies require, CYCC agrees to provide information regarding these practices as part of permitting applications.
24. CYCC will sign all environmental review and permit applications as necessary for Alternative D (including the golf course flood prevention work), approving work proposed on CYCC property, contingent on review of these environmental review permit applications – as submitted in their original and revised forms – to ensure consistency with this conceptual

agreement. Except as provided in Section 31 below, CYCC will not appeal, object to, or otherwise challenge permits obtained for the Project that reflect an approach consistent with the implementation of Alternative D that includes the golf course prevention work.

25. Only if and once Alternative D activities that include the golf course flood prevention work are permitted and funded and the necessary parties⁵ enter into a mutually binding and acceptable agreement, will CYCC also commit to the following:
 - a. CYCC will manage and oversee the golf course flood prevention construction work. Funding, responsibilities, and contractual obligations will be worked out in appropriate documents at a later stage; the timing and release of money will be managed to minimize construction delays. CYCC will be relying on the Project to timely manage cash flows.
 - b. CYCC will provide the total amount of fill necessary to complete the golf course flood prevention plans from on-site, upland portions of its property as identified in the permit-level design plans, which will be attached to a future agreement between the parties.
26. CYCC will provide in-kind public benefits with an estimated value of \$1.1 million, conditioned on permitting and funding of Alternative D (including the golf course flood prevention work). The in-kind, non-cash benefits will be based on estimated and agreed upon costs related to the upland holes that are not required as part of the overall golf course work in general to flood proof the lower holes. Those in-kind benefits will include:
 - a. making available an estimated 100,000 cubic yards of additional fill for work on roads and other off-CYCC site project needs; and
 - b. providing sufficient staff time and expertise to oversee construction management (¶25) of the Project.
27. CYCC acknowledges that in exchange for funding to implement the golf course flood prevention work, it will need to agree to a land encumbrance and to terms, contingent on obtaining the necessary permits and funding, involving a release of the Project partners for claims related to the effects

⁵ As used herein, "necessary parties" refers to CYCC and those parties, as of yet unspecified, with whom CYCC will enter into the referenced mutually acceptable and binding agreements.

of the Project resulting from tidal restoration up to a stipulated maximum surface water elevation on CYCC property. A conservation restriction (CR) or other appropriate legal encumbrance will need to be placed on the filled wetland areas of the golf course, to ensure that these areas remain in open space in perpetuity; such CR, however, shall permit active recreation including but not limited to golf course use and related golf course improvements including minor accessory structures

C. Implementation Contingencies

28. The parties reaffirm that their shared goal is to implement all aspects of Phase 1 / Class 1 activities and therefore to propose partial tidal restoration in the Mill Creek sub-basin under Phase 1 / Class 1 of the Project including implementing the golf course flood prevention plans concurrently with other project Phase 1 / Class 1 activities. HRRC commits to using best efforts in pursuit of this goal.
29. The parties jointly acknowledge that the regulatory approvals and funding for implementation of various project elements are dependent on the actions of many others outside the CYCC and HRCC. Thus, despite best efforts to permit and raise funds for the golf course flood prevention plans concurrently with other project Phase 1 / Class 1 activities, a scenario may occur where tidal restoration activities in the main Herring River basin proceed prior to completion of Mill Creek tidal restoration and golf course flood prevention work.
30. To address this possibility, despite best efforts to minimize its probability, the parties agree to the following contingent approach in the event tidal restoration proceeds in the main Herring River basin prior to completion of Mill Creek tidal restoration and golf course flood prevention work.
 - a. HRRC will continue to exercise best efforts to pursue funding and implementation of Mill Creek tidal restoration and golf course flood prevention work.
 - b. The CYCC adaptive management plan (CAMP) (incorporated herein as Appendix B) will be a proposed condition of the project permits. HRRC agrees to operate the Project in accordance with the CAMP until and unless the golf course flood prevention work is completed.
 - c. CYCC will cooperate in good faith with the HRRC in vigorously seeking funding for the golf course flood prevention work and allowing

necessary actions approved in the project permits, such as CYCC property access for monitoring, to proceed in accordance with the CAMP.

31. Should this contingent approach be necessary, nothing in this conceptual agreement precludes CYCC's right to object to, challenge, or appeal:
- (a) material modifications to any permits or approvals; (b) permits or approvals that do not include the CYCC component; or (c) or conditions that conflict with the MOU or the CAMP.

D. Working Relationships

32. To ensure ongoing and effective communication, CYCC and HRRC will establish a regular process for interaction. This process will generally include at least monthly meetings of key project staff, periodic meetings of project principals, and other arrangements as necessary. In these meetings, HRRC will:
- a. provide CYCC updates on funding status, grants requested and funds received, and any restrictions on grants sought or funds secured;
 - b. review with CYCC data generated from the ongoing monitoring program since the last monthly meeting of key project staff, and address concerns, if any, raised by CYCC regarding the need for and the timeline to implement certain adaptive management actions; and
 - c. update CYCC on proposed changes to the opening of the Chequessett Neck dike tide gates.
33. HRRC will consult with CYCC as a project partner in development and refinement of key documents and actions related to the CYCC golf course flood prevention work, including, but not limited to monitoring, monitoring plans, permit applications and conditions, funding applications and other related materials.
34. In the event that one or both parties have questions or concerns regarding the terms or implementation of this agreement, they will raise the issue directly with the other party. If resolution of the issue or matter is not successful, the parties will employ the use of a mediator/facilitator to seek to resolve differences. HRRC or CYCC may bypass mediation in the event that either party believes potential harm to be imminent, therefore requiring court intervention.

E. Intent to Pursue Binding Agreement(s)

35. The parties agree to continue discussions regarding an agreement or agreements that would be mutually binding upon CYCC and the necessary parties. The parties agree that such discussions will include consideration of the timing of such agreement(s).

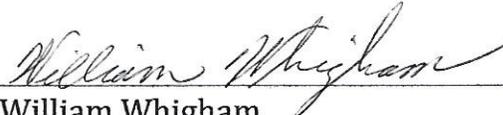
**HERRING RIVER
RESTORATION COMMITTEE**



Gary Joseph
Chair

Date: May 2, 2017

**CHEQUESSETT YACHT
AND COUNTRY CLUB**



William Whigham
Board President

Date: April 27, 2017

APPENDIX A: Cost Assumptions

1. The Maurer report estimated the design and construction cost of the proposed golf course renovation at \$4.7 million, assuming that the work would be bid as a public project at prevailing wages and the fill is obtained at no cost from on-site on the CYCC property.
2. If the work is privately bid by an entity that does not trigger prevailing wage requirements, costs would be reduced by approximately \$1 million, making the total \$3.7 million.
3. The Project partner agencies will cover all design and permitting costs (estimated by the Maurer report at approximately \$400,000) further reducing the total construction cost to \$3.3 million.
4. CYCC estimates its operating loss during construction and recovery to be \$1.7 million.
5. Total mitigation cost for all the golf course work (high and low holes combined) plus the shut-down costs is estimated at \$5 million. ($\$3.3 \text{ million} + \$1.7 \text{ million} = \5 million).
6. The cost to reconstruct the low golf holes and cover shut down costs is \$3.9 million ($\$2.2 \text{ million (at non prevailing wage rate)} + \$1.7 \text{ million} = \$3.9 \text{ million}$). The cost to cover construction of the high holes is \$1.1 million.

APPENDIX B: CYCC Adaptive Management Plan (CAMP)

1. An adaptive management process is a keystone of the Project. It is described in depth in Appendix C of the FEIS/FEIR.
2. Appendix C of the FEIS/FEIR states that elimination and minimization of potential adverse impacts to private property including the CYCC golf course is a fundamental objective of the Project.
3. CYCC acknowledges that the Project is in the midst of developing a detailed framework and protocol for the adaptive management process, including its application to the CYCC golf course.
4. There are, however, important elements of the adaptive management process already described in Appendix C of the FEIS/FEIR⁶ that are foundational, establishing a baseline for the Project, and will be operative as the Project is implemented:
 - a. The Mill Creek dike tide gates will only be opened to initiate tidal restoration in that sub-basin after all necessary mitigation measures, including the golf course flood prevention work, have been implemented to prevent adverse impacts to CYCC.
 - b. A robust monitoring program will be put in place before any changes to tide range in the Herring River are implemented.
 - c. If analysis of monitoring data indicates that increasing tide range in the Herring River results in groundwater increases approaching predetermined threshold elevations in Mill Creek, measures will be employed to prevent project-related changes to groundwater from exceeding the predetermined elevation thresholds.
 - d. If necessary, Chequessett Neck Road tide gates could be adjusted to reduce Herring River water levels and maintain Mill Creek groundwater below threshold elevations.
 - e. Monitoring data, model parameters, and model output would be reevaluated to determine whether additional actions could allow resumption of increases to Herring River tide range while preventing adverse effects on the CYCC golf course.

⁶ See FEIS/FEIR Appendix C at 59.

- f. Project modifications may require investigation of alternate means of impact mitigation for the golf course. These measures could include:
 - i. cleaning out trapped sediment from the sub-basin channel network to increase drainage;
 - ii. adjusting Chequessett Neck Road tide gate operation to limit increases in mean water levels;
 - iii. on-site mitigation measures; and
 - iv. installation of a pump system at the Mill Creek dike.⁷
5. In the event tidal restoration activities in the main Herring River basin proceed prior to completion of Mill Creek tidal restoration and golf course flood prevention work, the above-cited adaptive management process elements require further definition both as to substance and process.
6. Substantively, in clarification of and in addition to the measures described in ¶ 4 above, HRRC and CYCC agree:
 - a. In the event tidal restoration in the main Herring River basin is initiated prior to Mill Creek tidal restoration and golf course flood prevention work, then the gates at the Chequessett Neck dike will be set initially in a position such that maximum water surface elevations in the main Herring River basin do not exceed pre-restoration conditions. The Chequessett Neck dike tide gates will be maintained at this initial setting for a minimum of one month, after which the tide gate settings may be changed to increase water levels above pre-restoration conditions.
 - b. In the event tidal restoration in the main Herring River basin proceeds prior to completion of the golf course work, the Mill Creek dike will be constructed and managed to prevent any tidal flow into the Mill Creek sub-basin.⁸
 - c. To ensure that impact prevention measures are effective and enforceable, the Project Proponent will propose that regulatory agencies incorporate detailed conditions into permitting documents. These conditions will specify monitoring and management requirements that would detect

⁷ See memorandum from The Herring River Restoration Committee to The Chequessett Yacht and Country Club on the subject *September 14, 2016 CYCC Position Statement*, dated November 18, 2016 (“Nov 18, 2016 memo”) at 6 for very similar presentation.

⁸ Nov 18, 2016 memo at 6.

Project effects on hydrology in the Mill Creek sub-basin and prevent potential adverse effects on the golf course.⁹ Specifically:

- i. HRRC, in the Project's permit applications under the Massachusetts Wetlands Protection Act, will propose Permit Conditions establishing a Water Level Review Threshold of +0.15 feet NAVD88 for mean water levels in the lower Herring River basin. The Water Level Review Threshold specifies a mean water level for tidal restoration in the lower Herring River basin that cannot be exceeded before one or the other of the following conditions is met:
 1. CYCC flood prevention measures (as approved in the permit plans) have been substantially completed and evidence of substantial completion has been presented to and approved by all necessary permit issuing authorities; OR
 2. Project proponents apply for and obtain amended Orders of Conditions (OOC) under the MA Wetlands Protection Act authorizing tidal restoration to proceed by increasing to a higher level the Water Level Review Threshold specified in the most recently issued OOCs. Project proponents would have to present evidence in the amendment application demonstrating that tidal restoration above the specified Water Level Review Threshold would not cause adverse hydrologic or related impacts to the CYCC golf course. Regulatory review of proposed OOC amendments would occur per procedural rules specified at 310 CMR 10.00, including any required public hearings and any abutter rights of appeal.
- ii. HRRC, in the Project's permit application under the Cape Cod Commission Act, will propose Permit Conditions establishing a Water Level Review Threshold of +0.15 feet NAVD88 for mean water levels in the lower Herring River basin. The Water Level Review Threshold specifies a mean water level for tidal restoration in the lower Herring River basin that cannot be exceeded before one or the other of the following conditions is met:
 1. CYCC flood prevention measures (as approved in the permit plans) have been substantially completed and evidence of substantial

⁹ Nov 18, 2016 memo at 7.

completion has been presented to and approved by all necessary permit issuing authorities; OR

2. Project proponents apply for and obtain a review and approval from the Cape Cod Commission authorizing tidal restoration to proceed by increasing to a higher level than the Water Level Review Threshold specified in the original permit or any modification thereto. Project proponents would have to present evidence in such review demonstrating that tidal restoration above the specified Water Level Review Threshold would not cause adverse hydrologic or related impacts to the CYCC golf course. Regulatory review of the proposed increase of the Water Level Review Threshold shall require prior notice to CYCC of the requested change, a public hearing at which CYCC shall have the opportunity to provide comment, and any such Cape Cod Commission approval authorizing an exceedance of the Water Level Review Threshold shall be appealable pursuant to Section 17 of the Cape Cod Commission Act.
- d. The pre-construction iteration of the project-wide AMP will identify and describe in detail those adaptive management actions that may be taken to prevent adverse effects to the golf course in the event that a mitigation threshold is triggered by changes in hydrologic conditions caused by the Project. The Project will generate cost projections for, and obtain funds necessary to implement (A) adaptive management actions i. and ii. identified below, and (B) adaptive management action iii. identified below if determined to be needed by the process described in ¶ 6.e. below, and hold them in reserve for such time as a mitigation threshold is triggered. Adaptive management actions will include one or more of a variety of measures, such as:
- i. Reducing mean water levels in the main Herring River basin by modifying tide gate settings at the Chequessett Neck dike;
 - ii. Improving drainage and lowering water levels in the Mill Creek sub-basin by increasing flow capacity of drainage channels;
 - iii. Improving drainage and lowering water levels in the Mill Creek sub-basin through the removal of phragmites and the use of additional pump(s); and
 - iv. On-site golf course work (e.g., land elevation of low-lying portions of the golf course).¹⁰

¹⁰ Nov 18, 2016 memo at 9.

- e. The HRRC will:
 - i. Prior to submittal of any permit applications, in partnership with CYCC, conduct an analysis of hydrologic conditions to determine whether the installation and operation of a pump is necessary to prevent project-related changes to Mill Creek surface water elevations;
 - ii. Develop a Mill Creek surface water level mitigation (review) threshold trigger that, if triggered as a result of project-related changes to Mill Creek hydrology, would require installation of a pump or pumps.
 - iii. Incorporate the water level mitigation (review) threshold into the AMP and design plans into permit applications for a pump or pumps to address Mill Creek drainage issues.
 - f. The project-wide AMP also will identify and describe in detail short-term and immediate modifications to Chequessett Neck dike tide gate settings that will be implemented during specified storm events to prevent adverse effects to the golf course. The specific storm conditions that would trigger such short-term Chequessett Neck dike tide gate modifications will be described in the project-wide AMP.
7. Procedurally, in clarification of and in addition to the measures described in ¶ 4 above, HRRC and CYCC agree:
- a. Pre-construction activities, e.g., groundwater monitoring and modeling, will be undertaken by HRRC with CYCC's input and agreement.
 - b. Copies of all relevant reports, e.g., those describing measurements of groundwater and surface water elevations, will be provided to CYCC at the same time they are presented to HRRC.
 - c. The Water Level Review Threshold and any modification thereto discussed in ¶ 6.c. above will be developed through a consultative process involving HRRC and CYCC, and established only with the agreement of both parties.
 - d. Mitigation thresholds and any modifications thereto discussed in ¶¶ 6.d. and 6.e. above will be developed through a consultative process involving HRRC and CYCC, and established only with the agreement of both parties.
 - e. HRRC agrees to provide written notice (by email) to CYCC's general manager not later than 48 hours before any action is taken to increase the opening of the Chequessett Neck tide gates.

8. This CAMP will be incorporated in the project-wide AMP to be included in the permitting documents submitted to various regulatory agencies.