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CAPE COD
COMMISSION

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Minutes
November 8, 2012
Joint Hearing with MEPA
Herring River Draft EIR/Draft EIS
Truro Council on Aging/Senior Center
715 Old Kings Highway, Truro, MA

Commission Subcommittee Members Present: Leonard Short (Chair), Peter Graham, Roger Putnam, Austin Knight, John D. Harris

Commission Staff Present: Andrea Adams (Senior Regulatory Planner), Jonathon D. Idman (Chief Regulatory Officer), and Heather McElroy (Natural Resources Specialist)

Applicant Representatives Present: Margo Fenn (Staff Coordinator), Steven Block (Habitat Restoration Specialist, National Oceanic and Atmospheric Administration), Eric Derleth, (Biologist, U.S. Fish and Wildlife Service), Hunt Durey (Deputy Director, Massachusetts Division of Ecological Restoration), Charleen Greenhalgh (Assistant Town Administrator/Planner, Town of Truro), Gary Joseph, Chair, Herring River Restoration Committee, Town of Wellfleet), Steve Spear (Conservation Planner, Natural Resources Conservation Service), Tim Smith (Restoration Ecologist, Cape Cod National Seashore) George Price (Cape Cod National Seashore Superintendent), and Holly Johnson (Analyst, MEPA Office)

Others Present: Ned Hitchcock, Don Palladino, Charles Harris, Nis Wiberg, Ed DeWitt, Martin Nieski, Janet Morrissey, Donald Thimus, Dean Aidct, Jim Garpaw, Timothy Tummerson, Marry Peabody, Marty Fox, John Duane, Nicholas Babon, Janet Buckley, Alex Hay, Jack Whalen, Robert DeBeau, Calvin Anderson, Barbara Bennesal, Barbara Grey, Laura Runkle, Michael Parlante, Sarah James, Maureen Cronin, John Viuth, Walter Baron, Chuck Edmonson, Bill Iacuesa, Ashley Faukes-Silver, Tom O'Connell, Pamela Bauder, Irene Davith, Lisbeth Chapman, Daniel Berical, Nancy Bone, Robert Hubby, and Bob Granville

Minutes Summary: A Cape Cod Commission Subcommittee held a joint public hearing with the Massachusetts Environmental Policy Act Unit (MEPA), and heard testimony and received written comments on the Draft Environmental Impact Report/Draft Environmental Impact Statement for the Herring River Restoration project for the purpose of commenting on the project scope to the Massachusetts Environmental Policy Act Unit. The Subcommittee received a copy of the Draft EIR/Draft EIS, as well as correspondence received since the Subcommittee held a joint hearing on the Environmental Notification Form in 2008. The Subcommittee heard a PowerPoint presentation on the project by representatives of local, state and Federal agencies involved in the project. The Subcommittee heard a PowerPoint presentation on the Draft EIR/Draft EIS by Cape Cod Commission staff. The Subcommittee heard comments from public officials, abutters and other interested parties on the project. The Subcommittee voted to continue the hearing and the record to December 12, 2012 to be procedurally closed by a

Hearing Officer at 10:00 AM at the Cape Cod Commission's office. The Subcommittee voted to hold a Subcommittee meeting at 10:00 AM at a location within the project area for the purposes of deliberating on its comment letter to MEPA. The Subcommittee voted to adjourn the hearing.

Materials Received or Used:

1. October 2012 cover Memo from Commission staff transmitting a copy of the Draft EIR/Draft EIS, either as a bound paper document, or on disk, or both
2. 10/31/12 cover Memo from Commission staff
3. 10/31/12 corrected Commission staff report
4. 11/8/12 Commission staff Power Point of staff report
5. 10/29/08 letter to Stacey Justus from Carrie Phillips, NPS
6. 10/30/08 letter to Secretary Bowels from Thomas French, DF&W
7. 10/31/08 letter to Secretary Bowels from Elizabeth Sorenson, DCR
8. 10/15/09 letter to Secretary Bowels from Brona Simon, MHC
9. 6/1/10 letter to George Price, NPS, from Brona Simon, MHC
10. 11/2/11 letter to George Price, NPS, from Brona Simon, MHC
11. 7/19/12 letter to George Price, NPS from Brona Simon, MHC
12. 10/24/12 Email to Commission staff from Margo Fenn, Project Coordinator
13. 11/1/12 letter to George Price, NPS, from Brona Simon, MHC
14. 11/8/12 Power Point presentation by Applicants (*presented at hearing*)
15. Written comments from Wellfleet Shellfish Advisory Board (*received at hearing*)
16. Written comments from Wellfleet Natural Resources Advisory Board (*received at hearing*)

Mr. George Price, Superintendent of the Cape Cod National Seashore, welcomed everyone to the joint hearing. He noted it was a joint state and Federal project that involved the Towns of Truro and Wellfleet.

Ms. Margo Fenn, Project Coordinator for the Herring River Restoration Committee, noted the Draft EIR/Draft EIS was posted on the Towns' and National Park Service's websites. She also said copies were available at the Town Libraries. She introduced the representatives present of the various state and Federal agencies, and the members of the Herring River Restoration Committee. She noted where to send comments on the Draft EIR/Draft EIS.

Mr. Short opened the hearing at 7:00 PM. Mr. Short introduced the Subcommittee members. He noted there was a sign-up sheet for testimony. Mr. Short said that there might be a time limit on testimony based on the number of people who wished to speak.

Mr. Knight read the Hearing Notice.

Mr. Short administered an oath to those providing testimony. He asked the Applicants' representatives to describe the proposed project.

Applicants' Presentation

Mr. Tim Smith, Cape Cod National Seashore, described the project using a Power Point presentation. Using slides showing the Herring River locus and the river's sub-basins, he described the proposed project's limits. He showed a slide of the Chequessett Neck Road dike compared to the prior river opening before it was constructed in 1909. He said the river had also been channelized in the 1900s. He noted the dike had been reconstructed in the 1970's. He described the tidal range in the river with the dike, noting that it had been an attempt to control

salt marsh mosquitos. He showed a slide about the effects of diking and drainage, noting that the end result of the dike and channelization had negatively impacted the estuary.

Mr. Hunt Durey, Deputy Director, Massachusetts Division of Ecological Restoration, described the proposal to reestablish tidal exchange in the river and estuary. He showed a slide of the dike at Hatches Harbor in Provincetown as an example. He noted the rebuilt dike at Hatches Harbor had articulating tide gates. He showed a slide of the marsh recolonization post dike reconstruction from 1999 to 2006. Mr. Durey said the general approach was to re-establish tidal flow gradually over a number of years by using an Adaptive Management Plan. He showed a slide of constraints, including low lying roads and low lying properties. He said the project was being designed to achieve the maximum water level in the estuary while minimizing impacts to private property and infrastructure.

Mr. Smith described the alternatives described in the Draft EIR/Draft EIS. He said the alternatives analysis triggered by social constraints, and social and environmental impacts. He said the goal was to maximize the degree of tidal restoration while minimizing adverse impacts. He noted the Draft EIR/Draft EIS included a no action alternative and three action alternatives, and he described the components of each, noting the alternatives were primarily distinguished by the long-term reconfiguration of a new dike at Chequessett Neck Road. He also said that two of the action alternatives included a tidal control structure at Mill Creek. Mr. Smith also noted that an Adaptive Management Plan (AMP) was key to the action alternatives, because it would allow the project to be adjusted going forward. He said the Applicant was currently working on the details of the AMP. Mr. Smith said action alternative D was the preferred alternative, in part based on the estimated tidal exchange and changes in salinity in the marsh. Mr. Smith said the Applicants were also working on the impacts to cultural resources within the project area with the Native American tribes and Massachusetts Historical Commission.

Ms. Charleen Greenhalgh Truro Assistant Town Administrator/Planner described the socio-economic impacts of the proposed project. She said water quality would be improved, and this would have a potentially positive impact on fin fish and shellfish habitat. She noted that approximately 376 low lying properties had been identified, and that each had been notified by October 12, 2012. She said the Committee wanted to discuss impacts to private property with the affected owners. Ms. Greenhalgh also noted the impacts to low lying roads, which could be addressed by elevating or relocating them.

Mr. Smith concluded by again noting that alternative D was the preferred alternative. He said comments on the Draft EIR/Draft EIS were due to the NPS and MEPA by December 12, 2012. He said work on the Final EIR/Final EIS was expected to continue through 2013, with an expected release date of sometime in the fall of 2013. He said the Applicants hoped for completion of the MEPA process by winter, 2013.

Mr. Short asked Commission staff to present the staff report.

Ms. Adams, the Commission's Senior Regulatory Planner, summarized the staff report. She said her presentation would only cover those Regional Policy Plan issue areas that the Commission staff suggested applied to the project. She described the Joint Review procedure between the Commission and the Massachusetts Environmental Policy Act (MEPA) Unit, noting it was distinct from the Special Review procedure created in 2008 by the Secretary of Energy and Environmental Affairs to allow coordination of the MEPA and Federal agency comments on the project. She noted the project required the preparation of an Environmental Impact Report,

and therefore was a Development of Regional Impact according to Section 2(d) of the Commission's *Enabling Regulations*.

Ms. Adams summarized the Commission staff comments in the Regional Policy Plan (RPP) issue areas of Coastal Resources, Natural Resources, Water Resources, Community Character, Transportation, and Waste Management. She noted several key Minimum Performance Standards (MPS) in the Coastal, Wetlands and Wildlife/Plant Habitat sections of the Regional Policy Plan, and noted more information was needed to demonstrate that impacts to Lands Subject to Coastal Storm Flowage have been minimized. Ms. Adams also said the Adaptive Management Plan needed more details to address resource impacts, to demonstrate rare species impacts have been mitigated, and that engineering decisions for culverts and road alterations should minimize impacts to wetlands and upland buffers.

Ms. Adams said that in the RPP Water Resources issue area, the Applicant should identify impacts to private water wells, and should use this data in subsequent project analyses. She said staff suggests use of the Chequessett Yacht and Country Club (CYCC) golf club well and USGS wells. Ms. Adams said staff suggests the Adaptive Management Plan should identify impacts to private wells.

Ms. Adams said that in the RPP issue area of Community Character/Heritage Preservation, staff notes that Alternative C appears to have fewer impacts than Alternative D, which has the potential to impact archeological resources. She said staff notes that only an initial survey has been done to date, and a Programmatic Agreement is being developed between the parties. She said staff suggests the Applicant develop methods to minimize impacts, and that the Programmatic Agreement should reflect MPS HPCC1.3. She said staff suggests that impacts from work lights will be temporary, and should not result in a significant impact.

Ms. Adams said that in the RPP issue area of Transportation, staff notes that all the Alternatives have the potential to impact roads by construction or from flooding. She said this includes High Toss, Pole Dike, Bound Brook, Old County and numerous fire roads. Ms. Adams said the project may require elevation, relocation, closure during high tide, or abandonment of roads. She said staff suggests the impacts to roads be described in engineering studies and traffic analyses. Ms. Adams said staff suggests the Applicant develop a plan for traffic circulation during construction.

Ms. Adams said that in the Regional Policy Plan issue area of Waste Management, the Alternatives have the potential to generate hazardous and solid wastes. She said this includes from construction activity, raising/relocating roads, removal of woody vegetation in the floodplain and reconfiguration of the CYCC. She said staff suggests subsequent project documents provide more analysis on the hazardous and solid waste to be generated and methods for handling and disposal.

Ms. Adams concluded by noting the comment deadline of December 12, 2012. She said the project may be required to file a Final EIR. She said this would mean at least one joint hearing with MEPA. She said completion of the MEPA process would be via a Certificate from the Secretary of Energy and Environmental Affairs. She said once the MEPA process was complete, the Commission's Development of Regional Impact (DRI) process would begin, and DRI review would involve at least one public hearing.

Mr. Short asked for Subcommittee questions.

Mr. Knight expressed a concern that the project might result in the inundation of private septic systems, thereby increasing nitrogen loading. He also questioned whether the Applicants had taken account of global warming in planning the various project components? He asked if the Applicants proposed to dredge or otherwise open channels in the marsh to facilitate additional tidal flow? Mr. Knight asked if the Applicant had a plan to deal with affected property owners?

Mr. Putnam asked if the project would include restoring the serpentine flow of Herring River?

Mr. Smith said yes, restoring the serpentine flow of Herring River was a project component. He said this would be done via the Adaptive Management Plan. He noted the river's channel has already been manipulated.

Public Testimony

Mr. Short asked for public testimony but noted it would be subject to a three minute limit. He also asked those testifying to summarize their points if another speaker had already touched on that issue.

Mr. Bob Hubby, Chair, Wellfleet Open Space Committee, spoke in favor of the project.

Mr. Alex Hay, Chair, Wellfleet Wastewater Committee, spoke in favor of the project, noting that increased flows to the Harbor were important.

Mr. Ned Hitchcock, Wellfleet Natural Resources Advisory Board, said the Board supported Alternative D. He said the Shellfish Advisory Board also supports the project, but that both Boards wanted to emphasize the need to create public access points.

Ms. Barbara Bennesal, Wellfleet Shellfish Advisory Board, said the Board was in support of the project. She said it would expand shellfish habitat, and allow for a better functioning Harbor. She said the Town was concerned that it retain the right to manage the fisheries, and recommended additional public access points with vehicle parking and safe access.

Mr. Short described the Cape Cod Commission Subcommittee's role, that it would take comments and testimony, assemble the record and ultimately make a recommendation to the full Cape Cod Commission.

Ms. Adams clarified the Subcommittee's role, noting it was similar to that of a Planning Board. She said it was important that interested parties communicate with the Commission members in public hearings, or by mail through the Commission staff, so that all of the members could be made aware of the comments and concerns.

Mr. Short said the joint hearing would be in recess for 10-15 minutes for a comfort break for the Subcommittee members. Tape stopped at approximately 8:00 PM.

The tape was resumed at approximately 8:15 PM when the Subcommittee members reconvened the hearing after the comfort break.

Ms. Fenn clarified that comments received by the National Park Service or by the MEPA office would be shared between the two agencies.

Mr. Palladino, Friends of Herring River, commended the Towns for conducting the needed research. He said the Friends supported Alternative D. He said it was important to include public access opportunities in the project design.

Mr. Ed DeWitt, Executive Director of the Association for the Preservation of Cape Cod, spoke in favor of the project. He noted APCC had some 5,500 members. He said restoration of the Herring River was a top priority for APCC as far back as the 1960's. He said the marsh was critical to nutrient attenuation and addressing global warming. He said the marsh and estuary were a key public and fisheries resource.

Mr. Donald Thimus, Wellfleet, spoke in favor of the project, and agreed with Alternative D as the preferred alternative. He said the Applicants had done an outstanding job analyzing the alternatives, and the project would be good for the Town.

Mr. Jack Whalen said the Draft EIR/Draft EIS was comprehensive. He said Alternative D is key to restoring the marsh, and that the increased tidal flow would help kill off Phragmites.

Ms. Laura Runkle, 3175 State Highway, said she was an affected private property owner. She said the project's natural resources impacts had been studied in depth, but not so the impacts to private property. She questioned those, and the proposed mitigation for impacts to private property. She said the Final EIR/Final EIS should include significantly more detail on these impacts, such as a map of impacted properties, and suggested the main goal of the project could be achieved without impacts to Pole Dike Creek.

Mr. Michael Parlante questioned whether his property would become "public" based on the level of inundation. He said the Draft EIR/Draft EIS was vague on the impacts to roads. He questioned whether the project would include dredging? He questioned whether there would be impacts to shellfish grants in the Harbor?

Mr. Chuck Edmonson, President of the Chequessett Yacht and Country Club (CYCC), said the Draft EIR/Draft EIS was professionally prepared. He said the CYCC had been a participant in the restoration effort. He expressed concern over impacts to the golf course. At the same time, he said the CYCC had also selected Alternative D as the preferred alternative.

Mr. Bill Iacuesa, President, Wellfleet Conservation Trust, said the Trust was generally supportive of the project. He said the Trust as a group had not formally voted on the issue, but would do so at their next meeting, which was before December 12, 2012.

Ms. Ashley Faukes-Silver, Coles Neck Road, said the impacts to private property owners need to be considered. She suggested this might include higher taxes because of increased marsh or water views. She expressed concern over impacts to her horses, and whether or not they would have to be relocated because of increased green head flies.

Ms. Pamela Bauder said she was an impacted private property owner on Briar Lane. She said she was first thrilled about the project, but that was based on an overly simplistic view of it. She said the incremental flooding will negatively impact species presently resident in the marsh. She was concerned about this, and impacts to her property, some 8 acres. She expressed concern that her private property would become "public" by the act of inundation. She said the time for restoration of the marsh to the state that it was before the dike was first built had passed, and consideration should be given to species currently living there, and private property owners.

Mr. Martin Nieski, 505 Old Chequessett Neck Road, said he expects his property to be severely negatively impacted by the project. He acknowledged that perhaps he was given a building permit in error in 1990, when he constructed his house, given the nearness to the marsh edge. He said he had a report commissioned by Massachusetts Coastal Zone Management using a private consulting firm which described potential significant negative impacts to his property and his house. He read a paragraph from the report which indicated direct flooding of the basement, utilities and decking. He questioned why the Applicants had not released this report. He said that his house was effectively unsaleable, and the project raised eminent domain and takings questions. He said he was very frustrated with the entire process.

Mr. Short swore in Mr. Mark Flaherty, Massachusetts Audubon Society, who arrived late to the hearing.

Mr. Mark Flaherty, Massachusetts Audubon Society, said the Society supports the project. He thanked the Herring River Restoration Committee for their efforts. He said Audubon supports Alternative D and the use of an Adaptive Management Plan as the project moves forward.

Mr. Short asked for any further public comments.

Mr. Nieski asked if the Applicants had submitted a copy of the report on his house for the record? He suggested either the Subcommittee or Applicants had a copy of the report.

Ms. Adams suggested that Mr. Nieski could submit a copy of the report for the record and it can be mailed to the Commission office. She said it would then be distributed to the Subcommittee members.

Ms. Faukes-Silver suggested there should be an Alternative E, which confines the restoration efforts within the National Seashore boundary. She noted the project would bring the 200 foot buffer of the state Rivers Protection Act into play.

Ms. Bauder said few of the affected private property owners have a complete understanding of the project's full impact, noting that she was unaware of the impact of the Rivers Protection Act and its required setbacks.

Final Comments

Mr. Short asked for final comments from the Applicant.

Mr. Durey said impacts to private property owners were very important to the Herring River Restoration Committee. He said the Committee wants to connect directly with affected property owners, to discuss their individual situation. He said the affected properties were not identified in great detail in the Draft EIR/Draft EIS due to privacy concerns, and the potential number of affected properties, and a desire to discuss individual solutions. He noted the project was in its early stages.

Mr. Gary Joseph Chair, Herring River Restoration Committee, Town of Wellfleet, said private property owners' concerns are important to the Committee. He said the concerns have to be individually discussed with those affected. He said letters were sent out to affected property owners, and urged affected property owners to respond to the letter that had been set out by the Committee.

