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CAPE COD
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Minutes
MEPA FEIR Joint Review Hearing
Herring River Restoration Project (CCC No. 08009 / EEA No. 14272)
June 30, 2016
Wellfleet Council on Aging
715 Old King's Highway, Wellfleet, MA 02667

Subcommittee Members Present: Roger Putnam (Chair), Leonard Short, Elizabeth Taylor, Kevin Grunwald, John Krajovic

Commission Staff Present: Jonathon Idman (Chief Regulatory Officer), Jeffrey Ribeiro (Regulatory Officer), Michele White (Regulatory Officer), Tom Cambareri (Water Resources/Watershed Program Manager), Heather McElroy (Natural Resources Specialist), Cally Harper (Planner), Martha Hevenor (Planner)

Minutes Summary

The Cape Cod Commission (Commission) Herring River Restoration Project Subcommittee (Subcommittee) held a Joint Review hearing with the Massachusetts Environmental Policy Act (MEPA) office to review the Final Environmental Impact Report (FEIR) on the proposed restoration of the Herring River in Wellfleet and Truro. A representative of the Herring River Restoration Committee presented a description of the project and the Subcommittee heard public comments.

Minutes

Roger Putnam called the meeting to order at 5:30pm. Jonathon Idman read the public hearing notice and outlined the order of the hearing. The Subcommittee members introduced themselves.

Mr. Putnam asked if a representative from the town of Wellfleet would like to speak. Selectman Helen Miranda Wilson, who spoke on behalf of herself, stated that the project proponents have been very open about the project, she is in favor of the project, and that the Selectmen have consistently supported the project. Mr. Putnam asked if a representative from the town of Truro

would like to speak. Mr. Paul Wisotsky, Chair of the Truro Board of Selectmen, stated that the Truro Board of Selectmen is in favor of the project and the town is committed to the project. Mr. Putnam asked if a representative from the Cape Cod National Seashore would like to speak. Mr. George Price, Jr., Superintendent of the National Seashore, stated the significance of the project for future generations. Mr. Putnam next called for a presentation on the project by the proponent Herring River Restoration Committee (HRRC).

Mr. Tim Smith, Restoration Ecologist with the National Seashore, presented an overview of the project on behalf of the HRRC, using a Power Point presentation. Mr. Smith stated where copies of the FEIR are available to the public, and that comments on the FEIR are due to the MEPA office by July 8, 2016. Mr. Smith introduced the members of HRRC present, and then described the project area and area history. Mr. Smith stated that the Herring River was originally diked by the Chequessett Neck Road dike in 1909 to drain the marshland as a means of mosquito control, and that the dike was rebuilt in 1973. Small tide gates in the dike restrict tidal flow from Wellfleet Harbor into the Herring River, which has led to changes in the vegetation community within the estuary and river system. There are currently approximately 13 acres of tidal salt marsh upstream of the dike, where historically there was approximately 1,000 acres. Vegetation that is less salt tolerant has established in the estuary and river due to the restriction of salt water. The loss of salt water in the salt marsh also creates acidic conditions which leach into the water column. There is poor water quality in the river due to bacteria and low amounts of dissolved oxygen, which can lead to fish kills and stressed conditions for aquatic life. Poor water quality can result in the closure of shellfish areas to harvesting.

Therefore, the intent of the project is to restore tidal flow to the Herring River by gradually removing tidal restrictions to allow more salt water to enter the estuary and upper reaches of the river. The Draft Environmental Impact Report (DEIR) analyzed alternatives for the project. The project proponents ultimately chose Alternative D as the preferred alternative, which is described in further detail in the FEIR.

Some components of Alternative D are the removal of tidal restrictions at the Chequessett Neck Road dike, High Toss Road, Pole Dike Road, and Old County Road by widening tidal restrictions and replacing culverts. Engineering design of a new Chequessett Neck Road dike has been included in the FEIR, as updated since the DEIR, and will allow for incremental opening of tide gates along the dike. The new dike will include upgraded public access to the river. The dike will initially allow for existing conditions in the estuary, but over time the tide gates will be opened incrementally to gradually allow additional salt water flow into the estuary and river. The goal is to have all of the tide gates open eventually and then removed from the structure, essentially creating a bridge along Chequessett Neck Road, which will allow for a 165-foot wide tidal opening. The current opening is 18-feet.

Other components of the project are actions that are to be taken to protect low lying roads and private properties that have been constructed in the floodplain over time. Tidal control structures are proposed for Mill Creek and Pole Dike Creek. The HRRC has been working with the Chequessett Yacht and Country Club (CYCC) to address potential impacts to the golf course.

The measure proposed in the FEIR is to elevate portions of the golf course out of the floodplain. Portions of low lying roads (Old County Road, Bound Brook Road, and Pole Dike Creek Road) will be elevated above the high water elevation. The HRRC is working with other private property owners to develop agreements to relocate or elevate privately owned structures in the floodplain, such as wells and driveways.

The project will incorporate 'Adaptive Management' to use an incremental approach to restore tidal flow in the river and limit impacts to properties. The Adaptive Management Plan (AMP) has adjustability and control over the process to very gradually allow water in over time. A monitoring program will be established, and continued where currently in place, to monitor hydrology, salinity, vegetation, sediment, and animal communities. This data will be analyzed at each increment of the project before decisions are made about moving forward to the next step or other actions, and will be used to make the best decisions to minimize or avoid impacts, while at the same time achieving water quality and habitat restoration goals. Monitoring will be performed at various locations within the river and harbor.

Another component of the project involves 'secondary management' actions, based on monitoring data, intended to enhance the effects of restoring the tides and salt water to the system. Secondary management includes potential tree removal, vegetation management of invasive non-native species, restoring river channel geometry, and filling mosquito control ditches.

Ecological benefits of the project include: opening approximately 11+ miles of river herring habitat; increased water quality; decreased bacteria, which can lead to opening shellfish harvesting areas above and below the dike; increased salt marsh habitat; increased habitat for certain animal species; increased recreational opportunities; increased resiliency of the estuary to the effects of climate change; and, possible greenhouse gas fixation by the marsh.

Mr. Smith highlighted changes and additions to the project since filing the DEIR, which have been included in the FEIR. Public comments provided on the DEIR have been summarized and responses generated. A detailed analysis of anticipated habitat changes within the project area has been provided. Since filing the DEIR, two additional species have been added to the federal endangered species list, the Northern Long-eared Bat and Red Knot, and discussion has been included in the FEIR on those species. More information has been provided on state listed rare species. The National Park Service and Massachusetts Historical Commission have negotiated and executed a Programmatic Agreement which provides a flexible approach on how to deal with potential impacts to cultural and archeological resources, included as an Appendix in the FEIR.

A Memorandum of Understanding (MOU III) has been established between Wellfleet, Truro, and the Seashore, and a draft has been included in the FEIR. MOU III established an administrative structure for the project, which will be an executive council made up of the Seashore Superintendent and representatives from the select-boards of Wellfleet and Truro, which will be the governing entity for implementation and management of the project.

Also included in the FEIR is an overview of the Adaptive Management approach to the project, and more technical details and design of the Chequessett Neck Road dike and other structures and roadways.

Mr. Smith reviewed the next steps and timeline of the project. The Secretary will issue a Certificate on the adequacy of the FEIR on July 15, 2016. A National Environmental Policy Act (NEPA) Record of Decision on the FEIS will be issued after a 30-day 'no action period', which ends July 24, 2016. Within 45 days of a Certificate on the FEIR from the MEPA office the Commission's Development of Regional Impact (DRI) hearing process will begin. The HRRC will continue work on technical designs of flood control structures and roadway mitigation. The HRRC will continue to work with landowners to prevent flood impacts, finalize and establish the executive council management structure, and continue developing the AMP with detailed monitoring plans. It is anticipated to take approximately 12 months to prepare permit applications to agencies such as MassDEP and USACE, among others.

Fundraising is ongoing. The project is estimated to cost \$40-60 million dollars, and have a 5-10 year construction period, which is anticipated to begin in late 2018-2019. Funding for construction has not yet been secured. Mr. Smith concluded his presentation.

Mr. Putnam called for a presentation by Mr. Idman, who discussed a brief history of the project relative to Commission review. Mr. Idman stated the purpose of the hearing is to take public comment on the project and inform the Subcommittee's recommendation on future DRI review. Mr. Idman stated that Commission staff suggests that the FEIR adequately and properly complies with MEPA and should be granted a Certificate on the FEIR, allowing the project to continue on to Commission review as a DRI. The applicants will be filing a Project of Community Benefit application with the Commission. Mr. Idman clarified that the 45-day timeline to open a DRI hearing following completion of the MEPA process can be extended by mutual agreement of both parties. Mr. Idman presented an overview of the Commission Staff Report, and stated that in staff's opinion a sufficient amount of information has been presented in the FEIR relative to MEPA review.

Mr. Idman stated that the Commission anticipates a greater level of project specificity will be made in the application to the Commission, specifically to address Cape Cod Regional Policy Plan (RPP) Goals and Standards, and other statutory provisions of Commission regulations. The development of an AMP will be critical for Commission review. A framework of the AMP is provided in the FEIR and has to be more specific the further it goes through permitting. Some project elements are uncertain at this point, which is why the AMP is important to guide alternatives and decisions. Additional items that will be required for DRI review are groundwater and surface water modeling in the Mill Creek sub-basin, and staff suggests an archeological survey be conducted prior to the start of work. The AMP should address flood protection provisions on private properties, and impacts between private properties and impacts to resources should be distinguished. An impact analysis on the road network should be performed for project impacts and alternative emergency access for High Toss Road should be considered.

Mr. Idman stated that Alternative C and Alternative D share the same infrastructure but differ in operation, and briefly described the operational differences between Alternative C and Alternative D. Through the Commission Staff Report, staff state that there should be clear decision making, justification, and processes to minimize and mitigate the full implementation of Alternative D, the proponents preferred alternative. In sum, the Commission supports the broad array of benefits that could be achieved by the project, subject to minimizing and mitigating resource impacts. Mr. Idman introduced Commission staff present at the hearing and offered to address any questions by the Subcommittee.

Mr. Putnam called for discussion from the Subcommittee.

Leonard Short asked what the timeframe for implementation of the project would be. Mr. Smith stated between five and 20 years, which includes time to collect and analyze monitoring data to inform future decisions.

Kevin Grunwald asked about sources of project funding and progress made towards obtaining funds. Mr. Smith stated that fundraising for project implementation cannot begin until National Environmental Policy Act (NEPA) review has concluded, but expects project funding will be through federal and state grants, and other sources. Friends of Herring River have begun exploring where project funding may come from. Hunt Durey (HRRC/MA Div. of Ecological Restoration) stated substantial funding has been raised to date for project design.

John Krajovic asked about the cost of Alternative C. Mr. Smith stated that the infrastructure for Alternatives C and D would be the same, the difference would be in how those structures were operated; therefore, costs of both Alternatives are similar. Alternative C would alleviate the need for mitigation in the Mill Creek sub-basin; however, a Cost-Benefit analysis showed that with the extra restoration area achieved through Alternative D and added benefits, the alternatives are comparable in cost to value.

Mr. Krajovic asked if there was confidence among the proponents that funding for the implementation of the project would be realized. Mr. Smith stated that the project team is confident in obtaining funding due to the project benefits, and that funding would likely be primarily federal. Stephen Spear (HRRC/ USDA) stated that the project proponents want to secure the necessary approvals so when funding is available they are ready to execute the project.

Mr. Krajovic asked if there is a phasing plan for implementing project components based on securing funding. Mr. Durey stated that due to the nature of the project the infrastructure would have to be in place prior to increasing tidal flow into the estuary and river, and infrastructure is a majority of the project costs; therefore, phasing project implementation based on fundraising is unfeasible.

Mr. Putnam then asked for public comment by Federal, State, or Local Officials. Hearing none, Mr. Putnam stated that the Subcommittee would hear public comments. Jeffrey Ribeiro stated that he would call members of the public to comment in the order they signed up to speak.

Mr. Ribeiro called Ed DeWitt. Mr. DeWitt, Executive Director of the Association to Preserve Cape Cod (APCC), stated that restoration of Herring River has been an interest of the Association's since 1976, because the 1973 project did nothing to restore tidal flow to the estuary system. This is an important public works project to protect this region from the effects of storm surges. He stated that he felt the project is proposed to achieve goals within the core purposes of the Commission Act.

Mr. Ribeiro called Eliza Cox. Ms. Cox, an attorney with Nutter McClennen & Fish LLP, representing Chequessett Yacht & Country Club (CYCC), summarized comments presented in a written submission to the Commission and MEPA office. Ms. Cox submitted a hard copy of the comment letter sent to the MEPA office and Commission staff, dated June 30, 2016, on behalf of CYCC, providing a hydrogeological opinion of the FEIR relative to CYCC prepared by EI LLC, also dated June 30, 2016. Ms. Cox stated that the FEIR states that Alternatives B and D would cause flooding on the CYCC property that would require mitigation, and that Alternative C will not cause the flooding predicted with Alternatives B and D. As such no mitigation is proposed at the CYCC for implementation of Alternative C. A professional hydrologist consulting the CYCC does not believe that sufficient evidence has been provided which shows that Alternative C will not impact the CYCC property. Therefore, the CYCC does not support Alternative C.

Mr. Ribeiro called Bruce MacGibbon. Mr. MacGibbon stated concern for the loss of the use of his land, and did not see the need for the project.

Mr. Ribeiro called Jodi Birchall. Ms. Birchall stated concern for loss of emergency access to Griffin Island from High Toss Road and concern regarding project funding. Ms. Birchall also had concern regarding potential loss of use of her land, and that property owners should be given a guarantee that their land will be protected. Ms. Birchall also submitted written comments.

Following Ms. Birchall, Mr. Putnam asked if anyone who did not sign up would like to speak.

Mr. Putnam recognized Judith Stiles for public comment. Ms. Stiles asked how water from the project will affect the town landfill. Ms. Stiles also submitted comments in writing.

Mr. Putnam recognized Michael Parlante for public comment. Mr. Parlante stated concern for impacts to shellfish harvesting and impacts on the town landfill that could affect shellfishing due to the project.

Mr. Putnam asked if there were any comments or discussion among the Subcommittee. Mr. Idman asked if the Subcommittee would like to include additional comments in the Commission Staff Report. Mr. Putnam stated that he would like to see broader outreach about mitigation and would like more information on how water from the project may impact the landfill. Mr. Short and Ms. Taylor stated they would like more information on mitigation and project funding.

Tom Cambareri, Commission Technical Services Director/Water Resources, spoke regarding a study report titled "Draft Technical Memorandum on Wellfleet Landfill Hydrogeological

Evaluation”, Wellfleet EIS/EIR, Delivery Order No. 2, prepared by Metcalf & Eddy, dated May 2, 1988. Mr. Cambareri stated that the study evaluated groundwater around the closed landfill, as that land had been considered for a possible wastewater disposal site. While the results of the study regarding groundwater monitoring did show elevated concentrations of chemicals associated with the landfill at that time, sampling showed that movement of the landfill plume towards Pole Dike Creek had no impact on the Herring River or its tributaries, and that any chemicals entering the stream would be highly diluted.

Mr. Grunwald stated that he would like more information on the process for mitigation and what percent of project funds go towards mitigation. Mr. Krajovic stated that he would like more information on the scope of the mitigation program.

Mr. Idman suggested to Mr. Putnam that the Subcommittee may wish to hear further from Mr. Smith regarding the flood proofing measures proposed for private properties. Mr. Smith stated that the FEIR does summarize mitigation. The project team identified properties in the area where flooding will occur. Approximately 10% of those properties will have some structure that would be affected. The proponents have reached out to those property owners in this area with anticipated impacts to structures in order to discuss options to mitigate those impacts. These are private discussions with individual property owners.

Mr. Krajovic asked what the process is for negotiating these settlements; will there be a document between the property owners and an entity? Mr. Smith stated that eventually there would be a formal document but at this stage agreements are under informal discussions.

Mr. Putnam recognized Ms. Birchall for comment, who stated that there is no mitigation proposed for properties that do not have structures that will be affected.

Mr. Putnam recognized Randy Emmons for public comment. Mr. Emmons asked who is responsible for creating the negotiating entity. Mr. Smith stated that an Executive Committee to be established would be responsible for negotiations with private property owners.

Mr. Spear stated that mitigation funding will be sought along with construction funding; construction of any mitigation is part of the project.

Mr. Putnam recognized Susan Balgart for public comment. Ms. Balgart asked how one can know if their property is protected from impacts of the project. Mr. Smith stated that the proponents have contacted those people who, in their analysis, have a structure that may be impacted. Ms. Balgart asked to see information on the analysis.

Mr. Putnam recognized Laura Runkel for public comment. Ms. Runkel asked who will be responsible for unanticipated mitigation.

Mr. Putnam asked if anyone else wanted to make a public comment and if there was any further discussion among the Subcommittee.

Mr. Grunwald made a motion to adjourn. Mr. Short seconded. The motion was passed by a unanimous vote and the hearing was adjourned at 7:45pm.

Respectfully submitted,

Roger Putnam, Chair, Herring River Restoration Subcommittee

Date

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