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CAPE COD
COMMISSION

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DEVELOPMENT OF REGIONAL IMPACT SCOPING DECISION

DATE: March 7, 2019
PROJECT: Herring River Restoration Project – Phase 1 (CCC File No. 08009)
Herring River Estuary System, Town of Wellfleet/Cape Cod National Seashore
PROJECT APPLICANT: Town of Wellfleet c/o Daniel Hoort, Town Administrator
Town Hall, 300 Main Street, Wellfleet, MA 02667

FINDINGS

The Cape Cod Commission (“Commission”), through its Executive Director, hereby finds and determines as follows:

1. The Herring River Restoration Project qualifies as a mandatory Development of Regional Impact (“DRI”) pursuant to Sections 2 & 3 of the Commission’s “Enabling Regulations Governing Developments of Regional Impact,” revised April 2018 (“Enabling Regulations”).
2. The Secretary of the Commonwealth’s Executive Office of Energy and Environmental Affairs issued a Certificate for the full potential restoration area (approximately 890 acres) of the Herring River Restoration Project (EEA # 14272) in July 2016 determining that its Final Environmental Impact Report (“FEIR”) properly and adequately complies with the Massachusetts Environmental Policy Act (“MEPA”). Commission staff opened the DRI public hearing period on the Herring River Restoration Project procedurally in September 2016, and the period is currently extended through April 2019. The Wellfleet Selectboard will consider and vote on a further extension at one of its meetings in March 2019.
3. In accordance with Section 5(a) of the Enabling Regulations, as the Herring River Restoration Project qualifies as a DRI “...the proponent may apply to the Commission to limit the scope of the DRI review.”
4. Pursuant to Section 5(e)(v) of the Enabling Regulations, “[t]he Executive Director shall issue a written decision following his/her determination of the scope of DRI review...(which) shall be reported to the Committee on Planning and Regulation, who shall vote whether to adopt the decision as final...”
5. The Town of Wellfleet (“Applicant” or “Town”) submitted a cover letter and application to the Commission on 1/3/19 requesting to limit the scope of DRI review pursuant to Section 5 of the Enabling Regulations, which application is entitled “Herring River Restoration Limited Development of Regional Impact Review Scoping Application, January 2, 2019, Town of Wellfleet.” The Town has applied to limit the scope of DRI review, and subsequently intends to pursue DRI review, for Phase 1 of the Herring River Restoration Project, as described herein, which is a less expansive project than the full Herring River Restoration Project described in the

Commonwealth's FEIR Certificate. The application package included site plans for the primary water control components of the project described herein ("Scoping Application").

6. As used in this Scoping Decision, the "Project" refers to this Phase 1. In Phase 1, all principal water control components and the vast majority of potential effects of restoration will take place within the Town of Wellfleet, and thus the Town of Wellfleet is the sole applicant under the Scoping Application and for subsequent DRI review. Phase 1 consists of the following principal water control components: replacement of the existing dike and tidal control structure at Chequessett Neck Road with a new bridge and tide gate system; new construction or alteration of other tidal control structures at the entrances to the Mill Creek and Upper Pole Dike Creek sub-basins; and removal of a portion of High Toss Road where it crosses the Herring River marsh. Subject to certain operational controls, Phase 1 is anticipated to re-establish tidal exchange and restore approximately 570 acres of native tidal wetlands in the approximately 1,100-acre Herring River estuary system.

7. The Town proposes to restore (and gauge restoration of) the approximately 570 acres associated with Phase 1 by opening tide gates on the new Chequessett Neck Road bridge to a configuration (i.e. number of gates opened and size of openings) that achieves a maximum mean high tide in Lower Herring River of 3.6 feet. The Town intends that this maximum mean high tide measure serve as the primary limiting factor for the extent of tidal exchange in Phase 1. Further, the Applicant has indicated that it intends to propose as a condition of its DRI permitting an intermediate water level review threshold which is related to potential impacts at CYCC property. The Town would undergo further review by the Commission to authorize further Project phases and tidal exchange beyond that authorized in Phase 1.

8. Phase 1 also includes related vegetation and marsh management; proposed measures to prevent or mitigate potential flood impacts to structures on public and private properties, including to the golf course at Chequessett Yacht and Country Club ("CYCC"); and elevation of portions of low-lying roads to maintain access to all private properties currently served.

9. The project site consists of the parcels within the limits of disturbance for construction of the above-referenced water control components, including any ancillary/staging areas necessary during construction (collectively, "Project Site"). The Project Site is located entirely within Wellfleet, MA on land owned by the Town of Wellfleet or the National Park Service ("NPS").

10. The Project Site is distinguished from areas where mitigation and management activities are proposed as part of the Project, which include measures such as: elevating low-lying road sections, installing upgraded culverts, and improving stormwater management on these road segments; installing a flood control structure on Cape Cod National Seashore ("CCNS") property; marsh/channel work; and completing flood protection measures at the CYCC and other specified private properties to protect public and private structures from potential damage resulting from the return of tidal flow.

11. Much of the proposed restoration area and some of the Project water control components are in or adjacent to the CCNS. Out of the approximately 570 acres covered under Phase 1, 535 acres are within the CCNS; 9 acres are owned by the Wellfleet Conservation Trust; 10 acres are owned by CYCC; and approximately 12 acres are on portions of 15 private residential parcels.

12. The Town included a letter of consent and support from CCNS in the Scoping Application. The Towns of Wellfleet and NPS are parties to a Memorandum of Understanding ("MOU") established to guide implementation of the Herring River Restoration Project.

13. The Project is subject to the 2019 Cape Cod Regional Policy Plan ("2019 RPP"). The RPP has recently been revised and updated, resulting in the 2019 RPP that has recently been adopted and approved as Barnstable County Ordinance 19-01 in January 2019. Similarly, the companion DRI Technical Guidance to the 2019 RPP (consisting of Technical Bulletins associated with the fourteen goals set out in Section 6 of the 2019 RPP) was adopted and approved by the Cape Cod Commission in January 2019.

14. Among other findings for DRI approval, the Cape Cod Commission Act and Enabling Regulations require the Cape Cod Commission to review DRIs for their consistency with the Regional Policy Plan. As set out in Section 9 of the 2019 RPP, the Commission's determination of consistency with the applicable, material, and

regionally significant goals and objectives set out in Section 6 of the 2019 RPP constitutes consistency with the RPP for purposes of DRI review.

15. Section 5 of the Enabling Regulations provides that, even if an issue area from the RPP is deemed applicable to a project, such issue area may still be ‘scoped’ out of DRI review if the Executive Director finds that such project does not involve substantial deviation from the RPP or does not have significant impact upon the purposes and values identified by Section One of the Cape Cod Commission Act. As applies to the 2019 RPP, where said Section 5 uses the terms “Minimum Performance Standard/s” or “issue area/s,” such references shall be to the goals and objectives set out in Section 6 of the 2019 RPP.

16. The purpose of DRI Scoping is to establish the applicable, material and regionally significant goals and objectives from Section 6 of the 2019 RPP that will be considered by the Commission during DRI review in its determination of whether a project is consistent with the RPP.

17. The Executive Director through Commission staff reviewed the Scoping Application according to Section 9 of the 2019 RPP and Section 5 of the Enabling Regulations to determine what goals and objectives from Section 6 of the 2019 RPP shall be included in the scope of the Commission’s RPP consistency determination during DRI review. As applicable to the Project, the Executive Director and Commission staff considered the Scoping Checklist for Redevelopment in review.

18. Commission staff deemed the Scoping Application complete on February 28, 2019 whereupon the Executive Director, through Commission staff, prepared and issued this Decision. The Commission’s Committee on Planning and Regulation (“CPR”) reviewed and voted to adopt this Decision at a CPR meeting on March 7, 2019.

19. The goals and objectives from the 2019 RPP set out in Finding 20 below are either not applicable or are not material or regionally significant to the Commission’s RPP consistency review of the Project; the Project does not substantially deviate from said goals and objectives; and the Project does not have significant impact upon the purposes and values identified by Section One of the Cape Cod Commission Act with respect to said goals and objectives, based on the foregoing Findings and for the following reasons:

- The primary purpose of the Project is to restore degraded coastal wetlands and associated habitat;
- Business development and employment are not primary purposes of the Project;
- Much of the restoration area currently serves or is protected as open space for conservation, scenic or recreational purposes under federal, state, or local law , and the purposes of the Project are consistent with the purposes set out in Article 97 of the Massachusetts Constitution;
- The Project will not significantly increase stormwater runoff or alter land drainage patterns from those under existing conditions;
- The Project does not involve groundwater discharges or withdrawals, including wastewater generation;
- The Project is not proposed within off-shore ocean resource areas;
- The Project does not involve building development;
- The Project does not involve a significant amount of land clearing or disturbance associated with building or structural development;
- The Project does not involve traditional site development;
- The Project is an ecological restoration project and does not involve commercial, industrial, residential or other development uses;
- The Project does not involve energy generation or involve significant, permanent energy demands;
- The primary components of the Project involve water-dependent uses;
- The Project will not directly generate new, permanent vehicle trips;
- The Project does not involve significant waste generation;
- The Project does not promote or result in development growth that increases demands for municipal services or expansion of private utilities; and
- The Project will not involve activities that generate or store hazardous waste.
- The Project is primarily located within the RPP’s Natural Area Placetype.

20. The following goals and objectives from the 2019 RPP are scoped out of and excluded from the RPP consistency analysis under subsequent DRI review:

- Water Resources objective WR5;
- the Ocean Resources goal and its corresponding objectives;
- the Open Space goal and its corresponding objectives;
- Community Design objectives CD1 and CD2;
- Coastal Resiliency objective CR1;
- the Capital Facilities and Infrastructure goal and its corresponding objectives;
- Transportation objectives TR2 and TR3;
- the Energy goal and its corresponding objectives;
- the Waste Management goal and its corresponding objectives;
- Cultural Heritage objective CH1;
- the Economy goal and its corresponding objectives; and
- the Housing goal and its corresponding objectives.

21. Where this Decision reserves RPP consistency review over proposed stormwater management under Water Resources objective WR4 and Wetlands objective WT3, that review is limited to the stormwater management associated with the Project's proposed water control structures and low-lying roadway segments. This Decision also recognizes that such stormwater management is proposed in the context of redevelopment, in which context the aim is to improve stormwater management over existing conditions.

CONCLUSION

Based on the foregoing Findings, the Executive Director hereby issues and the Committee on Planning and Regulation approves this Scoping Decision, establishing the goals and objectives from Section 6 of the 2019 RPP that will be considered by the Commission during DRI review in determining the Project's consistency with the 2019 RPP, with the review scope set out as follows:

See Exhibit A, which is expressly incorporated herein and made a part hereof.

This Scoping Decision is subject to the Conditions below.

CONDITIONS

1. This Scoping Decision allows the Applicant to file a DRI application with the Commission, subject to and consistent with the terms, conditions and scope set out herein, within one year from the date of this Scoping Decision, which time may be extended upon mutual agreement of the Commission and the Applicant.
2. This Scoping Decision is based on the plan sets, materials, information, and documents submitted by the Applicant in and with its Scoping Application. Proposed changes to the Project may require changes to the scope of DRI review authorized herein.
3. The terms and conditions of this Scoping Decision shall be incorporated into any DRI decision for the Project.
4. The purpose of this Scoping Decision is to establish the goals and objectives the Commission will consider during DRI review in its determination about whether the Project is consistent with the RPP. This Scoping Decision does not preclude the Commission from considering the general subject matter related to those goals and objectives scoped out of review hereunder, as part of the Commission's broader DRI review and decision-making authority; specifically, in its determination about whether the probable benefit of the Project is greater than its probable detriment.

SIGNATURE PAGE FOLLOWS

SIGNATURES

Executed this 7th day of March 2019.

For the Cape Cod Commission by:

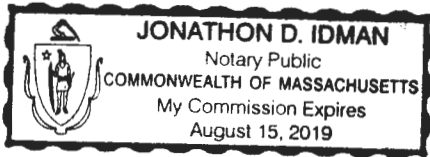
Elizabeth Taylor
Elizabeth Taylor, Chair
Committee on Planning and Regulation

Kristy Senatori
Kristy Senatori, Executive Director

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss March 7, 2019

Before me, the undersigned notary public, personally appeared Elizabeth Taylor, in her capacity as Chair of the Cape Cod Commission's Committee on Planning and Regulation, whose name is signed on the preceding document, and such person acknowledged to me that she signed such document voluntarily for its stated purpose on behalf of the Cape Cod Commission. The identity of such person was proved to me through satisfactory evidence of identification, which was [] photographic identification with signature issued by a federal or state governmental agency, [] oath or affirmation of a credible witness, or [X] personal knowledge of the undersigned.



[Signature]
Notary Public
My Commission Expires:

SEAL

EXHIBIT A
CAPE COD REGIONAL POLICY PLAN
GOALS AND OBJECTIVES REVIEW/DRI SCOPING



**CAPE COD
COMMISSION**

Project Name: Herring River Restoration Project – Phase 1
 Cape Cod Commission File #: 08009
 Applicant: Town of Wellfleet
 Date Application Submitted for Scoping: 1/3/19

RPP GOALS AND OBJECTIVES – SCOPE FOR RPP CONSISTENCY DETERMINATION

RPP GOALS AND OBJECTIVES	Include in Scope of RPP Consistency Review	Scoped Out of RPP Consistency Review
NATURAL SYSTEMS		
WATER RESOURCES ("WR")		
GOAL – WR: To maintain a sustainable supply of high quality untreated drinking water and protect, preserve, or restore the ecological integrity of Cape Cod’s fresh and marine surface water resources.	✓	
OBJECTIVE WR1: Protect and preserve groundwater quality	✓	
OBJECTIVE WR2: Protect, preserve and restore fresh water resources	✓	
OBJECTIVE WR3: Protect, preserve and restore marine water resources	✓	
OBJECTIVE WR4: Manage and treat stormwater to protect and preserve water quality	✓*	
OBJECTIVE WR5: Manage groundwater withdrawals and discharges to maintain hydrologic balance and protect surface and groundwater resources		✓
OCEAN RESOURCES ("OR")		
GOAL – OR: To protect, preserve, or restore the quality and natural values and functions of ocean resources.		✓
OBJECTIVE OR1: Locate development away from sensitive resource areas and habitats		✓
OBJECTIVE OR2: Preserve and protect ocean habitat and the species it supports		✓
OBJECTIVE OR3: Protect significant human use areas and vistas		✓
WETLAND RESOURCES ("WT")		
GOAL – WT: To protect, preserve, or restore the quality and natural values and functions of inland and coastal wetlands and their buffers.	✓	
OBJECTIVE WT1: Protect wetlands and their buffers from vegetation and grade changes	✓	
OBJECTIVE WT2: Protect wetlands from changes in hydrology	✓	
OBJECTIVE WT3: Protect wetlands from stormwater discharges	✓*	
OBJECTIVE WT4: Promote the restoration of degraded wetland resource areas	✓	

* Stormwater review under WR4 and WT3 for the Herring River Restoration Project – Phase 1 is limited to that associated with water control structures and roadwork.

WILDLIFE AND PLANT HABITAT ("WP")		
GOAL – WP: To protect, preserve, or restore wildlife and plant habitat to maintain the region's natural diversity.	✓	
OBJECTIVE WP1: Maintain existing plant and wildlife populations and species diversity	✓	
OBJECTIVE WP2: Restore degraded habitats through use of native plant communities	✓	
OBJECTIVE WP3: Protect and preserve rare species habitat, vernal pools, 350-foot buffers to vernal pools	✓	
OBJECTIVE WP4: Manage invasive species	✓	
OBJECTIVE WP5: Promote best management practices to protect wildlife and plant habitat from the adverse impacts of development	✓	
OPEN SPACE ("OS")		
GOAL – OS: To conserve, preserve, or enhance a network of open space that contributes to the region's natural and community resources and systems.		✓
OBJECTIVE OS1: Protect and preserve natural, cultural, and recreational resources		✓
OBJECTIVE OS2: Maintain or increase the connectivity of open space		✓
OBJECTIVE OS3: Protect or provide open space appropriate to context		✓
BUILT SYSTEMS		
COMMUNITY DESIGN ("CD")		
GOAL – CD: To protect and enhance the unique character of the region's built and natural environment based on the local context.	✓	
OBJECTIVE CD1: Promote context sensitive building and site design		✓
OBJECTIVE CD2: Minimize the amount of newly disturbed land and impervious surfaces		✓
OBJECTIVE CD3: Avoid adverse visual impacts from infrastructure to scenic resources	✓	
COASTAL RESILIENCY ("CR")		
GOAL – CR: To prevent or minimize human suffering and loss of life and property or environmental damage resulting from storms, flooding, erosion, and relative sea level rise.	✓	
OBJECTIVE CR1: Minimize development in the floodplain		✓
OBJECTIVE CR2: Plan for sea level rise, erosion, and floods	✓	
OBJECTIVE CR3: Reduce vulnerability of built environment to coastal hazards	✓	
CAPITAL FACILITIES AND INFRASTRUCTURE ("CF")		
GOAL – CF: To guide the development of capital facilities and infrastructure necessary to meet the region's needs while protecting regional resources.		✓
OBJECTIVE CF1: Ensure capital facilities and infrastructure promote long-term sustainability and resiliency		✓
OBJECTIVE CF2: Coordinate the siting of capital facilities and infrastructure to enhance the efficient provision of services and facilities that respond to the needs of the region		✓
TRANSPORTATION ("TR")		
GOAL – TR: To provide and promote a safe, reliable, and multi-modal transportation system.	✓	
OBJECTIVE TR1: Improve safety and eliminate hazards for all users of Cape Cod's transportation system	✓	
OBJECTIVE TR2: Provide and promote a balanced and efficient transportation system that includes healthy transportation options and appropriate connections for all users		✓
OBJECTIVE TR3: Provide an efficient and reliable transportation system that will serve the current and future needs of the region and its people		✓

ENERGY ("EN")		
GOAL – EN: To provide an adequate, reliable, and diverse supply of energy to serve the communities and economies of Cape Cod.		✓
OBJECTIVE EN1: Support renewable energy development that is context-sensitive		✓
OBJECTIVE EN2: Increase resiliency of energy generation and delivery		✓
OBJECTIVE EN3: Minimize energy consumption through planning and design (energy efficiency and conservation measures)		✓
WASTE MANAGEMENT ("WM")		
GOAL – WM: To promote a sustainable solid waste management system for the region that protects public health, safety, and the environment and supports the economy.		✓
OBJECTIVE WM1: Reduce waste and waste disposal by promoting waste diversion and other Zero-Waste initiatives		✓
OBJECTIVE WM2: Support an integrated solid waste management system		✓
COMMUNITY SYSTEMS		
CULTURAL HERITAGE ("CH")		
GOAL – CH: To protect and preserve the significant cultural, historic, and archeological values and resources of Cape Cod.	✓	
OBJECTIVE CH1: Protect and preserve forms, layouts, scale, massing, and key character defining features of historic resources, including traditional development patterns of villages and neighborhoods		✓
OBJECTIVE CH2: Protect and preserve archaeological resources and assets from alteration or relocation	✓	
OBJECTIVE CH3: Preserve and enhance public access and rights to and along the shore	✓	
OBJECTIVE CH4: Protect and preserve traditional agricultural and maritime development and uses	✓	
ECONOMY ("EC")		
GOAL – EC: To promote a sustainable regional economy comprised of a broad range of businesses providing employment opportunities to a diverse workforce.		✓
OBJECTIVE EC1: Protect and build on the Cape's competitive advantages		✓
OBJECTIVE EC2: Use resources and infrastructure efficiently		✓
OBJECTIVE EC3: Foster a balanced and diverse mix of business and industry		✓
OBJECTIVE EC4: Encourage industries that provide living wage jobs to a diverse workforce		✓
OBJECTIVE EC5: Expand economic activity and regional wealth through exports, value added, import substitution, and local ownership		✓
HOUSING ("HO")		
GOAL – HO: To promote the production of an adequate supply of ownership and rental housing that is safe, healthy, and attainable for people with different income levels and diverse needs.		✓
OBJECTIVE HO1: Promote an increase in housing diversity and choice		✓
OBJECTIVE HO2: Promote an increase in year-round housing supply		✓
OBJECTIVE HO3: Protect and improve existing housing stock		✓
OBJECTIVE HO4: Increase housing affordability		✓