

Agenda & Meeting Access Information
Herring River Executive Council (HREC)
Thursday, July 16, 2020
Virtual meeting via Webex
(Webex access information is provided below)
3:00 pm

To access the virtual meeting:

[Webex meeting link](#)

Or go to www.Webex.com or call 1-415-655-0001 and use the following meeting number:

Meeting number (access code): 126 126 7107

Meeting password: umSZbgpu635 (86792478 from phones and video systems)

-AGENDA-

-Welcome and introductions

-Approval of minutes: April 16, 2020 and July 1, 2020

-Administrative matters

-Herring River Restoration Project update

-Permitting update

-Follow up on ROW encroachment land transfer

-Project management

-Adaptive management plan

-Report from Chair of the Herring River Stakeholders Group

-HREC member announcements

-Public comment (15 minutes) *

** Any discussion of an issue not on the agenda that is raised in the public comment section shall be limited to whether that issue should be placed on a future agenda.*

-Next Meeting dates

Thursday, September 17, 2020, 3:00 pm

Thursday, December 17, 2020, 3:00 pm

-Adjourn

**Meeting Minutes of the
Herring River Executive Council (HREC)
Thursday, April 16, 2020, 3:00 pm
Virtual meeting via Webex**

Attending: HREC members: Geoffrey Sanders, Brian Carlstrom, Janet Reinhart, Helen Miranda Wilson, Dan Hoort; Coordinator: Carole Ridley; Attending: Martha Craig, Tim Smith, Dave Koonce, Beth Chapman, Gail Ferguson, Philip Tabas, Christine Odiaga, Dale Rheault, Steve Spear.

The meeting opened just after 3:00 pm with introductions of the HREC and others participating virtually.

-Administrative matters

Approval of Minutes: Prior to the meeting Helen Miranda Wilson had circulated to HREC members, and confirmed receipt by them, proposed edits to the draft minutes of January 16, 2020. Her proposed changes were shown in red typeface, and included typographical changes and other clarifications. Janet Reinhart requested to clarify whether the discussion of the Chequessett Neck Road dike as a point source for bacterial contamination was accurately reflected and she agreed that it was so in the revision. Brian Carlstrom highlighted a question about whether the appointment of Moe Borocas as Vice Chair of the Herring River Stakeholder Group had been accomplished by vote or by consensus. Dan Hoort remarked that the decision had been made by unanimous consent.

Ms. Wilson moved that the members present vote on the approval of minutes. Janet seconded the motion and the vote was 5-0-0 in favor. Ms. Wilson then moved approval of the minutes as amended. Mr. Hoort then seconded the motion and the vote was 5-0-0 in favor.

A second administrative matter concerned a draft report of the Herring River Executive Council to be submitted for inclusion in the 2020 Town of Wellfleet Annual Report. Ms. Wilson had circulated a draft to the HREC members, and confirmed receipt. She noted that the report had been prepared by Hillary Greenberg Lemos with edits provided by Ms. Wilson. Carole Ridley noted that in previous years the report had been submitted by the Herring River Restoration Committee, which is no longer constituted under the memorandum of agreement between the Town and Seashore (MOU IV). Mr. Hoort recommended approval of the annual report for submission by consensus. The consent was unanimous. Mr. Carlstrom thanked Ms. Wilson for her efforts in moving the report forward. Ms. Wilson indicated that she would submit the report to the Town Administrator's office for inclusion in the Town Report.

-Herring River Restoration Project update

Ms. Ridley provided an update on project permitting and an issue related to land transfers associated encroachment on Seashore property due to roadway design.

Permitting: The Cape Cod Commission public hearing opened on March 9th, and was well attended by the public. The Cape Cod Commission staff report, which was described at the hearing by the Chief Regulatory Officer, found that the project is compliant with the Cape Cod Regional Policy Plan standards for Development of

Regional Impact review. His comments noted that the focus of the Cape Cod Commission's review would likely be on the form of conditions that would be included in a Commission decision. The public hearing was continued to April 30th at 4:30 pm and will be conducted as a virtual meeting due to social distancing restrictions that are in effect.

The Commission staff report identified a number of questions related to different topical areas. Consistent with the Selectboard's vote to authorize the Friends of Herring River and consultants to assist with the permitting process, responses to each of these questions were prepared and will be submitted to the Commission by the Town of Wellfleet. A draft of the responses was shared with Mr. Hoort, Ms. Lemos and representatives of project partner agencies for input. Ms. Wilson requested to see the document, and Ms. Ridley offered to circulate it to the HREC members. The document will be submitted to the Cape Cod Commission in the coming days, well in advance of the April 30th hearing continuation.

Ms. Ridley explained that the Selectboard had approved an agreement to extend the Cape Cod Commission's public hearing period. The public hearing period now extends through July 2020. That should be more than sufficient time for the Cape Cod Commission subcommittee to formulate their recommendation to the full Cape Cod Commission.

Ms. Reinhart complimented the presentation at the hearing. Ms. Ridley acknowledged the work of the representatives of the partner agencies and also the assistance of the Friends of Herring River in their outreach efforts.

Lastly, Ms. Ridley reported that work is ongoing in the development of subsequent permit application to Massachusetts Department of Environmental Protection, US Army Corp of Engineers and Massachusetts Coastal Zone Management. More information about those permits should be available at the July Executive Council meeting.

-ROW land transfer

Ms. Ridley explained that the elevation of low road segments resulted in an increased side slope of roadway that encroaches on Seashore property on one side of the roads. The roadway elevation work is proposed along two non-contiguous miles on Old County, Pole Dike and Bound Brook Island Roads. The amount of land encroachment is equivalent to approximately two acres when small pieces along the roadway segments are combined. The encroachment has been minimized, but is also balanced with the objective of minimizing encroachment on private parcels and maintaining ease of wildlife passage. The Seashore is not authorized to provide an easement or license to allow the encroachment. In lieu of that, there is a requirement for a transfer of land comparable to the area of encroachment. This requires a four step process of 1) quantifying the Seashore and Town parcels for transfer, 2) conducting surveys and developing legal descriptions of the parcels, 3) conducting appraisals of the parcels and 4) executing the exchange. Mr. Carlstrom explained that the process involves the National Park Service Lands Office, and Lauren McKean is the Seashore official who works most closely with that office. Ms. Wilson noted that final execution of a transfer would likely require Town Meeting action. Mr. Carlstrom noted that this is a complex and time consuming process, and that it can be managed in a way that allows the project to proceed even if the transfer has not been fully executed. This will require close coordination between the Town and

Seashore. Mr. Hoort said that he would identify someone to work with the Seashore staff and the project team to move this process forward.

-Report from Chair of the Herring River Stakeholders Group

Due to technical difficulties, the Chair was not able to participate in the meeting. However, Ms. Ridley reported that the HRSG has been meeting to learn more about 1) various aspects of the project and 2) the adaptive management process and discuss how they may be involved in collecting data regarding socio-economic factors that are accounted for in the adaptive management structured decision-making framework.

-HREC member announcements

Mr. Carlstom thanked the Friends of Herring River for working with Geoff Sanders to modify the herring count to address social distancing requirements.

-Public comment (15 minutes) *

There was no public comment

-Next Meeting dates were reviewed by the Council and are still workable:

Thursday, July 16, 2020, 3:00 pm

Thursday, September 17, 2020, 3:00 pm

Thursday, December 17, 2020, 3:00 pm

Prior to adjournment, Ms. Wilson requested that the draft minutes be circulated soon after the meeting while memories were fresh, and also that a link to the meeting recording be provided to the Town Administrator's office.

The meeting adjourned at just before 4 pm.

HREC Meeting
Work Group to Discuss Low Roads Encroachment
Wednesday, July 1, 2020, 3:00 pm via Webex

Attending: HREC members: Brian Carlstrom, Geoff Sanders, Helen Miranda Wilson, Janet Reinhart, Dan Hoort; NPS representatives: Jennifer Cherry, Jean Olson, Molly Kammerer, Tim Smith, Lauren McKean; Other: Steve Spear, Martha Craig, Christine Odiaga, Ryan Curley, Gail Ferguson, Dave Koonce; Denise Coffey, Carole Ridley

Introduction

Following introductions, Carole explained that this meeting was a follow-up to the April Herring River Executive Council meeting where the land encroachment issue was discussed. The purpose of this meeting is to make sure that the town, NPS and project team all have the same base of information about the extent of encroachment and the process and can identify concrete next steps to move this process along.

Brian Carlstrom welcomed the Northeast Lands office team. He affirmed that it was a positive step to move this discussion forward. The land exchange process is frequently used, but it is a lengthy and involved process and has many steps. It is important that the Town and Seashore share a common understanding of the process.

Town officials (Janet Reinhart, Helen Miranda Wilson, Dan Hoort) expressed a desire to move this process forward in support of the project.

Carole reviewed PowerPoint overview of the road encroachment issue (attached).

There are three main areas of encroachment: (1) the elevation of segments of Old County, Bound Brook Island and Pole Dike Roads; (2) the elevation of High Toss Road and (3) the elevation of a road and driveway on private property in the Seashore.

- Tim Smith noted that the NPS needs to identify each separate land tract impacted by the encroachment, even though only a small part of the tract is impacted. NPS land tract numbers differ from town assessing data, but the two data sets can be coordinated.
- Martha Craig asked if any of the encroachment is occurring in Truro. Steve Spear confirmed that some amount of encroachment is in Truro. It was agreed that Truro representatives should be apprised of this.
- Steve Spear noted that the amount of encroachment on High Toss Road will depend on how much of the road is elevated. Currently the project team is working with Town and Seashore officials to evaluate full and partial elevation options. The full elevation would result in encroachment along 5,000 linear feet (approximately 1 mile).

- With respect to the private property off Bound Brook Island Road, the design is settled but there are some ownership questions that need to be resolved.

Jennifer Cherry from the NPS Northeast Lands Office, described the steps involved in the land transfer process.

- Land exchanges such as are proposed for this project are common, but usually are simpler exchanges that involve far fewer parcels.
- One of the first steps is preparation of a Justification Statement that must be signed by the Regional Director. The statement explains what the NPS is giving up, and what benefits it is recouping in the land transfer, including economic value and natural resource value, among other factors. This project should have no issue with demonstrating public benefit associated with the transfer.
- At this point, the critical task is confirming and narrowing to the extent possible the NPS land tracts impacted, and also the list of possible parcels available from the town for transfer.
- Once the parcels involved in the exchange are identified, NPS will work with the Town to develop a scope of work for the survey, and legal descriptions and data files that are needed.
- Only the portions of NPS tracts that are going to be encroached upon need to be surveyed.
- Appraisals are needed and must be done at the same time on NPS and town parcels.
- This is often a 2-year process but the timeline depends on how quickly the parcels can be identified. Once that happens and the survey and legal descriptions have been submitted to NPS, a number of other steps are required, many of which happen in consultation with the Seashore office: e.g., NEPA and cultural resource compliance (may not be necessary since project has gone through NEPA and there is a Programmatic Agreement with Mass Historical Commission).
- There needs to be a preliminary exchange agreement between NPS and the Town that spells out what needs to happen and who is responsible for each task.
- Notifications to abutters, town officials, elected officials and congressional committees also may be warranted.
- An environmental site assessment is needed for each parcel so that NPS knows that what natural and cultural resources are on the land they are transferring and what they are receiving is clean from contaminants or minor contaminants that can be mitigated are identified.
- NPS also will run title on the town parcels.

Jennifer Cherry will provide templates for the work scope and preliminary exchange agreement. However, she noted that these documents would need to be tailored to the circumstances of this project.

Questions and discussion followed Jennifer Cherry's description of the NPS land exchange process:

- If a sliver of encroached land involves more than one NPS tract, will separate surveys of each tract be needed? Jean Olson will check. However she noted that NPS will need to be able to subtract the land amount from each tract.
- What guidance or parameters should the town consider in identifying parcels for exchange? The NPS Lands Office will look to the Seashore for direction on which parcels have resource value. Lauren McKean of the Seashore will work with the Town on this aspect of the process.
- What is the basis for determining comparable land exchange? The exchange may not be the exact land area or appraised value but also will consider resource value. Appraisals are based on highest and best use, but in this instance with slivers of land, other factors such as resource value may carry more weight.
- In what form does the NPS need the parcel data? The scope of work for surveys and legal descriptions will spell out the work products that need to be submitted. These include GIS shape files, two sets of plats, legal descriptions, etc. Parcel data based on town assessors maps is workable and can then be translated by NPS into tract data.
- Town meeting will need to approve any town land transfers, so that needs to be factored into the time line.
- Existing project funding sources may not be available for this work. The Seashore will work with the Town to explore options for funding this work.

Next Steps

1. Develop descriptions of the project areas where encroachment will occur, including a specific parcel list for encroachment areas – Lauren McKean will work with Steve Spear on this.
 - a. Make a final decision on the elevation of High Toss Road - Project team will coordinate with Town and Seashore
 - b. Resolve ownership issues with private property on Bound Brook Island Road – Lauren McKean will work with Steve Spear on this.
2. Identify Town Parcels for Exchange
 - a. Develop an initial list of potential town parcels for exchange – Helen Miranda Wilson will assemble this information
 - b. Narrow the list of town parcels based on town and Seashore/NPS considerations for review by Select Board, others
 - c. Identify appropriate Town decision steps (e.g., Town Meeting)
3. Based on detailed list of Town and Seashore parcels, develop a work scope for the areas where encroachment will occur – Lauren will liaise with the Lands Office on this
4. Explore funding options for this work – Brian Carlstrom and Town officials will discuss options.