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June 20, 2008

CERTIFICATE OF THE SECRETARY OF ENVIRONMENTAL AFFAIRS  
ESTABLISHING A SPECIAL REVIEW PROCEDURE

PROJECT NAME : Herring River Restoration Project  
PROJECT MUNICIPALITY : Wellfleet and Truro  
PROJECT WATERSHED : Cape Cod  
EEA NUMBER : 14272  
PROJECT PROPONENTS : Town of Wellfleet, Town of Truro, and Cape Cod  
National Seashore  
DATE NOTICED IN MONITOR : N/A

Pursuant to the Massachusetts Environmental Policy Act (M.G. L. c. 30, ss. 61-62H) and Section 11.09 of the MEPA regulations, I hereby establish a Special Review Procedure to guide the MEPA review of the project.

Project Background and Description

As described in a letter submitted by the proponent, the Herring River Restoration Committee, to the Secretary of Energy and Environmental Affairs on May 29, 2008, the proposed project entails the restoration of ecosystem functions and values to a degraded 1,100-acre tidally restricted estuary. Prior to the 1908 construction of a dike at the mouth of the Herring River, the estuary was dominated by healthy and highly productive salt marsh plant communities. The prime objective of the project is to eventually restore tidal exchange to an extent closely approximating the normal, natural tidal range that occurred prior to diking. Tides will be restored gradually, over a period of several years, with small, incremental opening of adjustable tide gates.

The Herring River Restoration Committee (HRRC), a multi-agency group appointed by the two Towns and the National Seashore, is currently engaged in development of a comprehensive restoration plan for the estuary, building upon work completed by the preceding Town-appointed Herring River Technical Committee (HRTC). With input from the Herring River Stakeholder Group (also appointed by the Wellfleet Selectmen), the HRTC's work culminated with release of the Herring River Conceptual Restoration Plan in November 2007. As described in the Conceptual Restoration Plan, the Herring River Project comprises the following elements:

- Reconstruction of the existing 1908 dike and tide control structure at Chequessett Neck Road with a new structure, incorporating enlarged culverts and adjustable tide gates designed to allow gradual increases to tidal range.
- Replacement of at least seven additional culverts at road crossings upstream of Chequessett Neck Road to allow increased tidal exchange and better fish passage.
- Raising, relocating, or abandoning up to 22,000 linear feet of low-lying roadway occurring within the Herring River floodplain that are vulnerable to flooding from restored tidal range.
- Removal of approximately 600 acres of woody vegetation that has become established within the Herring River floodplain in order to promote recolonization of salt marsh vegetation and support fish passage coincident with restored tidal range.
- Restoration of natural channel sinuosity in the channelized portions of the Herring River system to enhance wetland habitat functions and abate mosquito production.
- Prevention and/or mitigation of flooding impacts to several private properties within the Herring River floodplain, including structures, developed lands, and domestic water wells.

#### MEPA Jurisdiction and Required Permits

At a minimum, it is expected that the Herring River project will alter at least one acre of salt marsh or bordering vegetated wetlands, triggering the mandatory EIR threshold described at 310 CMR 11.03(3)(a). Although the exact nature and extent of wetland alteration is unknown at this time, it is likely this threshold will be exceeded to a significant extent. In addition, the project area is known to contain both estimated and priority rare species habitat, is adjacent to significant cultural and historic resources, and is located with the Wellfleet Harbor Area of Critical Environmental Concern. The project will require numerous state permits (Chapter 91 Licenses, 401 Water Quality Certification, etc.) and has already received funding from the Massachusetts Office of Coastal Zone Management's Wetlands Restoration Program. Because the project requires a Chapter 91 License, MEPA jurisdiction is broad in scope and extends all aspects of the project with the potential to cause Damage to the Environment.

### SPECIAL REVIEW PROCEDURE

The proponent has requested that I establish of a Special Review Procedure (SRP) for the review of the project under MEPA. The MEPA regulations provide that a Special Review Procedure may be established to provide for “coordination or consolidation of MEPA review with other environmental or development review and permitting processes”. In addition, 301 CMR 11.09 states that “A Special Review Procedure may be appropriate, for example, for reviewing a proposed program, regulations, policy, or other Project in which there is more than one Proponent or more than one Participating Agency with a significant role, or a Project that is undefined or is expected to evolve during MEPA review, or a Project that may benefit the environment if there is early Commencement of a portion of the Project.”

A SRP will enable the MEPA process to build on, rather than duplicate, the extensive analysis that has been and will be conducted by the HRRC. After considering the factors cited in Section 11.09 of the MEPA regulations, I hereby find that the review of the project would benefit from the establishment of a SRP.

#### *Coordination with Other Review Processes*

The SRP is largely for administrative convenience, designed to provide an opportunity for coordinated review and to consolidate the MEPA review with other environmental or development review and permitting processes.<sup>1</sup>

The Herring River Restoration Project is deemed a Development of Regional Impact (DRI) under the enabling regulations of the Cape Cod Commission and is, therefore, subject to DRI review. Additionally, approximately 80 percent of the project area is located within the Cape Cod National Seashore and, therefore, subject to compliance with the National Environmental Policy Act (NEPA). Because of the complexity, and long-term duration of the project, National Seashore staff and other cooperating federal agencies, have determined that a full Environmental Impact Statement (EIS) is appropriate.

This consolidation and coordination allows these regulatory and public review processes to be conducted in such a way that the public will be able to provide both written and oral comments, within a single timeframe, under the various regional, state and federal regulatory processes.

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<sup>1</sup> The term “coordinated review” as used in this Certificate and in the MEPA regulations refers to the practice of allowing a single set of documents to serve simultaneously for more than one environmental review process, concurrent with that conducted under MEPA. In common usage, the practice is sometimes referred to as “joint review,” although this term is misleading since federal and state agencies retain independent authority to judge the adequacy of the information submitted pursuant to their respective statutory and regulatory responsibilities.

*Citizens Advisory Committee*

The MEPA regulations at 310 CMR 11.09(3) allow for the establishment of a Citizen's Advisory Committee (CAC) to assist with public and agency review and comment. For the Herring River Restoration Project, I hereby designate the Herring River Restoration Committee as the CAC. In addition to the Towns of Wellfleet and Truro and the Cape Cod National Seashore, the HRRC includes representatives from Office of Coastal Zone Management's Wetlands Restoration Program; the National Oceanic and Atmospheric Administration Restoration Center; the U.S. Fish and Wildlife Service; and the Natural Resources Conservation Service. All of these agencies were also represented on the former Herring River Technical Committee (HRTC) and have been meeting at least monthly, either as the HRTC or HRRC, since September 2005. As directed by a Memorandum of Understanding (signed in November 2007) between the two Towns and the National Seashore, the HRRC will prepare a detailed, comprehensive restoration plan, pursue funding, and obtain permits. Though actual implementation and oversight of the restoration activities may be directed by a successor committee, it is expected that any future committee will be similarly comprised.

As the CAC, the HRRC, or its successor, would continue to meet regularly as the project advances. At a yet-to-be determined frequency, the HRRC would hold meetings with regulatory agencies including, but not limited to, the MEPA Office; the Department of Environmental Protection (MassDEP); the Natural Heritage and Endangered Species Program (NHESP); the Department of Conservation and Recreation (DCR); the U.S. Army Corps of Engineers (ACOE); the Cape Cod Commission (CCC); and the local Conservation Commissions, to review project plans and designs. As the project advances to the implementation stages, these meetings also would include review of monitoring data; outcomes of prior restoration actions; and consensus-driven decision-making regarding future actions. As a publicly-appointed body, the HRRC meetings are open to the public and this will continue under the SRP. It is anticipated that additional meetings focused more directly on specific public stakeholder concerns will be held on a regular basis. The HRRC will also conduct a wide-ranging outreach campaign, including regular updates via a newsletter, a dedicated project web-site, educational programs, site walks, and other events.

Under this proposed SRP, these agency consultations and public meetings would meet the compliance and reporting requirements of MEPA and allow the Herring River Restoration Project to proceed under Adaptive Management guidelines, which acknowledge uncertainty and rely on iterative, science-based, and incremental management decisions. However, it is expected that individual restoration activities, e.g. culvert replacements and road relocations, will most likely require separate permits.

*Environmental Notification Form (ENF)*

As requested by the HRRC, I hereby waive the specific requirement to submit the form usually required as part of the Environmental Notification Form (ENF) submission. While the HRRC intends to submit a document that would serve as the ENF for the MEPA review of the

project, the use of the form itself would be problematic because the project's impacts cannot be quantified at this time. In its place, the HRRC will submit a document summarizing all of the basic information on the project, including a concise narrative that will identify how and to what extent the project may exceed each of the review thresholds. I expect that the Environmental Impact Report(s) for the project will contain more detailed information on the project's environmental impacts and benefits, particularly as the HRRC identifies preferred alternatives during the course of the environmental review process.

The proponent's signature below indicates consent to the establishment of a Special Review Procedure and the specific provisions outlined in this Certificate.

June 20, 2008  
Date



Ian A. Bowles  
Secretary of Energy and Environmental Affairs

June 30, 2008  
Date



Gary Joseph  
Chair, Herring River Restoration Committee

RWG/RB/rb