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November 7, 2008

CERTIFICATE OF THE SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS
ON THE
ENVIRONMENTAL NOTIFICATION FORM

PROJECT NAME : Herring River Restoration Project
PROJECT MUNICIPALITY : Wellfleet and Truro
PROJECT WATERSHED : Cape Cod
EOEA NUMBER : 14272
PROJECT PROPONENT : Town of Wellfleet, Town of Truro and Cape Cod National Seashore
DATE NOTICED IN MONITOR : July 23, 2008

Pursuant to the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-62I) and Section 11.06 of the MEPA regulations (301 CMR 11.00), I hereby determine that this project **requires** the preparation of an Environmental Impact Report (EIR).

This project has the potential to re-introduce up to 1,000 acres of salt marsh to the Herring River floodplain and estuary. This is the largest salt marsh restoration project in Massachusetts and represents an ambitious undertaking by the Cape Cod National Seashore (CCNS), the Town of Wellfleet and the Town of Truro. The Nature Conservancy and Mass Audubon have expressed their strong support for the project. Comments on the project, including comments from the US Environmental Protection Agency (EPA), the Natural Heritage and Endangered Species Program (NHESP) and the Areas of Critical Environmental Concern (ACEC) Program and other state resource agencies, identify support for the goals of the project. Comments from residents that could be affected by the project stress the importance of planning the project carefully to avoid unintended consequences and to minimize impacts of the project on private property.

Project Description

The project consists of the re-establishment of tidal flow to the 1,100-acre Herring River estuary and floodplain to an extent closely approximating the natural tidal range that occurred prior to diking at the Chequesset Neck Road. The ecological goal of the project is to restore the full natural tidal range throughout as much of the Herring River floodplain as practicable, including up to the 100-year flood level (9.1 feet NAVD88). In certain areas where tidal flooding must be limited to protect existing land uses, the goal is to restore the maximum high tide up to the mean spring high-tide level (9.1 feet NAVD88). The project proponents plan to use an adaptive management strategy to restore tides gradually with small, incremental openings of adjustable tide gates over a period of several years allowing floodplain characteristics to be monitored and adjusted in response to these actions.

Project planning has been guided by the Herring River Restoration Committee (HRRC), a multi-agency group appointed by the towns of Wellfleet and Truro and the CCNS. The HRRC, with input from stakeholders, prepared the Herring River Conceptual Restoration Plan (November 2007) which was provided to the MEPA Office as a supplement to the ENF.

Proposed restoration activities include reconfiguration of the Chequesset Neck Road dike, replacement of additional upstream culverts, additional upstream tidal control structures and mitigation for low-lying roadways, structures and private properties.

The ENF indicates that the project will include some or all of the following activities:

- Reconstruction of the existing dike and tide control structure at Chequesset Neck Road.
- Construction of several tidegate control structures upstream of Chequesset Neck Road to protect existing land uses.
- Replacement of several culverts upstream of Chequesset Neck Road to allow increased tidal exchange and better fish passage.
- Reconfiguration of the CYCC golf course to maintain a playable layout given increased tide heights.
- Raising, relocating, or removing up to 22,000 linear feet of low-lying roadway occurring within the Herring River floodplain which would be vulnerable to flooding from a 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 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 and domestic water wells.
- Public access improvements including additional canoe/kayak put-in locations and fishing piers.

Project Site

The project site includes the Herring River floodplain within Wellfleet and Truro. The Herring River extends from Wellfleet Harbor at the Chequesset Neck Road dike northeast about four miles to Herring Pond in Wellfleet, and to the northwest a similar distance to Ryder Beach in south Truro. Approximately 80% of the floodplain is within and is managed by the CCNS. The Chequesset Neck Dike, which was constructed in 1908, consists of three 6-foot wide culverts, two of which allow river outflow into Wellfleet Harbor, but block the inflow of seawater, while the third has a partially open sluice gate that allows some inflow of seawater. According to the ENF, the estuary was dominated by healthy and highly productive salt marsh plant communities prior to the construction of the dike. The result of the diking and subsequent drainage of the estuary has led to the conversion of hundreds of acres of intertidal salt marsh to upland vegetation, eliminating habitat for estuarine animals, including shellfish and finfish. Approximately 13.6 acres of saltmarsh remain upstream of the dike. In addition, surface waters have been acidified, toxic metals have been leached from native clays, and dissolved oxygen depletions are common, which have contributed to fish kills in the river. The dike has restricted the normal tidal range of 10 feet (ranging from 5 below to 5 feet above NAVD88) within Wellfleet Harbor just seaward of the dike to approximately 2 feet (ranging from 1.1 feet below to .9 feet above NAVD88) above the dike. Drainage has caused the wetlands upstream of the dike to subside by nearly 3 feet.

The project area contains both estimated and priority rare species habitat, contains important fisheries and shellfishery resources, is adjacent to significant cultural and historic resources, and is located with the Wellfleet Harbor Area of Critical Environmental Concern (ACEC). According to the NHESP 13th Edition of the MA Natural Heritage Atlas, the project will occur within or in the vicinity of the habitat of the following state-listed species: Roseate Tern (*Sterna dougallii*), Common Tern (*Sterna hirundo*), Northern Harrier (*Circus cyaneus*), Piping Plover (*Charadrius melodus*), Eastern Box Turtle (*Terrapene carolina*), Diamond-backed Terrapin (*Malaclemys terrapin*), Eastern Spadefoot (*Scaphiopus holbrookii*), Gerhard's Underwing Moth (*Catocala herodias gerhardi*), Water-Willow Stem Borer (*Papaipema sulphurata*) and Broom Crowberry (*Corema conradii*). Diadromous fish species (Alewife and Blueback herring) use all or part of the river for passage, spawning, nursery and forage habitat. Various life stages of numerous other finfish species transit and/or inhabit the river during the year including American eel, white perch and lamprey. Oyster beds are located within the Herring River and seaward of the Chequesset Neck Road Dike. The ENF indicates that the project area is adjacent to and includes significant cultural resources. In addition, the project area includes private property including the CYCC and private residences.

Permits and Jurisdiction

At a minimum, it is expected that the Herring River project will alter at least one acre of salt marsh or bordering vegetated wetlands (BVW), triggering the mandatory EIR threshold described at 310 CMR 11.03(3)(a). The exact nature and extent of wetland alteration is unknown at this time; however, it is likely this threshold will be exceeded to a significant extent. In addition, the project may exceed other mandatory EIR thresholds including 310 CMR 11.03

(a)(1) because it will alter more than 50 acres of land and 310 CMR (3)(a)(2) because it may require a variance in accordance with the Wetlands Protection Act. The project will require Chapter 91 Licenses and 401 Water Quality Certifications from the Department of Environmental Protection (MassDEP). It may require a Conservation and Management Permit from the Natural Heritage and Endangered Species Program (NHESP). It will require Federal Consistency Review by the Coastal Zone Management (CZM) Office. It will require review by the Massachusetts Historical Commission (MHC). In addition, the project will require Orders of Conditions from the local conservation commissions.

The project has received funding from the CZM Wetlands Restoration Program. Because the project includes state funding, MEPA jurisdiction is broad in scope and extends to all aspects of the project that may cause Damage to the Environment as defined by the MEPA regulations. These include water quality, wetlands, coastal/marine resources, rare species habitat and cultural resources.

The project may require a National Pollutant Discharge Elimination System (NPDES) General Construction Permit for Stormwater from the US Environmental Protection Agency (EPA) and will require Section 404/Section 10 permits from the US Army Corps of Engineers (ACOE) and it will require Section 106 Review. The project is also subject to review under the National Environmental Policy Act (NEPA) and the Cape Cod Commission Act as a Development of Regional Impact (DRI).

Coordinated Review/Special Review Procedure

The proponent has committed to filing one set of documents that fulfill the requirements of NEPA, MEPA, and CCC. Both NEPA and MEPA regulations allow (and encourage) the preparation of joint EIS/EIR documents. Coordinated review will allow maximum public and agency understanding of the project and ensure that review by regulatory agencies is as efficient as possible. A Certificate Establishing a Special Review Procedure (SRP) was issued on June 20, 2008 to provide for coordination of MEPA review with these environmental and developmental review and permitting processes. The public meeting held on August 14, 2008 served as the scoping session for the NEPA and MEPA process and as the hearing for the Cape Cod Commission. An additional public meeting was held on September 12, 2008. The consolidation and coordination will allow 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. This project has been to subject to extended review under the MEPA process to align with the NEPA public comment period.

As part of the SRP, the HRRC was identified as the Citizens Advisory Committee (CAC) to assist with public and agency review and comment as allowed by the MEPA regulations at 310 CMR 11.09(3). In addition to the Towns of Wellfleet and Truro and the CCNS, the HRRC includes representatives from CZM's Wetlands Restoration Program; the National Oceanic and Atmospheric Administration (NOAA) Restoration Center; the U.S. Fish and Wildlife Service; and the Natural Resources Conservation Service (NRCS).

In addition, the SRP waived the specific requirement to submit the form usually required as part of the Environmental Notification Form (ENF) submission. The ENF submitted on this project summarizes basic information regarding the project, including a narrative that identifies how and to what extent the project may exceed each of the review thresholds.

SCOPE

The EIR should follow the general guidance for outline and content contained in section 11.07 of the MEPA regulations, as modified by this Certificate. The Cape Cod Commission provided a comment letter on this project identifying information that will be relevant to this project's review as a DRI. Because the proponent will file a Draft EIR/EIS/DRI, I am incorporating the comment letter from the CCC into the Scope by reference.

Project Description

The Draft EIR should include a thorough description of the project and all project elements and construction phases. The Draft EIR should include an existing conditions plan illustrating resources, including the existing floodplain, structures and abutting land uses for the entire project area and a proposed conditions plan (or plans) illustrating proposed floodplain elevations, structures and access roads. The Draft EIR should include sufficient baseline data to allow a full characterization of existing conditions and natural resources and support a meaningful analysis of feasible alternatives. The Draft EIR should identify all project related activities including structural modifications, dredging, fill and removal of vegetation. The Draft EIR should identify where and how public access will be improved or introduced.

Project Permitting and Consistency

The Draft EIR should briefly describe state permits required for the project and should describe how the project will meet applicable performance standards or where regulatory flexibility will be requested based on the stated public purpose of the project. In accordance with section 11.01 (3)(a) of the MEPA regulations, the Draft EIR should discuss the consistency of the project with any applicable local or regional land use plans. The Draft EIR should also address the requirements of Executive Order 385 (Planning for Growth).

I am recommending the formation of a Technical Working Group (TWG), comprised of state and federal agency representatives, to support effective and coordinated consultation throughout the review of this project. The TWG will assist the proponent in developing appropriate study methodologies and protocols and should review interim studies, plans and analysis prior to inclusion in the Draft EIR to ensure that the proponent's efforts adequately address the analysis and data requirements of required permits and approvals. In addition, the TWG should assist in the development of benchmarks and criteria for environmental monitoring. Representatives from CZM, Division of Marine Fisheries (DMF), NHESP, ACEC Program,

MassDEP, MHC and representatives from EPA and US ACOE will be asked to participate in the TWG.

Adaptive Management/Environmental Monitoring

The ENF indicates that tidal restoration will be restored gradually over time using an adaptive management approach that relies on iterative, science-based and incremental management decisions. The nature and timing of specific activities will be implemented based on the results of environmental monitoring and the response of the ecosystem to tidal flow as well as technical and public review of project progress. This project will include major project elements such as redesign of the Chequesset Neck Road opening to the Herring River and many discrete elements that will include installation of new tidal controls, replacement or maintenance of existing culverts and tidal controls, reconstruction, or realignment of roadways and management of vegetation. The environmental review of this project may result in phasing of the project into a number of coordinated but discrete actions that will be implemented based on adaptive management as well as funding availability and other factors.

The Draft EIR should identify how adaptive management will be employed throughout the project and include a comprehensive Environmental Management Plan that incorporates a monitoring program for pre-construction, construction and post-construction phases that will provide sufficient information to adequately assess progress towards project goals, identify impacts and inform the development of adaptive management strategies. The Plan should identify what will be monitored, how monitoring will be conducted and the proposed duration of monitoring. At a minimum, monitoring should include water quality, rare species, fisheries, shellfish, sediment transport and vegetation.

At this conceptual stage of the project while several distinct alternatives are under consideration, it would be premature to establish phasing; however, once a Preferred Alternative is identified and phasing can be considered in more detail, the SRP may be amended to establish a process for subsequent review within an adaptive management framework under the aegis of the CAC/HRRC.

Alternatives Analysis

As noted previously, this project has the potential to restore up to 1,100 acres of salt marsh. It is a large and ambitious undertaking. Although this is an environmental restoration project and its clear intention is to improve and strengthen the ecosystem of the Herring River, MEPA imposes a requirement on project proponents to understand and fully disclose the potential impacts of a project, both positive and negative; to study feasible alternatives to a project; and to avoid, reduce, or mitigate environmental impacts to the maximum extent feasible. The environmental review process should create a strong foundation for planning and implementation of this project. The review will include consideration of alternatives to achieve the project goals and will require a straightforward analysis of environmental impacts and benefits.

The primary emphasis of the Draft EIR will be to evaluate potential alternatives. The alternatives analysis should identify benefits, impacts and mitigation associated with each alternative and provide information, data and analysis necessary for state resource agencies to evaluate the alternatives. Various regulatory programs may require the submission of an alternatives analysis as part of permitting or as a requirement for regulatory flexibility. I encourage the proponent to prepare the alternatives analysis so that it will address the needs of these regulatory processes. If a Preferred Alternative is identified in the Draft EIR, the Draft EIR should provide adequate information to support this selection and discuss mitigation approaches.

The Draft EIR should evaluate the following four alternatives:

No Action Alternative: Existing tidegates would remain in place and tide levels would be managed under existing conditions.

Modified Tidegate Control at Chequesset Neck Road: Existing dike would be replaced with a new structure with an opening 100 – 130 feet wide consisting of culverts arch spans or a bridge. The structure would be fitted with sluice gates to allow full tidal control and management.

Open Bridge with Upstream Tidegate Controls: An open bridge span would be constructed at the site of the Chequesset Neck Road dike. The bridge would not have any tidal control. Tidal control would be established at upstream locations with several smaller structures to regulate the limit of tidal flooding.

Hybrid of Modified Tidegate Control at Chequesset Neck Road with Upstream Tidegate Controls: A combination of controlling tides at the neck of the river and at upstream locations.

The Draft EIR should investigate all feasible methods of restoring salt marsh while avoiding, reducing or minimizing negative impacts, in particular impacts to private properties. The alternative analysis should include a clear comparison (quantified to the extent feasible) of the impacts of each alternative and its project components. For each alternative, the Draft EIR should quantify the amount of land altered, quantify the amount of impervious surfaces created, quantify wetlands impacts, identify impacts to rare species, identify associated dredging and identify impacts to cultural resources. The Draft EIR indicates that two-dimensional hydraulic/hydrologic modeling will be used to analyze alternatives. The results of the modeling should be included in the Draft EIR including the tidal ranges, expansion of the floodplain, salinities and velocities at road crossings and other impediments to tidal exchange. The Draft EIR should identify criteria that will be used to select a Preferred Alternative and the Draft EIR should clearly explain why certain alternatives are selected and others ruled out for further consideration. The Draft EIR should fully explain any trade-offs inherent in the alternatives analysis, such as increased impacts on some resources to avoid impacts to other resources.

The alternatives analysis should identify alternatives for avoiding impacts to private properties within each sub-basin. In particular, it should include a detailed discussion of alternatives for addressing the Chequessett Yacht and Country Club (CYCC) golf course which is located in Mill Creek adjacent to the Chequessett Neck Road dike. Portions of five holes within this nine-hole golf course were constructed in the floodplain. The majority of comments made during public meetings identify concerns with the impact of this project on the CYCC. Commentors have requested that these impacts be carefully evaluated and that the proponent work cooperatively with the CYCC to identify alternatives. In addition, some comments identify efforts the CYCC has made to address this problem and identify alternatives. The ENF indicates that the proponent and CYCC have discussed several potential alternatives including filling of this area to raise it above the floodplain or re-location of holes within land owned by the CYCC. The alternatives must consider and balance the private property concerns of the CYCC with potential impacts to wetlands, historic resources and rare species habitat.

The ENF indicates that several structures, wells and septic systems are located on private property and are at elevations low enough to be directly affected by tidal restoration up to the spring high tide elevation of 5.1 feet (NAVD88). The Draft EIR should address alternatives that will protect structures, public and private water supplies and septic systems from flooding and/or saltwater intrusion.

Land Alteration

The Draft EIR should quantify the amount of land alteration associated with the project. The Draft EIR should clearly identify how land will be altered, where vegetation will require removal and identify objectives and measures that will be included in the vegetation management program to minimize impacts and maximize the effectiveness of the project.

Wetlands

Wetlands impacts will include alterations to wetland resources associated with construction, reconstruction or maintenance of structural elements of the project and impacts associated with the introduction of tidal flow. The re-introduction of tidal flow will convert some wetland resource areas such as upland wetlands to salt marsh and introduce wetland resources to areas that are currently non-jurisdictional.

The Draft EIR should characterize wetland resources throughout the site, identify and quantify wetland alterations associated with each alternative and identify how negative impacts will be minimized consistent with the Performance Standards of the Wetlands Regulations (310 CMR 10.00). The Draft EIR should include plans at an appropriate scale that illustrate impacts to resource areas. The analysis should demonstrate how the project will support the interests of the Wetlands Protection Act and how it may impact those interests, particularly storm damage prevention and flood control. In addition, the Draft EIR should illustrate where new resource areas will be created and identify associated buffer zones. The proponent should consult with the

TWG and the Wellfleet and the Truro Conservation Commissions regarding the preparation of wetlands information for the Draft EIR.

MassDEP comments indicate that portions of the project are located on lands subject to the Town of Wellfleet's Coastal Wetlands Restriction Order (310 CMR 12.00 and MGL c 130 s. 105) adopted April 19, 1982. This Order contains specific prohibitions, including substantially altering existing patterns of tidal flow. The proponent should consult with MassDEP to conduct a review of the land restricted pursuant to the Order and to determine if an amendment or modification to the Order of Restriction is required.

If MassDEP determines that the project requires a variance in accordance with the Wetlands Protection Act or the proponent chooses to seek a variance, the Draft EIR should provide the information required as part of a variance request. This includes:

1. a description of alternatives explored that would allow the project to proceed in compliance with 310 CMR 10.21 through 10.60 and an explanation of why each is unreasonable;
2. a description of the mitigating measures to be used to contribute to the protection of the interests identified in M.G.L. c. 131, § 40; and
3. evidence that an overriding public interest is associated with the project which justifies waiver of 310 CMR 10.21 through 10.60.

MassDEP comments identify additional regulatory requirements the project may be subject to. The proponent should carefully review the MassDEP comment letter and take note of the requirements and standards identified within it.

Tidelands/Chapter 91

The reconstruction of the existing dike and upstream culvert crossing will likely require Chapter 91 licenses. The Draft EIR should identify project elements associated with each alternative that would require Chapter 91 licensing. The Draft EIR should include an analysis of the project's compliance with the Waterways Regulations. The Draft EIR should assess the project's impacts, positive and negative, on the public's right to access, use and enjoy tidelands that are protected by Chapter 91 and identify measures to avoid, minimize or mitigate any adverse impact on these rights.

Pursuant to Chapter 168 of the Acts of 2007, I am required to conduct a public benefit review for this project because it requires a license under Section 18 of Chapter 91 and is required to file an EIR. The Draft EIR should include detailed information concerning benefits to the public trust rights in tidelands or other associated rights, including but not limited to, benefits provided through community activities on site, environmental protection and preservation, public health and safety and the general welfare. In weighing the benefit to the public trust rights in tidelands, I will apply a preference for a benefit on-site that promotes access to, and use and enjoyment of, the waterfront.

Dredging

The Draft EIR should identify any dredging associated with project alternatives, estimate the amount of material to be dredged and describe the soils to be dredged. Potential impacts associated with dredging and fill activities include increased turbidity, mobilization of pollutants and downstream sediment deposition. It should identify measures that can be employed to avoid release of sediments into the river environment and to protect downstream shellfish beds.

Rare Species/Wildlife Habitat

As noted previously, the site includes habitat for many rare species. Restoration of salt marsh will alter habitats for some of these species and expand habitat for others. Comments from NHESP indicate that portions of the proposed project may qualify for a Habitat Management Exemption in accordance with the Massachusetts Endangered Species Act (MESA) (321 CMR 10.14 (11)), while other portions may require a Conservation & Management Permit. The Draft EIR should include detailed hydrologic/hydraulic models and impact analyses for all proposed alternatives to assist the NHESP in making a determination regarding the appropriate approach to permitting. Analyses should address impacts to state-listed species for both the proposed restoration efforts, as well as for any associated upland projects such as the relocation of roads or relocation of the CYCC holes. The Draft EIR should address how each alternative could be designed to avoid, minimize, and mitigate impacts to state-listed species. The proponent should consult with NHESP through the TWG regarding permitting approaches and the development of additional rare species surveys.

The Draft EIR should identify how overall habitat within the floodplain will be monitored and evaluated consistent with adaptive management goals.

Fisheries

This section should summarize the benefits of the project to fisheries and shellfish and provide projections regarding growth. It should identify temporary impacts to fish and shellfish during construction and identify measures to avoid, minimize and mitigate these impacts, including consideration of time-of-year (TOY) restrictions identified by the Division of Marine Fisheries (DMF). It should identify how restoration of tidal flow to the Herring River at Chequesset Neck Road will be designed to optimize fish passage.

Water Quality

The Draft EIR should identify baseline water quality data that measures salinity, pH and metals, dissolved oxygen and fecal coliform, identify how project alternatives will affect water quality and identify how water quality will be monitored. The Draft EIR should identify impacts on public and private water supplies and septic systems associated with each alternative. It should provide a more detailed discussion of the relationship between the restoration of tidal flow and groundwater. The Draft EIR should identify how the project will be conducted

consistent with water quality standards associated with the 401 Water Quality Certification. In addition, the Draft EIR should discuss short- and long-term changes in rates and volumes of sediment transport associated with each alternative and related impacts on the river and the harbor.

Historic/Archaeological Impacts

The Draft EIR should identify historic properties and archaeological sites within the project area and its vicinity and identify potential impacts to these sites. MHC comments indicate that it will consult with the National Park Service (NPS) under Section 106 of the National Historic Preservation Act of 1966 during their review of the project under NEPA regarding the scope of work for the cultural resources survey and development of the area of potential effect (APE) for this project. Also, MHC comments indicate that it previously reviewed a portion of this project in 2006 and 2007 including a Project Notification Form (PNF) for the CYCC redevelopment and indicate that any redevelopment of the CYCC will be reviewed as part of the Herring River Restoration Project.

Greenhouse Gas Emissions

The project is subject to the EEA Greenhouse Gas Policy and Protocol because it requires an EIR and MEPA has full scope jurisdiction. This is an environmental restoration project that will not result in the emissions of Greenhouse Gases (GHG) and therefore falls within the de minimis exception of the policy. The proponent is not required to prepare an analysis of GHG emissions or identify measures to mitigate GHG emissions. The ENF indicates that the project will serve to minimize the impacts of climate change by providing additional protection from flooding and storm surges and expanding habitat for wildlife. In addition, the structure at Chequesset Neck could be designed to incorporate tidal power. The Draft EIR should identify how the impacts of climate change, including sea level rise, are being incorporated into the analysis of this project, how the project will provide protection from the impacts of climate change and whether the Chequesset Neck Dike could be designed to incorporate tidal power while balancing other project goals including improved habitat for fisheries and recreational access.

Construction Period Impacts

The Draft EIR should include a discussion of construction phasing, evaluate potential impacts associated with construction activities and propose feasible measures to avoid or eliminate these impacts. The proponent should implement measures to alleviate dust, noise, and odor nuisance conditions, which may occur during the construction activities.

Mitigation

The Draft EIR should include a separate chapter on mitigation measures. This section should form the basis of the proposed Section 61 Findings that will be presented in the Final EIR. Draft Section 61 Findings for all state permits should include a clear commitment to mitigation, an estimate of the individual costs of the proposed mitigation, the identification of the parties responsible for implementing the mitigation and a schedule for the implementation of mitigation, based on the construction phasing of the project.

Comments

To ensure that the issues raised by commenters are addressed, the Draft EIR should include a response to comments section. This directive is not intended to, and shall not be construed to, enlarge the scope of the Draft EIR beyond what has been expressly identified in this Certificate. A copy of each comment letter should be included in the Draft EIR. I defer to the proponent as it develops the format for this section, but the Response to Comments section should provide clear answers to questions raised.

Circulation

The Draft EIR should be circulated in compliance with Section 11.16 of the MEPA regulations and copies should also be sent to the list of "comments received" below and to local officials in Wellfleet and Truro. A copy of the Draft EIR should be made available for public review at the Wellfleet and Truro public libraries. The proponent should provide a hard copy of the Draft EIR to each state agency and town department from which the proponent will seek permits or approvals.

November 7, 2008

Date



Ian A. Bowles

Comments Received¹:

10/31/08 Massachusetts Department of Environmental Protection/Southeast Regional Office (MassDEP/SERO)

10/31/08 Department of Conservation and Recreation/Areas of Critical Environmental Concern Program (DCR/ACEC)

10/14/08 Division of Marine Fisheries (DMF)

10/28/08 Division of Fisheries and Wildlife/Natural Heritage Endangered Species Program (DFW/NHESP)

7/29/08 Massachusetts Historical Commission (MHC)

10/31/08 US Environmental Protection Agency (EPA)

10/23/08 Cape Cod Commission (CCC)

10/31/08 Mass Audubon

8/14/08 Chequesset Yacht and Country Club

10/15/08 Chequesset Yacht and Country Club (second letter)

10/23/08 The Nature Conservancy (TNC)

8/14/08 Nancy Deppen

10/21/08 Dale and Lee Ann Fanning

9/10/08 P. Faxon

8/20/08 Doug Franklin

9/24/08 Bill Dahl

9/26/08 Douglas E. Franklin

8/26/08 Katherine Gilmour

8/14/08 Kathryn Hubby

8/15/08 David Kew

10/1/08 Sarah Nickerson

8/16/08 John & Linda Riehl

9/24/08 Elliot Paul Rothman

9/6/08 Laura Runkel

10/21/08 Nancy N. Ryder

8/28/08 Harvey F. Schwallie

9/24/08 Marc Stahl

8/14/08 Paula Tasha

8/14/08 Jack Whalen

11/3/08 Wellfleet resident

IAB/CDB/cdb

¹ MEPA, NPS and CCC agreed that any letter submitted to one of the agencies/organizations would be accepted by each as a comment letter. I have reviewed all comment letters submitted including the transcripts from the August 14 scoping session and the September 24, 2008 public meeting, as I am authorized under 301 CMR 11.06 (2), and they have factored into this decision to the extent that the issues raised fall within MEPA jurisdiction.