



Commonwealth of Massachusetts  
Executive Office of Energy & Environmental Affairs

## Department of Environmental Protection

Southeast Regional Office • 20 Riverside Drive, Lakeville MA 02347 • 508-946-2700

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SEP 29 2021

Town of Wellfleet  
ATTN: Charles Sumner, Town Administrator  
300 Main Street  
Wellfleet, MA 02667

US National Park Service  
Cape Cod National Seashore  
ATTN: Brian Carlstrom, Superintendent  
99 Marconi Site Road  
Wellfleet, MA 02667

RE: COMBINED PERMIT/401 WATER QUALITY CERTIFICATION  
Application for: BRP WW 07 & 10  
401 WATER QUALITY CERTIFICATION FOR DREDGING & FILL/EXCAVATION

AT: Chequessett Neck Road, Pole Dike Road, Old County Road, Bound Brook Island Road,  
High Toss Road, Way 672, and Herring River Estuary North of the Chequessett Neck  
Road Dike  
Wellfleet and Truro, MA

401 WQC Transmittal # X287602 (Dredging)  
401 WQC Transmittal # X287603 (Fill/Excavation)

Dear Mr. Sumner and Mr. Carlstrom:

The Department of Environmental Protection ("MassDEP") has reviewed your applications for a License/Permit for Waterways, 401 Water Quality Certification for Dredging (DEP Transmittal #X87602) and a 401 Water Quality Certification for Fill/Excavation (DEP Transmittal # X287603), as referenced above (Collectively "Combined 401WQC"). In accordance with the provisions of Section 401 of the Federal Clean Water Act as amended (33 U.S.C. §1251 et seq.), MGL c.21, §§ 26-53, and 314 CMR 9.00, MassDEP has determined there is reasonable assurance the project or activity will be conducted in a manner which will not violate applicable Massachusetts Surface Water Quality Standards (314 CMR 4.00) and other applicable requirements of state law. The Chapter 91 Licenses associated with this project will be issued as separate documents.

This information is available in alternate format. Contact Michelle Waters-Ekanam, Director of Diversity/Civil Rights at 617-282-8781.  
TTY# MassRelay Service 1-800-439-2370  
MassDEP Website: [www.mass.gov/dep](http://www.mass.gov/dep)

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The Herring River contains waters in and adjacent to the Cape Cod National Seashore, designated in the Massachusetts Surface Water Quality Standards (the "Standards") as an Outstanding Resource Water (ORW) (314 CMR 4.04(3)) Class SA (314 CMR 4.06 (Table 26)). Such waters are intended as "excellent habitat for fish, other aquatic life and wildlife, and for primary and secondary contact recreation." Furthermore, this area has been designated in the Standards for Shellfishing. Antidegradation provisions of these Standards require that "existing uses and the level of water quality necessary to protect the existing uses shall be maintained and protected." The discharge of dredged or fill material and/or dredging in an ORW is not permitted, except as otherwise provided in 314 CMR 9.06(3)(a) through (k) and 314 CMR 9.07(1)(k)1. through 5.

The project is an Ecological Restoration project and proposes to restore native tidal wetland habitat to large portions of the Herring River floodplain in and adjacent to the Cape Cod National Seashore by re-establishing tidal flow. Tidal flow will be increased incrementally over time using an Adaptive Management Plan (AMP) that will balance ecological goals with flood control measures to allow the highest tide range practicable while protecting vulnerable properties, including roads and homes. Pursuant to 314 CMR 9.06(3)(b) and 314 CMR 9.07(1)(k)2., the activities associated with this Ecological Restoration project are permissible in an ORW.

The above-referenced Ecological Restoration project consists of the following activities described in the Combined Application as Class 1 activities:

- Chequessett Neck Road Bridge and Water Access Facility: The existing Chequessett Neck Road dike and culverts will be replaced with a new bridge and electrically controlled sluice gates to allow for the gradual transition from the culvert restricted tidal flushing regime to conditions closely resembling the river's natural flow prior to the installation of the dike.
- Mill Creek Water Control Structure: A water control structure with slide/flap tide sluice gates will be constructed across Mill Creek near the entrance to the Lower Herring River to allow for a controlled re-introduction of tidal exchange while protecting structures on private properties.
- Removal of High Toss Road Causeway: An earthen berm causeway is present where the Herring River passes under the western portion of High Toss Road. Hydrodynamic modeling showed that this portion of the road will cause a restriction when tidal flow is increased at Chequessett Neck Road. The causeway and culvert will be removed, and a new Herring River channel will be excavated.
- Pole Dike Road Water Control Structure: Pole Dike Road will be raised as it crosses over the river and the culvert opening under the road will be increased. A sluice gate structure will also be installed at the culvert to restrict flow into Upper Pole Dike Creek.

- Elevation of Low-Lying Roads, Crossings and Culverts: Portions of several low-lying roads, including Pole Dike, Bound Brook Island, Old County and High Toss Roads and Way #672 are vulnerable to high tide water levels with the restored tidal flow. Segments of these roadways will be elevated, and roadside slopes will be modified.
- Private Property Mitigation: Portions of the golf course at Chequessett Yacht and Country Club will be elevated. The project proposes to excavate and reconstruct Hole #2 to provide a portion of the fill needed for the project. Channel clearing and vegetation management activities are also proposed to improve drainage on the property.

The construction of Class 1 elements will result in temporary alteration of wetlands. These impacts result from the installation of temporary structures (i.e., sheeting and cofferdams), erosion and sedimentation controls and construction access drives, the removal of vegetation and the establishment of staging and work areas. Approximately 118,573 square feet of Bordering Vegetated Wetland (BVW), 910 square feet of Land Under Water (LUW), 29,112 square feet of Salt Marsh (SM) and 19,300 square feet of Land Under the Ocean (LUO) will be temporarily impacted during the construction phase of Class 1 activities.

The construction of Class 1 elements will also result in permanent alteration of wetlands. A total of 633,455 square feet of BVW, 11,374 square feet of LUW, 17,982 square feet of SM, and 21,243 square feet of LUO will be permanently and unavoidably impacted during the widening and regrading of roadway embankments, elevation of roadways, replacement of culverts, construction of permanent access drives, installation of dike and gate structures, regrading of tidal channels, improvements to drainage infrastructure, removal of High Toss Road Causeway, and the raising and reconstruction of low-lying areas on the golf course.

The filling associated with the activities detailed above will alter approximately 614,606 square feet of BVW, 4,311 square feet of LUW, 8,637 square feet of SM and 14,896 square feet of LUO. Approximately 18,451 square feet of BVW and 10,674 square feet of Salt Marsh will be excavated.

In addition, a total of approximately 5,442 cubic yards (4,773 cubic yards from coastal waters and 669 cubic yards from inland waters) of material will be dredged at several of the aforementioned locations, the majority of which will occur at Chequessett Neck Road Bridge.

The reintroduction of tidal flows to the Herring River floodplain is expected to result in widespread restoration of degraded coastal wetlands to estuarine sub-tidal and intertidal habitats according to modeled data from the Sea Level Affecting Marshes Model (SLAMM). The modeled data shows approximately 15 acres of LUW and 393 acres of BVW type habitat will be lost and 269 acres of SM will be gained once Class 1 activities are completed.

Specific best management practices were proposed to minimize disturbances to the wetland resource areas. Erosion and sedimentation controls will be implemented at the limits of work to prevent sediment and siltation from entering wetland resource areas.

The project shall be carried out in accordance with the habitat management plan developed in consultation with and approved by the Massachusetts Natural Heritage and Endangered Species Program. The project shall also be carried out in accordance with any time of year restrictions recommended by the Massachusetts Division of Marine Fisheries.

The project is expected to significantly improve estuarine water quality, restore degraded wetlands, and re-establish salt, brackish and freshwater marsh habitats, enhance natural coastal processes, and restore the connection between the estuary and the larger marine environment.

Class 2 actions, which will be the subject of a future water quality certification, include marsh management activities to be undertaken over a period of years as tidal flow is incrementally restored to the Herring River estuary.

Alternatives Analysis: Numerous alternatives for several project elements were considered. For various reasons, the proposed project as described herein is comprised of the preferred alternatives.

Due Diligence Review: A due diligence review of the project area was conducted through the use of several resources, including MassGIS data layers. Based on the results of that review, it was determined that pesticides would be added to the parameters established in the sampling program within 314 CMR 9.07(2)(b)6.

Sediment Sampling Data: Project wide, a total of seventeen samples were collected for gradation analysis. The results of the gradation analysis revealed that the samples are mainly sand and some fines with a range of 0.3 to 61.4 passing the No. 200 U.S. Standard Series Testing Sieve (the "No. 200 Sieve").

Of the aforementioned group, eleven samples were submitted for chemical analysis. The results of the chemical analysis that was performed on the samples were compared to MassDEP's Interim Policy for Sampling, Analysis, Handling and Tracking Requirements for Dredged Sediment Reuse and Disposal (COMM-94-007). All of the results were either non-detect or below the Reportable Concentration ("RC") S-1 criteria of the Massachusetts Contingency Plan ("MCP").

Dredged Material Dewatering: The sediment will be dewatered on site. Although a preliminary plan has been proposed, it should be noted that the exact details will be developed by the contractor. Therefore, MassDEP shall require the applicant's contractor to provide a final dewatering plan prior to construction [see Special Combined Permit Condition # 15].

**Beneficial Reuse of Sediments:** After it has been dredged and dewatered, all of the material will be beneficially reused at various locations on or near the project site pursuant to the plans and documents cited in Special Combined Permit Condition # 6. It should be noted that the exact amount of material being transported to each location is not yet known. Therefore, the applicant shall include special provisions in the contract documents to ensure proper handling and disposal of the dredged material; and the contractor shall submit the appropriate material tracking documents to MassDEP [see Special Combined Permit Condition #s 17 and 18]. Pursuant to 314 CMR 9.07(5)(a), all dredged material, when transported upon public roadways, shall have no free liquid as determined by the Paint Filter Test.

**Dredged Material Disposal or Reuse:** While the applicant would prefer to beneficially reuse all of the dredged material at various locations at or near the project site, some portion of it may also be removed and disposed of or reused as landfill daily cover material at an appropriate facility. If that outcome occurs, the identification of the licensed disposal location shall be the responsibility of the contractor [see Special Combined Permit Condition # 16]. When the disposal or reuse facility is identified by the contractor, information shall be provided to MassDEP [see Special Combined Permit Condition # 16]. The applicant shall include special provisions in the contract documents to ensure proper handling and disposal of the dredged material; and the contractor shall submit the appropriate material tracking documents to MassDEP [see Special Combined Permit Condition #s 17 and 18]. Pursuant to 314 CMR 9.07(5)(a), all dredged material, when transported upon public roadways, shall have no free liquid as determined by the Paint Filter Test.

**Public Notice:** The Combined Permit Application public notice was published in the Cape Cod Times and in the Environmental Monitor on April 7, 2021. The Department did not receive any public comments during the 21-day public comment period which ended on April 28, 2021.

**Section 61 Findings:** Pursuant to M.G.L. Chapter 30, Sections 61 to 62H inclusive [the Massachusetts Environmental Policy Act ("MEPA")], this project was reviewed as EOEEA # 14272. In the Certificate issued on July 15, 2016 on the Final Environmental Impact Report (FEIR), the Secretary of Energy and Environmental Affairs (the "Secretary") determined that "the FEIR adequately and properly complied with MEPA and its implementing regulations and that "Outstanding issues will be addressed during State and local permitting, the proposed regulatory structure, and the AMP".

**Therefore, based on information currently in the record, MassDEP grants a Combined Permit for this project, subject to the following conditions to maintain water quality; to minimize impact on waters and wetlands; and to ensure compliance with appropriate state law. MassDEP further certifies in accordance with 314 CMR 9.00 that there is reasonable assurance the project or activity will be conducted in a manner which will not violate applicable water quality standards (314 CMR 4.00) and other applicable requirements of state law. Finally, MassDEP has determined that upon satisfying the conditions and mitigation requirements of this approval, the project provides a level of water quality necessary to protect existing uses and accordingly finds that the project to be implemented satisfies the Surface Water Quality Standards at 314 CMR 4.00.**

### STANDARD COMBINED PERMIT CONDITIONS

1. Acceptance of this Combined Permit shall constitute an agreement by the applicant to conform to all terms and conditions stated herein.
2. This Combined Permit is issued upon the express condition that any and all other applicable authorizations necessitated due to the provisions hereof shall be secured by the applicant prior to the commencement of any activity hereby authorized.
3. This Combined Permit shall be revocable by MassDEP for noncompliance with the terms and conditions set forth herein. This Combined Permit may be revoked after MassDEP has given written notice of the alleged noncompliance to the applicant or his agent and those persons who have filed a written request with MassDEP for such notice; and has afforded the applicant a reasonable opportunity to correct said noncompliance.
4. This Combined Permit is issued subject to all applicable federal, state, county, and municipal laws, ordinances, by-laws, and regulations, including but not limited to, a valid Order of Conditions issued pursuant to the Wetlands Protection Act, M.G.L. Chapter 131, §.40.
5. The applicant shall assume and pay all claims and demands arising in any manner from the work authorized herein, and shall save harmless and indemnify the Commonwealth of Massachusetts, its officers, employees, and agents from all claims, audits, damages, costs and expenses incurred by reason thereof.

### SPECIAL COMBINED PERMIT CONDITIONS

1. This project could result in a violation of the water quality standards adopted by MassDEP's Division of Water Pollution Control. Therefore, reasonable care and diligence shall be taken by the applicant to ensure that the proposed activities will not violate the Coastal and Marine Water Class SA criteria [314 CMR 4.05(4)(a) and (5)].
2. Pursuant to 314 CMR 9.01(3) and 314 CMR 4.04, the contractor shall take all steps necessary to assure that the proposed activities will be conducted in a manner that will avoid violations of the anti-degradation provisions of the Massachusetts Surface Water Quality Standards that protect all waters, including wetlands. This condition is necessary to assure that any discharge from the project complies with the Massachusetts Surface Water Quality Standards, as provided in 314 CMR 9.00, to protect the public health and restore and maintain the chemical, physical, and biological integrity of the water resources of the Commonwealth.
3. In furtherance of 314 CMR 9.06(2) and 9.07(1), the Construction Methods shall be performed in accordance with Section 5 of the Project Narrative entitled: "Herring River Restoration Project Phase 1: 401 Water Quality Certification Application", dated March 2021, submitted by Town of Wellfleet and U.S. National Park Service, Cape Cod National Seashore.

4. In furtherance of 314 CMR 9.06(2) and 9.07(1), prior to start of work, the applicant shall provide MassDEP with the name, address and phone number(s) of the person responsible for ensuring that all work complies with the conditions of this Water Quality Certification.
5. Pursuant to 314 CMR 9.09(2), the Department shall be notified of any change(s), modifications, or deletions of work as specified in the proposed project plans that may affect water quality prior to the start of work or any portion of the work. Depending on the nature and the scope of any change, the Department will determine whether the change(s) requires further approvals or revision to this Certification. This condition is necessary to assure that any project changes comply with the Massachusetts Surface Water Quality Standards, as provided in 314 CMR 9.00, to protect the public health and restore and maintain the chemical, physical, and biological integrity of the water resources of the Commonwealth.
6. Pursuant to 314 CMR 9.05(1), all work shall be performed in accordance with the following documents and plans:
  - Application for Combined Permit, Transmittal Forms #X287602 and X287603, dated March 24, 2021, as revised through September 13, 2021, with attachments
  - Plans entitled: "Herring River Restoration Project: Chequessett Neck Road Bridge and Water Access Facility Construction" consisting of 53 sheets, various scales, dated 1/26/21, prepared by Fuss & O'Neill, signed and stamped by Shawn M. Martin, Civil P.E., Kevin M. Sullivan, Electrical P.E., Stuart Harris, Structural P.E.;
  - Plans entitled: "Herring River Restoration Project: Mill Creek Water Control Structure and Drainage Improvements" consisting of 36 sheets, various scales, dated 1/26/21, prepared by Fuss & O'Neill, signed and stamped by Shawn M. Martin, Civil P.E., Stuart Harris, Structural P.E. and Kevin M. Sullivan, Electrical P.E.;
  - Plans entitled: "Herring River Restoration Project: High Toss Road Permit-Level Design Plans" consisting of 13 sheets, various scales, dated 3/12/21, prepared by WSP, signed and stamped by Clayton Carlisle, P.E.;
  - Plans entitled: "Herring River Restoration Project: Engineering Design to Elevate Low-Lying Roadways and Replace Associated Culverts" consisting of 91 sheets, various scales, dated March 2021, prepared by Louis Berger, signed and stamped by Clayton Carlisle, P.E.;
  - Plans entitled: "Herring River Restoration Project: Permit Level Design for Low-Lying Property Impact Prevention Way #672, Hirsch-Meek Property (25 Way #672), & Ellis Property (27 Way #672)" consisting of 11 sheets, various scales, dated March 2021, prepared by WSP, signed and stamped by Clayton Carlisle, P.E.;

- Plans entitled: "Chequessett Yacht and Country Club Reconfiguration Permit Plans: Herring River Restoration Project" consisting of 37 sheets, various scales, dated March 24, 2021, as revised through September 21, 2021, prepared by ESS Group, Howard Maurer Golf Course Design, LLC Irrigation Consulting, Inc., and York Bridge Concepts, all plans signed and stamped by Jason M. Gold, P.E. except the irrigation and timber cart bridge plans;
- Letter from Division of Marine Fisheries, dated May 25, 2018, consisting of two (2) pages; signed by Eileen M. Feeney, Fisheries Habitat Specialist;
- Email from Massachusetts Division of Fisheries and Wildlife, to: Craig Wood [cwood@essgroup.com](mailto:cwood@essgroup.com), dated April 17, 2018, consisting of one (1) email page and one (1) page entitled: "Fisheries Section, Environmental Review Best Management Practices", signed by Caleb Slater, PhD, Anadromous Fish Project Leader;
- Letter from United States Department of Commerce National Oceanic and Atmospheric Administration National Marine Fisheries Service, dated December 10, 2020, consisting of six (6) pages, signed by Louis A. Chiarella, Assistant Regional Administrator for Habitat Conservation;

This condition is necessary to assure that any project changes comply with the Massachusetts Surface Water Quality Standards, as provided in 314 CMR 9.00, to protect the public health and restore and maintain the chemical, physical, and biological integrity of the water resources of the Commonwealth.

7. In the furtherance of 314 CMR 9.06(2), a copy of this Certification and referenced plans and other documents shall be provided to the contractor(s) prior to the start of construction and shall be kept available on the work site during all phases of construction.
8. Per 314 CMR 9.10, work in accordance with this Certification may begin following the 21-day appeal period and once all other permits have been received. This condition is necessary to assure that due process is provided to certain persons deemed to be aggrieved by the Certification.
9. In the furtherance of 314 CMR 9.06(2) and 9.07(1), the Department shall be notified in writing (email, attention [Cally.Harper@mass.gov](mailto:Cally.Harper@mass.gov) and [Derek.Standish@mass.gov](mailto:Derek.Standish@mass.gov)) one week prior to the start of in-water work. The Applicant and its contractor shall allow agents of the Department to enter the project site, subject to contractor's health and safety protocols, to inspect the work and verify compliance with the terms and conditions of this Certification. This condition is necessary to assure that all work complies with the Massachusetts Surface Water Quality Standards, as provided in 314 CMR 9.00, to protect the public health and restore and maintain the chemical, physical, and biological integrity of the water resources of the Commonwealth.



10. The term of the 401 WQC of the Combined Permit remains in effect for the same duration as the federal permit that requires it or five years from the date of issuance of this Combined Permit, whichever comes first. This condition is necessary to assure that any discharge from the project is conducted in a timely manner to assure compliance with the Massachusetts Surface Water Quality Standards, as provided in 314 CMR 9.00, to protect the public health and restore and maintain the chemical, physical, and biological integrity of the water resources of the Commonwealth.
  11. The applicant may request an amendment or extension of this Certification in accordance with 314 CMR 9.09(2) and (3), respectively. This condition is necessary to assure that any discharge from the project is conducted in a timely manner to assure compliance with the Massachusetts Surface Water Quality Standards, as provided in 314 CMR 9.00, to protect the public health and restore and maintain the chemical, physical, and biological integrity of the water resources of the Commonwealth.
  12. Pursuant to 314 CMR 9.06(2), prior to the start of construction, erosion and sedimentation control barriers detailed in the plans below shall be installed as necessary to protect the wetland and other sensitive areas during construction activities:
    - Plan set entitled "Herring River Restoration Project: Chequessett Neck Road Bridge and Water Access Facility Construction" dated 1/26/21, 1" = 30', prepared by Fuss & O'Neill, signed and stamped by Shawn M. Martin:
      - CS-104, Sheet 9 of 53, Demolition and Erosion Control Plan No. 1 – Chequessett Neck Road;
      - CS-105, Sheet 10 of 53, "Demolition and Erosion Control Plan No. 2 – Duck Harbor Road Staging, Parking and Water Access
    - Plan set entitled "Herring River Restoration Project: Mill Creek Water Control Structure and Drainage Improvements" dated 1/26/21, various scales, prepared by Fuss & O'Neill, signed and stamped by Shawn M. Martin;
      - CS-104, Sheet 6 of 36, Site Preparation Plan No. 1
      - CS-105, Sheet 7 of 36, Site Preparation Plan No. 2
      - CS-106, Sheet 8 of 36, Site Preparation Plan No. 3
      - CD-503, Sheet 33 of 36, Erosion and Sediment Control Details
    - Plan Set entitled "Herring River Restoration Project: High Toss Road Permit-Level Design Plans" dated 3/12/21, various scales, prepared by WSP, signed and stamped by Clayton Carlisle, P.E.
      - C-5, Sheet 6 of 13, Proposed Conditions
      - C-6, Sheet 7 of 13, Proposed Conditions
      - C-7, Sheet 8 of 13, Proposed Conditions
      - D-1, Sheet 11 of 13, Details
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- Plan Set entitled “Herring River Restoration Project: Engineering Design to Elevate Low-Lying Roadways and Replace Associated Culverts”, various scales, dated March 2021, prepared by Louis Berger, signed and stamped by Clayton Carlisle, P.E.
  - C28-C44, Sheets 34-50, Proposed Conditions Plans and Profiles
  - C78, Sheet 84, Civil Details 01
  - C85 Sheet 91, Planting Notes and Details
- Plans entitled: “Herring River Restoration Project: Permit Level Design for Low-Lying Property Impact Prevention Way #672, Hirsch-Meek Property (25 Way #672), & Ellis Property (27 Way #672)”, various scales, dated March 2021, prepared by WSP, signed and stamped by Clayton Carlisle, P.E.;
  - C04, Sheet 6 of 11, Proposed Conditions Way #672
  - C05, Sheet 7 of 11, Proposed Conditions Hirsh-Meek Property (25 Way #672)
  - C06, Sheet 8 of 11, Proposed Conditions Ellis Property (27 Way #672)
  - C07, Sheet 9 of 11, Civil Details 1
  - C08, Sheet 10 of 11, Civil Details 2
- Plan Set entitled “Chequessett Yacht and Country Club Reconfiguration Permit Plans: Herring River Restoration Project” various scales, dated 3/24/21, revised 9/21/21, prepared by ESS Group, Howard Maurer Golf Course Design, LLC Irrigation Consulting, Inc., and York Bridge Concepts, all plans signed and stamped by Jason M. Gold, P.E.
  - GEC-1, Sheet 9 of 26, Grading & Erosion Control
  - GEC-2, Sheet 10 of 26, Grading & Erosion Control
  - GEC-3, Sheet 11 of 26, Grading & Erosion Control
  - GEC-4, Sheet 12 of 26, Grading & Erosion Control
  - GEC-5, Sheet 13 of 26, Grading & Erosion Control
  - D-1, Sheet 25 of 26, Details

This condition is necessary to assure that any discharge from the project complies with the Massachusetts Surface Water Quality Standards to protect the public health and restore and maintain the chemical, physical, and biological integrity of the water resources of the Commonwealth.

13. Future maintenance dredging is not authorized under this Combined Permit. Pursuant to 314 CMR 9.04(5), the project does not qualify for the routine maintenance exemption. This condition is necessary to ensure that the chemical, physical and biological integrity of wetlands and waters of the Commonwealth are protected.
14. No later than 21 days prior to commencement of dredging activity, a detailed plan of the physical dredging operation, including descriptions of the type of dredge equipment to be used, shall be submitted to MassDEP for review and written approval. Pursuant to 314 CMR 9.07(1), this condition is necessary to ensure that construction practices are implemented in such a manner as to prevent degradation to wetlands and waters of the Commonwealth.

15. No later than 21 days prior to commencement of dredging activity, a dredged material dewatering plan shall be submitted to MassDEP for review and written approval. At a minimum, the dewatering plan shall include, but not be limited to, the type of containment, method of dewatering (i.e. mechanical or by gravity), method of collecting the dewatered effluent, and method of disposal. Pursuant to 314 CMR 9.07(1), this condition is necessary to adequately minimize and contain runoff water and material from the dredged material dewatering process to protect the water resource area. It is also necessary to ensure that water quality is not degraded, and biological resources are not negatively impacted by potential discharges.
16. MassDEP shall be notified in writing of the names and locations of either the specific upland beneficial reuse sites or the licensed facility accepting the dredged material for disposal or reuse as daily cover material. If the licensed facility is located out of state, documentation shall be provided to MassDEP that the dredged material disposal/reuse has been approved and will be accepted by the receiving state in accordance with 314 CMR 9.07(13)(b). The dredged material shall not be transported to the facility without concurrence of MassDEP. Pursuant to 314 CMR 9.07(5) and 314 CMR 9.07(13), this condition is necessary to ensure that dredged material disposal will not adversely affect any wetlands or waters in the receiving area.
17. A Dredged Material Tracking Form ("DMTF") or Material Shipping Record ("MSR") shall be used to track the dredged material to either the upland beneficial reuse sites or the licensed upland facility. A fully executed copy of the DMTF or MSR shall be provided to MassDEP within 30 days of final shipment to the beneficial reuse location or licensed facility. Pursuant to 314 CMR 9.07(5), this condition is necessary to maintain a record of the dredged material for reference and to ensure accountability in its transportation. This assists in the protection of health, safety, public welfare, and the environment from any potential hazards during transportation. Finally, it attests to the dredged material conforming with permitting and regulatory requirements for acceptance at the receiving location.
18. Best Management Practices ("BMPs") shall be implemented during transportation of the dredged material to either the beneficial reuse location or licensed receiving facility. At a minimum, when transported upon public roadways, all dredged material shall have no free liquid as determined by the Paint Filter Test or other suitably analogous methodology acceptable to MassDEP, and a tarpaulin or other means shall be used to cover the dredged material during transport. Pursuant to 314 CMR 9.07(5), this condition is necessary to protect off site water quality during transportation. These practices help to avoid fugitive dust and siltation into wetlands and waters of the Commonwealth.
19. Within 30 days of the completion of dredging, photographs of the affected areas depicting post-dredge conditions shall be taken and submitted to Derek Standish at MassDEP, One Winter Street, Boston, MA 02108. Pursuant to 314 CMR 9.07(1), this condition is necessary to ensure that construction practices are implemented in such a manner as to prevent degradation to wetlands and waters of the Commonwealth.

20. No later than four weeks after issuance of this Combined Permit, the applicant shall submit a notification procedure outlining the reporting process to MassDEP for incidents relating to dredging activities that impact surrounding resource areas and habitats including, but not limited to, observed dead or distressed fish or other aquatic organisms, observed oily sheen on the surface of the water, a sediment spill, a turbidity plume beyond the deployed BMPs, and a barge or equipment accident/spill. If at any time during implementation of the project such an incident occurs, the applicant shall immediately notify MassDEP and all site related activities impacting the water shall cease until the source of the problem is identified and adequate mitigating measures are deployed to the satisfaction of MassDEP. Pursuant to 314 CMR 9.07(3), this condition is necessary to ensure that construction is conducted in a manner that minimizes short-term, long-term, and cumulative impacts on the aquatic ecosystem and provides protection to human health.
21. All erosion control barriers shall be maintained in good repair until all disturbed areas have been fully stabilized with vegetation or other means. At no time shall sediments be deposited in a wetland or water body, except as described in the documents and plans cited in Special Combined Permit Condition #6. During construction, the applicant or his/her designee shall inspect the erosion controls on a daily basis and shall remove accumulated sediments as needed. The applicant shall immediately control any erosion problems that occur at the site and shall also immediately notify MassDEP, which reserves the right to require additional erosion and/or damage prevention controls it may deem necessary. Erosion control barriers shall serve as the limit of work unless another limit of work line has been approved by MassDEP pursuant to this Combined Permit. The applicant shall provide to the Department and the local Conservation Commissions, the name and phone number of an individual (Construction Supervisor) responsible for repair and maintenance of the erosion control barrier. This condition is necessary to assure that any discharge from the project complies with the Massachusetts Surface Water Quality Standards, as provided in 314 CMR 9.00, to protect the public health and restore and maintain the chemical, physical, and biological integrity of the water resources of the Commonwealth.
22. Any tears, rips, breaks, or collapse of the erosion and sedimentation control barriers identified in Special Condition #12 shall be repaired immediately (i.e. in no more than 24 hours). This condition is necessary to assure that any discharge from the project complies with the Massachusetts Surface Water Quality Standards, as provided in 314 CMR 9.00, to protect the public health and restore and maintain the chemical, physical, and biological integrity of the water resources of the Commonwealth.
23. In furtherance of 314 CMR 9.06(2), all equipment/machinery shall be stored above the *Mean High Tide Line* ("MHTL")/High Water Mark ("HWM") and outside any wetland resource areas when not in use.
24. In furtherance of 314 CMR 9.06(2) and 9.07(1), any supplies, debris, fill or other materials stockpiled within the roadways and temporary workspaces shall be stored in a manner so as to prevent such materials from entering the wetland resource areas beyond the erosion control barrier unless otherwise approved by MassDEP pursuant to this Combined Permit.

Failure to comply with this Combined Permit is grounds for enforcement, including civil and criminal penalties, under MGL c.21 §42, 314 CMR 9.00, MGL c. 21A §16, 310 CMR 5.00, MGL c.91, 310 CMR 9.00 or other possible actions/penalties as authorized by the General Laws of the Commonwealth.

This Combined Permit does not relieve the applicant of the obligation to comply with other appropriate state or federal statutes or regulations. Any changes made to the project as described in the Notice of Intent, Combined Permit Application or supplemental documents will require further notification to MassDEP.

This Permit is not final until all administrative appeal periods from this Permit have elapsed, or if such an appeal has been taken, until all proceedings before the Department have been completed. The appeal period is for twenty-one (21) days. No work shall be undertaken until the Permit has become final.

**Please note that MassDEP may revoke this Combined Permit for non-compliance with the terms and conditions set forth. Therefore, it is recommended that you contact MassDEP prior to performing any alterations or use modifications for review and, if necessary, approval.**

#### NOTICE OF APPEAL RIGHTS

##### 401 WQC Appeal Process (314 CMR 9.10):

Certain persons shall have a right to request an adjudicatory hearing concerning Combined Permits by MassDEP when an application is required:

- a. the applicant or property owner;
- b. any person aggrieved by the decision who has submitted written comments during the public comment period;
- c. any ten (10) persons of the Commonwealth pursuant to M.G.L. c.30A where a group member has submitted written comments during the public comment period; or
- d. any governmental body or private organization with a mandate to protect the environment, which has submitted written comments during the public comment period.

Any person aggrieved, any ten (10) persons of the Commonwealth, or a governmental body or private organization with a mandate to protect the environment may appeal without having submitted written comments during the public comment period only when the claim is based on new substantive issues arising from material changes to the scope or impact of the activity and not apparent at the time of public notice. To request an adjudicatory hearing pursuant to M.G.L. c.30A, § 10, a Notice of Claim must be made in writing, provided that the request is made by certified mail or hand delivery to MassDEP, with the appropriate filing fee specified within 310 CMR 4.10 along with a DEP Fee Transmittal Form within twenty-one (21) days from the date of issuance of this Certificate.

Case Administrator  
Department of Environmental Protection  
One Winter Street, 2<sup>nd</sup> Floor  
Boston, MA 02108

A copy of the request shall at the same time be sent by certified mail or hand delivery to the issuing office of the Wetlands and Waterways Program at:

MassDEP -- SERO  
Wetlands and Waterways Program  
20 Riverside Drive  
Lakeville, MA 02347

A Notice of Claim for Adjudicatory Hearing shall comply with MassDEP's Rules for Adjudicatory Proceedings, 310 CMR 1.01(6), and shall contain the following information pursuant to 314 CMR 9.10(3):

- a. the 401 Combined Permit Transmittal Number and MassDEP Wetlands Protection Act File Number;
- b. the complete name of the applicant and address of the project;
- c. the complete name, address, and fax and telephone numbers of the party filing the request, and, if represented by counsel or other representative, the name, fax and telephone numbers, and address of the attorney;
- d. if claiming to be a party aggrieved, the specific facts that demonstrate that the party satisfies the definition of "aggrieved person" found at 314 CMR 9.02;
- e. a clear and concise statement that an adjudicatory hearing is being requested;
- f. a clear and concise statement of (1) the facts which are grounds for the proceedings, (2) the objections to this Certificate, including specifically the manner in which it is alleged to be inconsistent with the MassDEP's Water Quality Regulations, 314 CMR 9.00, and (3) the relief sought through the adjudicatory hearing, including specifically the changes desired in the final written Combined Permit; and
- g. a statement that a copy of the request has been sent by certified mail or hand delivery to the applicant, the owner (if different from the applicant), the conservation commission of the city or town where the activity will occur, the Department of Environmental Management (when the certificate concerns projects in Areas of Critical Environmental Concern), the public or private water supplier where the project is located (when the certificate concerns projects in Outstanding Resource Waters), and any other entity with responsibility for the resource where the project is located.

The hearing request along with a DEP Fee Transmittal Form and a valid check or money order payable to the Commonwealth of Massachusetts in the amount of one hundred dollars (\$100) must be mailed to:

Commonwealth of Massachusetts  
Department of Environmental Protection  
Commonwealth Master Lockbox  
PO Box 4062  
Boston, MA 02211

The request will be dismissed if the filing fee is not paid unless the appellant is exempt or granted a waiver. The filing fee is not required if the appellant is a city or town (or municipal agency), county, or district of the Commonwealth of Massachusetts, or a municipal housing authority. MassDEP may waive the adjudicatory hearing filing fee pursuant to 310 CMR 4.06(2) for a person who shows that paying the fee will create an undue financial hardship. A person seeking a waiver must file an affidavit setting forth the facts believed to support the claim of undue financial hardship together with the hearing request as provided above.

Should you have any questions relative to this permit, please contact Cally Harper (508) 946-2815, or by e-mail at [cally.harper@mass.gov](mailto:cally.harper@mass.gov)

Sincerely,



Daniel F. Gilmore, Chief  
Wetlands & Waterways Program  
Bureau of Water Resources

DFG/cjh

ecc: Wellfleet Conservation Commission  
Hillary Greenberg-Lemos, Wellfleet Conservation Agent, [Hillary.Lemos@wellfleet-ma.gov](mailto:Hillary.Lemos@wellfleet-ma.gov)

Truro Conservation Commission  
Emily Beebe, Truro Conservation Agent, [ebeebe@truro-ma.gov](mailto:ebeebe@truro-ma.gov)

MassDEP – SERO – Wetlands & Waterways Program  
ATTN: Brendan Mullaney  
[Brendan.Mullaney@mass.gov](mailto:Brendan.Mullaney@mass.gov)

Regulatory Division  
The New England District  
U.S. Army Corps of Engineers  
696 Virginia Road  
Concord, MA 01742-2751  
[alan.r.anacheka-nasemann@usace.army.mil](mailto:alan.r.anacheka-nasemann@usace.army.mil)

ecc: MEPA Office  
100 Cambridge Street, Suite 900  
Boston, MA 02114  
mepa@mass.gov

Wellfleet Harbormaster  
255 Commercial Street  
Town Pier  
Wellfleet, MA 02667  
William.Sullivan@wellfleet-ma.gov

Ridley & Associates, Inc.  
Attn: Carole Ridley  
115 Kendrick Road  
Harwich, MA 02645  
cr@ridleyandassociates.com

Environmental Reviewer  
Division of Marine Fisheries  
836 S. Rodney French Boulevard  
New Bedford, MA 02744  
dmf.envreview-south@mass.gov

Caleb Slater  
Massachusetts Division of Fisheries and Wildlife  
1 Rabbit Hill Road  
Westborough, MA 01581  
Caleb.Slater@mass.gov

Louis Chiarella  
NOAA  
National Marine Fisheries Service  
55 Great Republic Drive  
Gloucester, MA 01930  
lou.chiarella@noaa.gov

Emily Holt  
Natural Heritage and Endangered Species Program  
Massachusetts Division of Fisheries and Wildlife  
1 Rabbit Hill Road  
Westborough, MA 01581  
emily.holt@mass.gov