

Memorandum

To: Wellfleet Selectboard  
Daniel Hoort, Town Administrator  
Fr: Carole Ridley, Project Coordinator  
Herring River Restoration Project  
Date: July 2, 2019  
Re: Response to comments at June 25<sup>th</sup> Selectboard meeting

The Selectboard's vote to execute MOU IV with the Cape Cod National Seashore (CCNS) was another important step in the forward motion of the Herring River Restoration Project.

As with any large public project a certain amount of criticism can be expected, as well as misstatements of fact. During the discussion of MOU IV at the Selectboard meeting on June 25<sup>th</sup>, there were a number of comments made that require a response. Given the lateness of the hour, it was not possible to respond to these statements during the meeting. Therefore, I wanted to take this opportunity to respond briefly to oral and written comments submitted by Ms. Susan Baumgarten.

1. Ms Baumgarten claims that the Truro Board of Selectmen's rationale for voting to remove the Town as a partner from the Project was due primarily to liability concerns, and also that the Town of Truro has "become a potential plaintiff and will hold Wellfleet responsible for any damages to town-owned property and private property." The public record does not support these statements. The resolution voted unanimously by the Truro Board of Selectmen does not mention the word liability. In addition, counter to Ms. Baumgarten claim of future contention, Truro's unanimous resolution states the Town's intention "to establish a new role as an interested municipal stakeholder fully supportive of the ecological restoration objectives of the Project." The resolution also states that "Truro will provide indications of support for the Project as appropriate in the context of permitting proceedings and grant applications," among other cooperative actions.

2. Ms Baumgarten claims that there is no evidence that the potential benefits of the Project can be achieved and what she perceives as the potential risks avoided. In fact, such evidence does exist and has been widely shared publicly. The Project conducted a comprehensive assessment of potential environmental and socio-economic impacts and benefits of restoration, and the data and analyses are compiled in the Project's Final Environmental Impact Statement/Report (FEIS/R). The FEIS/R was thoroughly reviewed by local, county, state and federal environmental agencies and by the public. The FEIS/R received state and federal approval in 2016 and is available on the Friends of Herring River website. The Project also has a detailed explanation of how the Project manages risk, which has been publicly presented to the Herring River Stakeholder Group and the Herring River Executive Council.

3. Ms Baumgarten states that there has been no peer-reviewed evidence as part of this project. She also erroneously stated that a Friends of Herring River Board member shares this opinion. In fact, the Project is the result of more than three decades of scientific study, including more than

230 technical studies, peer-reviewed scientific articles, and other data sources, which are listed on twenty-two pages contained in the Final Environmental Impact Report.

4. Ms. Baumgarten characterizes the Project as having been stalled for three years since the FEIS/R was approved. In fact, there has been significant forward motion over the past three years. The Project received a Limited Scope Decision from the Cape Cod Commission earlier this year, and is in the process of preparing a Development of Regional Impact application for Cape Cod Commission review. The project team is also finalizing engineering plans for tide control and flood protection measures, and is conducting pre-application meetings with regulators involved in permitting. Baseline ecological monitoring and development of the Adaptive Management Plan is steadily progressing as well.

5. Ms Baumgarten states that 322 property owners will experience flooding on their property. This information is taken from the FEIS/R out of context and is misleading. This information refers to full restoration of the 900+/- acre flood plain. The Project will be permitted and developed in phases. Phase 1 of the restoration for which environmental permitting is now underway, involves a restoration area of 570 acres, all of which is currently regulated wetlands. Almost all of this Phase 1 restoration area, 530 acres or 95%, is federal land in the Cape Cod National Seashore. Land owned by CYCC and Wellfleet Conservation Trust account for another 3% of the Phase 1 restoration area. There are 17 acres on portions of twelve private residential properties, or approximately 2%, in the Phase 1 restoration area. These portions of private land are currently regulated wetlands that may experience a change in vegetation as wetlands become saltier following restoration of tidal flow. It should also be noted that all public and private structures that could potentially be affected by tidal flow during Phase 1 will be protected by flood protection measures that will be in place prior to restoration of tidal flow. Subsequent phases of the Project will be discussed, designed and permitted based on the experience of Phase 1.

However, the broader point is that Ms. Baumgarten's claim of significant risk and liability to the Town of Wellfleet is based on the unsupported premise that the Project entails major risks and potential liabilities. This premise is unsupported because, as stated above, the scope of Phase 1 restoration is almost entirely on federal land and Project effects are limited to existing wetland resource areas and regulated flood zones on relatively small portions of private property. The Project protects all low-lying public and private structures in the floodplain. The potential for risk is further minimized through a conservative design utilizing modern water control infrastructure, local governance of project decision making, and a science-based adaptive management program with extensive monitoring to guide and inform Project implementation.

In addition, Ms Baumgarten's references to liability overlook the fact that current, well-documented degraded conditions in the floodplain pose documented risks to the community and environment. Without the Project, the Town of Wellfleet can expect to bear the full cost of repair and eventual replacement of the Chequessett Neck Road dike and tide gates. The tide gates are nearing the end of their useful life. A professional engineering inspection conducted in 2011 found "each tide gate assembly as a unit in poor condition." Similarly, a 2017 MassDOT

inspection report characterized one of the tide gates as “inoperable due to a severely corroded crank receptacle...” Other environmental risks associated with current conditions include:

- Continued closure of shellfish beds upstream and downstream of the CNR dike due to poor water quality;
- Continued listing of Herring River as “impaired” under the Federal Clean Water Act (CWA) Section 303(d) for fecal coliform, low pH, high metal concentrations and fish passage barriers;
- Continued designation of the Chequessett Neck Road Dike by the MA Division of Marine Fisheries as a point source of bacterial contamination of shellfish beds;
- Continued loss of estuarine salt marsh functions which provide critical habitat for fisheries and other wildlife and combat climate change by absorbing and storing carbon from the air (in contrast to the significant amounts of methane the estuary is currently emitting due to lack of tidal circulation);
- Continued loss of opportunities for recreation and education, such as fishing, shellfishing, kayaking, birdwatching, etc., that help bolster the region’s economy and quality of life;
- Nuisance mosquito production from vast areas of stagnant freshwater that cannot drain from the wetlands; and
- Continued impediments to river herring migration.

As has been broadly recognized by the Wellfleet Selectboard and citizens of the Town, the return of tidal flow to the Herring River system will, among other benefits, vastly improve water quality and habitat for fish, shellfish, and coastal wildlife; protect and enhance harvestable shellfish resources in the river and Wellfleet Harbor; and restore the river’s functions as one of the largest estuarine nurseries and food sources for marine life in Cape Cod Bay and the Gulf of Maine.

On behalf of the Project team, I would like to thank the members of the Selectboard and the Town Administrator for your ongoing support and leadership in advancing the implementation of Phase 1 of the Herring River Restoration Project.