

MEMORANDUM OF UNDERSTANDING
NATIONAL PARK SERVICE AND TOWNS OF WELLFLEET AND TRURO
HERRING RIVER SALT MARSH RESTORATION

This Memorandum of Understanding (MOU II) is effective upon signature by and among the National Park Service (NPS), a bureau of the United States Department of the Interior, acting through the Superintendent of the Cape Cod National Seashore and the Towns of Wellfleet and Truro, municipal corporations located in Barnstable County, Massachusetts, acting through their Boards of Selectmen. The purpose of this Memorandum of Understanding is 1) to endorse the attached conceptual plan for the restoration of the Herring River estuary, recently completed by the Herring River Technical Committee under a previous (22 August 2005) MOU (referred to as MOU I) between NPS and the Town of Wellfleet, and 2) to enable additional planning, funding and environmental-compliance steps to produce a detailed restoration plan to be considered for ratification under a third and final MOU (proposed as MOU III) for project implementation.

WITNESSETH

WHEREAS, the National Park Service (hereinafter Park Service) administers and manages the Cape Cod National Seashore (hereinafter CCNS), located partially within the Towns of Wellfleet and Truro (hereinafter “the Towns”) and including more than 800 acres within the Herring River floodplain; and whereas CCNS is legally authorized by U.S.C. §§ 1 – 3, 459b – 459b-8 as a unit of the National Park System to enter into memoranda of understanding;

WHEREAS, the Town of Wellfleet maintains ownership of the Herring River Dike, which currently controls tidal flow to the Herring River System, as well as having jurisdiction over much of the area downstream from the structure;

WHEREAS, the Town of Truro includes lands and waters within the Herring River estuary that may be affected by the restoration of tidal flow through the Wellfleet-owned dike at Chequesset Neck;

WHEREAS, during a 10 January 2006 Wellfleet Board of Selectmen meeting, the Board voted “unanimously to endorse the recommendations of the Herring River Technical Committee and that the Technical Committee proceed with development of a management plan for restoration” (Board of Selectmen Minutes, 10 January 2006) (http://www.wellfleetma.org/Public_Documents/WellfleetMA_SelectMin/S0052DB29-0052DB30);

WHEREAS, on 2 May 2007 the Truro Board of Selectmen accepted in concept the restoration of the Herring River estuary, based on the stated premise that this restoration would be beneficial to the public interest and to the environment;

WHEREAS, the CCNS is mandated by law and policy to preserve native ecosystems, and the restoration of the natural functions and public values of the Herring River estuary is consistent with those mandates;

WHEREAS, the Town of Wellfleet and CCNS, through the Technical and Stakeholder Committees and pursuant to the prior MOU (MOU I), worked together to determine that restoration of natural functions to the Herring River estuary is feasible and desirable, and to complete a Conceptual Restoration Plan (CRP) that meets mutual goals and objectives for restoration; and whereas the Town of Wellfleet’s and CCNS’s acceptance of the CRP satisfies the objectives and completes the work called for in MOU I;

WHEREAS, the Towns and CCNS believe that it is imperative that a Detailed Restoration Plan (DRP) be developed with continued public involvement and, when completed, that the DRP represent the full consensus of the three primary entities; and whereas, the alternatives-analysis and public-involvement-based approaches of the

Massachusetts Environmental Policy Act (MEPA) and the National Environmental Policy Act (NEPA) provide a mechanism for accomplishing these objectives;

WHEREAS, the parties have determined that it is in the public interest to enter into this Memorandum of Understanding setting forth a cooperative arrangement between the parties with respect to the restoration of the Herring River Estuary;

NOW THEREFORE, in consideration of the foregoing, the Towns and the CCNS agree as follows:

1. The Town of Wellfleet, the Town of Truro and CCNS hereby accept the Conceptual Restoration Plan, attached to this MOU.
2. The Town of Wellfleet, the Town of Truro and CCNS agree to cooperate on the development of a detailed restoration plan for Herring River.
3. In the event that any of the signatories of this MOU disagree with any aspect of the proposed plan, all parties agree to work cooperatively to resolve any disagreement. No aspect of the project may proceed without the specific approval of the Towns and the CCNS.
4. Public and interagency review of the detailed restoration plan will be undertaken following the guidelines and requirements of MEPA and NEPA. The Towns will serve as co-applicants for the MEPA process, and CCNS will serve as the lead for the NEPA process. The Massachusetts Wetlands Restoration Program, National Oceanic and Atmospheric Administration, US Fish and Wildlife Service and the Natural Resource Conservation Service, key state and federal partners, will participate as cooperating agencies. All phases of this process will be jointly sponsored by the Towns, CCNS, and the cooperating agencies, and all documents (including public meeting notices, draft public review documents, final plans, and decision documents) will bear the names of these entities as equal partners in this endeavor.

5. The Towns, the CCNS and the cooperating agencies will, within 30 days of execution of this MOU II, organize as an interdisciplinary team, hereinafter the Herring River Restoration Committee, to develop a detailed and comprehensive plan for restoration of the Herring River estuary. This committee of seven may invite additional technical experts, recommended by the Herring River Technical Committee and others, to assist in restoration planning.

6. The Herring River Restoration Committee will:
 - a. Review the Herring River Conceptual Restoration Plan (CRP) accepted under this agreement;
 - b. Review all scientific and engineering reports in support of the CRP;
 - c. Develop a Detailed Restoration Plan that addresses environmental and social concerns through an integrated MEPA/NEPA process of alternatives analysis and public involvement;
 - d. Develop a Detailed Restoration Plan that is suitable for local, state and federal permitting requirements and procedures.
 - e. Seek funding sources.
 - f. Inform the public on a regular basis through public meetings, reports or other forms of outreach, in addition to the public process required by MEPA and NEPA.
 - g. Produce a third MOU for the Towns' and CCNS's approval, agreeing to collaborate on project implementation per the detailed restoration plan.
 - h. Deliver products of the MEPA/NEPA process.

7. This Agreement and the obligations of the Park Service hereunder shall be subject to the availability of funding and staffing, and nothing contained herein shall be construed as binding the Park Service to expend in any one fiscal year any sum in excess of appropriations made by Congress or administratively allocated for the purpose of this Agreement for the fiscal year, or to involve the Park Service in any contract or other obligation for the further expenditure of money in excess of such appropriations or allocations.

8. This Agreement and the obligations of the Towns hereunder shall be subject to the availability of funding and staff, and nothing herein shall be construed as binding the Towns to commit their resources beyond what is financially and managerially possible within the limits of their municipal budgets.
9. Each party shall bear its own costs associated with its participation in this agreement without reimbursement.
10. This Agreement and the obligations of the Park Service hereunder are subject to the laws, regulations and policies governing the Park Service and CCNS whether now in force or hereafter enacted or promulgated.
11. This Agreement and the obligations of the Towns hereunder are subject to the laws, regulations and policies governing the Towns, whether now in force or hereafter enacted or promulgated.
12. This agreement shall remain in effect until superseded by a further MOU.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their respective duly authorized representatives on the day and year indicated.

Jacqui Wildes Beebe

Wellfleet Board of Selectmen, Chair

Date

Gary Palmer

Truro Board of Selectmen

Date

George E. Price, Jr.

Cape Cod National Seashore, Superintendent

Date