

AGENDA

Wednesday

March 4, 2015

**TOWN OF EASTHAM
BOARD OF SELECTMEN
WORK SESSION AGENDA
Wednesday, March 4, 2015
2:30 PM**

Location: *Timothy Smith Room*

2:30PM	Boat Storage at Ponds and Landings – Mark Powers, Recreation and Beach Services Director, Neil Andres, DPW Superintendent and Shana Brogan, Conservation Agent	
2:45PM	Draft Criteria for Eligibility to Plow Private Roads – Neil Andres, Superintendent DPW	
3:00PM	Draft Criteria for Maintenance of Private Roads – Neil Andres, Superintendent DPW	
3:30PM	Discussion of Letter from Town of Orleans Re Nauset Estuary – Harbormaster Jurisdiction	
Minutes:	February 4, 2015	Work Meeting
	February 4, 2015	Executive Meeting
	February 9, 2015	Regular Meeting
	February 9, 2015	Executive Meeting
	February 18, 2015	Work Meeting

EXECUTIVE SESSION – To discuss strategy with respect to collective bargaining with Union Personnel when an open meeting may have a detrimental effect on the bargaining and litigating position of the public body and the chair is so declaring

Upcoming Meetings

<i>Monday, March 16, 2015</i>	<i>5:00 PM</i>	<i>Regular Meeting</i>
<i>Wednesday, March 18, 2015</i>	<i>2:30 PM</i>	<i>Work Session</i>
<i>Monday, April 6, 2015</i>	<i>5:00PM</i>	<i>Regular Meeting</i>
<i>Wednesday, April 8, 2015</i>	<i>2:30PM</i>	<i>Work Session</i>

**Per the Attorney General's Office: The Board of Selectmen may hold an open session for topics not reasonably anticipated by the Chair 48 hours in advance of the meeting.*

**If you are deaf or hard of hearing or are a person with a disability who requires an accommodation, contact Laurie Gillespie-Lee, 5900 x207*

Town of Eastham

230

Department of Public Works
555 Old Orchard Road
Eastham, MA. 02642



508 240-5973
Fax 508 240-6687

To: Sheila Vanderhoef, Town Administrator

From: Neil Andres, Superintendent DPW
Mike O'Connor, Harbormaster

Date: February 12, 2015

RE: DNR Regulations

Attached are proposed revisions to the Aquaculture, Mooring and Vessel Storage Regulations.

Aquaculture - Proposed changes would prohibit transfer of grants by adding a second name to the grant and then removing the first. Under the proposed changes, open grants would be offered to individuals who are on the waiting list established by the Board last year.

Mooring – Proposed changes would require Conservation Commission approval for certain swim floats located on ponds.

Vessel Storage – Proposed changes would allow the Board to set fees for vessel storage permits and prohibit vessel storage at Great Pond and Collins landing as there is not adequate room at these locations.

Town of Eastham Policy Guidelines Aquaculture License Regulations

1.0 Authority

The Board of Selectmen, through the authority derived under MGL Chapter 130, intends to continue the long standing policy and tradition of protection and enhancement of the shellfish resources of the town.

2.0 Purpose

Among the various methods utilized to this end, private aquaculture has been undertaken in the intertidal and subtidal zones since the early 1930's. It is recognized that the shell fishery is enjoyed by all citizens as part of the Commonwealth; however, the specific cultivation of sites which are not productive by reason of nature, is an objective that the town continues to support and encourage. The following regulations are an effort to facilitate such aquaculture projects while maintaining the protection of reasonable rights of the general public to enjoy the shell fishery. The granting of said license to pursue aquacultural activities is limited to the exclusive use of the land and waters above the lease site for purposes of growing shellfish; they are not to be construed as implying or conveying property ownership rights or the interference with private property rights in the adjacent upland areas.

3.0 Applicability/Eligibility

- 3.1 No person shall hold and exercise an aquaculture license in the Town of Eastham without first obtaining a commercial Shellfish permit from the Town in compliance with the requirements for said permit. Said aquaculture license shall be deemed invalid and forfeited if the holder fails to maintain said commercial permit. Commercial Permits can be purchased or renewed between January 1st and April 30th annually.
- 3.2 The minimum age for an Aquaculture license holder shall be eighteen (18) years upon the date of application, notwithstanding the issuance of a commercial permit to persons less than eighteen (18) years of age.
- 3.3 Expansion of an aquaculture lease site may be permitted by the Board of Selectmen after the initial two (2) year period of operation and upon application by the lease holder and favorable review by the Natural Resources Department with respect to the progress accomplished on the site in compliance with the management plan.
- 3.4 The maximum acreage permitted to be held by one licensee shall be two (2) acres. If more than one (1) licensee is domiciled at a single household, the maximum acreage per domiciles is two (2) acres.
- 3.5 Aquaculture licenses are issued to an individual and is for the exclusive use of the licensee. The holder of the license may employ others to perform certain necessary activities on the site. Subleasing or rental of the site is prohibited.

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- 3.6 The Board may issue licenses for sites for educational or experimental purposes. Said licenses shall be issued to the institution or agency which is conducting the project rather than an individual.

4.0 GENERAL REGULATIONS

- 4.1 The following regulations concerning private aquaculture licenses are adopted as part of the shellfish regulations of the Town pursuant to MGL Chapter 130 sections 52 and 57 as amended. Full compliance with all other state and local regulations is required as a condition to the aquaculture license.
- 4.2 Licenses issued under these sections do not convey any property rights. These licenses do not authorize injury to private property or invasion of private rights. It is the responsibility of the licensee to obtain written permission of an upland property owner before exercising the rights conferred by these licenses to plant and harvest shellfish.
- 4.3 Application for an aquaculture license shall be made on such forms as may be provided by the Natural Resources Department for said purpose and shall include a management plan for the use of the area.
- 4.4 Upon receipt of the application, the Board of Selectmen shall hold a duly advertised public hearing.
- 4.5 Within sixty (60) days of the close of the public hearing for such license, the Board shall approve or deny the license. All such approvals are further subject to approval by the Director of the Division of Marine Fisheries. For sites previously approved and certified by the Director of Marine Fisheries, the Board may directly issue the license. Sites not previously certified and approved will be reviewed by the Division and upon certification by the Director, the Board may issue the license.

5.0 LOCATION OF AQUACULTURE SITES

- 5.1 The town shall designate Aquaculture Development Areas (ADA) in the intertidal area of Cape Cod Bay and Nauset Marsh for the purpose of facilitating the process of certification and approval. Said designation of an Aquaculture Development Area will provide for: surveying, Conservation Commission approval, determination of productivity from Division of Marine Fisheries, Division of Waterway permits, Indian Affairs review and Corps of Engineers permits for the installation of devices for the cultivation of shellfish. Applicants for sites within an Aquaculture Development Area will accept the terms and conditions for each site as determined by the permitting process and may commence aquaculture activity upon issuance of the license by the Board of Selectmen.
- 5.2 The Cape Cod Bay Aquaculture Development Area shall be defined as westerly from the area known as Boat Meadow Creek, beginning at a point 100 feet north of the channel thence northerly to a point 100 feet south of the Bee's River Channel, thence westerly to a point in the waters of Cape Cod Bay, thence southeasterly to the beginning point (*Map #1 attached*).

- 5.3 The Nauset Marsh/Town Cove Aquaculture Development Area is limited to sites identified and in existence as of January 1, 1997.
- 5.4 Within the Cape Cod Bay Aquaculture Development Area described above, sites of one half (½) acre area each shall be designated. Additionally, a half (½) acre expansion site shall be designated adjacent to each initial site. Said areas and dimensions shall be subject to review by the Board of Selectmen.
- 5.5 Existing active aquaculture sites located in Nauset Marsh and Town Cove shall be continued subject to the provision of these regulations. (*Map #2a; #2b; #2c attached*).
- 5.6 Previously permitted sites in the Nauset Marsh shall be included in the Nauset Aquaculture Development Area designation subject to review and certification by all appropriate agencies. (MAP - Include)
- 5.7 Additional sites for aquaculture licenses may be considered for licensing by the Board of Selectmen on an individual basis. In such cases, the applicant must obtain all relevant state permits prior to the Board of Selectmen hearing to consider the matter.

6.0 OPERATION

- 6.1 All activities of an aquaculture lease site shall be in compliance with the management plan filed by the applicant or as amended in consultation with the Natural Resources Department. Management plans shall be completed on forms provided by the Department of Natural Resources. (*Copy - Form A attached*)
- 6.2 Annual reports of the activity and sale of shellfish from the site shall be filed on forms provided by the Department of Natural Resources on or before 31 December of each year. (*Copy - Form B attached*).
- 6.3 Seed permits are required for the purchase or transport of seed shellfish stock to the lease site. Such permits may be obtained through the Division of Marine Fisheries.
- 6.4 Each site shall be marked in compliance with MGL Ch. 130 Sec. 61 with buoys or signs bearing the number of the lease site.
- 6.5 All lease site cultivation shall be at least five feet (5') within the site boundary. This will facilitate the passage and movement of materials around adjacent lease sites.
- 6.6 Structures placed upon an individual lease site may not extend more than eighteen (18) inches above the surrounding sediment. All structures placed on sites shall be clearly marked with the name of the owner and the lease site number for identification in the event of removal by storm damage.
- 6.7 No wild seed may be transplanted onto a lease site by any means. However, recruitment of juvenile shellfish suspended in the overlying water column by means of cultch, nets or trays is permitted, subject to the other provisions of these regulations.
- 6.8 Access to aquaculture sites shall be by vessel, on foot or by special permission of the Board of Selectmen. Such permission may be requested annually, and if approved for designated vehicle type and limited time of applicability.

7.0 TERMS OF LEASES

- 7.1 Initial lease agreements shall be for a period of two (2) years for a maximum of one half (½) acre. Following the second year and upon favorable evaluation by the Natural Resources Department, the license will be recommended for renewal by the Board of Selectmen for a period of ten years. Licensees may elect to increase to one (1) acre.
- 7.2 Shellfish aquaculture licenses may not be transferred in whole or in part to any party other than an immediate family member without the approval of the Board of Selectmen. No licenses may be sold. After a public hearing, the Board of Selectmen may approve the *transfer* of a license from one family member to another. Said licenses shall be subject to all conditions and restrictions contained herein. In the event of the death of a license holder, the Selectmen may permit the transfer of said license to an immediate family member in accordance with the above conditions.
- 7.3 A licensee may elect to forfeit a license. He/she shall notify the Natural Resources Department of their intention in writing stating the reason and effective date. The licensee may obtain a seed sales permit from the Division of Marine Fisheries for the purpose of removing seed stock from the licensed site. If a licensee forfeits a license or has a license revoked for any reason, said licensee shall have sixty (60) days to remove all equipment from the site. If after sixty (60) days all equipment is not removed, the Town may remove it at the owner's expense.
- 7.4 An aquaculture license, in accordance with MGL Chapter 130 Section 57, may be suspended or revoked by the Board of Selectmen for just cause including, but not limited to, lack of substantial use of the licensed area, failure to comply with applicable regulations, statutes, procedures or directives of the town, or compliance with the approved management plan for the site.
- 7.5 The annual fees for the aquaculture licenses based in part on area under cultivation, shall be established by the Board of Selectmen, and shall be based on applicable sections of MGL Ch 130.
- 7.6 Nothing in these regulations shall relieve the licensee from complying with all applicable bylaws, regulations and statutes either local, state or federal. The Town shall not be held liable for damages to the lease site or cultivated shellfish as a result of use or management of the navigable waterways of the Town.
- 7.7 Any person receiving an Aquaculture Grant in the Town of Eastham shall be required to obtain a commercial shellfish license prior to starting activities on the grant area. Said license must remain current throughout the period of holding such aquaculture grant. Such licenses shall not be renewed if the grant holder fails to provide the annual activity report.

8.0 Assignment of vacant grants

- 8.1 As grant areas become available, they shall be assigned by the following process:

8.1.1 Grants can be transferred in whole or part to an immediate family member with approval of the Board of Selectmen after a public meeting - Section 7.2

current regulations.

- 8.1.2 If the grant is not transferred as above, an available grant will be offered to the individuals on the waiting list starting at the top of the list. A person on the list may pass and maintain their status on the list.

This policy adopted by the Board of Selectmen at a public meeting held on,

Deleted: Monday, December 21, 2009

ARTICLE 36

To see if the Town will vote to accept G.L. c.40, Section 6C, in the manner provided for in G.L. c.40, Section 6D, to allow the town to remove snow and ice from such private ways within its limits and open to public use, as may be designated by the Board of Selectmen, and further provided that for the purposes of Section 25, of chapter eighty four, the removal of snow and ice from such a way shall not constitute a repair of a way; or take any action relative thereto.

By Board of Selectmen

Summary:

The statute referenced above requires two separate actions, the first of which is acceptance by majority vote of Town Meeting. The effect of this vote is to allow the Selectmen to place a question on a town-wide election ballot, the form of which is specified by G. L. c. 40 §6D, as follows:

Shall the town vote to accept the provisions of section six C of chapter forty of the General Laws, which authorize cities and towns to appropriate money for the removal of snow and ice from private ways therein open to public use?

YES.	
NO.	

Only after passage of the above ballot question is the town allowed, but not required, to plow private roads, and then only to the extent that such roads meet minimum construction standards including providing access to a minimum number of parcels, and further within the limitations of an annual town meeting appropriation to be made for this purpose.

BOARD OF SELECTMEN RECOMMENDATION: 5-0

FINANCE COMMITTEE RECOMMENDATION: At Town Meeting

(Majority vote required)

3⁰⁰
p.m

ARTICLE 35

To see if the Town will vote pursuant to Chapter 40, Section 6N to adopt the following bylaw to provide for the making of temporary repairs on private ways;

CHAPTER 118 – Temporary Repairs on Private Ways

§118-1. Purpose and Authority

For the purpose of enabling safe and convenient passage for public safety vehicles and the public over private ways open to and serving the general public, the Selectmen may designate for temporary repairs in a particular year certain private roads that are open to the public, and town meeting may appropriate funds for said purpose, subject to the conditions set forth herein. No temporary repair may be made to any private way unless the Selectmen have previously determined that such repair is required by public necessity and an appropriation therefore is available.

§118-2. Regulations

The Selectmen may adopt regulations for the general administration of this bylaw and proscribing deadlines and procedures for submission of petitions, including official forms for petitions and indemnification, and may determine therein or by vote from time to time which, if any, private ways open to the public may receive temporary repair, and the extent and types of repairs that may be made, subject to the availability of an appropriation.

§118-3. Limits of repairs

Temporary repairs are limited to those as are determined by the Selectmen to be required as a public necessity, including but not limited to minor grading and patching, and shall not include installation, repair or maintenance of drainage or other work of a permanent nature or exceeding \$5,000 in value.

§118. 4. Road Conditions and Standards

At a minimum, each private road shall meet the following requirements

- Opened to and used by the public for a term of 5 or more years;
- With a travelled and improved width of at least 14' wide, clear of overhanging branches or other obstructions for at least such width, to a height of at least 14';
- A visible street sign at each terminus and significant intersections;
- Serving as access to 25 or more residences and/or businesses

§118-5. Petition requirements

- a. The signature of 100% of owners of property abutting the road is required;
- b. An executed indemnification of the town in form proscribed by the Selectmen must accompany each petition;
- c. A cash deposit in an amount determined by the Selectmen shall be made in an amount not less than 50% of the cost to the Town of the temporary repair.

§118-6. Betterments

The Selectmen may assess betterments, according to the circumstances of each private way, including but not limited to consideration of the extent of the use of the road by the public.

§118-Liability

The town shall not be liable for any damage to persons or property caused by such repairs, nor for a claim of public road status on account of such repairs.
or take any action relative thereto.

By Board of Selectmen

3:30 PM



TOWN OF ORLEANS

19 SCHOOL ROAD

ORLEANS

MASSACHUSETTS 02653-3699

Telephone (508) 240-3700 — Fax (508) 240-3703

<http://www.town.orleans.ma.us>

BOARD OF
SELECTMEN

TOWN
ADMINISTRATOR

February 24, 2015

Town of Eastham
Board of Selectmen
2500 State Highway
Eastham, MA 02642

ADMINISTRATION

FEB 26 2015

RECEIVED

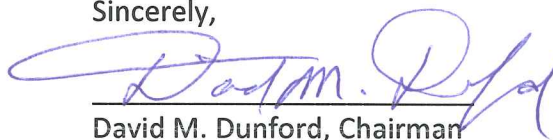
RE: Nauset Estuary – Harbormaster Jurisdiction

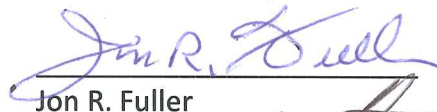
Dear Colleagues:

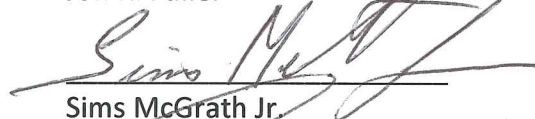
With the apparent determination of the Town boundary on Nauset Spit, the Orleans Board of Selectmen is aware that our Harbormaster has been routinely placing channel markers, patrolling and responding to calls in the portion of Nauset Estuary that appears to be located in the Town of Eastham.

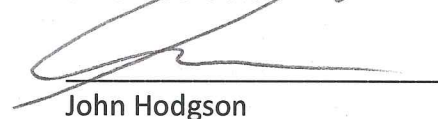
Due to our concerns over lack of jurisdiction, the Board has voted that as of March 1, 2015 the Orleans Natural Resources Manager and Deputy Harbormaster/Shellfish Constables will no longer be providing these services to the Town of Eastham, but may assist Eastham's Harbormaster in emergencies upon request provided there is a cross appointment vote by both Boards of Selectmen.

Sincerely,


David M. Dunford, Chairman


Jon R. Fuller


Sims McGrath Jr.


John Hodgson


Alan McClennen Jr.
Board of Selectmen