

AGENDA

Monday

March 16, 2015

**TOWN OF EASTHAM
AGENDA
BOARD OF SELECTMEN
Monday, March 16, 2015
5:00 PM**

Location: Earle Mountain Room

I. PUBLIC/SELECTMEN INFORMATION

II. APPOINTMENTS

5:00 p.m. WBUR Request for Tower Height Extension – Karl Voelker, Director of Engineering

5:15p.m. Update of Water Permitting Process and Tank Bid – Mark White, Environmental Partners Group

(Note: Other than public hearings, all times are approximate and items may be taken out of order.)

III. LICENSING

Renewal Seasonal Club, Package Store and All Alcoholic Licenses

IV. ADMINISTRATIVE MATTERS

1. Action/Discussion

- a) Approve Ragner Relay Race –
- b) Establish Gift Fund for Shore Bird Monitoring for Vehicle Access to Grant Areas
- c) Acknowledge Resignation from Housing Authority – Liz Simmons
- d) Acknowledge Light It Up Blue Campaign
- e) Discuss and Review Letter Concerning Eversource (Nstar) Herbicide Application
- f) Discussion of 208 Process – Details of Establishment of Committee
- g) Presentation of FY16 Selectmen's Budget
- h) Review of Draft Warrant and Vote Recommendations

V. OTHER BUSINESS/CORRESPONDENCE/MINUTES

Review List of Committee Appointments Affected by Term Limits

VI. TOWN ADMINISTRATOR'S REPORT

Presentation of FY16 Selectmen's Budget and Draft Warrant Review and Vote Recommendations

VII. EXECUTIVE SESSION – To discuss strategy with respect to litigation 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

Wednesday, March 18, 2015

2:30 p.m.

Work Session

Monday, April 6, 2015

5:00 p.m.

Regular Meeting

Wednesday, April 8, 2015

2:30 p.m.

Work Session: Fees/Seasonal Salary Review

Wednesday, April 15, 2015

5:00 p.m.

Public Hearings:

Capital Improvement Plan,

Annual Town Meeting Warrant

By-law Changes Proposed in Warrant

This meeting will be video recorded and broadcast over Local Access Channel 18 and through the Town website at www.eastham-ma.gov.

****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***



890 Commonwealth Avenue
Boston University
Boston, Massachusetts
02215

617 353.0909
617 353.4747 fax

February 24, 2015

Sheila Vanderhoef
Town Administrator
2500 State Highway
Eastham, MA 02642

Dear Ms. Vanderhoef,

Thank you for taking the time to speak to us concerning our proposal for the tower at Nauset Road in Eastham. Boston University is pleased to be a tenant on the Nauset Road tower (owned by Crown Castle) for our new Cape Cod station WBUH. The improvements we seek would lead to a long-term commitment to this tower site and continued revenues for the Town of Eastham. We would like to present our request for improvements to the Board of Selectmen in Eastham at our earliest opportunity. Per your recommendation, this letter summarizes the changes we would like to make.

Our proposal is to elevate the WBUH FM antenna from its current position on the tower, 120 feet above ground level, to the top of the tower which will result in a more favorable antenna height of approximately 210 feet above ground level. The increase in height will improve coverage for WBUH listeners. In addition, it gets the WBUH antenna out of the way of cellular maintenance climbers who currently have to climb through and potentially over the existing FM antenna.

To accomplish this increase in elevation, Boston University proposes to add a 20 foot extension to the top of the tower, increasing its overall height from 196 feet to 216 feet. The extension would be narrower than the upper section of the tower on which it would be placed.

wbur.org

The top of the tower currently is five feet across. The new extension would be three feet across.

The extension would be designed to be compliant with Massachusetts Building Code (which references Revision G of the ANSI/TIA-222 national standard for tower construction). This extension would be built with only enough height to mount a single FM antenna array. The array consists of four elements ("bays") and is Shively model 6600-4SS. The antenna design uses "Half-wavelength spacing" of the elements to minimize the amount of radio energy on the ground around the tower. Emissions will be fully compliant with Commonwealth and FCC regulations, which will be verified after construction. The antenna will occupy the full 20 foot height of the extension.

The proposed increase in height does change the FAA requirements for the tower. Once the tower is above 200 feet tall (216 feet proposed) it will require some aircraft safety lights. The technology in aircraft safety lights has improved significantly in recent years. With LED lighting, the safety lights are now designed to focus their light very horizontally to be seen by aircraft and be not as visible on the ground. A light will be placed on top of the tower and another pair about half way up (110 feet more or less).

The top beacon would flash white in the daytime and red at night. The mid-level lights (2 – each on opposite sides of the tower) are red and only come on at night.

Boston University understands there may be some negative reaction to the addition of tower lighting. We feel the site is located favorably on the town land in such a way that there will be no detrimental impact from the new lighting. Our study suggests that few abutters, if any, would be affected due to the extensive geographic spacing and vegetative borders that shield the tower from virtually all residents in its current state. We propose the absolute minimum height required to relocate our antenna, in our effort to minimize impacts. Boston University is prepared to demonstrate a "view test" of the proposed extension if the Board determines it is necessary to do so.

Additionally, Boston University plans to use an LED lighting system which greatly improves on the performance of traditional incandescent beacons. These new systems are configured to minimize downward illumination through lenses that focus the illumination horizontally and up into aviation airspace. Specifications for a typical "neighborhood friendly" lighting system will be discussed in our presentation to the Board of Selectmen and some examples of area towers will be provided.

In addition, while the lighting is designed to be of little impact to the surrounding area, Boston University would be willing to consider reasonable mitigation as requested by the Town of Eastham such as through the installation of indigenous evergreen plantings on town land adjacent to abutting properties.

One final issue: Boston University believes our proposal does not require additional review by the Cape Cod Commission. Section Three of Chapter A of the Enabling Regulations Governing Review of Developments of Regional Impact (revised November 2014) lays out the conditions under which a development project would be classified as a Development of Regional Impact. Any project which exceeds the thresholds in this section qualifies as a DRI. In paragraph (i), subsection (2) existing towers are permitted to increase their height by a maximum of 20 feet without being classified as a DRI, and therefore such a change does not require submission to the Cape Cod Commission for prior approval.

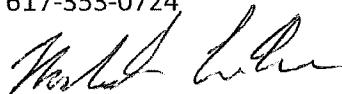
Boston University would like to thank the Board of Selectmen of the Town of Eastham for their consideration of our proposal and would respectfully request a chance to present it in the near future.

Sincerely,



Karl Voelker
Director of Engineering
WBUR Boston University
kvoelker@bu.edu
617-353-0720

Michael LeClair
Chief Engineer
WBUR Boston University
mleclair@bu.edu
617-353-0724



Memorandum III

DATE: March, 11, 2014

TO: Sheila Vanderhoef
Board of Selectmen

FROM: Stephanie Simkins

RE: 2015 Seasonal License Renewals

Attached are the Seasonal Liquor License renewal forms from the ABCC and the new licenses, for:

<u>License#</u>	<u>Narne on License</u>	<u>D. B. A.</u>	<u>Type</u>
036400022	Orleans-Eastham Lodge of Elks #2572	(Elks)	Club
036400032	L & T Fine Foods Corporation	(Laura & Tony's Kitchen)	Restaurant
036400033	Jerope, Inc.	(Arnold's Restaurant)	Restaurant
036400034	Tides Landing LLC.	(Tides Landing)	Package Store
036400036	Woody's Eastham Lobster Pool, LLC	(Stewart's Restaurant and Tavern)	Restaurant
036400040	El Mercado Loco, Inc.	(Sam's Uncorked)	Package Store
036400013	Dell Enterprises, INC.	(The Lobster Shanty)	Restaurant

The liquor license renewal forms must be signed and all appropriate paperwork must be submitted before a liquor license will be issued to any business.

These businesses are currently closed and all inspections by Building, Health and Fire will be completed during the months of April and May, prior to the issuance of their licenses.

Chief Kulhawik reported no incidents, from a public safety point of view, which may preclude the renewal of licenses for the above establishments.

If approved, please sign the ABCC renewal forms and the actual licenses for each applicant.

Thank you!



EASTHAM POLICE DEPARTMENT


2550 State Highway • Eastham, MA 02642
508-255-0551 • Fax: 508-255-5412



EDWARD V. KULHAWIK
Chief of Police

KENNETH J. RODERICK
Deputy Chief

To: Stephanie Simkins
Operations Assistant, Health Dpt.

FROM: Edward V. Kulhawik 
Chief of Police

DATE: March 12, 2015

Subject: 2014 Seasonal Liquor Licenses

As per your request dated March 11, 2015, a check of our records show no incidents, from a public safety point of view, which may preclude the renewal of the licenses for the establishments forwarded to this department.

Orleans-Eastham Elks
Laura & Tony's Kitchen
Arnolds Restaurant
Tides Landing
Stewarts Restaurant and Tavern
Sam's Uncorked

Please feel free to contact me if you have any questions or concerns.

"In Partnership with our Community"



EASTHAM POLICE DEPARTMENT

2550 State Highway • Eastham, MA 02642

508-255-0551 • Fax: 508-255-5412




EDWARD V. KULHAWIK
Chief of Police

KENNETH J. RODERICK
Deputy Chief

February 26, 2015

To: Sheila Vanderhoef
Town Administrator

From: Edward V. Kulhawik 
Chief of Police

Re: Ragner Relay Update

I met with the Race Director, Tian Luu, for Ragner Relay on February 12th and reiterated our position regarding our position on requirements necessary for this event to take place in our town. The race director has agreed to these requirements.

On March 16th Deputy Chief Kenneth Roderick will be addressing these issues with the Board of Selectmen to bring them up to date with the changes/additions we have agreed upon with Ms. Luu.

Please see the attached review of the meeting that I had with Ms. Luu on February 12th, and feel free to contact either myself or Deputy Chief Roderick if you have any questions or concerns.



EASTHAM POLICE DEPARTMENT

2550 State Highway • Eastham, MA 02642
508-255-0551 • Fax: 508-255-5412



EDWARD V. KULHAWIK
Chief of Police

KENNETH J. RODERICK
Deputy Chief

TO: Chief Edward V. Kulhawik
FROM: Deputy Chief Kenneth J. Roderick *KJR*
DATE: February 20, 2015
Subject: Meeting with Ragnar Relay

Here is a review of our meeting we had with Tian Luu, the Race Director for Ragnar Relay Cape Cod on February 12, 2015. As you are aware we discussed the route of the race as well as some concerns we had from prior years regarding the race.

- **Team Count:** Ragnar plans to have **500** teams which will be the same as last year.
- **Event Date & Times:** May 8-9, 2015, 5:00am to 3:00pm. Some runners maybe going through our town throughout the night on May 9th but because of the limited amount of participants I feel that there is **not** a need for police details until 6am.
- **Event Route:** The route has **not** changed from last year. (Please see route map provided by Ragnar).
- **Police Detail Officers:** Approximately six (6) officers will be assigned along the route to assist with traffic etc. during the race.
- **Support Vehicles:** We discussed our concerns regarding the support vehicles that travel along the route to assist the runners. Ms. Luu stated that they have approximately two (2) vans for each team. I advised her that in prior events some of the support vans became a traffic problem along the route and asked if they could limit or reroute the vans around the participants so they don't affect the traffic flow. We also discussed reckless driving by the support vans. Ms. Luu stated that all participants **must** attend a safety meeting prior to the event.
- **Signs along the route:** Ragnar will provide and place signs along the route to assist both the runners and motorist.
- **Use of Town Parking Lots:** We discussed our concerns when using the beach parking lots in our town. While doing so they agreed to limit the amount of parking spaces used by the participants. They were told to not block the entrance/exits of said lots. Clean up all trash etc. after completion of the event. Ms. Luu advised that it is her job to travel the route the next day to make sure everything is picked up and report any damage that may have occurred during the event.

- **Community Contribution & Involvement:** Ragnar agreed to review their "charity donations". They currently donate to "The Hole in the Wall Gang Camp". We suggested that they may want to look into a more local charity to donate to such as Lower Cape Outreach or Friends of the National Seashore. Ms. Luu stated that it would be something that she would look into for the 2016 event but we feel that it should be considered this year. There was also a discussion on a program that would better communicate with the community, such as a "hotline" that would be set up and manned by their staff so residents could call with question, concerns or any other feedback that would help both Ragnar and the community. Another suggestion was for them to do more public announcements prior to the event so that the community is more aware of the event, when it is taking place and the route they will be running. Ms. Luu again stated that she was not sure if that was something they could put in place for the upcoming event but they would look into it for the 2016 event.
- **Post Review Meeting:** A meeting was scheduled for Monday, May 11, 2015, @ 10:00 to review how the event went, discuss any concerns or possible changes that need to take place prior to the approval of next year's event.

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March 16, 2015

To: Board of Selectmen

From: Sheila Vanderhoef, Town Administrator

RE: Gift Fund – Shore Bird Monitoring

The Shellfish Grant holders off Bees River have deposited with the Town sufficient funds to pay fees that the Audubon may charge in connection with determining population and protection methods for nesting and resting shore birds that may inhabit the area. In particular, the monitoring program will ensure that no shore birds are adversely impacted by vehicular access to the grant areas. The fees charged by Audubon will be paid completely through the gift fund. Should the fund have insufficient monies to pay for said activity, the work will be authorized by the town only when sufficient money is available on deposit.

If this is acceptable, please vote as follows:

I move that:

The Board of Selectmen, in accordance with Chapter 44, Section 53A, hereby establish a gift fund to be known as the **Shore Bird Monitoring Fund**, to accept funds from any and all individuals, clubs, private non-profits, or corporations interested in supporting what is currently an Audubon activity that checks for the presence of various type of nesting or resting shore bird along pathways that may be used for vehicular access to shellfish grants as regulated under a Conservation Commission Order of Conditions. Expenditure of funds within such account shall be under the direction of the Town Administrator/ Conservation Agent and expenditures shall be reported to the Board of Selectmen.



TOWN OF EASTHAM

2500 Stare Highway, Eastham, MA 02642-2544
All departments 508-240-5900 • Fax 508-240-1291
www.eastham-ma.gov

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TO: Board of Selectmen
FROM: Jacqui Beebe
RE: Aquaculture Grants: Order of Conditions & Shorebird/Turtle Monitoring
March 3, 2015

Background:

In 2013 the Eastham Conservation Commission approved a Notice of Intent and issued an Order of Conditions (OOC) to allow the continued operation of commercial aquaculture grants in Eastham. Due to environmental concerns, primarily with birds and turtles, the scope of the OOC was reduced to work during the months of December through March. There were grant holders who wanted access to their grants during the shoulder seasons of April-May and October-November, and these individuals were advised to seek a permit for this activity directly from the Conservation Commission.

Current Issue:

Two groups of grant holders (First Encounter Beach & Boat Meadow Area) have sought approval to drive on the beach during the two shoulder seasons in spring and fall. The First Encounter grant holders have been granted an Order of Conditions by the Conservation Commission to drive ATV's on the beach during the shoulder season. One of the conditions of this approval is a monitoring program for nesting birds that is managed by an approved Natural Heritage and Endangered Species Program (NHESP) vendor. The MA Audubon is the vendor of choice in the area, and has agreed to provide monitoring services to the grant holders as a group, by way of a contract with the Town of Eastham.

Specific Request:

The Town has developed a process by which the town may collect fees from the grant holders in advance of the service, and then can be invoiced directly by the Audubon. In order to do this, we need to establish a gift account to deposit the funds that will then be used for the purpose of bird monitoring. As of this point, the amount for the entire season will be under \$1,000. **We will need a specific vote of the Board of Selectmen to establish a gift account for the purpose of Shorebird and Turtle Monitoring.**

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SPECIAL CONDITIONS FOR AMENDED ORDER OF CONDITIONS DEP SE 19-1496:

19. **ACCESS NOTICE.** The Conservation Commission office and Natural Resources shall be notified in writing and/or by phone twenty-four (24) hours before driving out on the tidal flats at 555 Old Orchard Road, Eastham, MA 02642, TEL: 508 240-5971, FAX: 508 240-6687, conservation@eastham-ma.gov
20. **INFORMING GRANT HOLDERS.** The project applicant and all Boat Meadow Aquaculture Development Area grant holders, must be informed of these conditions. The grant holders are responsible for compliance with this Order of Conditions.
21. **LIMIT OF ACCESS.** No access or material storage shall be allowed beyond the approved access route.
22. **NO OPERATION NEAR SALT MARSH.** Salt Marsh is present along the First Encounter beach shoreline. No ATV or equipment may operate within 25' of the salt marsh.
23. **PUPOSE OF ACCESS.** The purpose for ATV access is to bring out and remove aquaculture gear and shellfish product. It shall not substitute walking and the grant holder shall try to keep number of trips shall be the minimum necessary to carry out the work. Operation is permitted in daylight hours only. All ATV use shall cease by May 31 of each year.
24. **COMPLIANCE WITH RARE SPECIES REQUIREMENTS.** On or before April 1st of each year all suitable nesting habitats for piping plover as determined by Mass Wildlife, Mass Audubon or other wildlife biologist as approved by Nature Heritage shall be delineated with symbolic fencing (posts with warning signs with rope or twine strung between). Suitable nesting habitats for Least Terns may also need to be delineated by May 15th of each year. The Massachusetts Audubon Society shall be contracted to monitor and delineate piping plover nesting habitat at First Encounter Beach. All access with ATVs or any other motorized vehicle shall cease if state-listed chicks are present. All travel shall remain outside 200 yards from nesting birds. Any ruts created by the ATVs shall be immediately repaired before leaving the premises. All other requirements of the Natural Heritage and Endangered Species Program for rare species and piping plovers as indicated in their determination letter dated March 13, 2013, NHESP File No. 13-31915.
25. **OFF ROAD VEHICLES ONLY.** Only All Terrain Vehicles are permitted. So-called "side by sides" are not permitted. The ATV shall be designed to carry one person and specifications shall be submitted to the conservation office for approval by the Conservation Agent and Natural Resources department prior to use.
26. **GRANT HOLDER ATV.** Only one ATV per shellfish grant or grant holder may be used per shellfish grant.
27. **ATV ACCESS ROUTE.** Operation shall adhere to the proposed 4' wide access route as approved. ATV use is not permitted on the coastal beach other than over it from the main First Encounter parking area. Access is on coastal dunes is prohibited. Operators shall drive at a speed of five miles per hour (5 mph) during the months of April and May.
28. **PROPER WORKING ORDER.** Should a break-down of an ATV occur on the tidal flats or in the coastal resource area, the aquaculture grant holder and his or her designees are responsible for immediately notifying the Natural Resources Department/Conservation Agent and Police and Department. The ATV shall be removed immediately from the tidal flats and all proper hazardous materials remediation measures shall be undertaken. The Fire Department shall also be notified.
29. **ANNUAL REVIEW.** Grant holders shall hold an annual review meeting with the Conservation Commission in March of each year. The purpose of the meeting is to review the prior ATV use and any impacts it may have and

how to correct it. The meeting shall also discuss the previous years rare species update and measures in place for the upcoming spring season. The commission or conservation agent may require additional meetings if necessary.

30. **LIABILITY.** The applicants, and/or owners, agree that the allowance of the construction of the particular structure by the issuance of the permit shall not in any way obligate the town or any state or federal agency to protect the structure from the natural forces of storm damage, erosion, and flood hazard.
31. **GRANT HOLDERS AGREEMENT TO FOLLOW ORDER.** This **Order of Conditions** shall be included in all new grant holders in the Boat Meadow Aquaculture Development Area. The grant holders shall ensure that all and other personnel performing the permitted work are fully aware of the permit's conditions. Thereafter the contractor will be held jointly liable for any violations of the order resulting from failure to comply with its conditions.



COASTAL WATERBIRD MANAGEMENT AGREEMENT

Town of Eastham, MA

COASTAL WATERBIRD MANAGEMENT AGREEMENT dated as of February 18, 2015 (the "Agreement") by and between Massachusetts Audubon Society, Inc., a Massachusetts non-profit corporation exempt from Federal taxes under Section 501(c)(3) of the Internal Revenue Code with an address of Mass Audubon, 208 South Great Road, Lincoln, MA 01773 ("Mass Audubon"), and The Town of Eastham, MA (the "Client").

WHEREAS, Mass Audubon, through its coastal waterbird protection program and activities, has expertise in coastal nesting bird monitoring and management; and

WHEREAS, Client desires the services of Mass Audubon to assist in monitoring and management of coastal nesting birds at locations including coastal areas within the town of Eastham; and

WHEREAS, Mass Audubon through Wellfleet Bay Wildlife Sanctuary desires to perform such services for the Client; and

NOW, THEREFORE, in consideration of the premises and the mutual promises contained herein and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mass Audubon and the Client hereby agree as follows:

(1) Services:

- (a) The Client hereby engages Mass Audubon, through Wellfleet Bay Wildlife Sanctuary (hereinafter "Mass Audubon"), to perform the services described in Exhibit A attached hereto (the "Services"). Mass Audubon hereby agrees to devote its best efforts to the performance of the Services. All Services shall be performed by Mass Audubon at times that are mutually agreeable to Mass Audubon and the Client.
- (b) Either Mass Audubon or the Client may terminate the engagement of Mass Audubon under this Agreement at any time by giving written notice at any time to the other party stating its election to terminate this Agreement thirty (30) days after the date of receipt by the other party of such written notice. In the event of such termination, Mass Audubon shall be entitled to be paid through such thirty (30) day period and any compensation paid to Mass Audubon for services to be performed by Mass Audubon beyond such thirty (30) day period shall be returned by Mass Audubon to the Client. The terminating party shall also provide

notice to Mass Wildlife, US Fish and Wildlife Service, and MA Natural Heritage and Endangered Species Program.

- (c) Unless terminated by one of the parties as provided above, this contract shall be in effect as of the date it is executed and shall run through November 1, 2015.

- (2) Compensation: For the performance of the Services, the Client agrees to pay to Mass Audubon the compensation set forth in Exhibit B attached hereto in accordance with the payment schedule and procedures set forth therein.

- (3) Indemnification:

- (a) Mass Audubon hereby agrees to indemnify and hold harmless the Client from and against any and all claims, liabilities, and obligations (including, without limitation, reasonable attorneys' fees) arising out of or resulting from any material breach by Mass Audubon of this Agreement.
- (b) The Client hereby agrees to indemnify and hold harmless Mass Audubon and its officers, directors, agents, volunteers and employees (including, but not limited to, the personnel of Mass Audubon) from and against any and all claims, liabilities, and obligations (including, but not limited to, reasonable attorneys' fees) arising out of or resulting from the performance by Mass Audubon of the Services. Mass Audubon assumes no liability or obligation for any omissions from any work performed for the Client.
- (c) Mass Audubon shall be an independent contractor, with the sole responsibility of directing the work of its employees to be performed under this contract. Mass Audubon shall *hold harmless* the Client for any actions undertaken by Mass Audubon while on the Client's premises.
- (d) Mass Audubon agrees to carry all necessary insurance including, but not limited to, comprehensive general liability and Worker's Compensation and shall provide certificates of same to the Client. Mass Audubon will provide the Client with a certificate of Workmen's Compensation Insurance for employees used to perform the work requirements of the Contract. Mass Audubon shall also provide a certificate of comprehensive general liability coverage with limits of at least one million (\$1,000,000) dollars coverage per occurrence and \$2,000,000 in the aggregate, wherein Client shall be named as an additional insured.

- (4) Notice: Any and all notices under this Agreement shall be in writing and, if to Mass Audubon, shall be duly given if sent to Mass Audubon by registered or certified mail, postage prepaid, return receipt requested, addressed to Attention: Robert Prescott, Sanctuary Director, Mass Audubon's Wellfleet Bay Wildlife Sanctuary, PO Box 236, South Wellfleet, MA 02663, and if to the Client addressed to the Client at the address set forth above. The primary contact

person of the Client will be Sheila Vanderhoef, and all notices under this Agreement shall be addressed to the Client to the attention of such person.

(5) Miscellaneous:

- (a) This Agreement or any of the rights and obligations under this Agreement may not be assigned in whole or in part by any party hereto.
- (b) The provisions of Exhibit A and Exhibit B shall be incorporated in this Agreement by reference as if set forth in their entirety in this Agreement.
- (c) This Agreement constitutes the entire agreement of the parties hereto as to the subject matter hereof and supersedes all previous oral or written agreements between the parties hereto as to the subject matter hereof. This Agreement may be changed or amended only in writing signed by both parties hereto.
- (d) This Agreement shall be governed by, and construed in accordance with, the internal laws of The Commonwealth of Massachusetts without regard to its conflict of laws principles.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as an instrument under seal, all as of the day, month, and year first written above.

MASSACHUSETTS AUDUBON SOCIETY, INC.

By: _____
Bancroft R. Poor
Assistant Treasurer/CFO

By: Sheila Vanderhoef
Sheila Vanderhoef
Administrator, Town of Eastham

EXHIBIT A

Description of Services

Under an Order of Conditions (Mass DEP File# SE 19-1496) received by the Town of Eastham in January, 2015, the Mass Natural Heritage and Endangered Species Program requires compliance with certain rare species conditions for All Terrain Vehicle access to aquaculture grants on the flats off First Encounter Beach during the months of April and May. In accordance with these conditions, on or before April 1 each year a qualified shorebird monitor from Mass Audubon shall erect and maintain warning signs and symbolic fencing to protect nesting habitat and nests of Piping Plovers and/or Least Terns from disturbance or human-caused mortality. Monitoring will occur at least two (2) times per week until at least July 1. However, if Piping Plovers or Least Terns are found to be using the site, then monitoring frequency shall be increased to at least three (3) times per week, and shall continue until all nesting and brood-rearing activity has been completed. The tasks involved in this work include the following in accordance with state and federal guidelines (MA NHESP 1993 Guidelines for Managing Recreational Use of Beaches to Protect Piping Plovers, Terns and their Habitats in Massachusetts and USFWS 1994 Guidelines for Managing Recreational Activities in Piping Plover Breeding Habitat on the US Atlantic Coast to Avoid Take under Section 9 of the Endangered Species Act).

EXHIBIT B

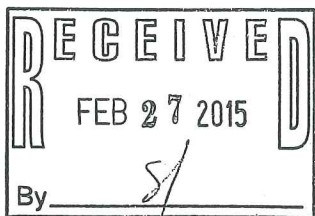
Description of Compensation and Payment Schedule

The rate of pay shall be \$25/hour. The Town of Eastham agrees to pay for the services provided as invoiced provided the terms in Exhibit A have been met.

All payments will be due within 30 days of receipt of invoice.

6/25 6/25

From April 1 to July 1 there would be 25 visits by a monitor and there would be 2 hours to erect the symbolic fenceing. At a cost of \$25/hour the total cost would be \$675. The grant holders would pay the Town the cost before April 1.



PO Box 162

N. Eastham, MA 02651

26 February 2015

Susanne Fischer

Town Clerk

Town of Eastham

Eastham, MA 02642

Dear Ms Fischer,

Due to my increasing poor health, I am tendering my resignation from the Housing Authority.

I have enjoyed and been grateful to have served on the Board, and to have served my town.

Respectfully submitted,

Elizabeth C. Simmons

E. Karol Alexander

(POA for Eliz. Simmons)

Sheila Vanderhoef

TV
Id

From: Glenn Loomis <gloomis@capeabilities.org>
Sent: Tuesday, February 17, 2015 2:52 PM
To: Sheila Vanderhoef; Edward Kulhawik; Mark Foley
Subject: Light It Up Blue



Dear Sheila, Ed and Mark,

Cape Abilities, in association with Autism Speaks and Light It Up Blue, will celebrate Autism Awareness Month throughout April on Cape Cod.

Light It Up Blue is a unique global initiative that kicks-off World Autism Awareness Month on April 2nd. In honor of this historic day, Cape Abilities and many Cape Cod businesses, chambers, town halls, and schools will display blue lights to show their support for and help bring awareness to the growing numbers of individuals diagnosed with Autism each year. The latest numbers from Autism Speaks states that 1 out of 54 boys and 1 out of 252 girls are diagnosed with autism in the United States. A staggering percentage.

Last year, the towns of Barnstable, Yarmouth, Sandwich, Chatham, Brewster, Orleans, Eastham and Truro displayed blue lighting at their municipal locations. This year, we are looking to increase that number by asking *all* the towns from the Bridges to the Provincetown Monument to join us in placing blue lights in front of their buildings in recognition of Autism Awareness month. It would be impressive if every Town Hall, Police and Fire Station participated. A blue bulb (lamp post, spot light) placed strategically for all the public to see will create the spotlight needed to illuminate the awareness for this very challenging disorder. Cape Abilities will supply two, 60W Equivalent Blue Spiral CFL Light Bulbs to each participating town.

Cape Abilities will be responsible for the press coverage for this event. Please let me know what additional information you need, or if you would like to meet, in order to make this event a reality.

Thank you and I look forward to Lighting It Up Blue with you in April!

Sincerely,

Glenn Loomis
LIUB Committee

Cape Abilities is a nonprofit organization that has been providing jobs, homes, transportation and services to people with disabilities on Cape Cod since 1968

Administrator of [Life Skills](#)
a day habilitation program
gloomis@capeabilities.org

Cape Abilities
Serving Individuals with disAbilities on Cape Cod since 1968
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TOWN OF EASTHAM

2500 State Highway, Eastham, MA 02642 - 2544

All departments 508 240-5900 Fax 508 240-1291

www.eastham-ma.gov

March 11, 2015

Eversource
Attn: Jerry McDermott,
Eversource Community Liaison
One NSTAR Way
Westwood, MA 02090

Re: Herbicide Spraying

Dear Mr. McDermott:

Despite our conversation and your reference to "a circus atmosphere", the Board believes that a personal appearance at a Board of Selectmen meeting is necessary to fully understand the varying points of view. I would like to assure you, as well, that the Chair of the Board of Selectmen is capable and will control the meeting to eliminate the potential for anything other than a meaningful exchange of ideas.

Given the limited time remaining for comments, we respectfully request you attend the Board of Selectmen meeting on Monday, April 6, 2015 at 5:00PM.

Sincerely,

Sheila Vanderhoef
Town Administrator

cc: State Representative Sarah Peake
Senator Dan Wolf

BOS/lg

14
18

Sheila Vanderhoef

To: Adele Blong
Subject: RE: Eversource spraying

The YOP and Ag regulations require identification of wells within so many feet of the right of way spraying area. They should be aware and my comments were to highlight that fact and make sure it is so noted. As to the harm of the chemicals used, they say they are not a problem for drinking water or other living things as they apply them. I don't exactly remember the comments of EP but you are probably right. The municipal well locations were and are limited to what we own and the 400' buffer that we must own around the well, and further set by our defined water recharge zones.

I will include your comments in the BOS packet for the Monday discussion so they are aware of your position and concerns.

From: Adele Blong [<mailto:capeporter@comcast.net>]
Sent: Thursday, March 12, 2015 9:59 AM
To: Sheila Vanderhoef
Subject: Eversource spraying

I just saw the request for comments from Laura Kelley. I read the newspaper story in which you were quoted and noted in particular your comment about proximity to the well fields. I was surprised as I had raised this issue with EP early on and was told that herbicide spraying did not pose a risk to the wellfields because of distance and the rate of dissipation. If their position is different now, so be it. But if the threat is minimal I hope it will be explained as such. While mentioning the wellfields is useful as an argument against spraying, the fact that spraying could be a threat raises questions as to assertions that were made earlier and competence in selecting locations within proximity to the right of way.

Adele



TOWN OF EASTHAM

2500 State Highway, Eastham, MA 02642 - 2544

All departments 508 240-5900 Fax 508 240-1291

www.eastham-ma.gov

March 4, 2015

William Hayes, Senior Transmission Arborist
EverSource/ NSTAR, A Northeast Utilities' Company
Vegetation Management
One NSTAR Way, SE-370
Westwood, MA 02090-9230

RE: YOP 2015, Row 349

Dear Mr. Hayes,

The Town of Eastham's Board of Selectmen, herein comments on the EverSource/NSTAR Yearly Operational Plan (YOP) for 2015, described in your letter of January 30, 2015.

The Board of Selectmen continues to feel strongly that vegetation control techniques in Eastham should be limited to non-chemical applications such as hand-cutting and Integrated Vegetation Management (IVM) techniques.

The Town of Eastham is currently in the process of developing and permitting a public water supply. Currently, all properties abutting the NSTAR/EverSource transmission corridor are served by on-site wells and septic systems. We have reviewed the maps sent with the letter and wells with 50' or less separation are marked on your current maps, but we also want you to be aware of the many wells within the 100' separation. We have located all of these private drinking water wells with GPS coordinates, and will forward those files to you should you want to refine the private locations shown on the map with specific coordinates.

We are also commenting and requesting several specific actions be taken by NSTAR/EverSource prior to the start of the 2015 program.

- 1. Application standards must be adhered to and strict protocols defined and enforced.**
Application methods and errors in the use of approved herbicides are a significant concern. Federal and state standards require that a product be used in a manner consistent with its labeling. Specifically, the EPA states, "It is a violation of federal law to use a pesticide in a manner that is inconsistent with its labeling." Most of the products approved for use have a label warning that they should not be used in, "windy or gusty conditions", and use 3 to 10 MPH as guidance. Every town on Cape Cod routinely has conditions where winds exceed 10 MPH. We are aware of the problems caused by the

improper application of herbicides by NSTAR contractors in the town of Harwich, and want to avoid any improper use or application in our town. The margin of risk of misapplication, over-spraying or wind drift in such tight areas, close to homes, gardens and play areas, regardless of the products used, would suggest that alternative methods are more appropriate. *At the very least, it is imperative that clear procedures regarding wind conditions be set, followed, and checked throughout the day.*

2. **Private well marking and residential notification protocols need to be established.**
To meet the requirements of the YOP, applicable CMR's and the application protocols for specific chemicals, all wells should be marked in the field and the buffer and no spray zones should be flagged after being located with GPS coordinates. Letting resident's know that the company will be spraying, "in the next nine months," does not constitute effective notification. *A monthly plan, with areas identified, along with flagging and signage is the least that residents and town officials should expect prior to any spraying.*
3. **The use of Krenite, Glyphosate, and Garlon IV should be eliminated from the 2015 plan.** We are specifically concerned regarding the potential use of the herbicides Krenite, Glyphosate, which is the active ingredient in the product Roundup, and this year's addition of Garlon IV, all three on your list as approved herbicides. Krenite is of concern as the registration decision and label instructions do not allow use near homes. Specifically, the registration decision and the product label prohibit, "contact with other persons either directly or through drift", and carries an additional precaution that it not be used, "for the control of woody plants, on lawns, walkways, driveways, or other similar areas". Strict adherence to these protocols will be difficult to ensure unless NSTAR and its' contractors are prepared to notify residents and keep them off the easement while application is being made. In regards to Glyphosate, we are aware that at the request of Congress, this ingredient is being reviewed by the EPA due to concerns that it may be a human and animal endocrine disruptor. Furthermore, the most recent addition, Garlon IV is toxic to oysters and other shellfish. Eastham has an active aquaculture program and it is reckless to use this substance in this town, or any other on the Cape. The town understands all too clearly, how chemicals "approved" for use in one decade, can be determined to be harmful or carcinogenic ten years later. It is more than possible that characteristics not presently known about the herbicides and application methods may be identified in the future, and long lasting harm to the environment and public health could result by application at this time. *We request that you not use any of these three herbicides in this year's plan, and specifically, not to use Gyphosate until the EPA has completed its review and confirm its long-term safety.*
4. **The town's Water Resource District should be mapped and respected as a no-spray zone.** Our water resource district for the town-wide water supply is an extraordinarily sensitive area, and will be the site of a large, DEP permitted well for the public water supply. It is directly adjacent to the right of way and the NSTAR/EverSource easement lies within our water resource district. *We will provide GPS coordinates for the future municipal well site, and request that it be well-shown on the 2015 YOP map. There*

should be no spraying of herbicide in this district.

5. **The town will offer cooperation & support in consideration of our interests and concerns.** We proposed in 2010, and continue to believe that effective vegetation control can be achieved in an acceptable, cost-effective, and environmentally friendly manner. There is simply no necessity to use chemicals to manage the growth of vegetation in this area. Many residents, volunteers, and town staff, would be more than happy to assist in developing a plan and participate in active vegetation management that will replace, or at least minimize, chemical management. *We would like to schedule a meeting to discuss how we can work together to achieve an agreement that will satisfy your needs for vegetation management while using the most conservative approach available.*

In summary, we will do everything possible to ensure that our water supply, our fragile environment, and the health of our citizens, are protected. Thank you for your consideration.

Sincerely,

Linda Burt, Chair
Eastham Board of Selectmen

cc: Board of Selectmen
Sheila Vanderhoef, Town Administrator
Representative Sarah K. Peake
Senator Daniel A. Wolf
Hotze Wijnja, Director Rights of Way Program, MDAR
Mike McClean, Enforcement, MDAR
Jonathan Yeo, Director Division of Water Supply Protection, MassDEP



One NSTAR Way
Westwood, Massachusetts 02090

January 30, 2015

Dear Municipal Official:

This letter is to inform you that NSTAR Electric & Gas intends to selectively apply herbicides along power line and natural gas rights-of-way that pass through your municipality. This treatment is conducted as a component of an integrated vegetation management program that also utilizes mechanical and natural control techniques.

NSTAR's five-year Vegetation Management Plan (VMP) for 2013-2017 is posted at the following website: www.kenersongroup.com/vmp/2013/nstar. If you would like a hard copy please contact us with this request.

NSTAR's Yearly Operational Plan (YOP) for 2015 is posted at the following website: <http://www.kenersongroup.com/yop/capecod2015/nstar>. If you would like a hard copy please contact us with this request. Please note that the YOP also includes the rights-of-way (ROW) from the 2014 treatment program. This is just in case NSTAR needs to request a "touch-up" retreatment of scattered locations from its contractor(s). For some municipalities, these "touch-up" ROW's are the only ones that are located within your boundaries; please note the difference on pages 3 in the YOP.

Please review the YOP map(s) that locate the ROW corridors and the plotted location of known sensitive areas including public and private drinking water supplies. **If there are any additional sensitive areas located on or near the ROWs please advise us as soon as possible so a permanent record can be established and appropriate field protective actions implemented.** We particularly rely on this process to collect corrections to the public wells and to record the location of private wells. The enclosed maps will be updated with any new information that is received by NSTAR and posted at the above website.

The herbicides are listed in Section VII of the YOP and will be selectively applied to target vegetation by experienced, Massachusetts' licensed/certified applicators that walk along the ROWs using backpack equipment.

The foliage treatments will take place between September 1st and October 16th along with cut surface treatments (CST). Fall CST, basal treatments or sensitive foliar treatments may be necessary and are scheduled between October 5th and December 31st in areas along the ROWs that might not have received a foliage treatment or to trees over 12 feet tall. The exact time is dependent upon weather conditions and field crew progress.

In compliance with 333 CMR 11.06-11.07, No herbicide applications will occur before the conclusion of the 45 day YOP review period, the 21 day treatment notice and the 48 hour newspaper notice. At the end of these review periods, which can run concurrently, no application shall commence more than ten days before nor conclude more than ten days after the treatment periods listed above.



One NSTAR Way
Westwood, Massachusetts 02090

January 30, 2015

**45 Day Yearly Operational Plan
Public Notice, Review and Comment Period**

Dear Municipal Officials:

In compliance with 333 CMR 11.06, *45 Day Yearly Operational Plan Public Notice, Review and Comment*, please review NSTAR Electric and Gas 2015 Yearly Operational Plan.

NSTAR's Yearly Operational Plan (YOP) details specific information pertaining to the intended 2015 program. NSTAR's YOP is posted at the following website:

<http://www.kenersongroup.com/yop/capecod2015/nstar>

Please review the enclosed YOP maps that locate the rights-of-way and the plotted location of known *sensitive areas* including public and private drinking water supplies. If there are any additional *sensitive areas* located on or near the right-of-way, please advise us as soon as possible, so we may establish permanent records and implement appropriate field protective actions. We particularly rely on this process to collect corrections to the public wells and to record the locations of private wells. The enclosed maps will be updated with any new information that is received by NSTAR and posted at the above website. If you would like a hard copy of the YOP please contact us with this request.

Also please review the enclosed hard copy of the Environmental Monitor Notice, published under the Massachusetts Environmental Policy Act (MEPA) also located at:

www.env.state.ma.us/mepa/emonitor.aspx

Enclosures: 21 Day Letter
Environmental Monitor Notice
2015 Yearly Operational Plan Maps

Notice Sent to: Chief Elected Municipal Official
Board of Health
Conservation Commission
Municipal Water Supplier
Massachusetts Pesticide Bureau

THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS



Department of Agricultural Resources

251 Causeway Street, Suite 500, Boston, MA 02114
617-626-1700 fax: 617-626-1850 www.mass.gov/agr



CHARLES D. BAKER
Governor

MATTHEW A. BEATON
Secretary

Notice

Pursuant to the provisions of the Rights-of-Way Management Regulations, 333 CMR 11.00, to apply herbicides to control vegetation along rights-of-way (ROW), a five year Vegetation Management Plan (VMP) and a Yearly Operational Plan (YOP) must be approved by the Department of Agricultural Resources (DAR). NSTAR has submitted and holds a current VMP, therefore, notice of receipt of a YOP and procedures for public review is hereby given as required by Section 11.06 (3).

The Kenerson Group (TKG) of Athol, Massachusetts submitted a YOP to DAR for NSTAR, A Northeast Utilities Company in January 2015.

In 2015 NSTAR will conduct an Integrated Vegetation Management (IVM) program on their transmission and distribution lines. The intended vegetation control program will be consistent with NSTAR's VMP (approved by DAR in 2013). In accordance with the guidelines set forth in NSTAR's VMP and YOP, herbicides will be selectively applied to target vegetation by licensed/certified applicators carrying backpack or hand held application equipment for the IVM program.

NSTAR's YOP identifies the following 13 municipalities as locations where they intend to use herbicides to treat their electric Rights-of-Way in 2015:

Barnstable	Dennis	Harwich	Sandwich	Yarmouth
Bourne	Eastham	Mashpee	Truro	
Chatham	Falmouth	Orleans	Wellfleet	

NSTAR will only use herbicides recommended by DAR for use in Sensitive Areas for their IVM program. Pursuant to 333 CMR 11.04, no herbicides will be sprayed within any designated "no spray sensitive sites" instead mechanical only methods will be used to control vegetation.

Public notification, by certified mail, will be provided to each "affected" municipality at least twenty-one days prior to any herbicide application.

In accordance with 333 CMR 11.06 (2), NSTAR's YOP includes the identification of target vegetation; methods of identifying, marking and protecting Sensitive Areas; application techniques; the herbicides, application rates, carriers and adjuvants proposed for use; alternative control measures, a list of the application companies and YOP supervisor; procedures for handling, mixing and loading herbicides; emergency resources including local, state and federal emergency telephone numbers; maps of the ROW which included mapped Sensitive Areas, and herbicide fact sheets and labels.

PUBLIC REVIEW

The DAR seeks to verify the location of Sensitive Areas defined in Section 11.02 reported in the YOP. DAR itself has a limited ability to survey the geography, land use and water supplies in all the communities through which ROWs pass. Municipalities have most of this information readily available, and the particular knowledge with which to better certify the Sensitive Areas in their communities. DAR, therefore, requests, and urges the

Any questions or comments on the information provided in this *Notice* and the procedures established for the municipal review outlined above should be addressed to:

Michael McClean
Director of Rights-of-Way Programs
Massachusetts State Pesticide Bureau
251 Causeway Street, Suite 500
Boston, MA 02114-2151

Any questions or comments regarding the YOP should be addressed to:

William Hayes, Senior Transmission Arborist
NSTAR, A Northeast Utilities Company
Vegetation Management
One NSTAR Way, SE-370
Westwood, MA 02090-9230
781-441-3837 (office)

COMMENT PERIOD ENDS AT THE CLOSE OF BUSINESS ON Friday March 27, 2015



(774) 353-6511 ♦ POCCAcapcod.org ♦ poccapcod@gmail.com
Helping to Preserve Our Quality of Life on Cape Cod

TV
18

March 2, 2015

The Honorable State Representative Brian Mannal
The Honorable State Representative Sarah Peake
The Honorable State Senator Dan Wolf
Massachusetts State House
24 Beacon Street
Boston, Massachusetts 01233

Dear Brian, Sarah, and Dan:

Congratulations to you all for continuing your rise into leadership positions on Beacon Hill. The Cape is very fortunate to have you represent us and, in particular, we appreciate your support as we continue our efforts to restrict herbicide spraying on the utility rights-of-way throughout the Cape.

NSTAR, or Eversource as it is now known, has indicated they again plan to spray herbicides this year. Although they sprayed 8 towns in 2013, 9 towns last year, and have repeatedly indicated spraying would reduce over time, this year's proposed operational plan indicates they will spray 13 towns. We believe our current herbicide regulations no longer reflect the realities of the Cape's current day "Blue Economy" and, as a result, we encourage you to launch an effort to revamp these regulations. POCCA will support this effort in any way we can, and we're certain other organizations would be willing to join this effort.

As we begin 2015, we now know the issues associated with herbicides and other Contaminants of Emerging Concern, or CECs as they are known, are far more complex than they appeared when the current regulations were drafted decades ago. As you look into these regulations, we ask that you consider the following items. In addition, as you get into the details of any proposed changes, we offer to review the precise language. While the intention of the current legislation was good, the actual language was imprecise and, as a result, our current processes are simply not working.

Transparency and Confidence In the Program

Last year, after a series of missteps by MDAR, we contacted Governor Patrick's office and subsequently met with attorneys in his office, EEA's chief counsel, and MDAR's chief of staff. We indicated we had lost confidence in MDAR's oversight of this program.



As a result of these actions, MDAR committed to provide us with the following information:

- Copies of all the public comments submitted in response to NSTAR's 2013 and 2014 yearly operational plans. MDAR had dismissed these comments out-of-hand, indicating they had no obligation to respond to them and stating they had only received about 100, most simply asking MDAR to stop the spraying.

We note that many public agencies make it a practice to routinely release any public comments on their efforts. For example, we recently submitted comments on a plan coming out from Health and Human Services and, within days of the public comment period, HHS published our comments along with those from another 400 organizations.

- Details of any enforcement actions MDAR has taken. Despite apparent violations by NSTAR, we believe MDAR has not actually cited NSTAR at all.
- Detail logs of NSTAR's actual spraying activities. NSTAR's spraying activities are restricted in terms of where they can spray, when they can spray, what plants they can target, and how much they can spray. Without additional information, it's impossible for anyone in the public to understand what NSTAR is actually doing and, sadly, we have lost confidence in MDAR's efforts to properly oversee the effort.

Although MDAR had committed to release this information, to no one's surprise they simply ignored our follow-up requests, knowing we'd have little recourse as we changed administrations.

To make matters worse and add insult to injury, MDAR's belated "investigation" into the spraying incident at Sea Horse Farm in Harwich blamed the incident on Clare Bergh's reaction to engine fumes. Quite simply, we believe this conclusion was ridiculous and we feel MDAR owes Clare an apology.

Are These Herbicides Safe?

At the heart of the matter, NSTAR and MDAR repeatedly state that these herbicides have been approved by the EPA and are safe, to the point where NSTAR's key representative grabbed the leaves on a tree that had just been sprayed and commented that "it was just a little sticky." (When we showed this video to a joint meeting of the Cape's Boards of Health, there was a collective gasp of horror).



Science moves slowly and regulations move slower. Some still argue the Cape's waters are fine and others suggest global warming is a conspiracy. While we recognize "proof" is elusive, there are thousands of articles on the possible dangers of these herbicides. Bee colonies have collapsed and we've lost 99% of Monarch butterflies and both problems are widely attributed to herbicide use. Many are concerned that these two problems are "canaries in the coal mine" indicating we may see more serious problems in the future.

Proof aside, the concerns of our citizens are real. We suggest a compromise.

Congress has directed the EPA to assess all herbicides to identify which, if any, disrupt our endocrine systems. Glyphosate, the active ingredient in RoundUp and the most widely used and studied herbicide, appears on the first list of herbicides being reviewed by the EPA. We suggest that the Commonwealth should withhold approval of any new requests to use herbicides on our rights-of-way until the EPA finishes its review and confirms that glyphosate is not an endocrine disruptor.

Who Should Oversee These Regulations?

Under the current regulations, which we understand date back over 25 years, the Massachusetts Department of Agricultural Resources has sole responsibility for overseeing the use of herbicides on our utility rights-of-way. While we understand why MDAR should oversee the use of herbicides on our farms, we believe it would be more appropriate for the Department of Environmental Protection to oversee these regulations.

We're concerned that long term exposure of very low concentrations of these herbicides represent an additional risk to the Cape's sole source aquifer and our other waterways. At this point, it is widely acknowledged that threats to the waters on the Cape represent a significant long term risk to our community. While not yet our primary focus, many recognize that we also need to address "Contaminants of Emerging Concern" such as pharmaceuticals, herbicides, and other pesticides.

The DEP is at the front and center of this debate and, as a result, we believe they should be responsible for the use of herbicides on our rights-of-way as part of their overall charter to protect our waters.

Local Authority

Under the current regulations, MDAR has sole authority over regulating pesticides on our rights-of-way and local authorities do not have the ability to put in place more restrictive regulations.



The legitimate concern here is that we need to avoid an unmanageable patchwork quilt landscape of regulations. It would be unreasonable and unnecessary to ask MDAR and Eversource to tailor their approval and operational processes to each town's unique requirements.

Several years ago, we faced a similar challenge when we put in place a national program to manage handling of pharmaceutical waste in hospitals. It was virtually impossible to understand the requirements at a state level and we made no attempt to review local regulations. Logic was in short supply. An EpiPen is still federally hazardous in Connecticut, but non-hazardous in 45 other states. Confusingly, California redefines "biohazardous" to include aspirin and virtually all other drugs. We could go on and on.

Although we'd obviously prefer that we discontinue the use of these chemicals, we offer a simple compromise if the Commonwealth decides to continue that option. We suggest that NSTAR and Eversource continue with updated approval and operational processes and then allow each community to opt out. If the selectmen in a particular town asked Eversource to not use herbicides, Eversource would use traditional methods to control vegetation. If the selectmen took no action or voted to allow herbicides, they would use the standard state-wide approval and operational processes.

Wind Conditions

Oddly, what looks like the simplest restriction on herbicide application has become the most controversial and, as a result, embarrasses MDAR and undermines confidence in the entire system.

On the surface, the restriction is simple and we see very similar language on virtually every label, often capitalized and highlighted. "It is a violation of federal law to use a pesticide in a manner that is inconsistent with its labeling." "AVOID WINDY OR GUSTY CONDITIONS." Most labels also include language indicating you should spray in wind conditions between 3 and 10 miles per hour, with some confusing language on droplet size.

While NSTAR has said they closely monitor wind conditions, it's very difficult to be confident in their actions. Last October, on the day NSTAR resumed spraying, we traveled from the Cape to Boston and back to meet with EEA's chief counsel and MDAR's chief of staff. When we asked about wind conditions, MDAR's chief of staff dismissed our concerns stating "you don't know the wind conditions where they are actually spraying." (A bit of a sore point, considering MDAR doesn't require NSTAR to let people know when and where they plan to spray).



On that particular day, there were 30+ mph gusts when we left from Eastham and Orleans in the morning, and the gusty conditions continued throughout the day as we travelled off Cape, up to Boston, and when we returned at the end of the day. Certified applicators who were willing to comment off the record stated that anyone who sprayed that day should have their license revoked.

Today's wind restrictions simply don't work. Again, we suggest a simple alternative. Much like it does to manage brush burning, Barnstable County should consider the wind conditions each day and declare it a "spray day" or a "non-spray day."

Operational Oversight

While the regulations establish quite a few restrictions on where NSTAR can spray, what species they target, how much they can spray, and the like, the videos NSTAR itself has published raise considerable doubts about the ability of the applicator to adhere to these regulations.

We believe any spraying should include an independent observer who can monitor and report on the actual spraying activity.

Public Notice Process

The existing regulations require a bewildering combination of public notices. While we believe NSTAR attempts to technically comply with most of these requirements, we don't feel we are meeting the intent of the regulations. Any new regulations should clearly present an overall public communication strategy. We should be confident public comments are reviewed, considered, and responded to. The Commonwealth's approval of the yearly operational plan should establish confidence in the process, in contrast to the one or two line approval statements we've seen in 2013 and 2014. The Pesticide Review Board should actually oversee this process, as opposed to being invisible as they've been in recent years. The Commonwealth should maintain and use the mailing list required by the regulations.

More critical, we need to immediately halt NSTAR's past practice of posting a notice that, essentially, says they'll spray in a particular community sometime over the next nine months. To protect their families, their health, and their properties, the citizens on the Cape need to know when they need to prepare for their neighborhood to be sprayed and when it was actually sprayed.

Target Vegetation and Appropriate Herbicides

While the current regulations cover more details than we're going into here, we are puzzled by two particular details.



For some reason, the current regulations are very specific about the vegetation NSTAR can target and NSTAR has unilaterally added poison ivy and other invasive species to the list. While we're not lawyers and we don't have the legal resources to fight both NSTAR and MDAR, we see no basis for MDAR to approve the additional target species.

Also, we noticed that last year NSTAR added Garlon IV to the list of planned herbicides, although we have no way to know if they actually used Garlon IV during the year. While we believe all the herbicides represent risk, Garlon IV is toxic to oysters and other shellfish. We believe MDAR should not have approved Garlon IV and, obviously, this raises concerns about MDAR's overall approval process.

Thank you for the opportunity to submit these comments. If you have questions or want additional information, please contact us at pocccapecod@gmail.com.

Sincerely,

Laura Kelley
Director, POCCA Cape Cod

Jim McCauley



TOWN OF ORLEANS

19 SCHOOL ROAD

ORLEANS

MASSACHUSETTS 02653-3699

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

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

ADMINISTRATION

FEB 09 2015

RECEIVED

BOARD OF
SELECTMEN

TOWN
ADMINISTRATOR

February 5, 2015

Commissioner Gregory C. Watson
Massachusetts Department of Agricultural Resources
251 Causeway St., Suite 500
Boston, MA 02114

Re: Recommended Changes to Herbicide Application Regulations

Dear Commissioner Watson:

The Board of Selectmen of the Town of Orleans, at its last meeting on January 21, 2015 had on its agenda an item to discuss herbicide spraying in the Town of Orleans by NSTAR. The meeting was attended by representatives of NSTAR and representatives of your agency as well as residents and interested parties. The Board believes that some common sense changes to the herbicide application regulations are in order and would like to propose the following for your consideration as well as our legislative delegations considerations.

First, advertising in the newspaper and the general notices to town officials need to have a higher level of specificity for when the herbicide application will be done. If specifics are not available to include, then NSTAR should be required through its contractor to do an electronic phone distribution to the abutters of the utility easements. This is currently done to customers to inform them of power outages and should be used to inform abutters within a 48 hour period of when the spraying will occur. This will provide the opportunity for homeowners to take whatever actions to remove outdoor items from proximity of the easement and any other actions they deem necessary.

Second, the utility should be required to provide independent observers to be on-site while the spraying occurs to ensure that the herbicides are being sprayed appropriately and to avoid sensitive environmental areas as well as private and public wells. The use of qualified independent observers will lend higher levels of credibility to the herbicide application that currently exists. The cost of the independent observers should be borne by the utility with the independent observers providing their findings to not only state regulators, but as a courtesy, copies to each individual community's applicable agencies such as Board of Selectmen, Conservation Commission, Board of Health and Water Department.

Third, the utility should be required to have its approved herbicide application vendor affirmatively contact and meet with local officials from the respective town agencies (Conservation Commission Agent, Board of Health Agenda and Water Department Officials) prior to any spraying and to walk the easement areas that will be sprayed in advance to be sure that vernal pools, sensitive environmental

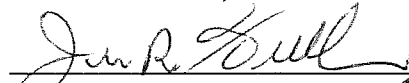
areas, private water wells and public water supply protection areas are clearly identified between the vendor in the applicable town agencies to ensure appropriate spraying.

The Board believes that these three common sense adjustments to the regulation should be made in order to enhance and improve the current process and provide greater notice and greater oversight of this program. The past incident that has been reported to the Board has highlighted the need for these important changes to be made to the existing Code of Massachusetts Regulation or Department of Agriculture Rules and Regulations in a timely fashion. The Board asks that these requests be officially acted upon and responded to and hopes that the Commonwealth of Massachusetts will work in concert with us to protect all the residents of Massachusetts.

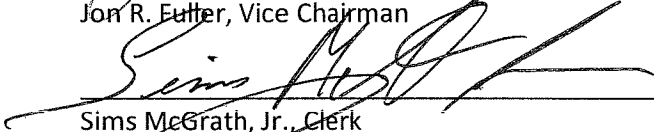
Sincerely,



David M. Dunford, Chairman



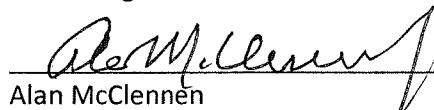
Jon R. Fuller, Vice Chairman



Sims McGrath, Jr., Clerk



John Hodgson



Alan McClennen

ORLEANS BOARD OF SELECTMEN

cc: Senator Dan Wolf
Representative Sarah Peake
Selectmen – Cape Cod Towns
Harwich Board of Selectmen

Sheila Vanderhoef

IV
1 F

From: Adele Blong <capeporter@comcast.net>
Sent: Monday, March 09, 2015 2:26 PM
To: Sheila Vanderhoef
Subject: 208 planning teams

Hi Sheila,

During the One Cape Summit Paul Niedzwicki described a planning process for the designation of WMAs consisting of to be selected teams from each town that would meet during March, April and May in 5 working groups. (He referred to these groups as Watershed Teams but that term was also used in the handout material and draft plan to describe the technical resource teams that have been established to provide assistance to WMAs on an ongoing basis.) The suggested makeup of the teams included town wastewater and water quality planning committee members, and interested citizens, among others. There was no discussion of how team members would be selected. I wanted you to know that I would be interested in serving on the Eastham team.

Although I was unable to participate in the 208 planning process because travel plans prevented me from committing to attend all of the meetings I will be on Cape for all of March, April and May. I believe my knowledge of the issues and analytical skills would be helpful in the process.

Adele



V

Memo:

To: Board of Selectman

From: Jessica Burt

Date: March 11, 2015

Re: **Upcoming Committee Vacancies**

On July 1, 2015, there will be 14 committee vacancies due to members who have served three consecutive terms. Below is the list of Committee Members whose terms will be expiring.

Robert Carlson	(Cemetery Commissioners)
Stephen Smith	(Conservation Commission)
Theresa McAlpine	(COA)
Susan Beyle	(Finance Committee)
Brian Eastman	(Finance Committee)
John Knox	(Finance Committee)
James Taylor	(Board of Health)
Elaine Lipton	(Human Services)
Robert Cook	(Open Space)
Robert Smith	(Search Committee)
Marcel Boelitz	(Water Management)
William Nugent	(Water Management)

Thank you,

Jessica
Receptionist