AGENDA

Monday
March 20, 2017

TOWN OF EASTHAM AGENDA BOARD OF SELECTMEN Monday, March 20, 2017, 5:00 PM

REVISED: MARCH 17, 2017

Location: Earle Mountain Room

I. PUBLIC/SELECTMEN INFORMATION

II. PUBLIC HEARINGS

5:05 p.m. **Proposed Changes to Aquaculture Regulations** – Michael O'Connor, Sr. Deputy

Natural Resources Officer and Shana Brogan, Conservation Agent/Natural Resources

Manager (public comment, Board discussion & vote may be taken)

5:15 p.m. Aquaculture Licenses – Michael O'Connor, Sr. Deputy Natural Resources Officer

(discussion & votes may be taken)

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

III. APPOINTMENTS

6:00 p.m.

Nauset Regional High School, Tom Conrad, Superintendant. Mr. Conrad will discuss a warrant article (debt exclusion) and ballot question for the Nauset High School renovation project.

IV. LICENSING

1. Transient Vendor Licenses (vote needed)

V. ADMINISTRATIVE MATTERS

- A. Action/Discussion (discussion & vote may be taken)
 - 1. Committee Appointments:
 - a. Cultural Council Charles McVinney as a regular member
 - b. Cultural Council Lou Roy as a regular member
 - 2. Consent to Refinance Request for an Affordable Housing Property. As the property is deeded affordable, the Board must give consent for a refinance. The property owner is staying in the home and simply refinancing to get a better rate and use equity. (vote needed)
 - 3. Use of Windmill Green and Bandstand Policy. The recommended changes have been made in the policy and it is ready for review.

VI. TOWN ADMINISTRATOR'S REPORT

VII. OTHER BUSINESS/CORRESPONDENCE

Upcoming Meetings

Wednesday, March 22, 20173:00 PMWork Session – Earle Mountain RoomMonday, April 3, 20175:00 PMRegular MeetingWednesday, April 5, 20173:00 PMWork Session

This meeting is video recorded and broadcast over Local Access Channel 18 and on 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 x3207

II 5:05 pm

LEGAL NOTICE TOWN OF EASTHAM PUBLIC HEARING

The Town of Eastham will hold a public hearing at 5:05 p.m. on Monday, March 20, 2017 in the Earle Mountain Room at Eastham Town Hall, 2500 State Highway, Eastham, MA 02642, on the proposed changes to the Aquaculture Regulations. Copies of the draft regulations are available at the Natural Resources office and at Town Hall during business hours Monday – Friday, from 8:00 a.m. to 4:00 p.m., or can be viewed online at www.eastham-ma.gov.

Published in Friday, March 3, 2017 Cape Codder Posted at Natural Resources Office, Town Hall Lobby, Town Hall Outside Board, Town Website

18W 3/1/17

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/ELIGABILITY

- 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 commercial permit must remain current throughout the period of holding such aquaculture grant. 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 Licensee's management plan.
- 3.4 The maximum acreage permitted to be held by one licensee shall be one (1) acre. If more than one (1) licensee is domiciled at a single household, the maximum acreage per domiciles is one (1) acre.
- 3.5 Aquaculture licenses are issued to an individual or equally to two persons and is are for the exclusive use of the licensee(s). The holder(s) of the license may employ others to perform certain necessary activities on the site. Subleasing or rental of the site is prohibited.
- 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.
- 3.7 The Board may issue licenses for aquaculture sites to domiciled residents of the Town of Eastham. Domiciled is defined as living in Eastham for at least six consecutive months immediately prior to issuance of a license and is the applicants primary residence. Current licensees domiciled in Orleans may continue to hold their existing license and renew according to section 7.1 until the license is forfeited or revoked. Orleans residents on the waiting list may be issued a license if no Eastham residents on the waiting list elect to apply for a license.

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 pursuant to MGL Chapter 130 Section 57 and Section 59. All activities of an aquaculture lease site shall be in compliance with the licensee's management plan and application filed by the applicant or as amended in consultation with the Natural Resources Department. The application/management plan shall be submitted by the person requesting a

grant site. (Copy - Form A attached). Any information that is found to be falsified may be cause for denial or forfeiture of a license.

- **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*). Cape Cod Bay is defined as Massachusetts Division of Marine Fisheries Growing Area CCB 9.
- 5.3 The Nauset Marsh/Town Cove Aquaculture Development Area is limited to sites identified and in existence as of January 1, 1997. Town Cove is defined as Massachusetts Division of Marine Fisheries Growing Area OC4, Nauset Marsh is Growing Area OC5 and Nauset Harbor is Growing Area OC2.
- 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*).
- 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

- Annual Reporting: Annual Reports provided by the Natural Resources Department must be submitted to the Town every year before January 31st which includes the total number of each kind of shellfish planted, produced or marketed during the preceding year upon or from a licensed aquaculture area, and an estimate of the total number of each kind of shellfish at the time of such report, planted or growing thereon (MGL Chapter 130 Section 65). (Copy Form B attached).
- **Seed Permits:** Seed permits are required for the purchase or transport of seed shellfish stock to the lease site. Such permits may be obtained through the Massachusetts Division of Marine Fisheries.
- 6.3 Corner Marking: Grant corner boundaries shall be marked by the licensee with the installation and maintenance of yellow buoys bearing the grant site number in the color black. Said buoys shall be no less than 20" (twenty inches) in circumference.
- **6.4 Grant Spacing:** 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.
- **Sediment Separation:** 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.
- **No Wild Seed/Stock:** 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.
- **Access:** 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.
- 6. 8 **Hydraulic Dredging:** Hydraulic dredging of grant areas is prohibited.
- 6.9 **Seed Purchase Receipts:** The licensee shall submit seed purchase receipts from Massachusetts Division of Marine Fisheries approved hatcheries to the Natural Resources Department with their annual lease report. New licensees shall submit their seed purchase receipts and pathology reporting if applicable, prior to initial placement of seed on the grant site.
- 6.10 **Seed Pathology and Documentation:** Except for seed purchased from Division of Marine Fisheries approved hatcheries, all seed purchased, or intended to be purchased or placed onto the licensees grant site, from other Designated Shellfish Growing Areas as defined by the Division of Marine Fisheries, or other outside growing areas, shall be submitted to a qualified facility for pathology testing and shall be found by the pathology reporting to be acceptable for placement on the grant site prior to such placement. Seed origin and documentation shall also be submitted to the Shellfish Constable for review prior to placement or planting.
- 6.11 **Hours of Operation:** In accordance with MGL Chapter 130 Section 68 operation is prohibited during the nighttime. Grant operations shall be conducted between one half hour before sunrise to one half hour after sunset.
- 6.12 Debris Management: Grant sites shall be maintained and cleaned of debris. This includes but is not limited to rebar, rebar staples, nets, racks, cages, bags, ropes and buoys. All equipment or gear which is either damaged or can no longer be used as it was originally designed or intended to be used in the opinion of the Shellfish Constable, must be removed from the licensed area and disposed of properly. All gear shall be secured so that it can handle strong weather elements. Rebar, rebar staples, nets, racks, cages, ropes and buoys shall be immediately secured if they become loose. Nets and rebar shall be removed from the site after use. Debris is defined as aquaculture gear not in active use. Debris shall include but is not limited to: rebar, piping, racks, cages, ropes and buoys.
- 6.13 **Labeling of Gear:** All aquaculture bags, cages, racks and buoys shall be labeled by the licensee with the owner's name town and/or grant number so that any loose gear may be returned to the owner.

- 6.14 **Active Use:** Due to high demand for aquaculture grant sites, licenses may be revoked by the Board of Selectmen for lack of productive use pursuant to MGL Chapter 130 Section 57. Productive use is defined as placing aquaculture gear on a site and/or spending between \$500 and \$1000 annually on shellfish seed and aquaculture gear.
- 6.15 **Vibrio Compliance:** Licensees shall comply with all vibrio regulations as updated annually.

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. (Selectmen to decide on family transfers of current Orleans licensees).
- 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.
- 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 Chapter 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 sites become available, they shall be assigned by the following process:
- **8.1.1** Grants may be transferred in whole or part to an immediate family member after approval of the Board of Selectmen at a public hearing Section 7.2 current regulations. For purposes of this section the term immediate family shall mean spouse, son, daughter, mother, father, brother or sister. (Selectmen to decide on family transfers of current Orleans licensees.)
- **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 with the first individual on the list that is domiciled in Eastham. A person on the wait list may pass on the offered site and maintain their status on the wait list. Orleans residents on the wait list will only be offered a site if no one from Eastham is on the wait list or all residents of Eastham defer on the opportunity to apply for a license.

9.0 ENFORCING PERSONS

9.1 These regulations shall be enforced by the Shellfish Constable and his/her designees and non-compliance with the above regulations may be brought forth to the Board of Selectmen for their review and action(s) taken including but not limited to revocation or forfeiture of shellfish grants. 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.

- 9.2 Enforcement of these regulations shall include without limitation the noncriminal disposition procedure provided in MGL Chapter 40; Section 21D
- 9.3 The penalties for violation of any of these regulations shall be assigned by the Shellfish Constable and his/her designees and shall consist of a fine of \$50 for the first offense, a fine of \$200 for the second offense, and a fine of \$300 for the third offense. In the event of a fourth offense, there will be a hearing with the Board of Selectmen to revoke the license.

These regulations adopted by the Board of Selectmen at a public meeting held on: Monday, December 21, 2009, Revised:

3/21 BOS
HRG
ADMINISTRATION
MAR 0 6 2017
REGEIVED

March 6, 2017

To: Eastham Board of Selectmen

From: Timothy Linkkila

188 Rock Harbor Rd. Orleans, MA 02653

RE: Town of Eastham Aquaculture License Regulations Hearing, Monday, March 20, 2017

I request that this letter be read into the hearing record as I am unable to attend.

Dear Board Members,

My name is Timothy Linkkila and I reside at 188 Rock Harbor Rd. in Orleans . I have held an Eastham commercial shellfish permit for the past fifteen years.

I would encourage you not change the method of awarding grants as proposed in the "Licenses for Aquaculture Sites"; Sections 3.7 and 8.1.2 whereby an Orleans resident will in all probability never make it to the top. If you do adopt the above regulation changes I respectfully request you refund my \$25.00 " wait list" fee which I paid to get on the list four years ago since the conditions under which I joined the list will have changed.

While the \$25.00 fee is not a big issue I think the proposed changes will damage the spirit and camaraderie of shell fishermen and women of Eastham and Orleans who have worked side by side for ever and is very short sighted.

Timothy Linkkila

CC: Natural Resources Dept.

II 5:15 PM

LEGAL NOTICE TOWN OF EASTHAM PUBLIC HEARING AQUACULTURE LEASES

Pursuant to M.G.L. Ch 130 s 57 and 60, the Eastham Board of Selectmen will hold a public hearing on Monday, March 20, 2017 at 5:15p.m., in the Eastham Town Hall, Earle Mountain Room, 2500 State Highway, Eastham, MA 02642, concerning the following aquaculture licenses:

Transfer Aquaculture License

Ms. Bethany Gibbons 4 Tonset Road Orleans, MA 02653 Site # B11W – ½ Acre Boat Meadow

Renew Aquaculture Licenses

Matthew Campbell 42 Lowell Road Orleans, MA 02653

Marilyn Collins 375 State Highway Eastham, MA 02642

Luther Eldredge 510 Hay Road Eastham, MA 02642

Stephen Smith 18 Blueberry Lane Orleans, MA 02653 Site # B10E - ½ Acre Boat Meadow Propose to expand to B10W – ½ Acre Boat Meadow

Requests 10 year license renewal

Site # N1, N2 and N7 $- 1 \frac{1}{2}$ Acres Town Cove

Propose to transfer to Jared Collins Requests 10 year license renewal

Site # $N35 - \frac{1}{2}$ Acre Town Cove Requests 10 year license renewal

Site # N43 $-\frac{1}{2}$ Acre Town Cove Requests 10 year license renewal

Town of Eastham

Natural Resources Department 555 Old Orchard Road Eastham, MA. 02642



508 240-5972 natres@eastham-ma.gov

To:

Eastham Board of Selectmen

From: Michael J. O'Connor

Senior Natural Resources Officer

RE:

Aquaculture License

Date: September 12, 2016

Bethany Gibbons

Orleans, MA 0265

Site# 11West

4 Tonset Road

Boat Meadow Aquaculture Development Area

The Natural Resources Department has received a new Aquaculture License Application from Bethany Gibbons. Ms. Gibbons is currently number one on the waiting list for aquaculture sites at Boat Meadow and site 11 West was recently forfeited by Adam Carpentieri. Ms. Gibbons currently holds a valid Town of Eastham Commercial Shellfish License, is familiar with the Town of Eastham Aquaculture Regulations and has visited the site. The site has been active within the last two years and will not need to be surveyed by the Massachusetts Division of Marine Fisheries. If approved this will be a transfer of a license from Adam Carpentieri.



TOWN OF EASTHAM FORM - A

SHELLFISH AQUACULTURE MANAGEMENT PLAN APPLICATION

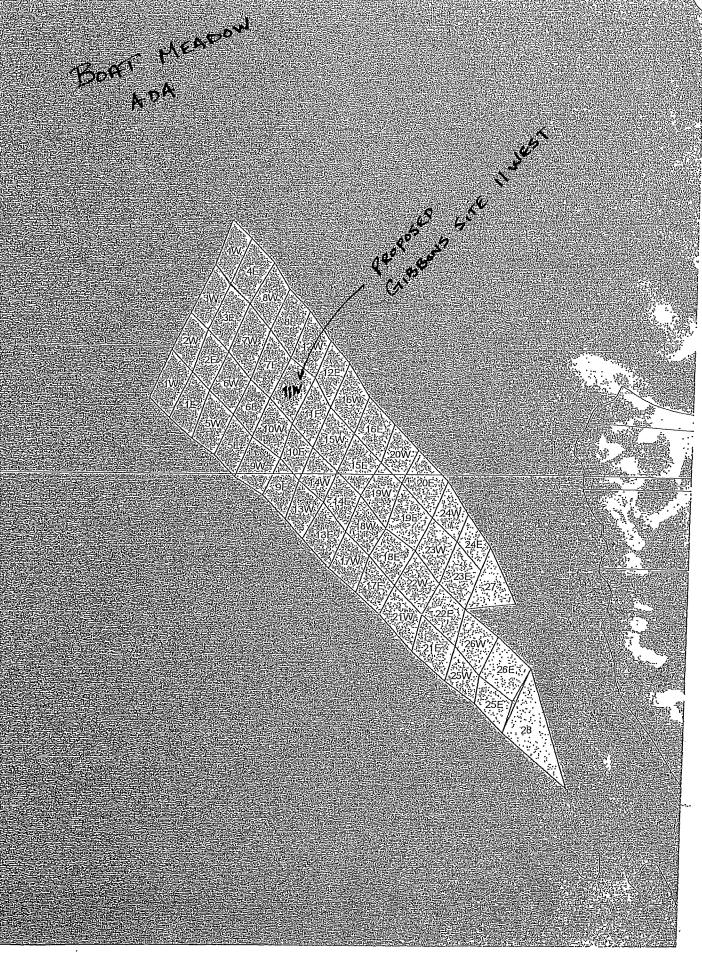
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TOWN OF EASTHAM FORM - A

SHELLFISH AQUACULTURE MANAGEMENT PLAN APPLICATION

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STATE PERMIT#)
,		,



5.2 MAP 1



Attachment A to grant application for 11W, Bethany Gibbons

Factors leading to successful oyster farming

- Experience. I have worked on oyster and quahog grants in Pleasant Bay and Nauset Estuary in Orleans and Eastham, respectively. I am familiar with all aspects of oyster farming: setting out new seed; sorting, cleaning and counting; purchasing equipment; bringing mature oysters to market; hauling out gear; storm preparation and winter storage of seed.
- Dedication. I am a full time commercial shellfisher, fully acclimated to working very hard in adverse weather conditions, most often alone, and am physically conditioned for lifting heavy weights and handling the other physical demands of this pursuit. Additionally, I come from a commercial fishing family. I have assisted in the assembly of lobster gear from childhood, have lived by the tides and weather reports my whole life, and have close family friends in every type of commercial fishing and shellfishing, including aquaculture.
- Preparation. I have been on grant waiting lists in Orleans for many years. I have investment funds available for this venture and specific plans to allow me to hit the ground running.
- Proven Markets. Market demand for farmed Cape Cod oysters is strong. I have long-standing
 and current relationships with five wholesale outfits, including one who had a 30-plus-year
 relationship with my father. I will be building on my proven commitment to quality shellfish,
 brought in clean, cold and fresh.

Attachment B

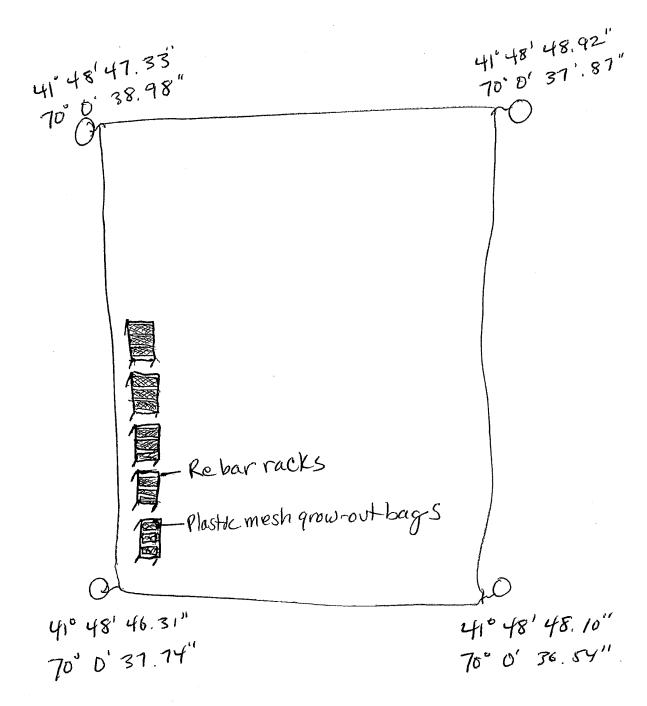
Aduaculture grant application for 11W

Bethany Gibbons

Ham applying for a 1.5-acre shellfish grant for site 11W at Boat Meadow on Cape Cod Bay in Eastham, MA. The site is intertidal with a mean high water depth of seven feet and mean low water depth of zero feet. I will access this site by boat for setting out gear in the spring and removing gear in the fall. Access for regular weekly management during the growing season will be made by foot, with a soft-wheeled oyster cart.

The habitat conditions on the site are loose sand, into which I will anchor rebar racks to hold plastic mesh oyster grow-out bags. The rebar rack is self-anchoring with a welded "T" driven >1-Ft into the bottom. Racks and bags will not exceed 18-inches in height. For the primary phase of the project, "Year One", I will grow 100,000 10mm oysters at a starting minimum density of 1,000 seed per bag, with maximum density at outset not to exceed 2,000 seed per bag, per hatchery recommendations. My 100 bags will be attached to 34 short rebar racks, each holding three bags. Racks and bags will be added to the system, in multiples of tens, as product matures.





Proposed gear density: 50 rebar racks, 100 grow-out bags.

Note: gear illustration not to scale

Side View of Proposed Aquaculture plan for site IIW at Boot Meadow, Bastham, MA

Proposed gear density: 50 KACFS

Mean High Water: 75t.

plustic mesh bags Intertibal Flat, loose sand bottom

Town of Eastham

Natural Resources Department 555 Old Orchard Road Eastham, MA. 02642



508 240-5972 natres@eastham-ma.gov

MEMO

To:

Eastham Board of Selectmen

From: Michael J. O'Connor

Shellfish Constable

RE:

Aquaculture Licenses

Date: January 12, 2017

The following aquaculture licenses are set to expire on the first day of April 2017. The licensees listed below request to renew their licenses and if approved will be extended for a period of ten years. Attached are annual lease reports for previous years for each license to illustrate productivity.

Matthew Campbell

Site# B10E- 1/2 acre Boat Meadow

42 Lowell Road

Propose to expand to B10W- 1/2 acre Boat Meadow

Orleans, MA 02653

Requests 10-year license renewal

Marilyn Collins

Site# N1, N2 and N7-1 1/2 acres Town Cove

375 State Highway

Propose to transfer to Jared Collins

Eastham, MA 02642

Requests 10-year license renewal

Luther Eldredge

Site# N35- 1/2 acre Town Cove

510 Hay Road

Requests 10-year license renewal

Eastham, MA 02642

Stephen Smith

Site# N43- 1/2 acre Town Cove

18 Blueberry Lane

Requests 10-year license renewal

Orleans, MA 02653

Mr. Campbell has held an aquaculture license since February 9, 2015 and requests to expand and renew his site at this time. He currently has site B10E which is a half-acre and would expand to include site B10W another half-acre so he would hold all of site B10 to include a total of 1 acre. If approved the half-acre expansion site will need to be surveyed by the Massachusetts Division of Marine Fisheries. Mr. Campbell currently holds a valid Eastham Commercial Shellfish Permit and has been active with the site and is seeing success with oysters.

Ms. Collins has held an aquaculture license since February 18, 2014 that includes three sites. These sites were transferred to Ms. Collins from her son Glenn Collins who moved out of town. Ms. Collins would like to transfer the sites to her grandson Jared Collins of Eastham. Jared Collins currently holds a valid Eastham Commercial Shellfish Permit. There have been some problems with site N2 and N7 that weren't used for many years. In site N2 we have had complaints of shellfishing in the grant but the site was not properly marked. The Collins recently placed buoys and signs marking the corners of site N2 in anticipation of placing aquaculture gear on the site but due to the lack of marking in previous years they have encountered boats on moorings in the area and signs and buoys have been moved or removed. Site N7 which is approximately one-hundred yards offshore has not been used in at least 17 years. An attempt was made to place buoys on the corners many years ago but it has not been used or marked since.

Mr. Eldredge has held an aquaculture license since October 22, 1996 and currently holds a valid Eastham Commercial Shellfish Permit. Mr. Eldredge has ceased purchasing seed for growout and is only harvesting what is left on the site. He is also using the site to hold over shellfish harvested from the wild until he can take it to market.

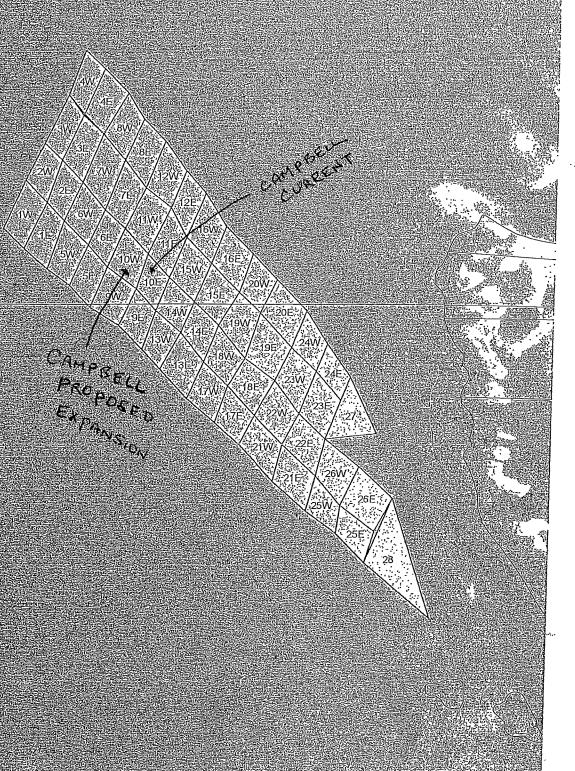
Mr. Smith has held an aquaculture license since October 7, 1996 and currently holds a valid Eastham Commercial Shellfish Permit. Mr. Smith has been active with the site and is having a great deal of success with both quahogs and oysters.



Google Earth

feet 4000 km

BOAT MEADOW



5.2 MAP 1



Town of Eastham ANNUAL AQUACULTURE LEASEHOLDER REPORT

NAME: Matthew Camp RESIDENCE ADDRESS:	pbell 42 Lowell Dr.	DATE:	2-1-2015
	Orleans, MA 02653		
MAIL ADDRESS (if diffe	erent):		- DEBETYEN
PHONE: 508-246-1028	ЕМАП	L ADDRESS polarisoysterfarm@	gmail.com JAN 0 7 2016
AREA: V_Boat MeadowNaus		arsh Site #: B10E	[HU [5]
•	EXISTING	CONDITIONS	DATI
TYPES OF SHELLFISH GROWN:QuahogMussel		Oyster Sea Clam	Softshell 1868 Other
METHODS USED:	Bag & Ra	ckNets	Other (describe)
	HATCHERY:	SEED PURCHASED	
ТҮРЕ	QUANTITY	VENDOR	SIZE
eyster.	f00,000	ARC	R3
WAS ANY SHELLFISH I	MARKETED? IF YES,	COMPLETE BELOW	
TYPE	QUANTITY	UNITS (bushels, (pieces))	SIZE (neck, cherry, etc)
PYSTER	245000	pieces	3+/21/2
Alcim5	245000 1900	pilces_	noreid
PLEASE DESCRIBE IN (GENERAL WHAT YOU DID O	N THIS SITE: product	t sold to wholeselers
WHAT LOGISTICAL PR	OBLEMS DID YOU ENCOUN	SSUES TER ? <i>\Non©</i>	
WHAT IF ANY GROWI	NG PROBLEMS ? (BIOFOULI	NG, PREDATION, GROWTH	RATES, ETC) . NONL
	LOOKI	NG AHEAD	
WHAT DO YOU ANTICI		TE NEXT YEAR ? <u>. \\ \\ \\ \\ \\ \\ \\ \\ \\ \\ \\ \\ \\</u>	mund work
WILL YOU BE INCREAS	SING SEED PURCHASES ?	NO	
COLLABORATING WIT ANY OTHER THOUGHT	H NEIGHBORING GROWERS S ?	·	e if necessary for additional comment

Marilyn Collins 375 State Highway PO Box 706 Eastham, MA 02642 508-255-2828

January 20, 2017

Town of Eastham Natural Resources Department 555 Old Orchard Road, Eastham, MA 02642

Michael O'Connor

As you are aware, the shellfish grants/license at 150 State Highway Eastham MA identified as Site N1, N2 and N7 are in my name.

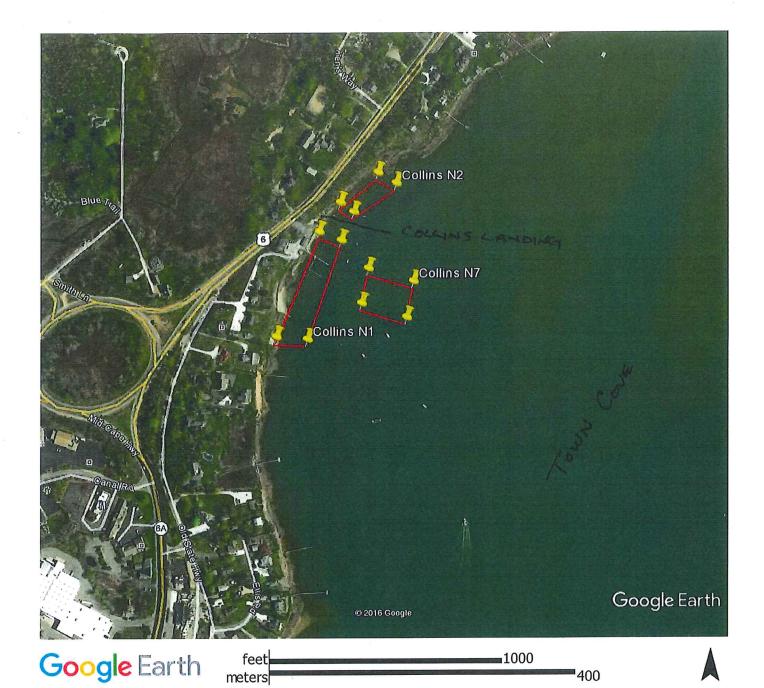
My son Glenn and grandsons Jared and Cameron have been expanding their aquaculture business and use of the sites. At this time I would like to request that the license be transferred to Jared who owns and resides at 240 Old Field Road, Eastham.

Thank you for your attention to this issue. We look forward to hearing from you.

Sincerely,

Marshyn & Corllins

Marilyn Collins



Town of Eastham

Natural Resources Department 555 Old Orchard Road Eastham, MA. 02642



508 240-5972 FAX 240-6687 natres@eastham-ma.gov

December 24, 2015

Marilyn Collins 375 State Highway Eastham, MA 02642

Dear Ms. Collins:

We have had numerous issues over the last few months with people shellfishing in your shellfish grant #N2 just north of Collin's Landing. I have spoken with Glen Collins about this issue before and informed him that we cannot enforce "no shellfishing" in this area unless the corners of the grant are properly marked. As per M.G.L Chapter 130 Sections 57 and 61 and the Town of Eastham Aquaculture Regulations, the site needs to be plainly marked by stakes or buoys, with the number of the license on each corner of the site. Failure to place or reasonably mark and maintain the site shall be sufficient cause for revocation of the license.

I have also spoken with Glen Collins about forfeiting the site as all of the work is done on site #N1 south of the landing. To my knowledge no aquaculture techniques have been used on site #N2 in many years and I recommend forfeiting your license for this site. As per M.G.L. Chapter 130 Section 57 and the Town of Eastham Aquaculture Regulations, said license may be revoked by the selectmen for failure to comply with any terms, or for lack of substantial use of the licensed area.

Please feel free to give me a call and I would be happy to go over the process for forfeiting the grant. Your attention to this matter is greatly appreciated.

Sincerely,

Michael J. O'Connor Town of Eastham

muly.och

Shellfish Constable

cc: Glenn Collins



Google Earth

feet 2000 meters 600





Google Earth





APPOINTMENTS

Nauset Public Schools



78 Eldredge Park Way, Orleans, Massachusetts 02653 Phone: 508-255-8800 • Fax: 508-240-2351 • http://nausetschools.org

> Mr. Thomas M. Conrad Superintendent of Schools

Keith E. Gauley Assistant Superintendent

Giovanna B. Venditti
Director of Finance and Operations

Dr. Ann M. Caretti Director of Student Services

Barbara Lavoine
Director of Teshnology ON

MAR 1 4 2017

RECEIVED

To: Town Administrators

From: Ann M. Tefft, District Secretary

Date: March 10, 2017

Re: Vote of the Nauset Regional School Committee

I, Ann M. Tefft, Secretary of the School Committee of the Nauset Regional School District, Orleans, Massachusetts, in the Nauset District, certify that at a meeting of the Regional School Committee held on March 9, 2017, of which all members of the Committee were duly notified and at which a quorum was present, the following vote was unanimously passed, all of which appear upon the official record of the Committee in my custody:

Nauset Regional School District School Committee Feasibility Study Vote

VOTED: That the Nauset Regional School District hereby appropriates the amount of One Million, Three Hundred Thousand Dollars (\$1,300,000) for the purpose of paying costs of a feasibility study for the Nauset Regional High School, 100 Cable Road, N. Eastham MA, 02651, including all costs incidental and related thereto (the "Study") said amount to be expended under the direction of the School Committee. To meet this appropriation the District is authorized to borrow said amount under and pursuant to M.G.L. Chapter 71, Section 16(d), and the District Agreement, as amended, or pursuant to any other enabling authority. The District acknowledges that the Massachusetts School Building Authority's ("MSBA's") grant program is a non-entitlement, discretionary program based on need, as determined by the MSBA, and any costs the District incurs in excess of any grant approved by and received from the MSBA shall be the sole responsibility of the District; provided further, that the amount of borrowing authorized pursuant to this vote shall be reduced by any grant amount set forth in the Feasibility Study Agreement that may be executed between the District and the MSBA. Any premium received by the District upon the sale of any bonds or notes approved by this vote, less any such premium applied to the payment of the costs of issuance of such bonds or notes, may be applied to the payment of costs approved by this vote in accordance with Chapter 44, Section 20 of the General Laws, thereby reducing the amount authorized to be borrowed to pay such costs by a like amount.

FURTHER VOTED: That within seven (7) days from the date on which this vote is adopted the Secretary be and hereby is instructed to notify the Board of Selectmen of each of the member towns of this District as to the amount and general purposes of the debt herein authorized, as required by the District Agreement and by Chapter 71, Section 16(d), of the General Laws.





78 Eldredge Park Way, Orleans, Massachusetts 02653 Phone: 508-255-8800 ● Fax: 508-240-2351 ● http://nausetschools.org

> Mr. Thomas M. Conrad Superintendent of Schools

Keith E. Gauley
Assistant Superintendent

Dr. Ann M. CarettiDirector of Student Services

Giovanna B. Venditti
Director of Finance and Operations

Barbara Lavoine
Director of Technology

To: Town Administrators

From: Thomas M. Conrad TM L

Date: March 10, 2017

Re: Ballot Question Wording as specified by the MSBA

FORM OF SCHOOL DISTRICT MEMBER TOWN/CITY BALLOT QUESTION

Shall the (*City/Town of*) be allowed to exempt from the provisions of proposition Two and one-half, so-called, the amounts required to pay the (*City/Town*)'s allocable share of the bond issued by the *Nauset Regional School District* for the purpose of paying costs of a feasibility study for the Nauset Regional High School, 100 Cable Road, N. Eastham, MA, 02651, including the payment of all costs incidental or related there to.

Forms of Member Town Article and Motion for Debt Approval

Article _____ To see if the Town will approve the \$1,300,000 borrowing authorized by the Nauset Regional School District, for the purpose of paying costs of a feasibility study for the Nauset Regional High School 100 Cable Road N. Eastham, MA 02651 including the payment of all costs incidental and related thereto (the "Study"), and for which the District may be eligible for a school construction grant from the Massachusetts School Building Authority ("MSBA"), said amount to be expended at the direction of the School Committee. The MSBA's grant program is a non-entitlement, discretionary program based on need, as determined by the MSBA, and any Study costs the District incurs in excess of any grant approved by and received from the MSBA shall be the sole responsibility of the District and its member municipalities. Any grant that the District may receive from the MSBA for the Study shall be as set forth in the Feasibility Study Agreement that may be executed between the District and the MSBA.

Motion ____. That the Town hereby approves the \$1,300,000 borrowing authorized by the Nauset Regional School District, for the purpose of paying costs of a feasibility study for the Nauset Regional High School 100 Cable Road N. Eastham, MA 02651 including the payment of all costs incidental or related thereto (the "Study"), and for which the District may be eligible for a school construction grant from the Massachusetts School Building Authority ("MSBA"), said amount to be expended at the direction of the School Committee; that the Town acknowledges that the MSBA's grant program is a non-entitlement, discretionary program based on need, as determined by the MSBA, and any Study costs the District incurs in excess of any grant approved by and received from the MSBA shall be the sole responsibility of the District and its member municipalities; provided further that any grant that District may receive from the MSBA for the Study shall be as set forth in the Feasibility Study Agreement that may be executed between the District and the MSBA. The amount of borrowing authorized by the District shall be reduced by any grant amount set forth in the Feasibility Study Agreement that may be executed between the District and the MSBA.

If the approval is to be conditioned upon a debt exclusion vote, the following sentence should be added at the end of the paragraph above:

The approval of the District's borrowing by this vote shall be subject to and contingent upon an affirmative vote of the Town to exempt its allocable share of the amounts required for the payment of interest and principal on said borrowing from the limitations on taxes imposed by M.G.L. 59, Section 21C (Proposition 2 1/2).

Nauset Public Schools



78 Eldredge Park Way, Orleans, Massachusetts 02653 Phone: 508-255-8800 • Fax: 508-240-2351 • http://nausetschools.org

> Mr. Thomas M. Conrad Superintendent of Schools

Keith E. Gauley **Assistant Superintendent**

Dr. Ann M. Caretti Director of Student Services

Giovanna B. Venditti Director of Finance and Operations

Barbara Lavoine Director of Technology

To:

Town Administrators

From:

Thomas M. Conrad TMC

Date:

March 10, 2017

Re:

Items Requested for SOI

Please provide the following:

After Town Meeting:

Certified copy of the Warrant with the Constable's return of posting

Certified copy of the Extract of the vote

Certified copy of the Town Meeting Minutes-showing where and when the meeting took place and if a quorum was present

Certification from the Town Clerks-if the vote was amended or reconsidered

After Town Election: (from Towns who wanted their share of debt service excluded)

Certified copy of the Selectmen's minutes whereby they voted to put the question on the ballot

Certified copy of the Election Warrant with the Constable's return of posting

(This may be combined in the Town Meeting Warrant)

Certified copy of the Ballot

Certified copy of the Results

Please forward all documents to:

Nauset Regional School District Attn: Jim Nowack 78 Eldredge Park Way Orleans, MA 02653





78 Eldredge Park Way, Orleans, Massachusetts 02653 Phone: 508-255-8800 • Fax: 508-240-2351 • http://nausetschools.org

Thomas M. Conrad Superintendent of Schools

Keith E. Gauley Assistant Superintendent

Dr. Ann M. Caretti Director of Student Services

Giovanna B. Venditti

Barbara Lavoine Director of Technology

Director of Finance and Operations

March 9, 2017

To:

Town Administrators

From: Thomas Conrad, Superintendent TC

Date:

March 9, 2017

Re:

Nauset Regional Schools Budget Information

At their meeting on February 27, 2017, the Nauset Regional School Committee voted to approve the FY18 budget for the Regional Schools and to certify the assessments for each member town. I have attached the Budget Summary Sheet that details the amounts.

The total operating budget for FY18 is \$29,019,785 (after applying \$2,622,601 of expenses directly to various revolving accounts per DESE). The Net Operating Budget after applying \$7,229,942 (in addition, \$2,622,601 has been utilized directly from various revolving accounts per DESE) revenue is \$21,789,843 which is an increase of \$526,412 representing a 2.48% increase over the FY17 Net Operating budget.

The Budget Summary Sheet also contains the debt service figures for FY18. The net cost of the bonding for the debt for the High School Green Repair Project and the Middle School Roof Project \$250,957. (after applying \$4,106 from E & D which represents the premium and interest on the sale of bonds for the two projects)

The total assessment to be apportioned based on enrollment is \$22,040,800 an increase of \$516,731 or a 2.40% increase.

BREWSTER \$10,067,789 \$ 4,669,661 EASTHAM ORLEANS \$ 4,333,446 WELLFLEET \$ 2,969,904

I have attached the line item budgets and descriptive materials for review by the Selectmen or Finance Committee. I have already attended meetings with the boards in some towns so this material may not be necessary.

The budget for the annual Capital Repair & Maintenance account is \$506,703 which represents an increase of 2.50% over the FY17 funding. A final copy is attached along with a summary for use in your Town's Warrant if applicable.

BREWSTER \$231,451 \$107,352 ~ EASTHAM \$ 99,623 ORLEANS **WELLFLEET \$ 68,276**

I have also included wording below for the annual article for the Region Assessment Formula. As has been past practice, please place the following article on the Town Warrant:

To see if the Town will vote to accept the provisions of Massachusetts General Law chapter 71, & 16B, which would reallocate the sum of the member Towns' contribution to the Nauset Regional School District in accordance with the Regional Agreement rather than the Education reform Formula, so-called, or to take any other action relative thereto. (Nauset Regional School Committee)

Summary

This article will apportion the Nauset Regional School Assessments for FY19 to the four member towns based on their proportionate enrollment within the school district. This is the method provided within the inter-municipal agreement approved by the four towns establishing the Nauset Regional School District, and has been applied in each of the last fifteen years by town meeting vote. NAUSET REGIONAL SCHOOLS

FY18 CAPITAL REPAIR & MAINTENANCE PLAN SUMMARY (for warrants as needed)

The Nauset Regional School District is requesting funds for the annual capital repair and maintenance portion of their budget. Funds are used to implement repairs to the school facilities and grounds and to purchase necessary, capital equipment. In FY18 funds will be used as follows:

Middle School:
Replace truck and plow
General repairs including painting
Replace classroom flooring
Mold remediation for flooring replacement
Add new sidewalk from Rt28 and repair main entrance stairs
Replace hot water system
Convert space into maker space and laser cutter
New Dust collector for woodshop
Preventative maintenance electric service

High School:
New server
General repairs including painting
Replace grounds equipment
Add/replace exterior lighting
Security

Please let me know if you need any further information.

Sincerely,

Thomas M. Conrad Superintendent of Schools

Nauset Regional School District High School MSBA Feasibility Study Member Town's Share

FY 18 Assessment %		45.6780%	21.1864%	19.6610%	13.4746%
	<u>Total</u> #	<u>Brewster</u>	<u>Eastham</u>	<u>Orleans</u>	<u>Wellfleet</u>
Feasibility Study Budget	1,300,000	593,814	275,423	255,593	175,170
Maximum Potential MSBA share*	(493,350)	(225,352)	(104,523)	(96,998)	(66,477)
Local Share	806,650	368,462	170,900	158,595	108,693

^{*} MSBA reimbursement calendar year 2017 rate for Nauset is 37.95%. This rate changes annually in January. This rate only applies to eligible expenses and within the feasibility study budget all other expenses are born entirely by the District and its' member Towns.

LICENSING



TOWN OF EASTHAM

II 1.

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

March 20, 2017

To: Board of Selectmen

From: Jacqueline W. Beebe, Town Administrator

Re: Transient Vendor Permits

Hands on the Arts- June 20 & 21, 2017 Windmill Weekend- September 9-11, 2017

Please find below the Transient Vendor applicants for approval by the Board of Selectmen. In each case, the \$20.00 fee has been received.

The following permits are valid as stated below.

Remmes, Judith (J & B Creations)	Handel, Robert D.
7 Joan Avenue	PO Box 2244
Stoneham, MA 02180	Rockport, MA 01966
Valid: March 20, 2017- March 20, 2018	Valid: March 20, 2017-March 20, 2018

ADMINISTRATIVE MATTERS



TOWN OF EASTHAM

I A. 1.

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

March 20, 2017

To:

Board of Selectmen

From:

Jacqueline W. Beebe, Town Administrator

Re:

Committee Appointment

The following is the information needed for the following committee appointment.

Charles McVinney

The Search Committee recommends the appointment of Charles McVinney to the Cultural Council as a regular member.

If the Board appoints him, his first term would commence July 1, 2017 and expire June 30, 2020. Replaces Anthony Cantore, Treasurer; his term Expires 6/30/17.

The following is the information needed for the following committee appointment.

Lou Roy

The Search Committee recommends the appointment of Lou Roy to the Cultural Council as a regular member.

If the Board appoints him, his first term would commence July 1, 2017 and expire June 30, 2020. Replaces Anthony Cantore, Treasurer; his term Expires 6/30/17.

Search Committee Interview Form For: <u>Cultural Council</u>
Date and time: March 6, 2017
Town Hall, Eastham MA
Interview Panel Selectmen Liaison Linda Burt
Search Liaison Gloria Schropfer
Committee Rep: Tony Cantore
Applicant: Charles McVinney
Recomendations of the interview Panel to the BOS
The Panel has selected:
This Recomendation Is based on:
Lind But
Selectmen liaison Cantae
Committee Chair
Search Committee Liaison
Said Williac Easti

Selectman liaison must present this form to the Town Administrator



Search Committee Interview Form For: <u>Cultural Council</u>
Date and time: March 8, 2017
Town Hall, Eastham MA
Interview Panel Selectmen Liaison: Linda Burt
Search Liaison: Gloria Schropfer
Committee Rep: Tony Cantore
Applicant: Lou Roy
Recomendations to the BOS
The Panel has selected: Lou Roy
This Recommendation Is based on: Mr Cantore's Recommendation
Selectmen liaison: Sud Sud
Committee Chair How How A Committee Chair
Search Committee Liaison Slavin Adnugl
Selectman liaison must present this form to the Town Administrator

*.

March 2, 2017

Sheila Vanderhoef Eastham Town Hall 508-240-5900 x3206

Re: Michael J. Currier Refinance

Property Address: 22 Sandy Meadow Way, Eastham MA 02642

To whom it may concern,

I am writing this letter to request consent to refinance the property 22 Sandy Meadow Way, Eastham MA 02642. The purpose of the refinance is to secure a lower interest rate as well as obtain cash out. I will be staying in the home, and the property will be deeded over to me individually. The current amount of debt on the property is roughly \$112,500 and the new loan request is for \$146,500. Thank you very much.

Sincerely,

Michael J. Currier

3/07/2017



Commonwealth of Massachusetts

DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT

Charles D. Baker, Governor 🔷 Karyn E. Polito, Lt. Governor 🔷 Chrystal Kornegay, Undersecretary

LOCAL INITIATIVE PROGRAM REFINANCING YOUR FIRST MORTGAGE OR OBTAINING A SECOND MORTGAGE

Dear Local Initiative Program (LIP) Homeowner:

The following is a summary on how to refinance your first mortgage or to obtain a second mortgage under LIP. Please note that before you may close on a new first or second mortgage, your municipality and the Department of Housing and Community Development (DHCD) must review your written request to refinance and issue a written approval.

To begin the review process, please mail or email the following information to DHCD and your municipality:

- 1. The completed Refinance Request Form (attached)
- 2. A letter from you, the Homeowner, requesting approval to refinance or obtain a second mortgage.
- 3. Required information from your lender:
 - Loan Commitment Letter stating the new loan terms, including:
 - o Interest Rate
 - o Loan Type (i.e., Conventional, Fixed)
 - Rate Lock Expiration Date
 - o Points
 - Length of Loan (i.e., 15-yr., 30-yr.)
 - APR (Annual Percentage Rate)

The above documents should be emailed to Bertha Borin at <u>bertha.borin@state.ma.us</u> or mailed to the following address:

The Department of Housing and Community Development 100 Cambridge Street, Suite 300 Boston, MA 02114 Attn: Bertha Borin – LIP Program

PLEASE NOTE THAT YOU MAY NOT CLOSE ON YOUR NEW LOAN WITHOUT WRITTEN RECORDABLE CONSENT FROM DHCD - OTHERWISE, YOU WILL BE OUT OF COMPLIANCE WITH THE LIP PROGRAM.

NEW FIRST AND/OR SECOND MORTGAGE GUIDELINES

Please contact your municipality for information on who will review and approve your refinance or second mortgage request. You may inquire at the Board of Selectmen's office, the Housing Authority, the Planning Department or the Town Manager/Town Administrator/ Mayor's office.

Your proposed new first or second mortgage must meet these guidelines:

Have a fixed interest rate through the full term of the mortgage

 Have a current fair market interest rate no more than two (2) percentage points above the current MassHousing Rate. For the current MassHousing rate, please call 617-854-1000

Have no more than two (2) points

Total debt on the property may not exceed 97% of the Maximum Resale Price – to be determined by DHCD

For more information or to inquire about the status of your request, please contact Bertha Borin of DHCD's Division of Housing Development at 617-573-1309



I.A.3.

Town of Eastham 2500 State Highway Eastham, MA 02642 508-240-5900 Fax 508-240-1291 www.eastham-ma.gov

USE OF THE EASTHAM WINDMILL GREEN AND BANDSTAND POLICY

1.0 Authority

The Board of Selectmen hereby adopts a set of guidelines for the use of the Town of Eastham's Windmill Green and Bandstand.

2.0 Purpose

It is the intention of the board of Selectmen of the town of Eastham to make the Windmill Green and Bandstand available to all qualified applicants as per the regulations described further in this policy.

3.0 Applicability

The policy shall apply to eligible individuals or organizations wishing to use the Windmill Green and/or the Bandstand for any event and/or program.

4.0 Definition

The Windmill Green and the Bandstand is the area known as the facility across from the Town Hall.

5.0 Responsibility

The Board of Selectmen or designee is responsible for ensuring that this policy is upheld and that policy guidelines are followed.

6.0 Standards/Rules and Regulations

6.1 Eligibility

Eastham residents, Eastham based non-profits, and Town sponsored groups shall be eligible to apply to use the Windmill Green and/or the Bandstand.

Applications shall not be considered from groups or individuals who discriminate in their membership, programs or philosophy on the basis of sex, race, color, creed, national origin, disability, marital status, veteran status, age or sexual orientation.

Repeat use may be denied to groups or individuals who fail to abide by this and other policies, rules and regulations pertaining to the use of town property.

6.2 Use of the Windmill Green/Bandstand shall be governed by the following rules and regulations:

- 6.2.1 Events shall be scheduled during daylight hours, and no event shall continue past 8:00 p.m. The applicant may set up the event after 4:00 p.m. the day previous to the event (when the area is available), and must have the Windmill Green cleaned up by noon of the day following the event. Event shall not exceed more than three (3) days.
- 6.2.2 The applicant is responsible for set up and clean up of the Windmill Green after the event, including the picking up of all litter, taking away of recyclable materials, and the removal of any display material and signage. The applicant is required to provide the necessary containers for recyclable materials. (Check with the town for a full list of recyclable items)
- 6.2.3 Signs, notices or other items may not be attached to any structure, tree or trash recycling bin on the Windmill Green. (Permits are required for signs)

- 6.2.4 No activity may charge a fee for the event. Items may be sold if permitted by the Board of Selectmen or their designee, and state and local license requirements are met.
- 6.2.5 The use or sale of alcoholic beverages is prohibited on the Windmill Green
- 6.2.6 Pursuant to M.G.L. Ch 270, §22(j), and the Town of Eastham's policy Prohibiting Smoking in Workplaces and Public Places, Smoking is prohibited on the Windmill Green, a town owned park.
- 6.2.7 Motor Vehicles may be allowed on the Windmill Green if requested on the application and a \$25 per event fee is paid.
- 6.2.8 There shall be no discharge of firearms except for ceremonial purposes and as approved by the Police.
- 6.2.9 There shall be no fires permitted, with the exception of candles which may be held by individuals participating in ceremonies, such as weddings, etc. Candles may not be placed along or attached to any structure on the Windmill Green.
- 6.2.10 For any event utilizing the Bandstand, a single noise complaint shall be sufficient to permit the policy to order discontinuance of the noise portion of the event. A second complaint shall be sufficient for the police to order the end of the event and the clearing of the entire Windmill Green.
- 6.2.11 Amplified music shall only be allowed by special permission of the Board of Selectmen or their designee.
- 6.2.12 No additional lighting may be installed, on either a temporary or permanent basis, without the explicit approval of the Board of Selectmen.
- 6.2.13 Dogs are prohibited on the Windmill Green during events. All other times dogs are allowed on Windmill Green only on a leash.
- 6.2.14 The applicant must agree to indemnify and hold the Town of Eastham harmless against any and all claims which may be made against the Town for property damages and personal injuries sustained by any person including the user which may result from the use of said property by the user. The applicant must also furnish proof of general liability insurance naming the Town as additional insured. Liability Limits as follows: Comprehensive General Liability-Bodily Injury-\$1,000,000 Aggregate

7.0 Procedure

All applicants shall be required to complete and sign the Application for Use of the Windmill Green and/or Bandstand. Applications and fees must be turned into the Town designee no less than eight weeks prior to the requested event date. A \$200 refundable damage deposit check is required, and must be submitted 3 days before the event.

Should two (2) or more applicants request the same day(s), preference shall be given to events sponsored by the town.

7.1 Fee Schedule

The following must be submitted and paid by the applicant at the time of application submittal:

- 1. A certification of current/valid insurance coverage.
- 2. A peddler's permit if anything is being sold on public property.
- 3. A \$200 refundable damage deposit check is required, and must be submitted 3 days before the event.
- 4. The appropriate use fees as follows:
 - a. Eastham residents, Eastham based non-profits and Eastham Town Sponsored Events:
 - \$100 per day use fee
 - \$25 per event fee if you intend to provide portable toilets
 - \$25 per event fee for vehicle access for set up and take down only (Vehicles travel in marked lanes only. Vehicles not being actively loaded or unloaded may not be parked on the Green)
 - \$25 per event fee if you intend to use/provide tents

b. Non-profits(out of town):

- \$500 per day use fee
- \$50 per event fee if you intend to provide portable toilets
- \$50 per event fee for vehicle access for set up and take down only (Vehicles travel in marked lanes only. Vehicles not being actively loaded or unloaded may not be parked on the Green)
- \$50 per event fee if you intend to use/provide tents

c. Private for profit

- \$1,250 per day use fee
- \$50 per event fee if you intend to provide portable toilets
- \$50 per event fee for vehicle access for set up and take down only (Vehicles not being actively loaded or unloaded may not be parked on the Green)
- \$250 per event fee if you intend to use/provide tents
- 8.0 The Board of Selectmen or their designee reserves the right to reject any and all requests.

9.0 Effective Date

This policy is effective as of September 15, 2008.

⁻This policy was adopted by the board of Selectmen at a public meeting on September 15, 2008.

⁻This policy was revised and adopted by the Board of Selectmen at a public meeting on January 4, 2016.

⁻This policy was revised and adopted by the Board of Selectmen at a public meeting on March 20, 2017.

INFORMATION





The Commonwealth of Massachusetts Alcoholic Beverages Control Commission 239 Causeway Street Boston, MA 02114

ADMINISTRATION MAR 0.8 2017 RECEIVED

NOTICE OF HEARING

VIA FIRST CLASS MAIL

March 03, 2017

SANDPIPERS SPORTS PUB, INC. DBA SANDPIPERS SPORTS PUB 4940 STATE HIGHWAY EASTHAM, MA 02642

LICENSE#: 036400045

You are hereby notified that a hearing will be held by the Alcoholic Beverages Control Commission on:

Thursday, April 13, 2017 at 12:00 PM

at 239 Causeway Street, 1st floor, Boston, MA to determine whether you have violated certain provisions of Massachusetts General Laws, (M.G.L) or Code of Massachusetts Regulations (CMR) as follows:

Massachusetts General Law c. 10 § 33, 961 CMR 2:20 (1)

Hearings are held pursuant to the Informal/Fair Hearing Rules under M.G.L. Ch.138, C. 30A and 801 CMR §§ 1.02 and 1.03. Reports, if any, concerning the violations charged, and your license file, may be examined and copied at the Commission's office with advance Hearings are audio-recorded. Pursuant to M.G.L. C.30A, §11 six (6) written transcripts will be furnished if requested in writing with tender of payment. You may arrange for your own stenographer.

NOTE: It is important that licensees and those interested in this matter attend the hearing to present evidence and testimony. The Commission has the authority to suspend, modify, revoke or cancel licenses.

If you have any questions regarding the scheduling of this hearing please contact Patricia Hathaway at (617) 727-3040 x738 or phathaway@tre.state.ma.us.

Ralph Sacramone

Executive Director

Info

March 15, 2017

Dear Selectmen:

I looked at the easement for the parcel at 390 Locust Road, which the Open Space Committee and the Community Preservation Committee are proposing for purchase as open space, on the Registry of Deeds website (I wasn't able to print a copy, but maybe someone at Town Hall could and attach it to this note). The easement is simply worded and grants rights to the owner of 390 Locust to cross over 400 Locust in order to access the rear (north) of the property via a proposed driveway, which is delineated on the subdivision plan signed by the Planning Board on 6/13/01. There's no language that limits the type or size of vehicles, etc.

This deeded easement ensures the "buildability" of this lot and supports its monetary value. However, building a road to utilize that easement so close to the site's vernal ponds would diminish its natural habitat values. If purchased as open space, this easement is not needed, as the property is readily accessible from the bike trail, and perhaps the easement could be conveyed back to the owner of 400 Locust as part of the negotiation process. This could help defray the cost of 390 Locust.

So, in my view, the existence of the easement is a main driver of the asking price for the parcel. But, given that the point of open space acquisition is to protect developable land with inherent natural value from being developed, I don't think the existence of this easement should be a reason for the BOS to oppose this purchase.

Respectfully,
Peter Wade
Open Space Committee & Community Preservation Committee

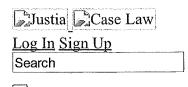
Vote to Amend Article 10: Nauset Estuary Dredging Vote YES on Article 46: Purchase of Town Dredge



What is the value of Nauset and Pleasant Bay Estuaries to Orleans? Both of these estuaries are experiencing serious shoaling problems in the channels that lead into their ponds. The eastern section of Nauset has the most severe shoaling problem. The result creates poor navigation, affects marine life and compounds water quality issues. Orleans needs to take action.

Article 10 calls for \$100,000 to obtain permits to dredge in a small section of Nauset that does not need any immediate work. It does not have any impact on the shoaling problem. Woods Hole Group's study requires \$345,000 for all of their permitting work. The local fishermen and their supporters will propose that the full amount be voted in and that there be benchmarks put in place to allocate the money. The final payment will be made once the permits are in hand. In this manner Woods Hole will be encouraged to move along without delays. We feel a similar process should be followed by the town for Pleasant Bay in 2017.

Article 46 calls for the purchase of a dredge for the town to use in all of its estuary projects and also the future maintenance of Rock Harbor. The current Woods Hole Group study for Nauset requires a dredge, an excavator and a barge. The latter two are unnecessary with the new dredge thus saving more than \$600,000. With the proposed \$905,000 dredge purchase the costs of all projects would be significantly reduced. Woods Hole Group would apply the town dredge into the application process. This is important since the method of material removal is required by all permitting agencies, in particular the Division of Marine Fisheries. The vote to approve the dredge purchase would make its cost part of the town's capital expenditures ready to be used at such time as permits are granted.



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TOWN OF WELLFLEET & another vs. JOHN W. GLAZE.

Annotate this Case

TOWN OF WELLFLEET & another [Note 1] vs. JOHN W. GLAZE.

403 Mass. 79

January 5, 1988 - July 20, 1988

Barnstable County

Present: HENNESSEY, C.J., WILKINS, LIACOS, ABRAMS, NOLAN, LYNCH, & O'CONNOR, JJ.

A Superior Court judge was without authority to issue an injunction under G. L. c. 214, Section 7A, to prohibit the owner of tidal flats from mooring three boats on an area of the flats that was licensed to certain other individuals for the planting, growing, and taking of shellfish, where the major purpose of the statute sought to be enforced, G. L. c. 130, Section 67, was not to "prevent or minimize damage to the environment." [82-84] WILKINS, J., concurring. ABRAMS, J., dissenting. O'CONNOR, J., with whom LIACOS, J., joined, was of the view that jurisdiction exists under the Superior Court's general equity powers.

The court expressed the view that it is within the power of the Legislature to authorize municipalities to issue licenses to individuals for planting, growing, and taking of shellfish on privately owned tidal flats. [84] Discussion of the nature of public rights with respect to privately owned intertidal zones. [84-85]

An owner of tidal flats who moored three boats on a portion of the flats that was licensed under G. L. c. 130, Section 57, to certain individuals for the growing of shellfish would not, by such activity, interfere with the public's reasonable use of the area for shellfishing. [85-86] O'CONNOR, J., with whom LIACOS, J., joins, concurring.

CIVIL ACTION commenced in the Superior Court Department on August 8, 1986.

Bos 21

The case was heard by Francis W. Keating, J., on a motion for summary judgment.

The Supreme Judicial Court on its own initiative transferred the case from the Appeals Court.

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Edward W. Kirk for the defendant.

Elizabeth A. Lane for the plaintiffs.

James M. Shannon, Attorney General, & James R. Milkey, Assistant Attorney General, for the Commonwealth, amicus curiae, submitted a brief.

LYNCH, J. The underlying question here is the relative rights of private owners and the public in tidal flats. In August, 1986, the town of Wellfleet filed a complaint in the Superior Court citing the defendant for violating G. L. c. 130, Section 67 (1986 ed.), and seeking a restraining order prohibiting the defendant from mooring his boats on a certain "shellfish grant" on a portion of the defendant's flats. The town's request for a temporary restraining order was granted. The town later applied for a preliminary injunction, but its application was denied. Several months later, the town moved for summary judgment on its claim for injunctive relief. The motion was allowed, and an order was entered permanently enjoining the defendant from mooring boats on the grant. The defendant appealed, and we transferred the case here on our own motion.

While the underlying legal issues are complex, they turn on a comparatively simple set of facts. In November, 1983, the town issued a shellfish license on 1.85 acres of tidal flats abutting the defendant's upland [Note 2] on Loagy Bay. The license,

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issued pursuant to G. L. c. 130, Section 57 (1986 ed.), [Note 3] authorized certain individuals to plant, grow, and take shellfish within the area covered by the license. The shellfish, specifically quahogs and oysters, are raised in frame structures known as "growout pens," which are covered by a plastic mesh.

Since 1972, the defendant has moored a thirty-foot catamaran, a nineteen-foot flat-bottomed sailboat, and a sixteen-foot outboard motor boat in the area now subject to license. At low tide, the three boats rest directly on the tidal flat, killing or endangering some of the shellfish and tearing the mesh covering the growout pens. In June and July of 1986, the town's shellfish constable observed the three boats moored in the licensed area and requested the defendant to remove them. The defendant refused, whereupon the town brought this action, claiming that the defendant had violated G. L. c. 130, Section 67, [Note 4] and seeking an injunction.

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The right to use tidal flats has long been regulated by the Colonial Ordinance of 1641-1647. Under the Colonial Ordinance, in order to encourage construction of private wharves, littoral owners were granted title to the shore as far as mean low tide mark or one hundred rods from the mean high tide mark, whichever is less. [Note 5] Reserved from the grant, however, were rights in the public to free fishing, fowling, and navigation. Commonwealth v. Alger, 7 Cush. 53, 67-68 (1851). In effect, the public reserved a kind of easement over the land. See Opinion of the Justices, 365 Mass. 681, 685 (1974) ("the ordinance is properly construed as granting the benefitted owners a fee in the seashore to the extent described and subject to the public rights reserved"); Commonwealth v. Alger, supra at 77, citing Storer v. Freeman, 6 Mass. 435 (1810) ("the flats are held by the riparian proprietor, subject to an easement").

The defendant argues that the town exceeded the bounds of the public easement by issuing the shellfish license. He claims that the effect of that license is to take his property without compensation. The town responds that issuing the shellfish license was simply a valid exercise of the legislative power to regulate the public's right to

fish. The court need not decide those claims, however, because the court concludes that the Superior Court lacked authority to enjoin the defendant's activities.

1. Authority to issue the injunction. The town asserts that the Superior Court's authority to issue an injunction in this case is conferred by G. L. c. 214, Section 7A (1986 ed.), which states in pertinent part: "The superior court for the county in

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which damage to the environment is occurring or is about to occur may, upon a civil action in which equitable or declaratory relief is sought . . . by any political subdivision of the commonwealth, determine whether such damage is occurring or is about to occur and may, before the final determination of the action, restrain the person causing or about to cause such damage; provided . . . that the damage . . . constitutes a violation of a statute, ordinance, by-law or regulation the major purpose of which is to prevent or minimize damage to the environment." Thus for the matter to be properly before the Superior Court this action must have been one in which equitable or declaratory relief was sought because (1) damage to the environment was occurring or about to occur, and (2) that damage constituted a violation of a statute, the major purpose of which is to prevent or minimize damage to the environment. [Note 6]

The town has not demonstrated that the the major purpose of G. L. c. 130, Section 67, is to prevent or minimize damage to the environment. Although protection of shellfishing undoubtedly provided some motivation for the enactment of the statute (see 1909 H.R. Doc. No. 1320, Report on the Mollusk Fisheries of Massachusetts, which speaks of shellfish as a State asset and which proposes the system of private licensing now at issue to cure the "almost complete exhaustion" of the shellfish supply "in certain areas." Id. at 4, 6 [Note 7]), it cannot be that the major purpose behind Section 67 is the protection of the environment because it is the consent of the licensee that determines whether the conduct described is within the statutory sanction. If the Legislature in enacting Section 67 was primarily motivated by a desire to protect the natural resources of the Commonwealth, it surely would not have limited the statutory sanction only to acts done without the licensee's permission.

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Therefore, the court concludes that the major purpose leading to the enforcement of Section 67 is not to prevent or minimize damage to the environment, and that authority to issue an injunction was thus not conferred by G. L. c. 214, Section 7A. However, since this appeal presents issues of significant public concern, the court makes some additional comments.

2. Authority to issue shellfish license. Section 57 of G. L. c. 130 authorizes the selectmen of a town, after notice and hearing, to "grant to any person a license for a period not exceeding ten years to plant, grow, and take shellfish . . . in, upon or from a specific portion of flats or land under coastal waters." Section 67 goes on to say that "[l]icenses under this section shall be issued . . . so as [not] to impair the private rights of any person" Thus, the statute only authorizes the town to issue a license upon privately held flats, so long as no taking or other impairment of private rights results. [Note 8]

The public right to fish includes the right to dig for shellfish. Commonwealth v. Howes, 270 Mass. 69, 73 (1930). See Proctor v. Wells, 103 Mass. 216, 217 (1869); Weston v. Sampson, 8 Cush. 347, 355 (1851). The Legislature may enact reasonable regulations appurtenant to that public right, including granting exclusive fishing rights to particular individuals. Commonwealth v. Hilton, 174 Mass. 29, 33 (1899) (Legislature may grant exclusive fishing rights). Weston v. Sampson, supra at 352-353 (Legislature may regulate and abridge public right of fishing in tidal flatlands). Therefore, the court concludes that it is within the power of the Legislature to authorize towns to issue licenses for shellfishing on privately owned tidal flats.

3. Relative rights of the parties in the licensed area. However, the conclusion that the town had the authority to issue a license for shellfishing on the defendant's flats does not dispose of the question whether, in mooring boats on the area of the shellfish grant, the defendant illegally encroached upon rights reserved to the public.

"We have frequently had occasion to declare the limited nature of public rights in the seashore." Opinion of the Justices, 365 Mass. 681, 687 (1974), and cases cited. While the public clearly has the right to take shellfish on tidal flats, there is no general right in the public to pass over the land, id., or to use it for bathing purposes. Butler v. Attorney Gen., 195 Mass. 79 (1907). Nor may the public take soil or seaweed resting on the soil of the flats. See Anthony v. Gifford, 2 Allen 549 (1861) (seaweed); Porter v. Shehan, 7 Gray 435 (1856) (soil). Compare Austin v. Carter, 1 Mass. 231 (1804) (owner may exclude others by building on flats), with Commonwealth v. Alger, 7 Cush. 53, 89 (1851) (owner's right to build wharf subject to reasonable regulation by Legislature). In close parallel with this case, it has been held that there was no liability in trespass for interference with the part of a fishing weir the plaintiff placed on tidal flats adjoining the land. Locke v. Motley, 2 Gray 265, 266 (1854). The court noted, in dictum, that it doubted whether the plaintiff had any right to fix stakes in the riparian owner's land for the purposes of securing the weir. Id. at 267.

These authorities indicate that, while the public clearly retains the right of fishing in the intertidal zone, that right is far from unqualified. As Chief Justice Shaw commented in the course of discussing the reserved public right of navigation, "[1]ooking at the terms of this law, and the purposes for which it was intended, the object seems to have been, to secure to riparian proprietors in general, without special grant, a property in the land . . . subordinate only to a reasonable use of the same, by other individual riparian proprietors and the public, for the purposes of navigation . . ." (emphasis added). Commonwealth v. Alger, 7 Cush. 53, 89 (1851). The Chief Justice also noted that regulations proscribing interference with the public right should state precisely what constitutes forbidden activity in order to pass the test of reasonableness. Id. at 96 ("An authoritative rule, carrying with it the character of certainty and precision, is needed").

The defendant has the right to use the land in a manner not inconsistent with the public's reasonable use of the area for

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shellfishing. The allegations of this complaint, however, are that the defendant interfered with the practice of aquaculture on the flats and with pens and mesh used in that practice. A license issued in accordance with Section 57 of G. L. c. 130, however, must not "impair the private rights of any person." The mooring of his boats by the defendant in this case is not such an exercise of his right to use the land as to constitute an interference with the public's reasonable use of the area for shellfishing. The court does not decide the extent to which public rights may lawfully restrict an owner's use of all or part of his flats for mooring of recreational boats.

Accordingly, the court concludes that the Superior Court lacked authority to enjoin the defendant's activities. The judgment is reversed, and a new judgment will enter in the Superior Court dismissing the action.

So ordered.

WILKINS, J. (concurring). I agree with the court's opinion and write separately only to disassociate myself from any implication in the opinion that the harm inflicted on the shellfish necessarily involved "damage to the environment," as defined in G. L. c. 214, Section 7A (1986 ed.). The circumstances that Section 7A specifically states constitute damage to the environment involve adverse effects on the air, water, or land. The direct infliction of harm on living things (animal or vegetable) may generally lie outside the range of damage to the environment expressed within Section 7A.

O'CONNOR, J. (concurring, with whom Liacos, J., joins). I disagree with the court's dismissal of the action on jurisdictional grounds. In my view, the Superior Court properly assumed jurisdiction under its general equity powers. However, on the merits, the town has demonstrated no right to the injunction it seeks. I therefore join in reversing the grant of summary judgment to the town.

Jurisdiction. The court concludes that jurisdiction is lacking under G. L. c. 214, Section 7A (1986 ed.). However, whether or not G. L. c. 214, Section 7A, provides jurisdiction, jurisdiction exists under the Superior Court's general equity powers. In Commonwealth v. Stratton Fin. Co., 310 Mass. 469, 472-474 (1941), the court said that, while our decisions have generally been hostile to the enforcement of criminal statutes through injunctions, this hostility has existed only "in cases involving criminal acts not amounting to a true public nuisance in the conventional sense and not involving the use of or injury to public or private property, encroachments upon public easements and the like, and when the statute itself does not confer equity jurisdiction" (emphasis added). Id. at 473. Thus, in Attorney Gen. v. Jamaica Pond Aqueduct Corp., 133 Mass. 361, 364 (1882), the court held that the Attorney General could maintain an action in equity to protect the public's fishing, boating, and other rights in the great ponds of the Commonwealth, because these rights "are regarded as valuable rights, entitled to the protection of the government." See Attorney Gen. v. Williams, 174 Mass. 476, 483 (1899), S.C., 178 Mass. 330 (1901), aff'd, 188 U.S. 491 (1903) (Attorney General allowed to maintain a suit in equity to enforce a public easement in open air space in Copley Square). As the court properly notes, ante at 82, the public fishing, fowling, and navigation rights in the defendant's tidal flats are essentially a public easement over the defendant's land. Furthermore, although the general public's shellfishing rights in the defendant's tidal flats are presently exercised exclusively by a private party, the licensee under G. L. c. 130, Section 57 (1986 ed.), his license is granted to serve the public interest in replenishing the shellfisheries, not for the private benefit of the licensee. See Commonwealth v. Hilton, 174 Mass. 29, 33 (1899) (it is not to be assumed that the Legislature would grant exclusive fishing rights except to promote the public interest). See also G. L. c. 130, Section 65 (1986 ed.) (Section 57 license to be forfeited for deficiency in planting, producing, or marketing shellfish). Thus, the proper public entity has the right to maintain a suit in equity to preserve the public's fishing rights in this case.

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The question then becomes whether the town is the proper party to enforce the public's rights. Private interference with the public's easement is treated in equity as a public nuisance, Attorney Gen. v. Williams, supra, and the Attorney General is generally the proper person to procure the abatement of a public nuisance, see Massachusetts Soc'y of Optometrists v. Waddick, 340 Mass. 581, 585-586 (1960). However, municipalities have been allowed to maintain an action to enjoin public nuisances either where a town has sustained special or peculiar damage in its corporate capacity, Dartmouth v. Silva, 325 Mass. 401, 404 (1950), or where "the regulation of the subject matter has been entrusted to the officers of a municipality, the inhabitants of which are peculiarly interested, and the wrongdoing alleged consists of a violation of the rules and orders of those officers," Mayor of Cambridge v. Dean, 300 Mass. 174, 175-176 (1938).

The town has standing in this case under the rule set forth in Mayor of Cambridge v. Dean, supra. Under G. L. c. 130, Section 57, as appearing in St. 1941, c. 598, Section 1, private shellfish licenses are granted by town officials "upon such terms and conditions and subject to such regulations as the [town officials] issuing the same shall deem proper." Further, "[t]he Legislature has consistently recognized that local municipalities 'have a peculiar interest' in protecting the shellfish resource," Barlow v. Wareham, 401 Mass. 408, 411 (1988), quoting Commonwealth v. Bragg, 328 Mass. 327, 331 (1952). Thus, although the town is asserting that the defendant is violating a State statute, G. L. c. 130, Section 67, rather than a local ordinance or regulation, this does not defeat the suit. The State criminal statute essentially enforces the license issued by the municipality under Section 57. Where, as here, a town is attempting to protect the cultivation of shellfish under a town-granted license, the town should have standing to maintain the action. If disregard of the order of a town officer is required as well, see Mayor of Cambridge v. Dean, supra, the town's verified complaint alleges that the defendant refused to comply with oral and written cease and desist orders issued by the town shellfish constable. Compare the facts and holding of Mayor of Cambridge

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v. Dean, where the mayor of Cambridge was held not to have standing to seek an injunction against the operation of a piggery under the jurisdiction of the board of health of Lincoln. Therefore, I would hold that the

court below had general equity jurisdiction to hear this matter, and that the town is a proper party to maintain this suit.

The merits. Under G. L. c. 130, Section 57, licenses granted to private parties to plant, grow, and take shellfish shall not "impair the private rights of any person." The town asserts that, even if the defendant is the owner of the tidal flats, see ante at 80 note 2, no private right of the defendant is impaired because the mooring of the defendant's boats on the shellfish grant illegitimately interferes with the reserved public rights in fishing.

However, the public right to fish is not implicated in this case. The town has not alleged any interference with the licensee's attempts to shellfish. Rather, it has alleged interference with the practice of certain types of aquaculture on the defendant's property, that is, with the planting and growing of oysters and quahogs, the latter in pens covered with plastic mesh, on the defendant's tidal flats. "We have frequently had occasion to declare the limited nature of public rights in the seashore." Opinion of the Justices, 365 Mass. 681, 687 (1974), and cases cited. The public has reserved only the rights of fishing, fowling, and navigation, and any "natural derivative" thereof. Id. at 685-686. "Except as against public rights . . . the private ownership is made perfect" Id. at 686, quoting Butler v. Attorney Gen., 195 Mass. 79, 83 (1907). The public's "right of fishing [is] a public right to take the fish . . . whether moving in the water or imbedded in the mud covered by it." Proctor v. Wells, 103 Mass. 216, 217 (1869).

Aquaculture is not fishing, nor can it legitimately be considered a "natural derivative" of the right to fish, any more than breeding game animals on someone else's land could properly be considered a "natural derivative" of the right to hunt there. Thus, whatever right the public has to interfere with the private property rights of coastal owners for purposes "reasonably related" to the promotion of fishing as well as navigation, see

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Opinion of the Justices, supra at 686; cf. Crocker v. Champlin, 202 Mass. 437, 441 (1909) (public has right to control property so far as is "reasonably necessary" for navigation), but see Opinion of the Justices, supra at 687 ("littoral owner may build on his tidal land so as to exclude public completely as long as he does not unreasonably interfere with navigation"); Locke v. Motley, 2 Gray 265 (1854) (owner could drive stakes into his flats even if they obstructed fishing by inhabitants of town), turning the tidal flats in which this defendant apparently owns the fee into a shellfish farm is too great an extension of the public's right of "free fishing" to be "reasonably related" to that right. Cf. Porter v. Shehan, 7 Gray 435 (1856) (member of public could take shellfish from tidal flats, but not surrounding soil, except such soil as would necessarily be attached to the shellfish); Opinion of the Justices, supra (public right to navigation does not include right to bathing on the beach; public has right to pass through the water "without any use of the land underneath"). Compare Barry v. Grela, 372 Mass. 278 (1977) (public has right to cross tidal flats to reach public jetty in order to fish from jetty); Locke v. Motley, supra at 267 (common right of fishing would not give plaintiff the right to fish by a method requiring the fixing of plaintiff's stakes in defendant's flats unless that method was needed to exercise the fishery rights).

Simply put, the right to fish cannot reasonably be construed to include the right to plant, cultivate, and propagate fish on the defendant's tidal flats. Because there is no such reserved public right, the town is not entitled to an injunction restraining the defendant from mooring his boats on Shellfish Grant 783. I would hold that the Superior Court has jurisdiction over this action, but that the town has demonstrated no right to an injunction.

ABRAMS, J. (dissenting). In my view, jurisdiction is proper in this case in the Superior Court under G. L. c. 214, Section 7A (1986

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ed.). On the merits, I think that the town is not entitled to summary judgment and that the matter should be remanded for trial with the licensee joined as a necessary party.

1. Jurisdiction. The narrow interpretation of G. L. c. 214, Section 7A, adopted today is inconsistent with the broad remedial purpose of that statute. In Boston v. Massachusetts Port Auth., <u>364 Mass. 639</u>, 646 (1974), this court wrote: "The legislative intent underlying [Section 7A] is broadly stated in the title under which it was enacted: 'An Act establishing a cause of action in behalf of certain persons and political subdivisions for the purpose of protecting the natural resources and environment of the commonwealth.' St. 1971, c. 732. . . . We believe that these broad statements of purpose are incompatible with a narrow, technical interpretation of [Section 7A] which would limit the operation of the statute to the enforcement of only prohibitory environmental laws and regulations." See also Cummings v. Secretary of Envtl. Affairs, <u>402 Mass. 611</u>, 619 (1988) (Abrams, J., dissenting).

General Laws c. 130, Section 67 (1986 ed.), imposes penalties on any activity "which may directly or indirectly injure the shellfish upon any [shellfish] grounds or beds," without the consent of the person licensed to oversee and manage "the natural shellfish resources of the town." See G. L. c. 130, Section 57 (1986 ed.). In my view, Section 67 is a statute "the major purpose of which is to prevent or minimize damage to the environment" within the broad meaning of G. L. c. 214, Section 7A. I therefore conclude that the violation of Section 67 alleged in this case satisfies the jurisdictional requirements of Section 7A.

2. Merits. I agree with Justice O'Connor that the town is not entitled to summary judgment. However, I think it is inappropriate for this court to determine the issues in this case in the first instance.

Assuming, without deciding, that the town may grant a license to conduct "aquaculture" without violating the rights of landowners, [Note Abrams-1] the central issue for trial is whether the license

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in this case necessarily prohibits the defendant from mooring his boats properly in an appropriate place on his tidal flats. If so, then the shellfish license granted by the town may be invalid, because G. L. c. 130, Section 57, provides that such licenses shall not "impair the private rights of any person." However, if it were determined that the scope of the license could be limited to allow the defendant to moor his boats, then the license may be valid. Because the scope and validity of the license are in issue, it would be unfair to decide this case without joining the licensee as a necessary party. See Mass. R. Civ. P. 19 (a), 365 Mass. 765 (1974).

FOOTNOTES

[Note 1] The shellfish constable for Wellfleet. We shall refer to the plaintiffs collectively as the town.

[Note 2] It is argued in a footnote to the brief of the amicus curiae that the defendant has not shown that he holds title to the flats in question or that the land covered by the shellfish license is above the mean low tide line. This argument, which appeared in the statement of facts in the amicus brief, was incorporated by reference in the brief of the town. This does not rise to the level of appellate argument within the meaning of Mass. R. A. P. 16 (a) (4), as amended, 367 Mass. 919 (1975). Commonwealth v. Vieira, 401 Mass. 828, 831 n.4 (1988). Therefore, the question is not before us because the town does not contest these issues. Samuel Hertzig Corp. v. Gibbs, 295 Mass. 229, 232 (1936). Furthermore, included in the record before the court are deeds in the defendant's name, describing the defendant's land as bounded by the waters of Loagy Bay. Title to the land was registered and confirmed in the Land Court by decree of November 1, 1978, stating that "[t]he land hereby registered is subject to the rights of the public in said Loagy Bay." There is nothing in the record to indicate that title to the tidal flats was ever severed from title to the adjacent uplands. See Storer v. Freeman, 6 Mass. 435, 437 (1810). Therefore, for purposes of its decision today, the court assumes that title to the flats is in the defendant, subject to the reserved public rights of fishing, fowling, and navigation.

[Note 3] General Laws c. 130, Section 57, in pertinent part, states: "The city council of a city or the selectmen of any town may, upon written application therefor and after public notice and hearing thereon as provided in section sixty, grant to any person a license for a period not exceeding ten years to plant, grow, and take shellfish and to plant cultch for the purpose of catching shellfish seed, in such city or town at all times of the year, in, upon or from a specific portion of flats or land under coastal waters, provided the division of marine fisheries

shall, after inspection, certify that the license and operation thereunder would cause no substantial adverse effect on the natural shellfish resources of the town, and provided further, no license shall be issued for any area then or within two years prior thereto, closed for municipal cultivation under the provisions of section fifty-four. Licenses under this section shall be issued upon forms supplied by such cities and towns and upon such terms and conditions and subject to such regulations as the city council or selectmen issuing the same shall deem proper, but not so as to impair the private rights of any person or to materially obstruct navigable waters, and they shall describe by metes and bounds the waters, flats or creeks covered thereby."

[Note 4] General Laws c. 130, Section 67, states: "Whoever works a dredge, oyster tongs or rakes, or any other implement for the taking of shellfish of any description upon any shellfish grounds or beds covered by a license granted under section fifty-seven or corresponding provisions of earlier laws, or in any way disturbs the growth of the shellfish thereon, or whoever discharges any substance which may directly or indirectly injure the shellfish upon any such grounds or beds, without the consent of the licensee or transferee, as the case may be, or whoever, while upon or sailing over any such grounds or beds, casts, hauls, or has overboard any such dredge, tongs, rake or other implement for the taking of shellfish of any description, under any pretence or for any purpose whatever, without the consent of the licensee or transferee, as the case may be, shall for the first offence be punished by a fine of not more than twenty dollars or by imprisonment for not more than one month, and for a subsequent offence by a fine of not more than fifty dollars or by imprisonment for not more than six months."

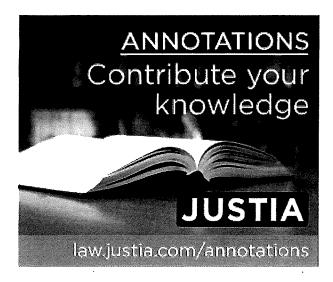
[Note 5] For a more detailed account of the history of the Colonial Ordinance and littoral rights in Massachusetts, see generally Boston Waterfront Dev. Corp. v. Commonwealth, <u>378 Mass. 629</u>, 631-634 (1979); Opinion of the Justices, <u>365 Mass. 681</u>, 684-686 (1974).

[Note 6] The town does not rely on the general equity power of the Superior Court, and we do not address that issue.

[Note 7] Protection to the licensee is also afforded by G. L. c. 130. Section 63 grants licensees a tort remedy with treble damages against any person who digs, takes or disturbs the shellfish in the area described in the license.

[Note 8] The court expresses no opinion as to whether a license to conduct aquaculture on privately owned flats comports with statutory limitations on the rights of a licensee.

[Note Abrams-1] I agree with the court that it is inappropriate on the present record to determine whether "aquaculture" may be considered "fishing" within the meaning of the Colonial Ordinance. See ante at 84 note 8.



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