

## SELECTMEN'S MEETING AGENDA

*Griffin Room, Town Hall*

*Executive Session 5:45 P.M.*

*Regular Meeting 6:30 P.M.*

*Monday, September 28, 2015*

### I. CALL TO ORDER

- II. EXECUTIVE SESSION – Pursuant to M.G.L. c.30A, § 21(6), to consider the purchase, exchange, lease or value of real estate, if the Chair declares that a meeting may have a detrimental effect on the negotiating position of the public body – Sutphin property; Pursuant to M.G.L. c.30A, § 21(3), to discuss strategy with respect to litigation if an open meeting may have a detrimental effect on the litigating position of the public body and the chair so declares – Friends of Harwich Beaches appeal, 5 Sea Street Ext. zoning status

### III. PLEDGE OF ALLEGIANCE

### IV. WEEKLY BRIEFING

### V. PUBLIC COMMENT/ANNOUNCEMENTS

### VI. CONSENT AGENDA

- A. Approve Minutes – September 14, 2015 Regular Meeting
- B. Appoint Dan Hall as full member of Waterways Committee from alternate member
- C. Appoint Cam Smith as alternate member of Waterways Committee from full member
- D. Approve application for Weekday Entertainment license by Red's Pizza
- E. Skinequit Road Betterment:
  - 1. Vote an Administrative Fee of \$2,852.50 and a 5% interest rate
  - 2. Vote a total Road Betterment of \$172,000 and a prorated share of \$17,200
  - 3. Vote to certify the list of Betterment Assessments to the Board of Assessors

### VII. PUBLIC HEARINGS/PRESENTATIONS (*Not earlier than 6:30 P.M.*)

- A. Annual Meetings:
  - 1. Real Estate and Open Space Committee
  - 2. Housing Committee
  - 3. Conservation Commission
- B. Presentation of 5-Year Financial Plan by Town Administrator – *discussion & possible vote*
- C. Joint Meeting with Monomoy Regional School District and Finance Committee regarding budget projections – *discussion & possible vote* (back-up requested, not provided at time of posting)
- D. Joint Meeting/Workshop with By-Law Charter Review Committee regarding proposed Charter amendments – *discussion & possible vote*

### VIII. OLD BUSINESS

- A. South Harwich Meeting House update – *discussion & possible vote* (back-up requested, not provided at time of posting)

IX. **NEW BUSINESS**

- A. License Agreement with Gosnold for use of room at Albro House – *discussion and possible vote*
- B. Wastewater Educational Moment – *discussion*
  - 1. Recharge Candidate Sites
  - 2. Approval of Cape Cod Water Quality Management Plan and Acceptance of Waste Management Agencies

X. **TOWN ADMINISTRATOR’S REPORT**

- A. West Harwich School RFI

XI. **SELECTMEN’S REPORT**

XII. **ADJOURNMENT**

*\*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 following “New Business.” If you are deaf or hard of hearing or a person with a disability who requires an accommodation contact the Selectmen’s Office at 508-430-7513.*

**Authorized Posting Officer:**

**Posted by:** \_\_\_\_\_  
Town Clerk

\_\_\_\_\_  
Ann Steidel, Admin. Secretary

**Date:** September 24, 2015

**MINUTES  
SELECTMEN'S MEETING  
GRIFFIN ROOM, TOWN HALL  
MONDAY, SEPTEMBER 14, 2015  
6:30 P.M.**

**SELECTMEN PRESENT:** Brown, Cebula, Hughes, LaMantia, MacAskill

**OTHERS PRESENT:** Town Administrator Christopher Clark, David Riquinha, Dan Pelletier, Ginny Hewitt, Jeremy Gingras, Gary Carreiro, Sally Urbano, Brooke Williams, Barbara Josselyn, Liz Groves, Allin Thompson, Danette Gonsalves, and others.

**MEETING CALLED TO ORDER** at 6:30 p.m. by Chairman Peter Hughes.

**PUBLIC COMMENT/ANNOUNCEMENTS**

Mr. Gingras reported on the upcoming Cranberry Festival events. The Board took comments from Brooke Williams regarding uses for the West Harwich School.

**CONSENT AGENDA**

- A. Approve Minutes – June 17, 2015 Regular Meeting
- B. Approve and sign Amendment to Town of Harwich/Harwich Historical Society Agreement to include A. Elmer Crowell Barn building as requested by Brooks Academy Museum Commission
- C. Approve request by Brooks Academy Museum Commission to establish A. Elmer Crowell Barn Maintenance Gift Account
- D. Approve Chapter 90 Project Request for Resurfacing Various Roads in the amount of \$392,645.08
- E. Accept gifts to Harbor Demolition/Beautification Fund
- F. Accept gifts to Albro House Maintenance Gift Account

Ms. Brown moved approval of the Consent Agenda. Mr. LaMantia seconded the motion and the motion carried by a unanimous vote.

**PUBLIC HEARINGS/PRESENTATIONS** *(Not earlier than 6:30 P.M.)*

- A. Annual Meetings:
  - 1. Architectural Advisory

Ms. Josselyn and Ms. Groves provide the annual report of the Architectural Advisory Committee.

- 2. Agricultural Commission

Chairman Hughes reported that the Agricultural Commission has asked to be rescheduled.

### 3. Brooks Academy Museum Commission

Mr. Gingras provided the annual report of the Brooks Academy Museum Commission.

### 4. Historic District / Historic Commission

Chairman Hughes reported that the Historic District/Historical Commission has asked to be rescheduled.

#### B. Joint Meeting with Board of Water Commissioners regarding potential water/wastewater organizational configuration – *discussion and possible vote*

Chairman Hughes asked the Water Commissioners take a vote to either support or not support the Comprehensive Wastewater Management Plan. Mr. Thompson stated that with regard to the organization, they have voted a position to have a 5 member elected Board for water and wastewater. He outlined a study that they commissioned in 2012 noting that it is discussed in the study. He stated that the Selectmen already have a full boat and if they go with this 5 member elected Board they will still be involved as they will have to sign bond issues and participate in fee structures. He said he doesn't think the Selectmen want to take on complaints and billing issues and he stressed the need for infrastructure improvements that need to be addressed. Chairman Hughes noted that recent races for Water Commissioners have been uncontested and questioned if there would be enough interest to fill a 5 member Board. Mr. Thompson responded that he firmly believes we will always have enough interested people. Chairman Hughes noted that there were significant management issues at the Water Department and questioned what steps would they use to make sure that doesn't happen again. Mr. Thompson responded that all employees know they may talk to the Commissioners at any time and there are now written policies in place including use of cell phones and computers. Chairman Hughes asked if the Water Department has a plan that matches the CWMP to what they might need water wise. Mr. Thompson responded that East Harwich is all set for water and our problems will be in the older part of Town. He said we are looking at about \$25 million in updates. Ms. Cebula questioned who makes sure the policies are supervised. Mr. Carreiro stated that they have gone way off subject and the comments are inappropriate and uncalled for. Chairman Hughes said he disagreed in light of past events and added that this is a lot of taxpayer money. Mr. LaMantia proposed keeping the current Commissioners as appointed members of a Wastewater and Water Committee, and having them report to the Town Administrator who reports to the Board, and the Selectmen would deal basically with policy. Mr. MacAskill clarified that the Commissioners are proposing expanding the current Board and increasing their responsibilities. He stated that an elected body is answerable to the taxpayers and he is not sure the Selectmen have the expertise for water and wastewater. Mr. Carriero stated that an elected body carries more weight being answerable to the taxpayers and an appointed body for this caliber of work isn't effective. Ms. Gonsalves pointed out that they already have the billing and software in place. Ms. Cebula asked that the report that Mr. Thompson referenced be placed on the Town's website so the public can have a better understanding. Mr. Clark stated that there has been a legislative history that this is an elected body and it would be a significant change to make it appointed and from a business perspective having the billing merged with water makes sense. Mr. Cakounes said he strongly disagrees with a potential charter change to disband the Water Commission and have the water and sewer duties under the Board of Selectmen. He noted that the Department has a history of awards and citations and the Selectmen would be overtaxed with adding

this under their direction. He said we should increase the elected Board to 5 members. Chairman Hughes said they would continue the dialogue.

## **OLD BUSINESS**

### **A. Preparation for Charter amendments – *discussion and possible vote***

Chairman Hughes reviewed the memo from Kopelman and Paige dated November 12, 2014 regarding Charter Interpretation Issues and asked Mr. Clark to identify the items they want to work on for their meeting with the By-Law Charter Review Committee next week. Mr. LaMantia noted that the Harbormaster isn't specified in the Charter and should be.

## **NEW BUSINESS**

### **A. Declare the following structures as surplus and offer for bid - *discussion & possible vote:***

1. Detached garage in rear of Albro House
2. Addition on east side of Albro House

Ms. Brown said we should hold off on this until we know if we are going to keep the building. Ms. Urbano said it detracts from the historic form of the building. Ms. Cebula questioned why if a Town department is doing something on Town property it becomes a Town expense and Mr. LaMantia noted that we have to pay the fees to ABC Disposal and we don't have any other source of funds. Ms. Cebula also questioned why we are soliciting funds to pay for Town expenses. Ms. Brown said we can start to create a plan for the building and Mr. Clark responded that administration has developed a plan for Town use and a wellness center. Mr. LaMantia moved to declare as surplus and offer for bid the detached garage in the rear of the Albro House and the addition on the east side of Albro House. Ms. Cebula seconded the motion for discussion. Mr. MacAskill stated he was against knocking down the garage because if we knock it down and somebody buys it they will never get a garage permit again. He said it adds some value to the building and could be of some use. Mr. MacAskill moved to amend the motion not to include the detached garage. The motion was not seconded. Ms. Cebula commented that the garage is a dump. Chairman Hughes called for a vote on the unseconded motion to amend. The motion to amend failed by a 2-3-0 vote with Ms. Cebula, Mr. LaMantia and Ms. Brown opposed to the motion. Ms. Brown moved to amend the motion that we do not offer it for bid, if we are going to declare these structures as surplus, that we simply move ahead and demolish it ourselves with the \$500 that was given to the gift account. The motion was not seconded. The main motion carried by a 3-2-0 vote with Mr. MacAskill and Ms. Brown in opposition.

### **B. Wastewater Educational Moment – Sewer Plan – *discussion***

Chairman Hughes outlined Figure 13-1 of the Comprehensive Wastewater Management Plan.

### **C. Potential re-use of West Harwich School – *discussion***

Chairman Hughes questioned if we want to put out an RFP for re-use of the West Harwich School. There was a discussion about putting out an RFI and having a license agreement with an interested party. Mr. Cakounes noted that there is still the contamination issue on the property that lingers and

he strongly advocated for a licensing agreement. The Board took comments from Brooke Williams. Chairman Hughes asked Mr. Clark to talk to legal counsel and find out the best way to move forward.

## **TOWN ADMINISTRATOR'S REPORT**

### **A. Legal costs summary – Kopelman & Paige FY 14, 15 & 16**

Mr. Clark noted that a summary of legal costs from Kopelman & Paige is included in the packet.

### **B. East Harwich Fire Study Group on potential additional uses for East Harwich station**

Mr. Clark reported that the Fire Chief had requested a study group to look at issues at the East Harwich Station.

### **C. Merging of two part-time Building Inspector positions**

Mr. Clark reported that he had a request from the Building Commissioner to merge the two part-time Building Inspector positions into one full-time position. He stated that he has the salary covered but probably not the overhead costs. Chairman Hughes asked Mr. Clark to provide the full cost. Mr. LaMantia commented that he is in agreement with the concept but it would be nice if they actually had the numbers. Ms. Cebula stressed the need for a full cost analysis.

### **D. Withdrawal of Proposal to purchase former Fire Station on Bank Street**

Mr. Clark noted that the proposal to purchase the former Fire Station on Bank Street has been withdrawn.

## **ADJOURNMENT**

Chairman Hughes adjourned the meeting at 8:56 p.m.

Respectfully submitted,

Ann Steidel  
Recording Secretary

## Sandy Robinson

---

**From:** W. Matthew Hart <mhart2@comcast.net>  
**Sent:** Friday, September 18, 2015 11:10 AM  
**To:** Sandy Robinson  
**Subject:** Fwd: Reust for BOS Consent Agenda consideration  
**Attachments:** Waterways Agenda September 2015.docx

Sorry about the earlier address mix-up.

Matt

---

Good Morning Peter:

Cam Smith is a valued member of the Waterways Committee and we do not want to lose his participation. But, his work for several months has taken priority and as such he has been unable to attend the regular WWC meetings.

On Wednesday September 16, 2015 at the regular WWC meeting, as specified on the attached agenda item, the committee discussed

Cam's attendance situation and there was a unanimous vote in favor of recommending the following action to the BOS for their approval.

**"Motion to recommend to the BOS to change Cam Smith from being a Regular Member of the Waterways Committee to Alternate Member, and to change Dan Hall from an Alternate Member to a Regular Member of the Waterways Committee immediately".**

I would like to request that at the next available BOS meeting that this recommendation be discussed and hopefully approved.

Thank you.

Matt Hart  
Chairman of the Harwich Waterways Committee

**TOWN of HARWICH, MA**  
**Waterways Committee Agenda**  
**PLEASE NOTE THE CHANGE IN THE LOCATION AND STARTING TIME**

Date of Meeting: Wed. Sept. 16, 2015 Harwich Fire Station, Conf. Room Time: 6:30pm

Attendance and Introductions:

MINUTES: Review & Approval

CONSENT AGENDA:

OPEN FORUM:

FINANCIAL REPORT YTD & Monthly

NEW BUSINESS:

- 1) Allen Harbor Parking Lot and Waterside Curbing Installation
- 2) Allen Harbor Rest Room Replacement
- 3) Saquatucket Marina Waterside Design Bid progress
- 4) Potential dates for Saquatucket Marina Construction Bid(s)
- 5) Saq Dev Com Landside Clean-up & Site Plan recommendations
- 6) Winter Boat Storage on former Downey Property (1, 2 or 3 leases?)
- 7) Saquatucket Marina Construction Funding in Town Warrant for 2016
- 8) Saq Dev Com Landside, Structures & Septic Design Funding Town Warrant for 2016
- 9) Saq Dev Com Landside, Structures & Septic Design Bid(s) progress
- 10) Harbormaster expanded budget to include the former Downey property 2016
- 11) Nat. Resource Officer Plans & Up-dates and any Town Warrant items for 2016?
- 12) Updating the status and assignments of Regular and Alternate WWC members

OLD BUSINESS:

- 1) Discussion and status about delinquent Waterways User Fee accounts
- 2) Discussion about the progress with Downey Property Clean-Up

MONTHLY REPORTS:

Board of Selectmen

Harbormaster

Natural Resource Officer

CORRESPONDANCE:

NEXT MEETING: October 21, 2015

ADJOURNMENT:

Authorized Posting Officer: Posted By: 

W. Matthew Hart WWC Chairman

Signed Date: Sept. 10, 2015



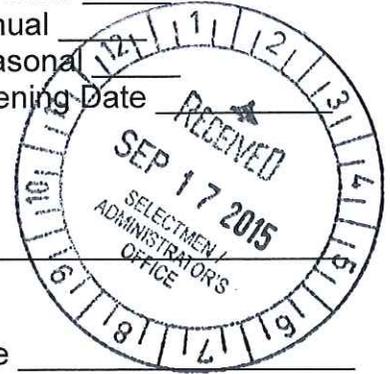
OFFICE OF THE SELECTMEN  
732 MAIN STREET  
HARWICH, MA 02645  
508-430-7513

**APPLICATION FOR ENTERTAINMENT LICENSE**

- Weekday Entertainment (\$75) \_\_\_\_\_ 1 day (\$25)
- Batters Box (\$50)
- Go Carts (\$50)
- Miniature Golf (\$50)
- Trampolines (\$25)
- Theater (\$150 per cinema)
- Automatic Amusement:
- Juke Box (\$100 each)
- Video Games (\$100 each)

- New application
- Renewal \_\_\_\_\_
- Annual \_\_\_\_\_
- Seasonal \_\_\_\_\_
- Opening Date \_\_\_\_\_

Other \_\_\_\_\_



Business Name Red's Phone \_\_\_\_\_

Business Address 703 Main St.

Mailing Address same

Owners Name & Address Brianne Smith 18 Little Ln Harwich 02645

Email Address b.e.krawth@gmail.com

Managers Name & Address same

**TIMES AND DAYS OF WEEK FOR ENTERTAINMENT (Please note this application does not cover Sundays. You can obtain a Sunday license application at the Selectmen's Office):**

Monday → Saturday 12pm-10pm

**ENTERTAINMENT TYPE: (Check all appropriate boxes)**

- Concert  Dance  Exhibition  Cabaret  Public Show  Other
- Dancing by Patrons
- Dancing by Entertainers or Performers
- Recorded or Live Music
- Use of Amplification System
- Theatrical Exhibit, Play or Moving Picture Show
- A Floor Show of Any Description
- A Light Show of Any Description
- Any Other Dynamic Audio or Visual Show, Whether Live or Recorded



*cash*  
*SM*

At any time during this concert, dance exhibition, cabaret or public show, will any person(s) be permitted to appear on the premises in any manner or attire as to expose to the public view any portion of the body as described in Mass. General Laws Chapter 140, Section 183A, Para. 3.

\_\_\_ Yes \_\_\_ No

If Yes, answer questions 1 through 4 below. Attach a separate sheet and/or exhibits if necessary:

1. Describe in complete detail the extent of exposure during the performance and the nature of the entertainment: \_\_\_\_\_
2. Furnish additional information concerning the condition of the premises and how they are suitable for the proposed entertainment: \_\_\_\_\_
3. Fully describe the actions you will take to prevent any adverse effects on public safety, health, or order: \_\_\_\_\_
4. Identify whether and how you will regulate access by minors to the premises: \_\_\_\_\_

Days/Hours of Business Operation 7 days, 11<sup>30</sup>am - 12am

Pursuant to MGL, Chapter 62C, Section 49A, I certify under the penalties of perjury that I, to the best of my knowledge and belief, have filed all State tax returns, and have paid all State taxes under the law.

[Signature]  
Signature of applicant & title

014-68-6041  
Social Security # or Federal I.D. #

\_\_\_\_\_  
Signature of individual or corporate name

\_\_\_\_\_  
Social Security # or Federal I.D. #

\_\_\_\_\_  
Signature of Manager

\_\_\_\_\_  
Social Security # or Federal I.D. #

\_\_\_\_\_  
Signature of Partner

\_\_\_\_\_  
Social Security # or Federal I.D. #

**REGULATORY COMPLIANCE FORM**

The premises to be licensed as described herein have been inspected and found to be in compliance with applicable local codes & regulations, including zoning ordinances, health regulations & building & fire codes.

[Signature] *\*not on balcony*  
Building Commissioner

N/A  
Board of Health

[Signature]  
Fire Department

[Signature]  
Police Department *check*

comments: *Must adhere to all by laws regarding noise*  
TBR

Required signatures to be obtained by the applicant prior to submission of new applications.

**MOTION**  
**(Skinequit Road Betterment)**

*I move that we*

- Vote an Administrative Fee of \$2,852.50 and a 5% interest rate.
- Vote a total Road Betterment of \$172,000.00 and a prorated share of \$17,200.00.
- Vote to certify the list of Betterment Assessments to the Board of Assessors.

THE COMMONWEALTH OF MASSACHUSETTS  
TOWN OF HARWICH  
OFFICE OF THE BOARD OF SELECTMEN  
NAME OF BOARD MAKING THE ASSESSMENT

September 28, 2015

Order for Improvement under 3-104  
CHAPTER OF GENERAL LAWS OR SPECIAL ACT

Adopted May 6, 2013 (ATM/Art. 36)  
Order or Statement Recorded October 25, 2014  
Order of Assessment Adopted September 28, 2015

SIDEWALK ORDER No. \_\_\_\_\_ SEWER ORDER No. \_\_\_\_\_ OR STREET LAYOUT No.  X

TO THE BOARD OF ASSESSORS OF HARWICH:

The Board of Selectmen hereby certifies to you for commitment the list of assessments made by it upon  
NAME OF BOARD OR COMMISSION MAKING THE ASSESSMENT  
the hereinafter described parcels of land situated within the area receiving benefit or advantage beyond the  
general advantage to the community by reason of  
(Here insert the nature of the improvement, stating the location and whether it consists in the laying out and  
construction of a street as a public highway, or of a sewer, drain, or sidewalk in an existing public way, or  
in the use of a sewer, the sprinkling of streets, or in some other benefit for which a betterment or special  
assessment may be levied.)  
Reconstruction of roadway, installation of drainage and paving under the Town's Private Road Betterment  
By-law.

Each parcel of land described below is shown on a plan on file in the office of Planning Board and marked  
"SKINEQUIT ROAD BETTERMENT, SKINEQUIT ROAD, HARWICH, MA DATED 8/16/13 BY J.M.  
O'REILLY & ASSOCIATES, INC." and the lot number specified below refers to the lot designated by the  
same number on said plan.

MAKE SEPARATE LIST OF EACH KIND OF BETTERMENT OR SPECIAL ASSESSMENT

Lot No.	DESCRIPTION OF REAL ESTATE STREET OR WAY (In case of Registered Land, Certificate of Title Number, Registry Volume and Page must be given)	NAME AND ADDRESS OF OWNER (The person liable to assessment for the parcel on January 1 preceding the order of assessment of this betterment)	ASSESSMENT
	See attached list of abutters 10 abutters (Assessment per abutter)		\$17,200.00

TOTAL NUMBER OF SHEETS ATTACHED  1

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

MEMBERS OF  
BOARD OF SELECTMEN  
NAME OF BOARD OR COMMISSION

SKINEQUIT ROAD BETTERMENT - HARWICH  
EXHIBIT "A"

Key	Parcel ID	Owner	Location	Plans & Lots	Book/Page (Cert)	Deed Date
23426	25/C3-7	MILLS THOMAS & MILLS JILL K	33 SKINEQUIT RD	30092-D Lot 6 & 7	204763	10/24/2014
2866	25/C3-8	POWERS JAMES DAVID III TRUSTEE SURVIVOR'S TRUST UNDER THE POWER FAMILY TRUST	27 SKINEQUIT RD	30092-D Lot 8	193208	12/16/2010
2869	25/C3-11	POWERS JAMES DAVID III TRUSTEE SURVIVOR'S TRUST UNDER THE POWER FAMILY TRUST	21 SKINEQUIT RD	30092-D Lot 11 & 30092-E Lot 19	188363	4/16/2009
2870	25/C3-12	THOMPSON SANDRA M TRUSTEE SKINEQUIT ROAD REALTY TRUST	15 SKINEQUIT RD	30092-D Lot 12	149389	7/17/1998
2871	25/C3-13	THOMPSON LEWIS B JR & THOMPSON SANDRA M	16 SKINEQUIT RD	30092-D Lot 13	125514	1/17/1992
2872	25/C3-14	WEEKES STEPHANIE	12 SKINEQUIT RD	30092-D Lot 14	163059	10/11/2001
2873	25/C3-15	WINER JOEL W & WINER LISA M	8 SKINEQUIT RD	30092-D Lot 15	204930	11/7/2014
2875	25/C3-16	PACE BRENDA GORDON	4 SKINEQUIT RD	30092-D Lot 16	172300	3/9/2004
9036	25/C3-17	SEIDEL JOSEPH P	7 SKINEQUIT RD	30092-D Lot 17	136585	3/8/1995
2878	25/C3-18	PEDI JOYCE M & PEDI GARY	3 SKINEQUIT RD	30092-D Lot 18	169447	6/11/2003

Town of Harwich  
Real Estate and Open Space  
Committee

September 15, 2015

To: Board of Selectmen

From: Real Estate and Open Space Committee

Current Membership: Dave Callaghan, Katherine Green, John Preston, Elaine Shovlin, Robert Thomas, Marcia Thorngate-Smith, Wendy Woods-Hartwell

The REOS Committee was successful this year in sponsoring the Hall property through the BOS, CPC and the May 2015 Town Meeting where it was supported and approved for acquisition. The Town and Hall family hope to finalize the Town purchase by Dec. 31, 2015. This pending 4-acre purchase is important for the Town of Harwich as it links to the 200-acre town-owned Bell's Neck Conservation Lands, protects more than 750 feet of shoreline on the West Reservoir/Herring River, and in conjunction with the Cape Cod Rail Trail bike path could complete a walking trail loop around the West Reservoir.

The Committee continues to assess Open Space priorities. Particularly those that fall under the Owner's Unknown and town-owned headings. As we review these priorities with water protection agreed upon as our highest priority, our focus is on the Six Ponds DCPC, the watershed of the Herring River, and the areas surrounding the Bell's Neck Conservation lands. The Committee has identified three Owner's Unknown properties that now require legal work. We are hoping that the town will support us in moving forward with this. We are also currently assessing town owned properties that may be candidates for conservation protection or possible disposition.

Membership is at full capacity and attendance and participation are exemplary. We would like to thank David Spitz for his continued support as well as the support of Amy Usowki, and Michael Lach of HCT.



TOWN OF

HARWICH

*732 Main Street  
Harwich, MA 02645*

CONSERVATION COMMISSION

(508)-430-7538 FAX (508)430-7531

## **Conservation Annual Report to Selectmen**

- Review of application trends for the year
- Update on Land Management of various Conservation parcels
- Update on Town Gardens
- Retiring Commissioners/New Commissioners
- Upcoming projects in the next year

Town of Harwich  
Five Year Financial Plan  
FY 2017-2021

Presentation to:

Board of Selectmen

By

Christopher Clark, Town Administrator

Andrew Gould, Finance Director

September 28, 2015

9/28/2015

2017-2021  
Assumptions Five Year Plan

**SOURCES**

<b>Property Tax</b>	
Property Tax (Base)	Prior year ending Tax Levy Limit .....
Statutory Increase 2.5 %	Statutory increase 2.5% per Year .....
Growth	Growth is estimate at \$200,000 per year .....
Capital Exclusion	As approved by ATM /STM .....
Debt	Per Treasurer & Assessor and includes proposed debt .....
General Override	NO General Overrides or/ Under ride included in plan .....
Unused Levy Capacity	None .....
Overlay Surplus	Per Assessor \$ 100,000 per Year 2017- 2021 .....
Community Preserv. Act	Per Community Preservation Committee Debt Service ( Land Bank Only) .....
Provision for Abatement/Exempt	Plan at \$ 460,000 for FY 2017 plus \$10,000 each year thru FY 2021 .....
<b>Non-Property Tax</b>	
State Aid Gross	Trend line projection based upon past history; .....
MSBA Reimbursement	MSBA on Elementary School Debt is paid off in FY 2017 .....
State Assessments	2.5 % increase .....
Motor Vehicle Excise	FY 17 \$ 1,725,000, Flat for FY 18-21 at \$ 1.8M .....
Other Local Receipts	Updated projections based upon FY 15 Actual +CVEC 250,000 .....
Other Available Funds	Recap Sch. B-2 (Comcast Septic, Road & Harbors Betterments) .....
Motel / Hotel Tax	90% of FY 15 Actual .....
Meal Tax	90% of FY 15 Actual .....

**USES**

<b>EXPENDITURES</b>	
<b>Municipal</b>	
<b>Operating Expenses</b>	
Salaries and Wages	2.25% Annual Salary increases for FY 17 -21 .....
General Expenses	1.5 % all plan years except as noted .....
Solid waste	Tipping fees increased from \$37.50 to \$70.00 effective January, 2015 .....
Unemployment	Plan \$25,000/yr for FY 17-21 ( \$40,000 - FY 17-21 for Golf unemployment costs) .....

**USES**

**EXPENDITURES**

**Municipal (continue)**

Group Health Insurance	2017-2021 - 10%
Pensions- Barnstable County	5.0% increases for FY 2017-2021 according to Barnstable County Administrator, predicated on a 7.75% investment return.....
Natural Gas	1.50% .....
Electric Utility	1.50%
Street Lights	new LED lighting lower base year FY14 + 2% annually.....
Bulk Fuel	@ county bid.....
Property / Liability Ins.	MIIA FY 16 for town only plus 10.0% per year through 2020.....
Debt	Total Principal and Interest on existing Debt 2016-2020 Note: Authorized and Unissued Debt, as of June 30,2014 is \$9,661,000.00
State/County Assessments	2.5% annual increase on municipal accounts; .....

**Education**

C.C. Technical High	Per Ed Reform Calculation	Current projections are FY 16 plus 0 new students Budget + 3.0% 2017-2021
---------------------	---------------------------	---

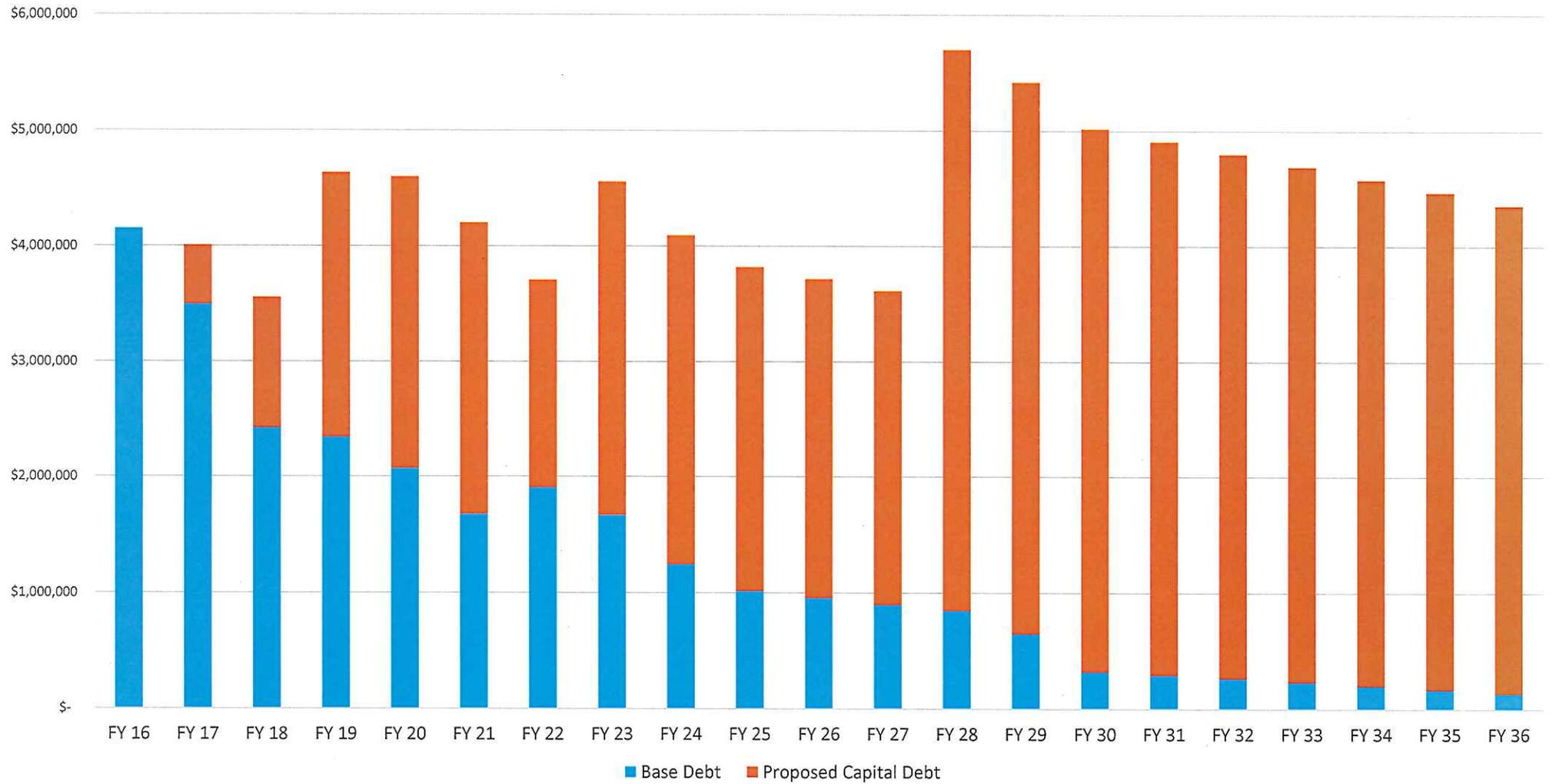
**Monomoy Regional Schools**

**Pending Information by Region**

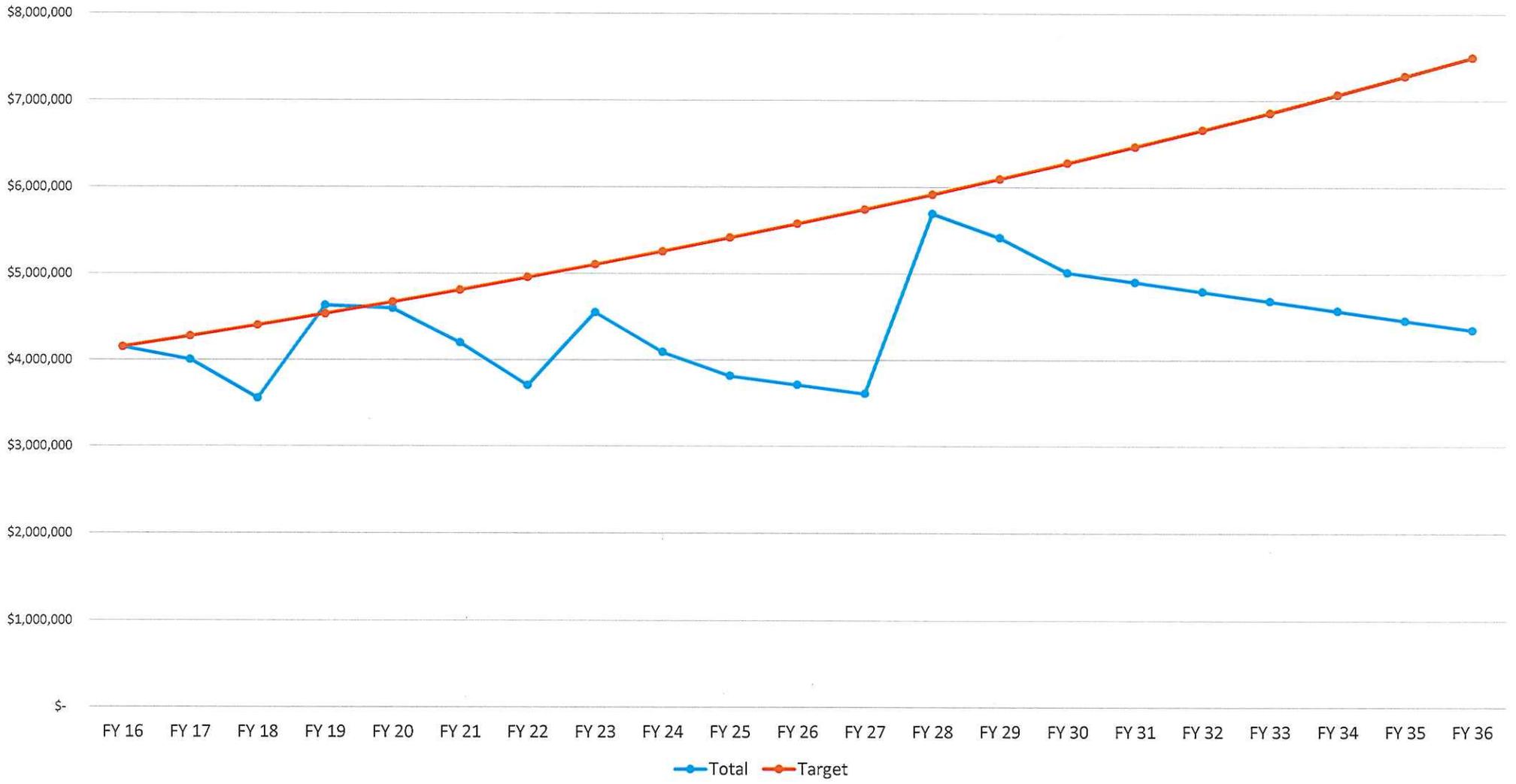
MRSD-Operating	Per Regional Agreement	Operating Budget increase by 3.25%
MRSD-Capital	Per Regional Agreement	Capital Budget zero same as fy 2015
MRSD-Transportation	Per Regional Agreement	Transportation Budget increase by 2 5% (holding place)
MRSD-Debt Service- Middle School	Per Regional Agreement	Not Exempt Debt under Tax Levy within Prop. 2.5% 2016=\$115,121.21: FY 2017= \$ 90,399.87: FY 2018=60,956.53: FY2019=\$24145.54 FY 2020 \$0, debt paid in FY 2019. Note this debt payment is net of SBA.
MRSD-Debt Service H.S. BAN	Per Regional Agreement	FY 2016 to be funded.
MRSD-Debt Service H.S.	Per Regional Agreement	Debt Service 9/16/2014 2016-2040.....Interest @ 3.07%...25Year.....

Town of Harwich Five Year Plan 2017-2021		Budget	Five Year Plan	Five Year Plan	Five Year Plan	Five Year Plan	Five Year Plan	Line #
Line #	SOURCES OF FUNDS	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	
1	Ley Limit	\$ 44,191,327	\$ 45,300,885	\$ 47,066,605	\$ 49,397,769	\$ 50,656,721	\$ 51,639,133	1
2	Local Receipts	10,105,464	10,542,012	10,549,775	10,593,057	10,637,394	10,682,625	2
3	<b>Other Revenues</b>							3
4								4
5	State Aid							5
6	Cherry Sheet	681,038	666,809	666,809	666,809	666,809	666,809	6
7	School Building Assistance	993,195	993,195	-	-	-	-	7
8	Overlay Surplus	100,000	100,000	100,000	100,000	100,000	100,000	8
9	<b>OFS (Transfers in)</b>							9
10	Waterways Mgmt.							10
11	Library State Grant							11
12	Comcast Operating	239,107	245,085	251,212	257,492	263,929	270,527	12
13	Septic Loan	17,358	17,250	17,250	17,250			13
14	Water Indirect	625,931	641,579	657,619	674,059	690,911	708,183	14
15	Harwich Emg. Mgt.	13,410	13,648	13,890	14,137	14,645	-	15
15-a	Road/ Harbor Betterments	195,945	274,490	479,945	464,650	450,635	433,265	15-a
16	CPC Funds	662,275	633,400	608,950	588,750	553,700	341,750	16
	<b>TOTAL SOURCES</b>	<b>\$ 57,825,049</b>	<b>\$ 59,428,353</b>	<b>\$ 60,412,055</b>	<b>\$ 62,773,974</b>	<b>\$ 64,034,745</b>	<b>\$ 64,842,293</b>	18
20	<b>USES OF FUNDS</b>							20
21	<b>Charges:</b>							21
22	RECAP, Offsets, Court Judg. Snow &	14,229	14,229	14,229	14,229	14,229	14,229	22
23	State-Cherry Sheet Charges	642,630	658,696	675,163	692,042	709,343	727,077	23
24	Overlay (Abatements- Taxes)	450,000	460,000	470,000	480,000	490,000	500,000	24
25	<b>TOTAL CHARGES</b>	<b>1,106,859</b>	<b>1,132,925</b>	<b>1,159,392</b>	<b>1,186,271</b>	<b>1,213,572</b>	<b>1,241,306</b>	25
26								26
27	<b>NET AVAILABLE Sources</b>	<b>\$ 56,718,190</b>	<b>\$ 58,295,428</b>	<b>\$ 59,252,663</b>	<b>\$ 61,587,703</b>	<b>\$ 62,821,172</b>	<b>\$ 63,600,987</b>	27
31	<b>Operating Plan Town</b>	<b>\$ 21,195,927</b>	<b>\$ 21,626,809</b>	<b>\$ 22,066,698</b>	<b>\$ 22,515,786</b>	<b>\$ 22,974,271</b>	<b>\$ 23,442,352</b>	31
32	<b>Fixed Cost</b>							32
33	Barnstable County Retirement	2,283,370	2,333,604	2,384,943	2,437,412	2,491,035	2,545,838	33
33-a	Debt Service	3,615,485	4,005,046	3,558,101	4,637,621	4,603,026	4,202,264	33-a
34	Health Insurance	4,129,202	4,459,538	4,905,492	5,396,041	5,935,645	6,529,210	34
35	Property & Liab. Insurance	548,561	601,917	631,263	662,076	662,076	694,430	35
	Capital Exclusion	736,071	-	-	-	-	-	
	OPEB		200,000	250,000	300,000	350,000	400,000	
37	Unemployment Insurance	35,000	35,000	35,000	35,000	35,000	35,000	37
38	<b>Total Fixed Cost</b>	<b>11,347,689</b>	<b>11,635,105</b>	<b>11,764,799</b>	<b>13,468,150</b>	<b>14,076,783</b>	<b>14,406,741</b>	38
39	<b>Education</b>							39
40	Cape Cod Tech	1,330,607	1,370,525	1,411,641	1,453,990	1,497,610	1,542,538	40
41-a	Monomoy Regional School District	22,843,944	23,676,772	24,413,886	25,168,545	25,961,592	26,805,344	41-a
42	<b>TOTAL USES</b>	<b>\$ 57,825,026</b>	<b>\$ 59,442,136</b>	<b>\$ 60,816,416</b>	<b>\$ 63,792,743</b>	<b>\$ 65,723,828</b>	<b>\$ 67,438,282</b>	42
45	<b>NET SOURCES &amp; USES</b>	<b>\$ 24</b>	<b>\$ (13,783)</b>	<b>\$ (404,361)</b>	<b>\$ (1,018,769)</b>	<b>\$ (1,689,083)</b>	<b>\$ (2,595,988)</b>	45

# Debt Chart



# Actual and Project vs Target Debt



## Ann Steidel

---

**From:** John Giorgio <JGiorgio@k-plaw.com>  
**Sent:** Tuesday, September 22, 2015 2:04 PM  
**To:** Christopher Clark; dhowell@cape.com; Lauren F. Goldberg; phughes41@comcast.net  
**Cc:** Ann Steidel; Sandy Robinson  
**Subject:** RE: review of Kopelman and Paige charter interpretation issues correspondence  
November 12, 2014  
**Attachments:** KP-#531510-v1-HARW\_Final\_Warrant\_Article\_-\_Proposed\_charter\_chages\_.DOCX

Dear Chris and Don:

Attached for your consideration is a draft warrant article setting forth the Charter amendments that we discussed at our meeting last Thursday.

The changes are as follows:

1. An amendment to section 5-5-1 to make it clear that the fire department is organized under the strong chief law.
2. Section 3-6-3 is a new section that allows for the Board of Selectmen to appoint for terms of less than three years in order to maintain the requirement for overlapping terms.
3. Addition of Harbormaster to the list of Board of selectmen appointments in section 3-6-1.
4. Two amendments to section 4-3-2. The first (subsection (I)) clarifies that the Town Administrator is authorized to execute contracts for goods and services subject to approval of the Board of Selectmen. , which approval authority may be delegated to the Town Administrator for certain classes of contracts. In addition, there is a further amendment to subsection (I) that strikes the reference to the school department which, since regionalization, no longer exists.
5. Section 5-3-1 is amended to change the reference from a Division of Highways and Maintenance to a Division of Public Works.
6. The definition section is amended to strike a reference to the School Committee which also no longer exists as a town board.

As we also discussed, I have drafted this article as a standard charter amendment rather than a special act charter change. This means that the motion at town meeting will require a two-thirds majority and a subsequent ballot question at the next annual local election or a regular state election.

Please let me know if you have any questions.

John

John W. Giorgio, Esq.  
Kopelman and Paige, P.C.  
101 Arch Street  
12<sup>th</sup> Floor  
Boston, MA 02110  
[jgiorgio@k-plaw.com](mailto:jgiorgio@k-plaw.com)  
Phone: (617) 556-0007  
Fax: (617) 654-1735

Mobile Phone: (617) 785-0725

---

**From:** Christopher Clark [mailto:cclark@town.harwich.ma.us]  
**Sent:** Thursday, September 10, 2015 12:04 PM  
**To:** John Giorgio; dhowell@cape.com; Lauren F. Goldberg; phughes41@comcast.net  
**Cc:** Ann Steidel; Sandy Robinson  
**Subject:** review of Kopelman and Paige charter interpretation issues correspondence November 12, 2014

To all,

In preparation for the Board of Selectmen discussion with the Charter Review Committee, I met with Don Howell the chair of the committee to discuss the Kopelman and Paige November 12, 2014 charter interpretation issues memo to assess which items may have a greater priority than others in terms of which items to bring to an annual town meeting.

Two general comments not specifically addressed in the November correspondence. First,, any thought to revising the language of the Highway and maintenance departments in consolidating them into a Department of Public Works. Second, Kopelman and Paige recently has weighed in on the topic of the Fire Chief in to coordinate the charter language with the strong chief statute.

Pertaining to the memo itself.

Item number one on the appointment authority to address the Fire Chief language specifically.

Item number two as it relates to the planning board but more so in terms of the larger issue of appointment terms. Specific language indicates three years where there should be language that allows for completion of terms as well as to provide for the provision of staggered terms so a board or committee would not have five members who all expire at the same time.

Item number three eligibility of finance committee members. Suggestion to leave as is.

Item number four appointment of library staff. Done

Item number five contractor bid authority. The board of selectmen has already authorized the town administrator to approve contracts up to \$50,000. Does it make sense to incorporate this contract and procurement authority within the town charter.

Items 6 through 9. No change is recommended.

Item 10 creation of water and wastewater commission. Separate correspondence has already been discussed on this area and discussions will continue.

Item number 11 reference to school Department. Need to verify that the existing language that created Monomoy regional school allows for existing charter references to school Department be changed. No legislative action would be necessary.

After our preliminary meeting, Don and I discussed having a meeting with Peter as the Chair of the Board of Selectmen and representatives of Kopelman and Paige to discuss their input. The board of selectmen is planning on meeting on September 14, 2015 to see if any board members believe additional charter bylaw changes are needed. A small group discussion the week of the 14<sup>th</sup> through 18 of September may be fruitful to focus the discussion on the 21<sup>st</sup>. All parties agree I will ask Ann or Sandy to arrange such meeting.

Chris

Christopher Clark  
Town Administrator  
Town of Harwich  
732 Main Street  
Harwich, MA 02645  
Tel. 508.430.7513  
Fax.508.432.5039  
[cclark@town.harwich.ma.us](mailto:cclark@town.harwich.ma.us)

To see if the Town will vote in accordance with the provisions of Massachusetts General Laws Chapter 43B, Section 10 to amend the Town of Harwich Home Rule Charter in several respects as follows (Deletions shown in strike through and new text shown as underlined):

1. Amend Section 5-5-1 Fire Department as follows:

~~5-5-1 A fire department shall be established under a fire chief, who shall be appointed by the board of selectmen.~~ The fire department shall be organized and operated as a so-called strong chief department under the provision of section 42 of chapter 48 of the General Laws.

2. Amend Section 3-6 Powers of Appointments by adding a new section 3-6-3 as follows:

3-6-3 The board of selectmen shall be authorized when making appointments to multi-member bodies pursuant to the provisions of sections 3-6-1 or 3-6-2 to make initial or subsequent appointments of terms of one, two or three years as may be needed to maintain or re-establish properly overlapping terms.

3. Amend Section 3-6-1 Section 6 Powers of Appointment as follows:

3-6-1 Except as may otherwise be provided by General Laws, this charter, or the personnel by-law, the board of selectmen shall have the power to appoint and remove: a) a town administrator as provided in chapter 4; b) a town counsel; c) a town accountant; d) a police chief; e) a fire chief; f) a harbormaster; g) 3 assessors for overlapping 3-year terms; hg) 3 members of a board of registrars of voters for overlapping 3-year terms; i) election officers; and j) 1 or more constables.

4. Amend two subsections of Section 4-3-2 relating to the powers of the Town Administrator as follows:

4-3-2 The town administrator shall devote full working time to the duties of that office, shall not become a candidate for, or hold, any elective office during the term of appointment; and shall not engage in any business activity during the term, except with the written consent of the board of selectmen. The town administrator shall:

(l) Be responsible for the purchasing of services, supplies, materials and equipment for all town divisions, departments, and offices, excepting those for ~~the school department~~, the water department and the Brooks Free Library. The Town Administrator shall execute all contracts for goods and services on behalf of the divisions and departments under the jurisdiction of the Town Administrator, subject to the approval of the Board of Selectmen. The Board of

Selectmen may delegate its approval authority to the Town Administrator for certain classes of contracts.

. . .

(k) Develop, keep, and annually update a full and complete inventory of all property of the town, ~~except school property~~, both real and personal.

5. Amend Section 5-3-1 as follows:

Division of Highways and Maintenance Public Works

5-3-1 A division of ~~highways and maintenance~~ public works shall be established under the direction of an appointed officer, to be known as the director of public works ~~highways and maintenance~~.

6. Amend Section 10-3-1 Definitions as follows:

(f) Committee. The word “committee” shall mean any town agency which has been charged with performing a specified function on behalf of the town but without statutory authority, except for the ~~the school committee~~, finance committee and capital outlay committee, which function under statutory authority;

Or to take any other action relative thereto.

Refer to Chapter 5-5-1 of the Charter of the Town of Harwich and amend it by adding the following text to the end of that section:

“The Fire Department shall be organized and operated as a so-called strong chief department under the provisions of Chapter 48, section 42 of the Massachusetts General Law s or any subsequent revisions which contain corresponding provisions.”

Refer to the Charter of the Town of Harwich and amend it by adding the following section:

3-6-3 All appointments made by the Board of Selectmen under section 3-6-2 above, whether to policy making town agencies as enumerated in chapter 7 of the charter or to any other advisory board as may be created, must be for the full specified term of the position or, if vacated, the full remaining balance of the term.

Refer to Chapter 6-4-2 of the Charter of the Town of Harwich and amend it by adding the following text to the end of that section:

“Notwithstanding the provisions of Chapter 4 section 4 of this charter, The Town Clerk’s office shall be organized under Chapter 48, section 42 of the Massachusetts General Laws. As such, the Town Clerk shall have appointment authority over an assistant clerk in a manner consistent with MGL 48.”

Mr. Robert C. Lawton, Jr.  
Acting Town Administrator  
September 18, 2013  
Page 5

3. Police Department

Questions have also been raised as to the appointing authority for the Police Chief and police officers. I understand that prior to the adoption of the Charter, the Town had accepted G.L. c.41, §97 (the so-called "strong chief" law), which states that Police Chief and Police Officers are appointed by the Board of Selectmen. As discussed above, the provisions of Section 3-6-1 provides that the Board of Selectmen appoints the Police Chief. In addition, Section 5-4-1 of the Charter states, "the board of selectmen shall appoint the chief of police and other officers that they consider necessary, as provided by section 97A of chapter 41 of the General Laws." [Emphasis added].

As discussed above, in my opinion, rules of statutory construction require the conclusion that the Board of Selectmen is the appointing authority for both the Police Chief and police officers. Section 5-4-1 of the Charter specifically establishes the Board of Selectmen as the appointing authority for police officers, and, as discussed above, would supersede the more general provisions of Section 4-4-2. In fact, if the Charter were interpreted differently, the above-quoted line of Section 5-4-1 would have no meaning, a result disfavored by the courts.

Be aware that while the Board's authority to make such appointments arises from the Charter rather than from the so-called "strong chief" provision of the General Laws, the end result is the same. In Atkinson v. Town of Ipswich, 34 Mass. App. Ct. 663 (1993), the Massachusetts Appeals Court ruled that where the town had adopted a special act charter, the charter provisions prevailed over previously accepted General Laws, including the so-called "strong" Fire Chief statute at G.L. c.48, §42. This case supports the conclusion reached herein, and would be controlling, in my opinion.

4. Fire Department

Similar questions have been raised with respect to appointment of the Fire Chief and fire fighters. As noted above, Section 3-6-1 provides that the Board of Selectmen appoints the Fire Chief. Section 5-5-1 establishes the Fire Department, but does not specify that appointments of fire fighters shall be made by the Board of Selectmen. In the absence of such language, in my opinion, while the Board of Selectmen is the appointing authority for the Fire Chief, fire fighters, which are, as applicable, full or part-time employees of the Town, are appointed by the Town Administrator under the provisions of Section 4-4-2 of the Charter.

In summary, it is my opinion that under the current Charter: (1) the officers listed in Section 3-6-1 are appointed by the Board of Selectmen; (2) as long as the Town Accountant/Finance Director remains a joint position, the position is filled by a joint appointment of the Board and the Town Administrator in accordance with the provisions of Section 3-6-1 and 4-4-1; (3) the Director of Public Works and Town Planner are appointed by the Town Administrator subject to the approval

that this item is not time sensitive. Mr. Hughes recused himself on Items L and M. Ms. Brown moved to accept Items L and M. Mr. LaMantia seconded the motion and the motion carried by a 4-0-0 vote.

## **PUBLIC HEARINGS/PRESENTATIONS** *(Not earlier than 6:30 P.M.)*

### **A. Presentation** – Town Counsel opinion on the following items - *John Giorgio*

#### 1. Non-Binding Ballot Question for Middle School Building Repurpose – *discussion*

Mr. Giorgio advised the Board that they have the authority to place a non-binding question on the ballot at an annual election with a simple vote of the Board. He noted that explanatory material cannot be included on the ballot but it doesn't prevent the Board from posting something on the website or to have discussion explaining it. He said he would work with the Town Administrator to draft the question with the intent to put forward the various options in a menu option with the three different concepts. Ms. Cebula asked if it will be one or three questions and Mr. Giorgio responded that he would look into it. Ms. Brown said it would be inappropriate to put in the estimated costs. Mr. Giorgio said he would have a draft in the next couple of weeks.

#### 2. Board of Selectmen Town Charter Appointing Authority & potential Charter change to support "Strong Chief" concept for Public Safety Departments – *discussion & possible vote*

Attorney Giorgio stated that the Strong Chief law says that the Board of Selectmen appoints the Fire Chief but the Fire Chief appoints the Fire Fighters but the complication is that when the Town enacted the Charter it was silent with respect to the Strong Chief law as well the appointment of Fire Fighters. He said that even though the Town had adopted the Strong Chief law in the 1920's, the Charter which was a later action provided a very different appointing mechanism. He explained that when your Charter doesn't match the practice you can either conform the practice to the Charter or amend the Charter to the preferred practice. He noted that amending the Charter is a lengthy process. Mr. Giorgio stated that he was asked if there is a way in the interim for the Fire Chief to appoint Fire Fighters and his answer is yes. He explained that the Town Administrator could delegate his authority under the Charter to appoint Fire Fighters to the Fire Chief. He said the Board could essentially waive their authority. He noted that he drafted a motion as that is what he understood the Board wanted and the motion accomplishes a Charter change as well. He stated that the Board needs to think about whether its appropriate to amend the Charter to have the Police Officers appointed by the Police Chief.

Sandy Hall, former Chairman of the Charter Commission, discussed what was in the mind of the commission when they created the Charter and the intent was that if the Charter is silent you go to Massachusetts General Laws or the By-Laws. Ms. Cebula stated that regardless of the intent, the wording is not clear and we need to fix it. The Board took comments from Don Howell and there was discussion about holding a joint workshop with the Board of Selectmen and By-Law Charter Review Committee in mid-September.

Mr. Giorgio recommended making things clear and stated that if the Board wants to simply acknowledge that the Fire Chief has historically appointed Fire Fighters pursuant to Strong Chief law then there is no need to make any formal delegation at this point.

Chief Clarke stated that this has never been an issue and that in his contract and that of previous Chiefs the Strong Chief law has been referenced. He noted that historically they have been very successful in in their appointments. Ms. Brown stated that if it is in the contract then no action is required. Mr. Giorgio stated



that he didn't realize it was in the contract and that Ms. Brown is correct. Ms. Cebula said they should make a motion to make it clear. Ms. Cebula moved to confirm the interpretation of the Charter that we have a Strong Fire Chief who is responsible for the hiring and firing and overall supervision and personnel administration of the Fire service personnel that are under his jurisdiction. Mr. LaMantia seconded the motion. Mr. MacAskill asked to amend the motion to include reference to Chapter 48, Section 42 so the legal description is in the motion, Ms. Cebula accepted the amendment and Mr. LaMantia agreed to the amendment. The motion carried by a 4-1-0 vote with Ms. Brown in opposition.

### 3. Sewer Fee Attached to Water Rates – discussion

Mr. Giorgio stated that he has reviewed the recommendation of the Wastewater Implementation Committee specifically with regard to financing of the water quality program and there are 3 mechanisms for financing in the recommendation which he outlined as follows:

#1 is a General Obligation Bond supported by a debt exclusion. He said he has no problem with that and it is very common.

#2 is the adoption of the Water Infrastructure Development Fund which allows the Town, through Town Meeting vote and ballot to assess a 3% surcharge on property tax. He advised that the way the statute is worded it requires both a Town Meeting vote and ballot question. He noted that there must be at least 35 days in between the two votes. He explained that if they wanted to implement that they have one of two choices: they could call a Special Town Meeting in the fall or early spring and vote the Town Meeting portion of it and as long as there are 35 days before the election you could add that to the election ballot, or they could adopt it at the 2016 Town Meeting and then it would go to the 2017 annual election. Mr. LaMantia asked if they brought it to Town Meeting in May, could they put it on the ballot for November. Mr. Giorgio said they could but the only caveat is they would have to notify the Secretary of State sometime in August as there is a deadline for the submission of local ballot questions at a state election.

#3 is placing a surcharge on the water rate which would then be used to fund wastewater infrastructure through an enterprise account. He said that this option needs to be looked at carefully because as with any fee you have to comply with the Emerson College test which includes three parts: the service being provided has to be voluntary which he thinks would pass the test as you choose to consume Town water, you have to receive a particular benefit that is not shared by the entire population, you can't use it to raise general revenue and it must be related to the purpose for which the fee is charged. He stated that water quality improvement through sewers is a benefit that everyone realizes through removal of nitrogen. He said that if the Board is serious they should add a provision to legislation that would expressly authorize the assessment of that surcharge.

#### B. **Presentation** – Implementation of Accela E-Permitting – *David Spitz*

Mr. Spitz outlined his memo dated July 23, 2015 regarding permitting software update (attached). Chairman Hughes asked that Mr. Spitz provide regular updates.

#### C. **Presentation** – Facilities Maintenance Overview – *Sean Libby, Lincoln Hooper*

Mr. Hooper and Mr. Libby outlined the memo of July 22, 2015 regarding facilities maintenance overview (attached). Chairman Hughes stated that there has been very positive feedback. The Board heard comments from Ginny Hewitt who spoke in support of centralized funding for maintenance.

#### D. **Presentation** - Community Center Catering Services – *Carolyn Carey, Barbara-Anne Foley*

## **2. Planning Board Appointments**

An issue arose in 2013 regarding an appointment that the Board of Selectmen made to the Planning Board. The appointment was for one year. Unfortunately, Section 7-5-1 of the Charter provides for appointments to the Planning Board for terms of three years. Therefore, there is no ability for the Board of Selectmen to appoint a member for a term of less than three years even if circumstances warrant. See Attachment 2. The Town may want to consider an amendment to this section of the Charter that would give the Board of Selectmen some flexibility in appointing members to the Planning Board or, for that matter, other multiple member boards for terms up to three years.

John Giorgio

# 2

**From:** John Giorgio  
**Sent:** Monday, June 24, 2013 10:19 PM  
**To:** James Merriam  
**Cc:** Michele Randazzo  
**Subject:** Appointments to the Planning Board

**Categories:** Green (Outlook 2003)

Dear Mr. Merriam;

You have requested an opinion whether the Board of Selectmen may consider a position on the Planning Board vacant at the expiration of a one year appointment to that position made by the Board of Selectmen for a term commencing on July 1, 2012.

In my opinion, because the Board voted to make the appointment for one year, the term of that appointed member terminates on June 30, 2013, notwithstanding the fact that Section 7-5-1 of the Harwich Town Charter ("Charter") provides that "[a] planning board of 9 members and 2 alternate members shall be appointed by the board of selectmen for 3-year overlapping terms." Although the Charter sets forth a fixed 3-year term of appointment for Planning Board members' as a general proposition, an appointment for less than a 3 year term would be inconsistent with the Charter.

G.L. c. 41, §81A permits a town to establish a planning board, and in fact requires the establishment of a planning board upon the town attaining a population of ten thousand residents. The statute further provides that: there shall be no less than five and no more than nine members; the positions are elected or "appointed in such manner as an annual town meeting may determine;" the terms are for three or five years, as determined by town meeting; and, the statute does not provide for removal of planning board members mid-term (in towns). Regardless of how the Planning Board may have been constituted prior to the Town's adoption of the Charter in 2006, the Charter establishes both the current size and terms of appointment of the Planning Board. Under G.L. c. 43B, §20, a town may, by charter, vary from what might otherwise be set forth in the General Laws, in terms of the composition, method of appointment and terms of local officers.

Thus, while Section 81A indicates that Planning Board members are to be appointed for either 3 or 5 year terms, the Town can vary that by Charter. Here, the Charter established only 3-year terms for members of the Planning Board. Typically, where a statute (or in this case, the Charter) establishes a specific term of appointment, that term is considered "fixed" and cannot be varied, in my opinion. Compare *Metivier v. Town of Grafton*, 148 F. Supp. 2d. 98 (D. Mass. 2001); *Town of Eastham v. Barnstable Retirement Board*, 52 Mass. App. Ct. 734 (1998). There are even cases that state that, in the absence of any specific provision permitting the removal of such an officer mid-term, an officer with a statutorily-fixed term of appointment simply may not be removed mid-term. *Adie v. Mayor of Holyoke*, 303 Mass. 295 (1939). Moreover, even at the expiration of a fixed term of office, officials typically may remain in office as "hold-overs" until such time as a successor is appointed, although this "hold-over" period is not considered as part of the term of appointment. *Rugg v. Town Clerk of Arlington*, 364 Mass. 264 (1973).

In light of these various, related legal principles, it is my opinion that the appointment last year of a Planning Board member for a one year term was improper, and arguably defective when the appointment was first made, because the appointment exceeded the authority and discretion that the Board of Selectmen has under the Charter. It is my further opinion, however, that the one year appointment that was made last year does not automatically convert to a three year term because such a result would be expressly contrary to the intent of the appointing authority (the Board of Selectmen) at the time.

Even though the appointment of the Planning Board member last year was arguably defective, please be advised that, in my opinion, the votes of that Planning Board member and the actions taken by the Planning Board over the last year are not called into question. This is because that there is a long line of cases that recognize that, even if there is some technical defect in the appointment of a public official, he may still be recognized as a "de facto" officer in order to validate his actions, where that individual "is in fact in the unobstructed possession of an office and discharging its duties in full view of the public, in such manner and under such circumstances as not to present the appearance of being an intruder or usurper." See, e.g., *Commonwealth v. Vaidulas*, 433 Mass. 247, 252 (2001). Here, the individual was duly appointed by the Board (albeit for a term shorter than what was specified in the Charter), and served as a validly appointed Planning Board member, with all the apparent authority of this office. Public policy dictates that this must be the result; otherwise, the entire work of the Planning Board over the past year would be called into question, and the courts have refused to do that in these types of circumstances

If you have any further questions, please do not hesitate to contact me.

John

John W. Giorgio, Esq.  
Kopelman and Paige, P.C.  
101 Arch Street  
12<sup>th</sup> Floor  
Boston, MA 02110  
[jgiorgio@k-plaw.com](mailto:jgiorgio@k-plaw.com)  
Phone: (617) 556-0007  
Fax: (617) 654-1735  
Mobile Phone: (617) 785-0725

## **11. References to School Department in the Existing Charter**

With the creation of the Monomoy Regional School Committee the local Harwich School Committee was abolished, and the Charter was amended accordingly. There are, however, a few references in the existing Charter to the "School Department" which should be removed.

Therefore, the Town may wish to consider amending the Charter to remove the reference to "School Department" in Sections 4-3-2(i) and 10-3-1(f), and to further delete the reference to School Property in Section 4-3-2(k).

THE COMMONWEALTH OF MASSACHUSETTS

In the Year Two Thousand and Twelve

AN ACT AMENDING THE CHARTER OF THE TOWN OF HARWICH.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 6-1-1 of chapter 6 of section 1 of chapter 18 of the acts of 2006, is hereby amended by striking out the words "a school committee," and inserting in place thereof the following words:- members of the Monomoy regional school district committee.

SECTION 2. Said chapter 6 of said section 1 of said chapter 18, as so appearing, is hereby further amended by striking out section 6-5-1 and inserting in place thereof the following section:-

6-5-1 Four members of the Monomoy regional school district committee shall be elected for the terms and in the manner provided in the regional school district agreement. The committee shall have the powers and duties set forth in the regional school district agreement and under applicable General Laws.

SECTION 3. Said chapter 6 of said section 1 of said chapter 18, as so appearing, is hereby further amended by striking out section 6-5-2.

SECTION 4. Said chapter 6 of said section 1 of said chapter 18, as so appearing, is hereby further amended by striking out section 6-5-3.

SECTION 5. Notwithstanding sections 1 and 2 of this act, the town of Harwich shall elect at the 2011 annual town election, 2 members of the Monomoy regional school district committee for 3-year terms, 1 member for a 2-year term, and 1 member for a 1-year term. The members shall have such authority set forth in the Monomoy regional school district agreement. The town of Harwich shall elect at the 2012 annual town election 1 member of the Monomoy regional school district committee for a 3-year term. At the 2012 annual town election, the office of local school committee member of the town of Harwich shall not appear on the ballot, and any incumbents holding the office of local school committee member shall serve until July 1, 2012 or their earlier resignation from office.

SECTION 6. Sections 1, 2, 3 and 4 of this act shall take effect on July 1, 2012. On July 1, 2012, the school committee of the town of Harwich, created by sections 6-1-1 and 6-5-1 to 6-5-3, inclusive, of section 1 of chapter 18 of the acts of 2006, shall be abolished and the terms of the elected incumbents shall be terminated.

SECTION 7. This act shall take effect upon its passage; provided, however, that should this act be enacted subsequent to the 2011 annual town election in the town of Harwich, the election of such regional school district committee members as is authorized herein, and all actions taken as a result thereof, shall be ratified, validated and confirmed as if this act was in effect prior thereto.

House of Representatives, May 7, 2012.

Passed to be enacted,

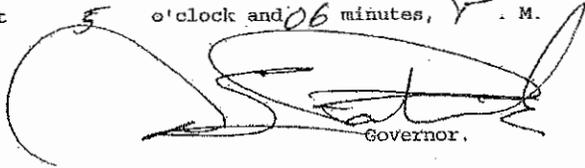
*Paul Donato* Speaker.

In Senate, May 7, 2012.

Passed to be enacted,

*Anthony Stabile*, President.

16 May, 2012.  
Approved,

at 5 o'clock and 06 minutes, P. M.  
  
Governor.

**DRAFT**  
**OF REQUESTED CHANGES TO THE TOWN OF HARWICH CHARTER:**

ARTICLE To see if the Town will vote to amend the Town of Harwich Charter, Chapter 5 TOWN ADMINISTRATIVE ORGANIZATION to add a Section 6 as set forth below and to act fully thereon. By request of the Harwich Waterways Committee

**Section 6. Harbormaster Department**

**5 - 6 - 1 A harbormaster department shall be established under a harbormaster, who shall be appointed by the board of selectmen.**

ARTICLE To see if the Town will vote to amend the Town of Harwich Charter, Chapter 7 APPOINTED TOWN AGENCIES section 7-14-2 by adding '*water dependant structure*' as set forth below and to act fully thereon. By request of the Harwich Waterways Committee.

7-14-2 The waterways committee shall be responsible for the development of regulations for all waterways and **water dependent structures** including marine ramps, docks, piers, moorings, and aquaculture.

ARTICLE To see if the Town will vote to amend the Town of Harwich Charter, Chapter 9 FINANCIAL PROVISIONS AND PROCEDURES Section 1. Finance Committee 9-1-4 by adding "*non-voting*" as set forth below and to act fully thereon.

No member of the finance committee shall hold any other elected or appointed town office, except for a **non-voting** membership in the capital outlay committee. Requested by Harwich Tax payer W. Matthew Hart

ARTICLE To see if the Town will vote to amend the Town of Harwich Charter, Chapter 9 FINANCIAL PROVISIONS AND PROCEDURES Section 5. Capital Outlay Committee 9-1-4 by adding "*non-voting*" as set forth below and act fully thereon. Requested by Harwich Tax Payer W. Matthew Hart

Two **non-voting** members shall be appointed by the finance committee, 2 members shall be appointed by the board of selectmen, 1 member shall be appointed by the planning board, and 2 members shall be appointed by the town administrator.

Section 5. Capital Outlay Committee

9-5-1 A capital outlay committee of 7 members shall be appointed for 3-year overlapping terms.

Two non-voting members shall be appointed by the finance committee, 2 members shall be appointed by the board of selectmen, 1 member shall be appointed by the planning board, and 2 members shall be appointed by the town administrator.

9-5-2 The capital outlay committee shall assist the town administrator in the development of the capital outlay plan.



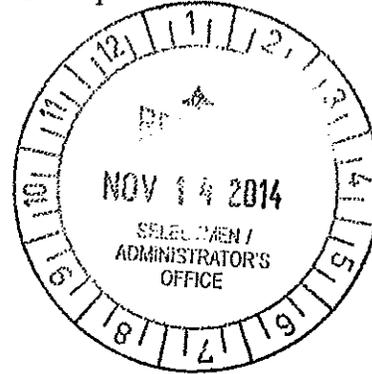
# KOPELMAN AND PAIGE, P.C.

The Leader in Municipal Law

101 Arch Street  
Boston, MA 02110  
T: 617.556.0007  
F: 617.654.1735  
www.k-plaw.com

*Charter Change  
Cons. Issues*

*Background  
material*



**John W. Giorgio**  
jgiorgio@k-plaw.com

November 12, 2014

Mr. Christopher Clark  
Town Administrator  
Harwich Town Hall  
732 Main Street  
Harwich, MA 02645

Re: Charter Interpretation Issues

Dear Mr. Clark:

You have asked that I prepare a list of Charter interpretation issues that have been addressed by Town Counsel in recent years. I understand that this list will be reviewed by the Charter Review Committee and may lead to recommendations for Charter amendments.

### 1. Town Charter Appointment Authority

*Strong Fire  
Chief*

In September 2013, Town Counsel provided an extensive opinion letter regarding the division of authority under the Charter for the appointment of certain department heads and division directors as between the Board of Selectmen and Town Administrator. See Attachment 1. For example, the Police Chief and all police officers are appointed by the Board of Selectmen under Sections 3-6-1 and 5-4-1 of the Charter. The Fire Chief is also appointed by the Board of Selectmen but firefighters are appointed by the Town Administrator under Sections 3-6-1 and 4-4-2. The Charter Review Committee may wish to undertake a comprehensive review for all appointments of Town officials under the Charter to ensure consistency.

### 2. Planning Board Appointments

An issue arose in 2013 regarding an appointment that the Board of Selectmen made to the Planning Board. The appointment was for one year. Unfortunately, Section 7-5-1 of the Charter provides for appointments to the Planning Board for terms of three years. Therefore, there is no ability for the Board of Selectmen to appoint a member for a term of less than three years even if circumstances warrant. See Attachment 2. The Town may want to consider an amendment to this section of the Charter that would give the Board of Selectmen some flexibility in appointing members to the Planning Board or, for that matter, other multiple member boards for terms up to three years.

### 3. Eligibility of Finance Committee to Serve on Other Town Committees

Section 9-1-4 of the Charter provides that "No member of the Finance Committee shall hold any other elected or appointed office, except for membership in the Capital Outlay Committee." In an email opinion dated May 5, 2013 (Attachment 3), Town Counsel opined that

Mr. Christopher Clark  
Town Administrator  
November 12, 2014  
Page 2

this provision of the Charter did not prohibit a member of the Finance Committee from serving on the Harwich Middle School Re-Use Committee because the Committee was not an "office" in that the Re-Use Committee was appointed as an advisory committee by the Board of Selectmen and was not created by statute, charter, or special act. Although this provision has been interpreted in the past as applying to any town committee, consideration may be given to amending the Charter to clarify this issue.

**4. Appointment of Library Staff**

*Complete*

Section 6-7-2 of the Charter states that the Library Trustees appoint all professional staff for the Library. This raised a Charter interpretation issue as to which positions within the library were "professional." Ultimately Town Counsel concluded that the Library Trustees' interpretation that the term "professional staff" included all non-custodial employees was reasonable. (See Attachment 4.) The Library has proposed a Charter amendment which Town Counsel is currently drafting that will remove the word "professional" from Section 6-7-2 of the Charter.

**5. Contract and Bid Awarding Authority**

The Town Charter (4-3-2(i)) provides that the Town Administrator is "responsible for the purchasing of supplies, materials, and equipment for all town divisions, departments, and offices, excepting those for the school department and the Brooks Free Library." In an opinion dated August 8, 2013 (Attachment 5), Town Counsel opined that the authority granted to the Town Administrator by necessary implication included the authority to execute contracts on behalf of the Town. The opinion also stated that as the chief policy making board of the Town, the Board of Selectmen could adopt a policy requiring the Town Administrator to obtain approval of the Board of Selectmen before executing certain classes of contracts. An amendment to the Charter which proves more specific requirements as to the authority of the Town Administrator to execute contracts and the role of the Board of Selectmen in approving such awards could be considered.

**6. Appointment of Harbormaster**

An issue arose in 2012 as to whether a member of the Waterways Committee was required to wait a year after resigning from the Committee in order to be eligible for appointment as Harbormaster. In an email opinion issued on May 29, 2012, Town Counsel reached the conclusion that the one year bar to appointments contained in Section 7-2-5 of the Charter applied to the Waterways Committee member who sought appointment as the Harbormaster. See Attachment 6. Because the provisions of 7-2-5 are more restrictive than the Conflict of Interest Law (G.L.c. 268A), the Committee may wish to review this provision.

Mr. Christopher Clark  
Town Administrator  
November 12, 2014  
Page 3

#### **7. Authority of the Golf Committee**

In 2007, Town Counsel rendered an opinion (see Attachment 7) that the Town Administrator and not the Golf Committee had the authority to appoint the Director of Golf Operations under Section 4-4 and was also responsible for the day-to-day supervision of the director of golf operations. See email opinion attached hereto as Attachment 7.

#### **8. Quantum of Vote for CPA Appropriations Outside of the Capital Outlay Plan**

Under the Community Preservation Act, the appropriation of CPA Funds to acquire land in the absence of borrowing only requires a simple majority vote. In an email opinion dated June 2, 2009 and a follow-up email opinion dated June 2, 2009, Town Counsel opined that the appropriation of CPA funds for a capital outlay that is not shown on the Capital Outlay Plan adopted under Section 9-6-2 of the Town Charter requires a two-thirds vote of Town Meeting. See Attachment 8. In order to exempt CPA capital projects from the Capital Outlay Plan, a Charter amendment will be required.

#### **9. Appointment of Committees**

In April 2014, Town Counsel answered a series of questions regarding the applicability of the Open Meeting law to various Town Committees. See Attachment 9. The questions that were answered raised a number of interpretations of various provisions of the charter relating to the definition of "Town Agency" and "ad hoc committees." The Committee may want to revisit these provisions of the Charter to make sure that there are consistent references to committee functions throughout the Charter.

#### **10. Creation of Water and Wastewater Commission**

The Board of Selectmen voted on November 10, 2014, to refer to the Charter Review Committee a proposed Home Rule petition for a Special Act creating a Water and Wastewater Commission. The proposed Special Act includes a number of Charter changes which create the new Commission, abolish the existing Water Commission, and create a new Division of Water and Wastewater. See Attachment 10.

#### **11. References to School Department in the Existing Charter**

With the creation of the Monomoy Regional School Committee the local Harwich School Committee was abolished, and the Charter was amended accordingly. There are, however, a few references in the existing Charter to the "School Department" which should be removed.

**KOPELMAN AND PAIGE, P.C.**

Mr. Christopher Clark  
Town Administrator  
November 12, 2014  
Page 4

Therefore, the Town may wish to consider amending the Charter to remove the reference to "School Department" in Sections 4-3-2(i) and 10-3-1(f), and to further delete the reference to School Property in Section 4-3-2(k).

I am also attaching a prior opinion that sets forth the various options available to change the Town Charter. See Attachment 11. This opinion may be of use to the Committee in their deliberations.

Please let me know if you have any further questions or need additional assistance.

Very truly yours,



John W. Giorgio

JWG/bp  
Enc.  
509921/harw/0001

ALSO

- Language to clarify "Strong Fire Chief"
-

Sample Only from 11/12/14 for discussion!

**AN ACT AMENDING THE CHARTER OF THE TOWN OF HARWICH FOR THE PURPOSE OF ESTABLISHING A WATER AND WASTEWATER COMMISSION.**

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:*

**SECTION 1.** There is hereby established in the town of Harwich a water and wastewater commission, which shall be an agency of the Town.

**SECTION 2.** The charter of the town of Harwich, established pursuant to chapter 18 of the Acts of 2006, is hereby amended by striking chapter 6, section 6, and replacing it with the following: -

6-6-1 There shall be a water and wastewater commission. The board of selectmen shall exercise the duties of the water and wastewater commission. 6-2-2 The water and wastewater commission shall possess and exercise all powers given to boards of water commissioners under section 69B of chapter 41 of the General Laws and boards of sewer commissioners under section 1 of chapter 83 of the General Laws, including stormwater management, and any special law pertaining to the operation of a water and wastewater commission in the town of Harwich.

**SECTION 3.** Said charter is hereby further amended by striking chapter 5, section 1-2 and replacing it with the following: -The divisions shall include: a division of finance, a division of highways and maintenance, a division of water and wastewater, and any other divisions established under clause 4-5-1.

**SECTION 4.** Said charter is further amended by adding a new section 7 to chapter 5, division of water and wastewater, to read as follows: - 5-7-1. A division of water and wastewater shall be established under the direction of an officer appointed by the town administrator to be known as

the director of water and wastewater. The division shall be responsible for the operation of all water and wastewater facilities within the town. The water and wastewater commission shall appoint a water and wastewater advisory committee consisting of five members to advise said commission on all policy matters relating to the operation of the division of water and wastewater.

**SECTION 5.** In addition to assuming the operation of the town's water system as provided for in the General Laws , the water and wastewater commission may lay out, plan, construct, maintain and operate a wastewater system or systems for a part or whole of the town's territory, as may be from time to time defined and established by adoption by town meeting of one or more by-laws as a designated wastewater service area under the jurisdiction and control of the water and wastewater commission, with such capacity limitations, connections, pumping stations, treatment plants and other works, as may be allocated in such by-law to such wastewater service area as required for a system or systems of wastewater treatment and disposal, and may construct such wastewater and related works in said wastewater service areas defined and established by by-law as may be necessary. No other wastewater system shall be constructed in any public roads or ways of the town which are not within the limits of such designated wastewater service areas and which are not under the control of the water and wastewater commission.

**SECTION 6.** Notwithstanding any provision of law to the contrary, owners of land not within the wastewater service areas defined and established pursuant to section 5 of this act shall not be permitted to connect to the town's wastewater system except as is set forth in this act. The territory covered by said wastewater service areas may be amended from time to time by the

water and wastewater commission, after a public hearing conducted to consider such amendment, upon approval of the department of environmental protection if otherwise required by law and upon enactment by town meeting of a by-law defining or establishing a new or expanded wastewater service area.

**SECTION 7.** The financial operation of the water system shall continue as an enterprise fund, and the wastewater system, including stormwater facilities and non-traditional methods of pollution mitigation, shall be operated as a separate enterprise fund pursuant to section 53F½ of chapter 44 of the General Laws, provided however that the town shall retain the flexibility under section 53F½ of chapter 44 of the General Laws to adjust the scope and purpose of any enterprise funds for water and wastewater services.

**SECTION 8.** The town shall, by vote at town meeting, determine whether it shall pay the whole or a portion of the cost of a wastewater system, which may include sewer and stormwater systems, and other facilities or undertakings deemed necessary by the water and wastewater commission to address non-traditional methods of pollution mitigation, and if a portion, what proportion. If the town votes to pay less than the whole cost, in providing for the payment of the remaining portion of the cost of said system or systems, the town, acting through the water and wastewater commission, may avail itself of any or all of the methods permitted by the General Laws; and the provisions of the General Laws relative to the assessment, apportionment, division, reassessment, abatement and collection of wastewater assessments or the additional methods set forth in section 9, and as to liens therefor and to interest thereon, shall apply to assessments made pursuant to this act by the water and wastewater commission, except that

interest shall be at the rate as may be established by the water and wastewater commission from time to time. At the same meeting at which town meeting determines that any portion of the cost is to be borne by the users of the wastewater system or systems, it may by vote determine by which of such methods as authorized under section 15 of chapter 83 of the General Laws the portion of said cost shall be provided for. The collector of taxes of said town shall certify the payment or payments of any such assessment or apportionments thereof to the water and wastewater commission.

**SECTION 9.** The water and wastewater commission may, in its discretion, prescribe for the users of said wastewater systems and disposal works such annual charges, connection fees, assessments, privilege fees, and the like, based on the benefits derived therefrom as such water and wastewater commission may deem proper, subject however, to such by-laws as may be adopted by vote of the town, or as may be provided for in the General Laws. Notwithstanding any law to the contrary, the water and wastewater commission is authorized to impose and collect such charges, fees, or assessments prior to connection or operation of such wastewater systems, and may enter into agreements for the payment thereof over such time as the water and wastewater commission shall determine. In fixing the charges to be imposed for said system, the water and wastewater commission is authorized to make use of any fee, charge, assessment or betterment provided for by the General Laws and further may take into consideration all costs for ongoing removal of infiltration and inflow of non-wastewater into the system as part of the normal operating costs of the system; may include, in setting privilege fees, capital costs and interest charges applicable thereto; may impose late fees for unpaid billings; may assess a capacity utilization fee to new estates and properties added to a wastewater service area authorized by this act from outside a designated needs area in addition to any privilege fee; may

charge betterments, special assessments, or any other charge to the estates and properties being served by collection system improvements and extensions to pay for all costs for sewer line extensions to serve new connections, both within the wastewater service areas authorized by the act and in any areas added to such wastewater service area; and may impose such charges on properties within a wastewater service area authorized by the act whether or not such estates and properties are then connected to the wastewater system.

The water and wastewater commission may make assessments on properties that are not connected to the wastewater system for which the Town has expended funds to address stormwater impacts and non-traditional methods of pollution mitigation.

**SECTION 10.** Notwithstanding anything to the contrary contained herein, the water and wastewater commission may at any time permit extensions, new connections or increases in flow to wastewater systems, subject to capacity, to serve municipal buildings or public restrooms or other public service uses as defined by the water and wastewater commission pursuant to duly adopted regulations. In addition, the water and wastewater commission may extend a wastewater system beyond the limits of any wastewater service area approved by town meeting (1) for the purpose of abating pollution in any “needs areas” as identified in a comprehensive wastewater management plan approved by the department of environmental protection, (2) to serve properties where the board of health has certified in writing that the on-site system is in failure, or (3) to serve properties in areas where due to emergency conditions such as sea level rise, on-site systems pose a threat of failure.

**SECTION 11.** The water and wastewater commission shall have all the powers of a board of health to order the connection of land to a wastewater system as set forth in section 3 of chapter 83.

**SECTION 12.** The water and wastewater commission may, consistent with section 10 of chapter 83, prescribe regulations to implement the purposes of this act, and is hereby authorized to delegate all or a portion of its statutory authority to any committee established by the board of selectmen or to the town administrator.

**SECTION 13.** No contracts or liabilities in force on the effective date of this act shall be affected by abolition of the elected offices as provided for herein, and the newly created appointed offices shall in all respects be the lawful successor of offices and departments so abolished.

**SECTION 14.** Any person holding an office or position in the administrative service of the town, or any person serving in the employment of the town shall retain such office or position and shall continue to perform his/her duties until provisions shall have been made in accordance with this act for the performance of the said duties by another person or agency; provided, however, that no person in the permanent full-time service or employment of the town, shall forfeit his/her pay grade or time in service. All such persons shall be retained in a capacity as similar to their former capacity as it is practical so to do.

**SECTION 15.** All leases, contracts, franchises, and obligations entered into by the town or for its benefit, prior to the effective date of this act shall continue in full force and effect.

**SECTION 16.** All records, property and equipment whatsoever of any office, department or agency or part thereof, the powers and duties of which are assigned in whole or in part to another office, department or agency, shall be transferred forthwith to the office, department or agency to which such powers and duties are assigned.

**SECTION 17.** Upon acceptance of section 39M of chapter 40 in the manner set forth therein, the town may appropriate from the Municipal Water Infrastructure Investment Fund for any purpose authorized by this act.

**SECTION 18.** Chapter 165 of the Acts of 1935 is hereby repealed. On the effective date of this Act, the board of water commissioners established pursuant to chapter 165 of the Acts of 1935, is hereby abolished, and the unexpired terms of said board members shall terminate.

**SECTION 19.** This act shall take effect upon passage.

## **LICENSE AGREEMENT**

This Agreement dated \_\_\_\_\_, 2015 by and between the Town of Harwich, Massachusetts (“Town”), acting by and through its Board of Selectmen (“Selectmen”), of 732 Main Street, Harwich, MA 02645 and \_\_\_\_\_ (“Licensee”) of \_\_\_\_\_, Massachusetts.

WHEREAS, the Town owns the real property, known as the Albro House, located at 728 Main Street, Harwich, MA., as shown on Harwich Assessor’s Map as Parcel 41-B8.

WHEREAS, the Licensee is a claimed user of an area of the building described as upstairs room #2.

NOW, THEREFORE, in consideration of the foregoing, and of the mutual promises and agreements contained herein, the parties agree as follows:

### **I. LICENSE AGREEMENT**

Whereas in consideration of \$250 per month and the mutual promises and agreements contained herein and the grant of a release from the Licensee to the Town, the parties hereto agree as follows:

1. The Town grants the Licensee a License to occupy a portion of the property described as upstairs room #2 at 732 Main Street in its current location on Town Property (Assigned Area), subject to the terms and conditions contained herein.
2. The term of the License shall be for a period at will, commencing October 1, 2015 and ending when terminated pursuant to any provision hereof. At the end of this License, unless further extended, and Licensee shall remove all personal property from the Assigned Area and surrender the area to the Town.
3. Licensee acknowledges that the building is owned by the Town.
4. Licensee shall maintain the Assigned Area at his expense, in the same condition as the area is on the commencement of the license term, normal wear and tear only excepted.
5. Licensee shall not make structural alterations, additions or improvements of any kind to the building, other than normal maintenance without the permission of the Board of Selectmen.
6. Licensee shall have no right to rent, transfer, assign or alienate the area in any way.
7. Licensee shall assume all risk of loss to personal property due to fire, storm or other casualty on the occupied area.

8. Should a substantial portion of the Assigned Area be substantially damaged by fire, storm or other casualty, this license shall terminate unless the Board of Selectmen approves the rebuilding and the license is extended.
9. The area is being licensed by the Town in an "AS IS" condition and the Town excludes and disclaims all warranties, express or implied, with respect thereto, including without limitation, the habitability of any structures, the conditions (including, without limitation, both patent and latent defects) of any structures, improvements, or systems, the availability of any utilities, access, compliance of the properties with any applicable zoning, land use, environment or other legal requirements, the existence or non-existence of hazardous materials, asbestos, lead paint or other health hazards, and the implied warranties of merchantability or fitness or adequacy for any particular purpose or use. The Licensee has licensed the designated area after a full and complete examination thereof. Licensee accepts the area in the condition or state in which it now is without any representation or warranty, express or implied in fact or by law, by the Town and without recourse to the Town, as to the title thereto, the nature, condition or usability thereof or the use or uses to which the occupied area may be put. The Town shall not be required to furnish any services or facilities or to make any repairs or alterations in or to the area, throughout the term, the Licensee hereby assuming the full and sole responsibility for the condition, repair and maintenance of the Assigned Area, to the extent the Assigned Area is reasonably fit for human use and maintained pursuant to Section I.4.
10. Licensee agrees to indemnify and hold harmless, the Town, its successors, agents and assigns from any demand, judgment, or claim of any kind arising out of the use of the designated area by the Licensee, his agents, successors, guests or invitees. Such indemnification shall include, but not be limited to all costs, including reasonable attorney's fees, incurred by the Town in defending any such claim.
11. Licensee agrees to submit an insurance certificate with at least a \$1,000,000 Personal and Advertising Injury Limit and a \$1,000,000 Annual Aggregate Limit, with the Town named as an "Additional Insured". Licensee also agrees to submit documentation of Workers' Compensation Insurance as required by law. All items shall be submitted within 30 days of the date of this agreement.
12. Licensee agrees to submit a CORI request form for each intended occupant of the area. Said form initially shall be submitted within 30 days of this agreement and prior to occupancy for any future occupants.
13. Licensee agrees to comply with all laws and agrees not to use the area in any way that may be unlawful, improper, noisy, offensive or contrary to any applicable statute, regulation, rule or bylaw. Licensee agrees that the assigned area shall continue to be maintained in its customary and usual manner.

14. The Town shall pay heat and electricity costs. The Licensee shall pay for any additional utilities including telephone and internet connection costs. Licensee shall be responsible for cleaning of the area and for disposal of trash.
15. No hazardous materials or wastes, shall be used, stored, disposed of, or allowed to remain in the assigned area at any time and the Licensee shall be solely responsible for, and shall indemnify and hold harmless the Town from, any and all damage in any way associated with the use, storage and/or disposal of same by the user.
16. Disputes: In any action, suit or other proceeding relating to the obligations of the parties hereunder, the non-prevailing party shall pay the reasonable legal fees and costs and expenses of the prevailing party.
17. Licensee shall be solely responsible as between Town and Licensee, for deaths or personal injuries to all persons and damage to any property, including damage by fire or other casualty, occurring in or on the Assigned Area and/or arising out of the use, control, condition or occupancy of the area by Licensee, its agents, successors, guests and invitees, and the Licensee agrees to indemnify and hold harmless the Town from any and all liability, including but not limited to costs, expenses, damages, causes of action, claims, judgments and attorney's fees caused by or in any way arising out of his use of the occupied area for any of the aforesaid matters.
18. The parties acknowledge and agree that the license may be revoked by the Town for any purpose upon providing 60 days written notice to the Licensee.
19. It is agreed that any notice regarding this License by the Town may be mailed by first-class mail to Selectmen/Administrator's Office at 732 Main Street, Harwich, MA 02645.

Executed as a sealed instrument on the day and the year first above written.

Town of Harwich  
Board of Selectmen

Licensee:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Name

\_\_\_\_\_  
Organization

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, and proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person(s) whose name is/are signed on the preceding or attached document, and who acknowledged to me that he/she/they signed it voluntarily for its stated purpose,

\_\_\_\_\_  
Notary Public  
My Commission Expires:

Key: 10782

Town of HARWICH - Fiscal Year 2015

9/10/2015 3:37 pm SEQ# 1

LEGAL

CURRENT OWNER		PARCEL ID		LOCATION	
HARWICH TOWN OF - WATER DEPT 732 MAIN ST HARWICH, MA 02645		114-S5-0		0 PLEASANT BAY RD	
TRANSFER HISTORY		DOS	T	SALE PRICE	BK-PG (Cert)
HARWICH TOWN OF - WATER D			XX		N/A-N/A

CLASS	CLASS%	DESCRIPTION		BN ID	BN	CARD
9380	100	VAC.DISTRICT				1 of 1
PMT NO	PMT DT	TY	DESC	AMOUNT	INSP	BY

LAND

CD	T	AC/SF/UN	Ngh	Inf1	Inf2	ADJ BASE	SAF	Topo	Lpi	VC	CREDIT AMT	ADJ VALUE			
100	S	40,000	5	1.00	1	1.00	100	1.00	167,500	1.00	100	1.00	4	1.25	153,810
200	A	4,590	5	1.00	1	1.00	100	1.00	83,750	1.00	100	1.00	4	1.25	384,410
300	A	33,352	5	1.00	1	1.00	100	1.00	13,750	1.00	100	1.00	4	1.25	458,590

TOTAL	38.860 Acres	ZONING	FRNT	0	ASSESSED	CURRENT	PREVIOUS
Ngh	NGH 5	NOTE			LAND	996,800	972,400
Inf1	NONE		BUILDING	0	0		
Inf2	FACTOR 100		DETACHED	0	0		
			OTHER	0	0		
			TOTAL		996,800	972,400	

DETACHED

TY	QUAL	COND	DIM/NOTE	YB	UNITS	ADJ PRICE	RCNLD	PHOTO

BUILDING

BUILDING	CD	ADJ	DESC	MEASURE
MODEL				
STYLE				LIST
QUALITY				REVIEW
FRAME				

BLDG COMMENTS

YEAR BLT	NET AREA	\$NLA(RCN)	SIZE ADJ	DETAIL ADJ	OVERALL	ELEMENT	CD	DESCRIPTION	ADJ	S	BAT	T	DESCRIPTION	UNITS	YB	ADJ PRICE	RCN	TOTAL RCN	CONDITION ELEM	CD
CAPACITY			UNITS	ADJ																
																		EFF.YR/AGE		
																		COND		
																		FUNC		
																		ECON		
																		DEPR	% GD	
																		RCNLD		





Key: 4918

Town of HARWICH - Fiscal Year 2015

9/10/2015 3:36 pm SEQ# 1

LEGAL

LAND

DETACHED

BUILDING

CURRENT OWNER		PARCEL ID	LOCATION			CLASS	CLASS%	DESCRIPTION			BN ID	BN	CARD	
HARWICH TOWN OF - SELECTMEN 732 MAIN ST HARWICH, MA 02645		52-N1-11-0	0 DUNDEE CIR			9300	100	VAC.SELECT/CITY CNCL					1 of 1	
TRANSFER HISTORY		DOS	T	SALE PRICE	BK-PG (Cert)	PMT NO	PMT DT	TY	DESC	AMOUNT	INSP	BY	1st	%
HARWICH TOWN OF - SELECTM OWNERS UNKNOWN		11/30/1990	E	17367-108	-									

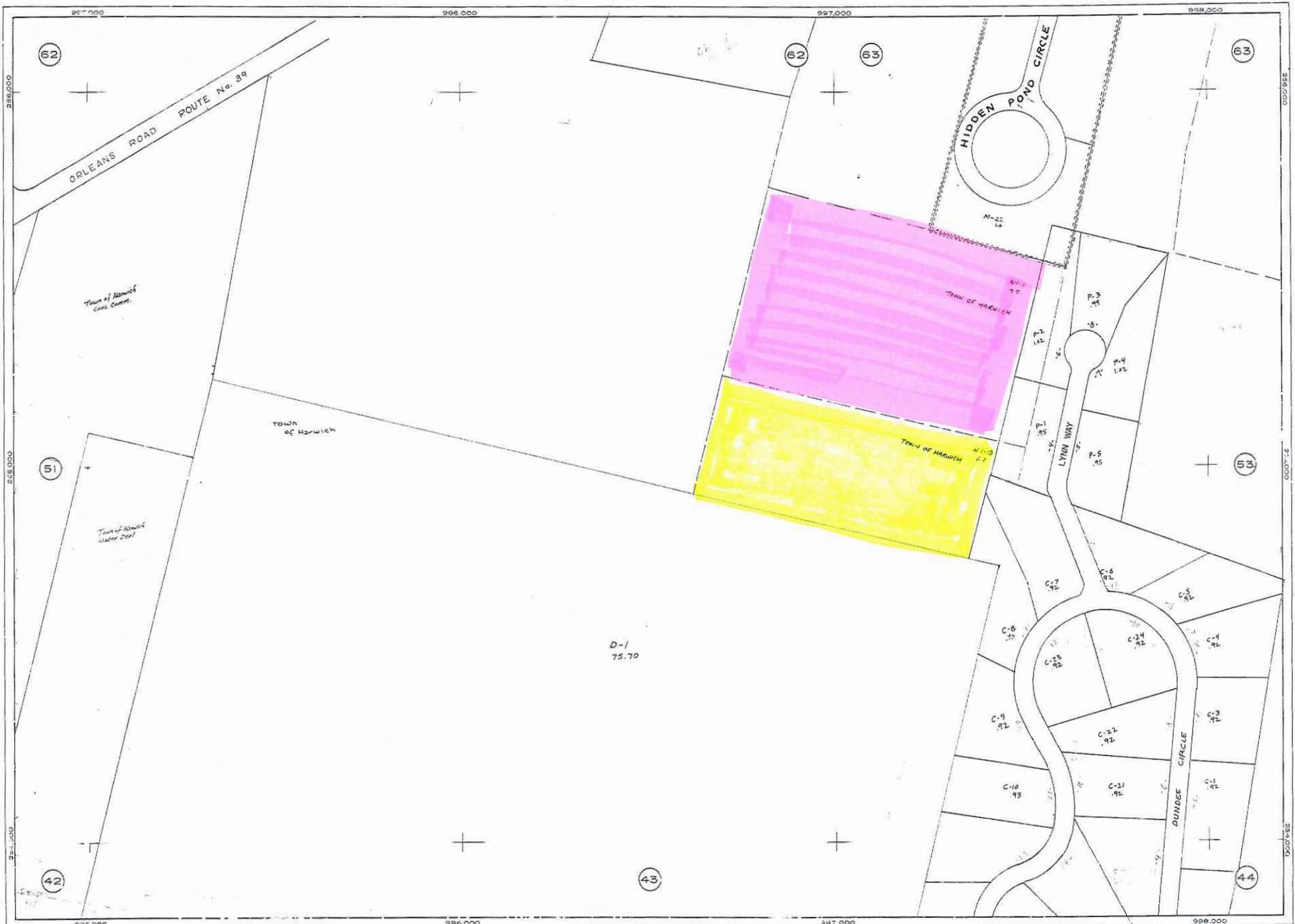
CD	T	AC/SF/UN	Ngh	Infl1	Infl2	ADJ BASE	SAF	Topo	Lpf	VC	CREDIT AMT	ADJ VALUE
300	A	9.820	6	1.00	1.00	100	1.00	50	0.50	2	1.10	59,410

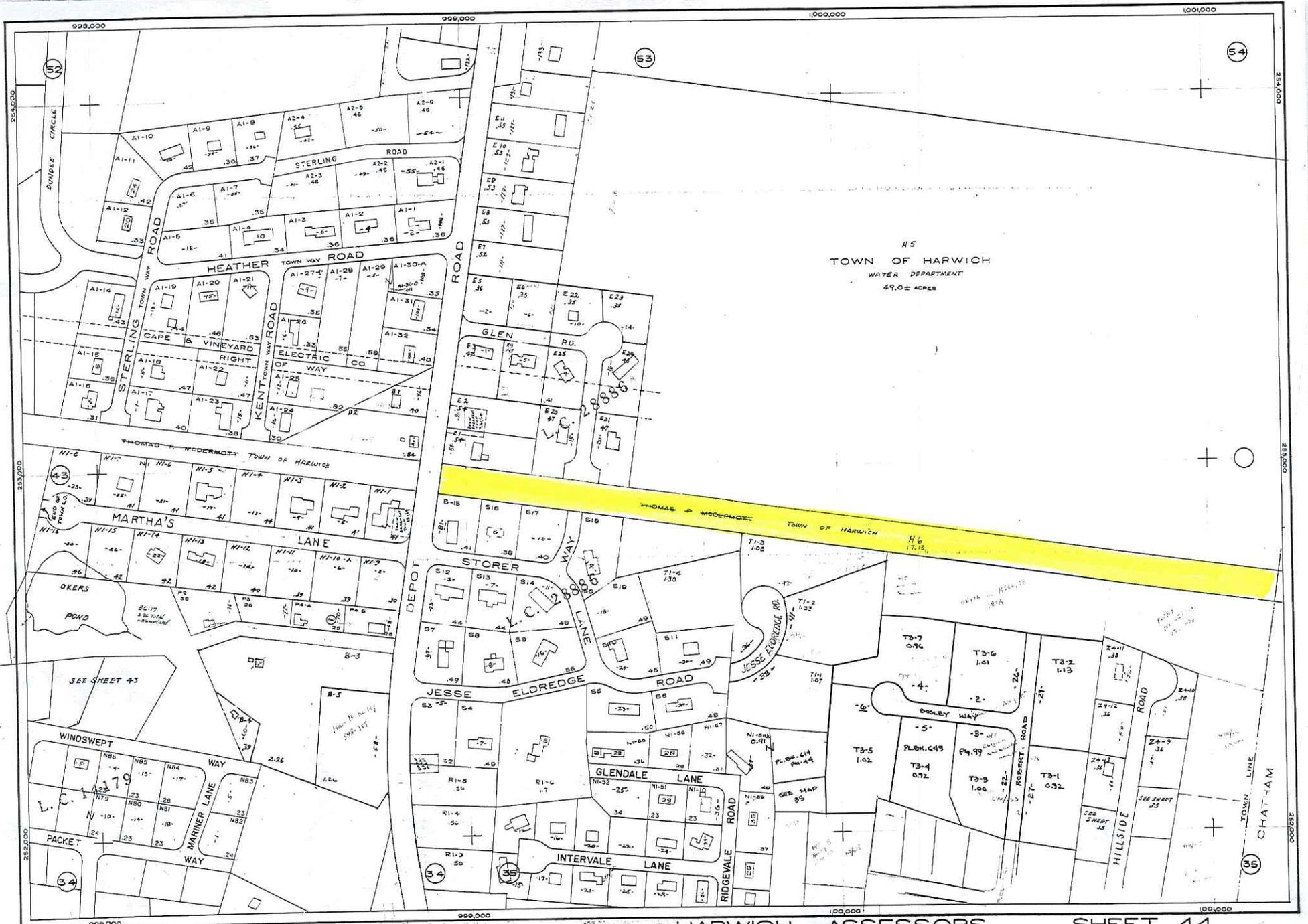
TOTAL	9.820 Acres	ZONING	FRNT	0	ASSESSED	CURRENT	PREVIOUS
Ngh	NGH 6	NOTE	LAND	59,400	58,300		
Infl1	NONE		BUILDING	0	0		
Infl2	FACTOR 100		DETACHED	0	0		
			OTHER	0	0		
TOTAL			TOTAL	59,400	58,300		

TY	QUAL	COND	DIM/NOTE	YB	UNITS	ADJ PRICE	RCNLD	PHOTO

BUILDING	CD	ADJ	DESC	MEASURE
MODEL				
STYLE				
QUALITY				
FRAME				
				LIST
				REVIEW

YEAR BLT	NET AREA	SNLA(RCN)	SIZE ADJ	DETAIL ADJ	OVERALL	ELEMENT	CD	DESCRIPTION	ADJ	S	BAT	T	DESCRIPTION	UNITS	YB	ADJ PRICE	RCN	TOTAL RCN	CONDITION ELEM	CD	
CAPACITY		UNITS	ADJ																		
EFF.YR/AGE																					
COND	FUNC	ECON	DEPR	% GD																	
RCNLD																					



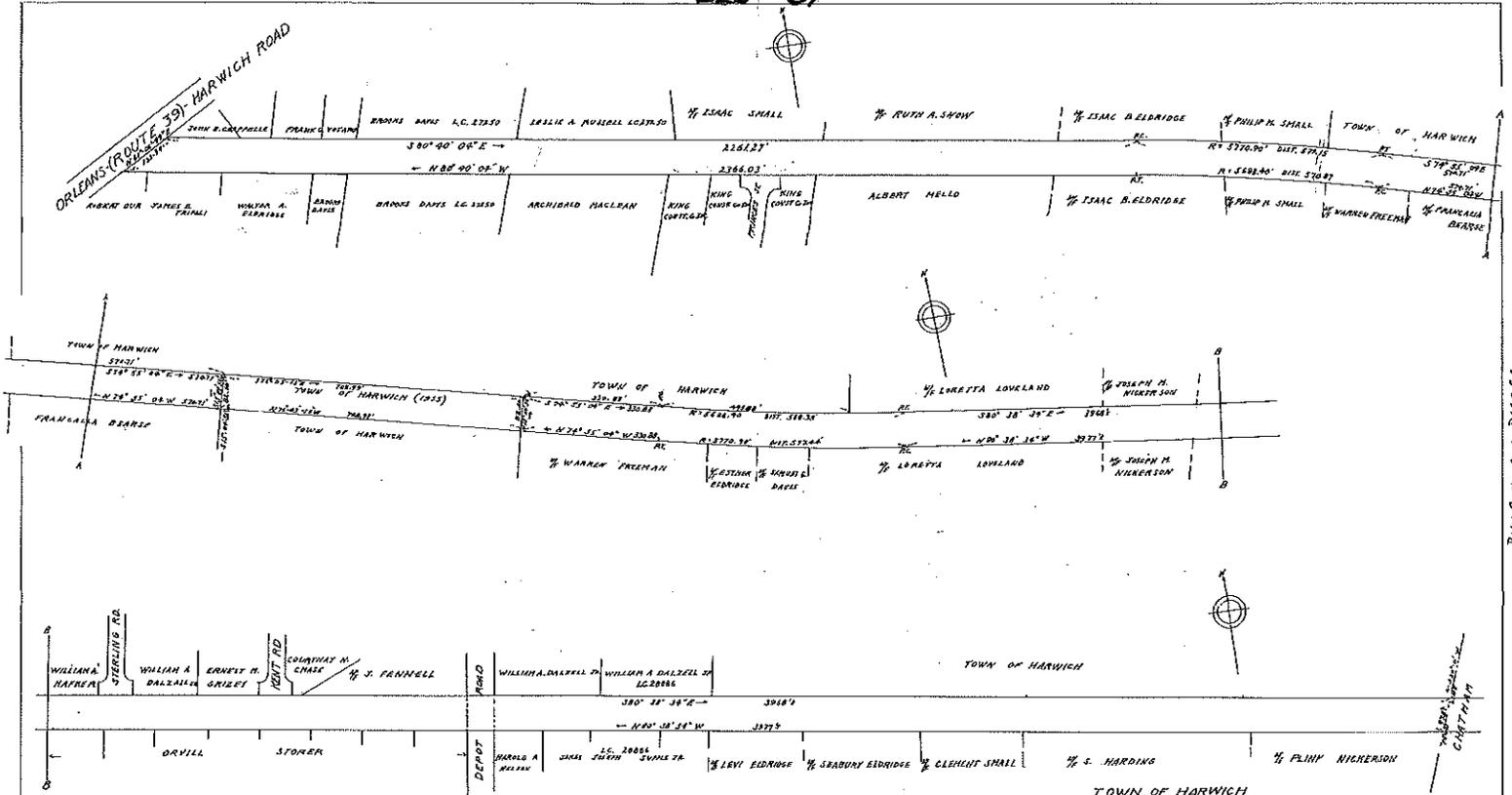


H.5  
 TOWN OF HARWICH  
 WATER DEPARTMENT  
 49.0± ACRES

THOMAS P. MOOREHEAD TOWN OF HARWICH

H.6  
 17.15

ORLEANS (ROUTE 39) HARWICH ROAD



TOWN OF HARWICH  
 PLAN SHOWING  
 LAND CONTAINED WITHIN THE LAYOUT OF THE FORMER  
 CHATHAM BRANCH OF THE OLD COLONY RAILROAD

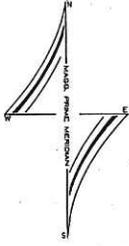
DESIGNED BY LAWRENCE TOWN ENGINEER - JUNE 1, 1908  
 MAY 1918



RECORDED  
 8-31-21

# TOWN OF HARWICH EAST HARWICH WELL FIELD

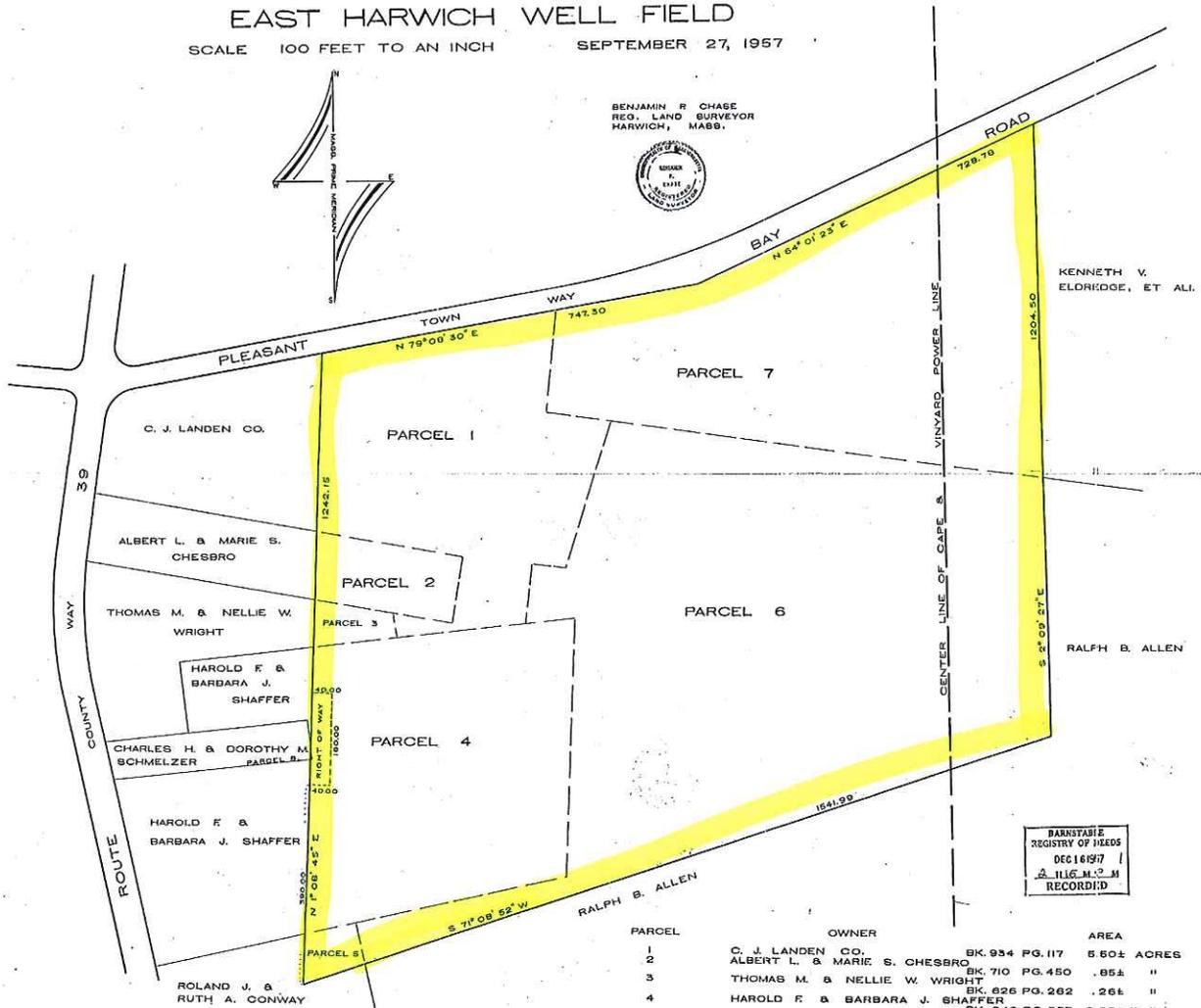
SCALE 100 FEET TO AN INCH SEPTEMBER 27, 1957



BENJAMIN R. CHASE  
REG. LAND SURVEYOR  
HARWICH, MASS.



139-15



BARNSHAW'S  
REGISTRY OF DEEDS  
DEC 16 1957  
A. H. G. M. 2  
RECORDED

PARCEL	OWNER	AREA
1	C. J. LANDEN CO.	BK. 934 PG. 117 5.50± ACRES
2	ALBERT L. & MARIE S. CHESBRO	BK. 710 PG. 450 .85± "
3	THOMAS M. & NELLIE W. WRIGHT	BK. 826 PG. 262 .26± "
4	HAROLD F. & BARBARA J. SHAFFER	BK. 949 PG. 337 6.28± "
5	ROLAND J. & RUTH A. CONWAY	BK. 916 PG. 333 .24± "
6	RALPH B. ALLEN	BK. 904 PG. 346 16.39± "
7	KENNETH V. ELDRIDGE, ET AL. (PROBATE), L. V. ELDRIDGE	9.34± "
8	CHARLES H. & DOROTHY M. SCHMELZER	BK. 903 PG. 289 30± SQ. FT.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1  
5 POST OFFICE SQUARE, SUITE 100  
BOSTON, MA 02109-3912

The Honorable Charlie D. Baker  
Massachusetts State House  
Office of the Governor  
Room 280  
Boston, MA 02133

**SEP 15 2015**

OFFICE OF THE  
REGIONAL ADMINISTRATOR

Re: Approval of Cape Cod Water Quality Management Plan Update and  
Acceptance of Waste Management Agencies

Dear Governor Baker:

On June 12, 2015, the Commonwealth of Massachusetts (the "Commonwealth") submitted a letter to EPA Region 1: (1) certifying that the Cape Cod Water Quality Management Plan Update ("Plan Update") is consistent with all other parts of the Commonwealth's Water Quality Management Plan, in accordance with Clean Water Act § 208(b)(3) and 40 C.F.R. § 130.6(e) (the "Certification"), and (2) reaffirming the existing designations of the Cape Cod Towns<sup>1</sup> as waste management agencies for the Plan Update, in accordance with CWA § 208(c)(1) (the "Designations"). See Attachment 1 (Letter from Governor Charlie D. Baker to Curt Spalding, Regional Administrator, dated June 10, 2015, re: Cape Cod Water Quality Management Plan Update). The Certification and Designations followed submission of the Plan Update by the Cape Cod Commission (the "Commission") to the Massachusetts Department of Environmental Protection ("MassDEP") on March 16, 2015. Upon review, and based on the administrative record, I approve the Certification pursuant to my authority under CWA § 208(b)(3) and 40 C.F.R. § 130.6(e), and accept the Designations under CWA § 208(c)(2).

Without significant actions to reduce nitrogen pollution, Cape Cod's embayments will continue to degrade, and we will lose the recreational, aesthetic and economic value of waters that have for so long been the focal point of life on the Cape. All levels of government—federal, state, county, municipal—as well as other stakeholders, from the business community to the Cape's residents and its visitors, must act to ensure that we never reach this point. I am acutely aware of the complexities inherent in fashioning a solution to the Cape's nitrogen pollution problem, particularly coordinating pollution abatement activities among multiple Towns and ensuring the ultimate approach is effective on a regional basis. The Plan Update does not ignore these complexities, but instead embraces them, detailing a process for forging comprehensive watershed-based solutions while balancing individual Town interests. It provides the Cape Cod Towns, as designated waste management agencies, with a shared, systematic framework to address the challenge, which is a departure from more fragmented approaches that have been pursued historically. Still, in reaching their objectives, the Towns will be provided with a reasonable opportunity to innovate and to finely tune pollution abatement measures to fit local environmental, political and economic circumstances.

---

<sup>1</sup> The "Cape Cod Towns" means the Massachusetts towns of Falmouth, Sandwich Bourne, Mashpee, Barnstable, Brewster, Harwich, Chatham, Orleans, Eastham, Wellfleet, Truro, Dennis, Yarmouth and Provincetown.

Given the scope of the Cape's nitrogen problem, and the environmental public policy complexities associated with solving it, I find the approach adopted by the Commonwealth in the Plan Update to be reasonable and appropriate.

By voluntarily opting to update the existing Section 208 Cape Cod Water Quality Management Plan, which was originally approved in 1978, the Commonwealth has demonstrated its commitment to facilitate, support, and participate in a regionally-based solution to the Cape's nitrogen pollution problem. The Commonwealth specifically directed an update "to facilitate a regional approach" to nitrogen pollution problems on Cape Cod. *See* Attachment 2 (Letter from Ken Kimmel, Commissioner, MassDEP, to Paul Niedzwiecki, Cape Cod Commission, dated January 30, 2013). Further, in directing the Plan Update be prepared, the Commonwealth specifically identified funding and implementation as topics that should be addressed. In its Certification, the Commonwealth expressly reaffirmed this commitment, stating, "MassDEP is committed to developing a watershed-based permitting program to address nitrogen management measures in accordance with the Massachusetts Legislature's directive of Chapter 259 of the Acts of 2014, Section 2A, item 2200-0135."<sup>2</sup> *See* Attachment 1. MassDEP has already commenced work on developing this program. *See* Attachment 3 (Letter Report, dated April 22, 2015, re Massachusetts Department of Environmental Protection's Report to the Joint Committee on Environment, Natural Resources and Agriculture on Statutory Changes Necessary to Implement a Watershed Permitting Approach). The Letter Report, at p. 2, concluded:

"The Department reports that it has identified adequate authority to establish such a new watershed-based permitting program under existing Massachusetts Clean Waters Act and that it does not anticipate a need for any statutory changes at this time to fully implement a watershed-based permitting approach for Cape Cod."

Furthermore, at EPA's request, MassDEP has detailed the measures it could take to ensure timely implementation of the Plan Update, including the timeframe envisioned for taking such actions. *See* Attachment 4 (Letter from Gary Moran, Deputy Commissioner, MassDEP, to Deborah Szaro, Deputy Regional Administrator, EPA Region 1, dated August 14, 2015, re: Section 208 Cape Cod Areawide Water Quality Management Plan Update). In approving the Certification and accepting the Designations, I have taken note of the Legislature's directive to MassDEP to develop a watershed permitting program, as well as the Commonwealth's representations regarding the creation of any additional authorities beyond those already possessed by the Cape Cod Towns to implement necessary nitrogen controls, as well as the commitment to take other appropriate actions, in the event they are found to be necessary as the complex process of implementation unfolds.<sup>3</sup>

In coming to my decision, I have also considered the ongoing role that will be played by the Cape Cod Commission during the implementation phase.

---

<sup>2</sup> In Chapter 259 of the Acts of 2014, Section 2A, item 2200-0135, the Massachusetts Legislature requires that "[MassDEP] shall develop a watershed permitting approach to address and optimize nitrogen management measures intended to restore water quality to meet applicable water quality standards in watersheds included in an approached area wide nitrogen management plan developed pursuant to 208 of the federal Clean Water Act[.]"

<sup>3</sup> The Commonwealth has in addition committed \$250,000 dollars toward monitoring and pilot nutrient reduction projects on Cape Cod, which I regard as further evidence of the Commonwealth's commitment to implementation.

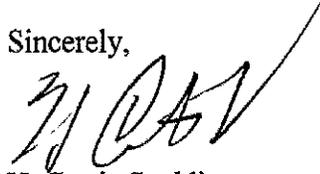
The Commission is available to help the Towns coordinate planning, monitoring and implementation, and will assist with the creation of intermunicipal agreements, as appropriate, in order to facilitate a regionally effective solution to the Cape's nitrogen problem. This process of planning and implementation is already underway, as described in Chapter 8 of the Plan Update. Upon certification of the Section 208 Plan Update by the Governor, the Cape Cod Towns have 12 months to develop "watershed reports" that outline potential scenarios for each of the watersheds for which they are responsible. The Commission has offered to assist the Towns with the development of watershed reports and creation of Watershed Teams, and can help with nutrient reduction scenario development, watershed agreements, permitting of technologies, monitoring and financing. Towns that use a Watershed Team will receive the benefit of an expedited regulatory review by the Commission based on its consistency with the Plan Update, and access to new funding sources available for implementation. If Towns do not complete a watershed report or request a team, the Commission will complete an interim report for the area, and will require those Towns to submit their plans to the Commission for a 208 Plan Update consistency review as part of the Commission's development review process. The Commission will issue an implementation report in June 2016 describing the actions of waste management agencies to date. The role the Commission will play during the implementation phase is described in greater detail in Attachment 5 (Letter from Paul Niedzwiecki, Cape Cod Commission, to Ken Moraff, EPA Region 1, dated August 25, 2015, re Cape Cod Water Quality Management Plan Update), the representations in which I specifically considered in approving the Plan Update and accepting the Designations.

Supplementing the foregoing, the Region will assess at reasonable intervals the actions being taken by the Commonwealth and Towns to implement the procedures and actions called for in the Plan Update to reduce nitrogen loads for a period of six years beyond the date of the Region's acceptance of the Cape Cod Towns as wastewater management agencies designated under CWA § 208(c)(2). Based on such assessments, and in the Region's sole discretion, the Region may notify the Commonwealth of additional actions to implement the approved Section 208 plan/update, or that a new update of the Section 208 Plan is needed (and resubmission to the Region of one or more designated Management Agencies for EPA acceptance). The Commonwealth, Commission and Cape Cod Towns should be aware that EPA specifically intends to track plan implementation utilizing the recommended milestones set forth in the Commission's August 25 letter. See Attachment 5 at pp. 8-9. EPA committed to assess implementation in the Settlement Agreement, filed November 17, 2014, in United States District Court for the District of Massachusetts, in connection with *Conservation Law Foundation v. United States Environmental Protection Agency, et al.*, Action No. 1:13-12704, and *Conservation Law Foundation, et al. v. United States Environmental Protection Agency, et al.*, Action No. 1:11-cv-11657. To carry out the assessment, the Region will in part rely on quarterly progress reports commencing January 15, 2016 by the Commission and MassDEP, which may be submitted jointly or separately. The Region has also agreed to participate in semi-annual meetings and a Technologies Summit on the Cape to be convened by the Commission to evaluate implementation progress.

The Region expects close contact and cooperation with the Commonwealth, the Commission, Barnstable County, the Cape Cod Towns and other stakeholders as the process of implementing the Plan Update progresses through its initial stages.

Please do not hesitate to contact Johanna Hunter of EPA's Office of Ecosystem Protection at (617) 918-1041 or Samir Bukhari of the Office of Regional Counsel at (617) 918-1095 if you should have any questions regarding this letter.

Sincerely,



H. Curtis Spalding  
Regional Administrator

cc:

Senator Ed Markey, Member of United States Senate  
Senator Elizabeth Warren, Member of United States Senate  
Mr. Bill Keating, United States House of Representatives  
Secretary Matthew A. Beaton, Executive Office of Energy and Environmental Affairs  
Commissioner Martin Suuberg, Massachusetts Department of Environmental Protection  
Deputy Commissioner Gary Moran, Massachusetts Department of Environmental Protection  
Ms. Mary Pat Flynn, Commissioner of Barnstable County  
Ms. Sheila Lyons, Commissioner of Barnstable County  
Mr. Leo Cakounes, Commissioner of Barnstable County  
Mr. Paul Niedzwiecki, Executive Director of Cape Cod Commission  
Mr. Tom Lynch, Town Manager of Barnstable  
Ms. Jessica Rapp Grasseti, President of Town Council, Town of Barnstable  
Mr. Tom Guerino, Town Administrator of Bourne  
Mr. Stephen Mealy, Chairman of Board of Selectmen, Town of Bourne  
Mr. Charles Sumner, Town Administrator of Brewster  
Mr. Ben deRuyter, Chairman of Board of Selectmen, Town of Brewster  
Ms. Jill Goldsmith, Town Manager of Chatham  
Mr. Jeffrey Dykens, Chairman of Board of Selectmen, Town of Chatham  
Mr. Richard White, Town Administrator of Dennis  
Mr. Paul McCormick, Chairman of Board of Selectmen, Town of Dennis  
Ms. Sheila Vanderhoef, Town Administrator of Eastham  
Ms. Elizabeth Gawron, Chairman of Board of Selectmen, Town of Eastham  
Mr. Julian Suso, Town Manager of Falmouth  
Mr. Doug Jones, Chairman of Board of Selectmen, Town of Falmouth  
Mr. Christopher Clark, Town Administrator of Harwich  
Mr. Peter Hughes, Chairman of Board of Selectmen, Town of Harwich  
Mr. Rodney Collins, Town Manager of Mashpee  
Mr. John Cahalane, Chairman of Board of Selectmen, Town of Mashpee  
Mr. John Kelly, Town Administrator of Orleans  
Mr. David Dunford, Chairman of Board of Selectmen, Town of Orleans  
Mr. David Panogore, Town Manager of Provincetown  
Mr. Thomas Donegan, Chairman of Board of Selectmen, Town of Provincetown  
Mr. George Dunham, Town Manager of Sandwich

Mr. Frank Pannorfi, Chairman of Board of Selectmen, Town of Sandwich  
Ms. Rae Ann Palmer, Town Administrator of Truro  
Mr. Paul Wisotzky, Chairman of Board of Selectmen, Town of Truro  
Mr. Harry Terkanian, Town Administrator of Wellfleet  
Mr. Paul Pilcher, Chairman of Board of Selectmen, Town of Wellfleet  
Mr. William Hinchey, Town Administrator of Yarmouth  
Mr. Erik Tolley, Chairman of Board of Selectmen, Town of Yarmouth  
Mr. Andrew Gottlieb, Executive Director of Cape Cod Water Protection Collaborative  
Mr. Christopher Kilian, Vice President and Director of Conservation Law Foundation Vermont  
Ms. Caitlin Peale Sloan, Staff Attorney of Conservation Law Foundation Massachusetts



OFFICE OF THE GOVERNOR  
**COMMONWEALTH OF MASSACHUSETTS**  
STATE HOUSE • BOSTON, MA 02133  
(617) 725-4000

**CHARLES D. BAKER**  
GOVERNOR

**KARYN E. POLITO**  
LIEUTENANT GOVERNOR

June 10, 2015

Curt Spalding, Regional Administrator  
USEPA Region I - New England  
5 Post Office Square  
Mail Code: ORA01-4  
Boston, MA 02109-3912

Re: Section 208 Cape Cod Areawide Water Quality Management Plan Update

Dear Administrator Spalding:

I am writing to submit for approval the Cape Cod Area Wide Water Quality Management Plan Update ("Plan Update") developed by the Cape Cod Commission ("CCC"). CCC submitted the Plan Update to the Massachusetts Department of Environmental Protection ("MassDEP") for review on March 16, 2015. The Plan Update builds upon the 1978 Water Quality Management ("WQM") Plan prepared by the Cape Cod Planning and Economic Development Commission, predecessor to the CCC.

Based on MassDEP's review, I hereby certify the Plan Update pursuant to § 208(b)(3) of the Federal Clean Water Act, 33 U.S.C. § 1288(b)(3), and 40 C.F.R. § 130.6(e). My certification is subject to the following:

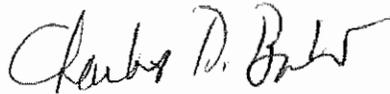
1. The Plan Update includes a number of recommendations, some of which call for legislative action, some of which call for action by other agencies and entities outside of the purview of the MassDEP, and some of which call for actions by the MassDEP, including changes to MassDEP rules and regulations. MassDEP is committed to developing a watershed-based permitting program to address nitrogen management measures in accordance with the Massachusetts Legislature's directive in Chapter 259 of the Acts of 2014, Section 2A, item 2200-0135. However, this certification of the Plan Update should not be construed as necessarily approving or endorsing every aspect of the Plan Update or any specific recommendation therein.
2. This correspondence also affirms that the local communities identified as the designated management agencies ("DMAs") under the 1978 WQM Plan will continue as the DMAs

## ATTACHMENT 1

for purposes of the Plan Update. My certification of the Plan Update should not be construed as waiving or otherwise affecting the Governor's right to de-designate any DMA or to designate any additional DMAs, as warranted, or otherwise affecting the rights of any DMA or other entity in this regard.

For additional information, please contact Martin Suuberg, Commissioner of the Department, at (617) 292-5856.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles D. Baker". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Charles D. Baker  
Governor

## ATTACHMENT 2



Commonwealth of Massachusetts  
Executive Office of Energy & Environmental Affairs

# Department of Environmental Protection

One Winter Street Boston, MA 02108 • 617-292-5500

DEVAL L. PATRICK  
Governor

TIMOTHY P. MURRAY  
Lieutenant Governor

RICHARD K. SULLIVAN JR.  
Secretary

KENNETH L. KIMMELL  
Commissioner

January 30, 2013

Paul Niedzwicki  
Executive Director  
Cape Cod Commission  
3225 Main Street  
Barnstable, MA 02630

Dear Mr. Niedzwicki:

On behalf of Governor Patrick and Secretary Rick Sullivan of the Executive Office of Energy and Environmental Affairs, I am writing to direct the Cape Cod Commission to prepare an update to the 1978 Water Quality Management Plan for Cape Cod to address a critical problem—the degradation of Cape Cod’s water resources from excessive nutrients. This directive accompanies the Commonwealth’s commitment to provide the Cape Cod Commission with \$3,350,000 from the Water Pollution Abatement Trust to fund this update.

As you are well aware, nutrient contamination is one of the the most pressing environmental challenges facing Cape Cod. Increased population and development in those areas surrounding Cape Cod’s estuaries have resulted in excessive amounts of nutrients being discharged into these sensitive resources, causing eutrophication and prompting the accelerated growth of nuisance plants, weeds and algae, using up much of the oxygen in the water. This forces out finfish, shellfish, and indigenous plant species. The result - water bodies that violate state water quality standards, are visually displeasing, smell bad, and cannot support the natural uses that the estuaries have historically offered. This is not only an environmental problem—if left unchecked, it is likely to harm the Cape’s economy through a decline in fishing, shellfishing, tourism, and property values.

The primary water quality problem on Cape Cod stems from nitrogen contamination. Nitrogen from septic systems, wastewater treatment plants, lawns and stormwater leaches into groundwater and flows underground and is discharged to surface water bodies. While nitrogen comes from a variety of sources, on Cape Cod the predominant sources are on-site septic systems. Approximately 85 percent of the wastewater flow into Cape Cod’s embayments comes from on-site septic systems.

This information is available in alternate format. Call Michelle Waters-Ekanem, Diversity Director, at 617-292-5751. TDD# 1-866-539-7622 or 1-617-574-6868  
MassDEP Website: [www.mass.gov/dep](http://www.mass.gov/dep)

Printed on Recycled Paper

## ATTACHMENT 2

Over the past decade, the Massachusetts Department of Environmental Protection (MassDEP) has been working closely with Cape Cod communities and the University of Massachusetts, through the Massachusetts Estuaries Project, to provide communities with the scientific studies they need to effectively address the specific water quality issues impacting each estuary. These studies clearly demonstrate the need to take action now. Based on the analyses performed to date, we estimate that more than 90 percent of the Cape's estuaries do not meet water quality standards.

It has become equally clear that the most effective and affordable approach to this problem is a regional effort. Nitrogen-loading is a Cape-wide problem, with estuaries and watersheds often crossing municipal boundaries. A regional approach to these problems will:

- Facilitate a more holistic, watershed-based approach to addressing nitrogen impacts;
- Limit the amount of infrastructure needed by sharing of wastewater facilities targeted towards areas of greatest need;
- Allow greater opportunity for solutions involving decentralized and innovative approaches, and continued use of conventional septic systems where appropriate; and
- Achieve greatest economies of scale, and spread costs over the largest number of users.

To most effectively facilitate a regional approach, MassDEP is directing the Cape Cod Commission, as the successor agency to the Cape Cod Planning and Economic Development Commission ("CCPEDC"), to prepare an update to the 1978 Water Quality Management Plan for Cape Cod.

Section 208 of the federal Clean Water Act authorizes State Governors to identify areas that have substantial water quality control issues and designate a planning entity to develop effective water quality management plans. Before a State Governor may forward such a plan to EPA for approval, § 208 also requires the Governor to designate suitable management agencies to implement the plan, based upon the plan's recommendations. The intent of this process is to generate a unified framework for activities to abate water pollution in a geographic area and integrate technical needs for pollution control with management arrangements capable of implementing those controls.

In 1975, Governor Dukakis designated the CCPEDC to create a regional water quality management plan for Cape Cod waters. The 1978 Plan, created by CCPEDC, was certified by the Governor and approved by EPA in accordance with § 208. The Plan relies primarily on designating existing local authorities for implementation and identified the need for further investigation into the possibility of strengthening the regional role in areas under the authority of the towns.

Since 1978, extensive scientific study has demonstrated that nutrient pollution on Cape Cod, especially nitrogen pollution, has become a far more serious problem, giving rise for the need to develop new cost-effective and environmentally sound approaches to managing water quality in

## ATTACHMENT 2

the region. The updated plan should include a comprehensive analysis of the factors contributing to water quality degradation, but prioritize management of controllable nutrients due to the current conditions in the region. The updated plan should:

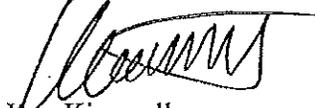
- Prioritize water resources, identifying the most impaired or endangered, and the actions to achieve water quality goals as quickly as possible;
- Limit the amount of infrastructure needed by prioritizing those areas requiring “shared” systems to restore water quality;
- Provide an opportunity to more fully evaluate decentralized and innovative approaches, as well as the continued use of conventional septic systems, where appropriate;
- Identify preferred solutions for nutrient management in nitrogen sensitive watersheds;
- Achieve greatest economies of scale, and identify methods to equitably share costs among all parties benefitting from the improvements;
- Feature a robust public participation process, including a facilitated outreach effort, watershed level advisory committees, and extensive public input opportunities to fully consider all views and input, and to build consensus for identified solutions;
- Identify ways in which solving the wastewater problem could also address other challenges facing the Cape. As one example, the updated plan should explore the use of anaerobic digesters at new or existing wastewater treatment plants to generate low-cost, renewable energy and help the Cape address organic waste disposal challenges; and
- Identify funding and implementation mechanisms.

The development of the updated regional plan is a substantial undertaking that will require significant resources. The Executive Office of Energy and the Environmental Affairs and MassDEP are committed to working with the Cape Cod Commission as it undertakes this critical task. We are pleased that the Massachusetts Water Pollution Abatement Trust voted on January 16, 2013, to authorize \$3.35 million to support the development of the updated regional plan and related efforts subject to the signing of a Memorandum of Understanding regarding the scope of services, corresponding project plan and budget, and disbursement of funds. MassDEP will play a significant role in development of the plan, providing input, specific requirements, and general oversight. We look forward to meeting with you in the near future to discuss the plan scope and contract in more detail.

On behalf of the Patrick-Murray Administration, I want to commend Barnstable County, the Cape Cod Commission, the Cape Cod Water Protection Collaborative, and the Cape Cod legislative delegation for your efforts to assist Cape communities in addressing these issues on a regional, watershed basis. We are pleased that the Commonwealth is able to provide additional resources to support your efforts. We look forward to continuing to work with you, Cape elected officials, communities, stakeholders, and residents in this critical effort to develop a plan that will restore and protect Cape Cod’s water resources in an acceptable phased approach that integrates affordability, appropriate infrastructure and growth management.

## ATTACHMENT 2

Sincerely,

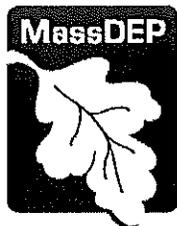


Ken Kimmell  
Commissioner

Cc: Senate President Therese Murray

Treasurer Grossman  
Scott Jordan  
Senator Wolf  
Representative Peake  
Representative Madden  
Representative Turner  
Representative Vieira  
Representative Hunt  
Representative Mannal  
Secretary Sullivan  
Andrew Gottlieb  
Mary Flynn  
Sheila Lyons  
Bill Doherty  
Curt Spalding

## ATTACHMENT 3



Commonwealth of Massachusetts  
Executive Office of Energy & Environmental Affairs

# Department of Environmental Protection

One Winter Street Boston, MA 02108 • 617-292-5500

Charles D. Baker  
Governor

Karyn E. Polito  
Lieutenant Governor

Matthew A. Beaton  
Secretary

Martin Suuberg  
Commissioner

April 22, 2015

Anne M. Gobi, Chairwoman  
Joint Committee on Environment, Natural Resources and Agriculture  
State House, Room 513  
Boston, MA 02133

Paul A. Schmid, III, Chairman  
Joint Committee on Environment, Natural Resources and Agriculture  
State House, Room 473F  
Boston, MA 02133

Re: Massachusetts Department of Environmental Protection's Report to the Joint Committee on Environment, Natural Resources and Agriculture on Statutory Changes Necessary to Implement a Watershed Permitting Approach

Dear Chairwoman Gobi, Chairman Schmid and Honorable Members of the Committee:

In Chapter 259 of the Acts of 2014, Section 2A, in item 2200-0135, the Massachusetts Legislature requires that "the department shall develop a watershed permitting approach to address and optimize nitrogen management measures intended to restore water quality to meet applicable water quality standards in watersheds included in an approved area wide nitrogen management plan developed pursuant to section 208 of the federal Clean Water Act; and provided further, that the department shall report to the joint committee on environment, natural resources and agriculture by March 31, 2015 on any statutory changes it deems necessary to fully implement said watershed permitting approach." I am submitting this letter in response to the Legislature's directive.

As you are aware, in mid-March, the Cape Cod Commission submitted its Section 208 Water Quality Management Plan Update to MassDEP. The submittal followed a public review and comment period that included public hearings in each region of the Cape last September and October. Recently, the Cape Cod Commission hosted the One Cape Forum, a conference attended by over 300 people, including the majority of elected officials on the Cape, focusing on how to effectively implement the final plan. MassDEP is now reviewing the Update.

This information is available in alternate format. Call Michelle Waters-Ekanem, Diversity Director, at 617-292-5751. TTY# MassRelay Service 1-800-439-2370  
MassDEP Website: [www.mass.gov/dep](http://www.mass.gov/dep)

Printed on Recycled Paper

## ATTACHMENT 3

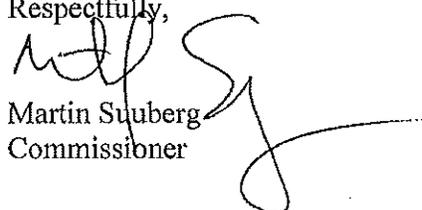
The Department is in the process of developing a new watershed-based permitting approach to address and optimize nitrogen management measures intended to restore water quality on Cape Cod. This is an approach that, in recent years, many communities have been asking be offered as an option. This new permitting mechanism will facilitate the comprehensive and innovative wastewater solutions envisioned in the 208 plan. These permits will:

- Allow communities increased opportunity to employ a greater range of solutions to address their water quality needs, including not only traditional centralized wastewater systems, but also alternative approaches, such as green infrastructure, aquaculture, inlet widening, or permeable reactive barriers.
- Allow communities to consider and employ long-term remedial strategies. Rather than the traditional 5-year permit covering discharge points and limits, the watershed permit will cover up to 20-year periods, incorporating a range of traditional and non-traditional strategies.
- Apply an adaptive management approach, acknowledging the uncertainties that may be associated with some projects, carefully monitoring performance and assessing progress in a transparent fashion---and, if necessary, making changes in the approach or recalibrating plans and projects to achieve water quality goals in a timely manner.

The Department reports that it has identified adequate authority to establish such a new watershed-based permitting program under the existing Massachusetts Clean Waters Act and that it does not anticipate a need for any statutory changes at this time to fully implement a watershed-based permitting approach for Cape Cod. I appreciate the opportunity to update you on our progress and welcome any suggestions, questions, or additional conversation as we proceed.

If you have any further questions regarding this matter, please contact Gary Moran, Deputy Commissioner, at (617) 292-5775.

Respectfully,

  
Martin Suuberg  
Commissioner

## ATTACHMENT 4



Commonwealth of Massachusetts  
Executive Office of Energy & Environmental Affairs

# Department of Environmental Protection

One Winter Street Boston, MA 02108 • 617-292-5500

Charles D. Baker  
Governor

Karyn E. Polito  
Lieutenant Governor

Matthew A. Beaton  
Secretary

Martin Suuberg  
Commissioner

August 14, 2015

Deborah Szaro, Deputy Regional Administrator  
US EPA Region 1  
5 Post Office Square  
**Mail Code:** ORA01-4  
Boston, MA 02109-3912

Re: Section 208 Cape Cod Areawide Water Quality Management Plan Update

Dear Deputy Regional Administrator Szaro:

I am writing in response to your letter of July 20, 2015 regarding the Massachusetts Department of Environmental Protection's ("MassDEP") efforts related to the update to the Cape Cod Section 208 Areawide Waste Treatment Management Plan (Plan Update). In your letter you ask us to provide: (i) information concerning the identity of potential designated management agencies ("DMAs") and the timing of designation; (ii) information concerning the measures MassDEP could take to ensure timely implementation of the final 208 Plan Update, and the timeline MassDEP envisions for taking such measures; and (iii) information concerning how MassDEP intends to address the nitrogen problem on Cape Cod on a watershed basis.

Over the past decade, MassDEP has been diligently working with the Cape Cod Commission ("Commission") and the University of Massachusetts at Dartmouth ("UMass Dartmouth") on the Massachusetts Estuaries Project ("MEP") in order to provide the scientific studies communities need to effectively address the specific water quality issues impacting Cape Cod's estuaries. Over \$6.9 million in state funds and \$4 million in matching funds from Cape Cod communities and UMass Dartmouth have been expended on this effort. Based on the MEP studies conducted to date, it has become increasingly clear to MassDEP that the most effective and affordable approach to solving Cape Cod's water quality problem is through a regional, watershed-based management approach.

## ATTACHMENT 4

To facilitate such an approach, in 2013 MassDEP directed the Commission to prepare an update to the 1978 Water Quality Management (WQM) Plan for Cape Cod in accordance with §208 of the Federal Clean Water Act (“CWA” or the “Act”). The Plan Update was submitted to MassDEP on March 16, 2015 after an extensive public participation process that included numerous public meetings across the Cape and input from hundreds of residents, community officials and stakeholders. As expected, the Plan reflects a watershed-based approach, as watersheds, not town boundaries, define the scope of the problem and possible solutions. On June 10, 2015, Governor Charles D. Baker certified the Plan Update pursuant to § 208(b)(3) of the Federal Clean Water Act and submitted the plan to EPA. The Plan Update examines the causes of water quality issues on Cape Cod and provides options for communities to consider, including new planning tools to use in making local decisions about potential solutions. The Plan Update also offers greater flexibility and discusses financing and funding options to help implement those solutions. In addition, it offers details on the following:

- Opportunities for communities to share systems to reduce costs;
- Analysis and planning tools, such as GIS mapping, to further understand if alternatives to large sewer systems and sewage treatment plants can work in certain locations and circumstances;
- The potential use of enhanced septic technologies; and
- Natural solutions in areas near the water’s edge, such as the creation of wetlands, to help absorb nitrogen.

In submitting the Plan Update, Governor Baker also affirmed that the local communities identified as the designated management agencies (“DMAs”) under the 1978 WQM Plan will continue as the DMAs for the purposes of the new Plan Update. These local communities have the requisite legal, institutional, managerial and financial capability to carry out their responsibilities in accordance with section 208(c)(2)(A) through (I) of the Act, including responsibilities:

- to carry out the area wide waste treatment management plan;
- to manage waste treatment works and related facilities;
- to design and construct new works, and to operate and maintain new and existing works as required by the 208 Plan;
- to accept and utilize grants, or other funds from any source, for waste treatment management purposes;
- to raise revenues, including through the assessment of waste treatment charges;
- to incur short- and long-term indebtedness;
- to assure in implementation of the 208 Plan that each participating community pays its proportionate share of treatment costs;
- to refuse to receive any wastes from any municipality or subdivision thereof, which does not comply with any provisions of the 208 Plan; and
- to accept industrial wastes for treatment.

Given the shared nature of the water resources on Cape Cod, collaboration across town boundaries is appropriate and often necessary in order to fulfill the requirements of §208. An examination of the essential requirements of a DMA suggests that one or more town(s) could implement watershed-based solutions utilizing existing inter-municipal collaboration tools to

## ATTACHMENT 4

carry out the final 208 Plan Update. Doing so would keep the process of decision making local, a goal MassDEP understands is shared by communities across Cape Cod. To assist communities in developing the management programs to address shared watersheds, the Plan Update includes a breakdown of subembayment and nitrogen reduction responsibility by town.

Regarding the timing of implementation of the Plan Update, the proposed approach includes a requirement that within 12 months of certification of the Plan Update, DMAs will develop “watershed reports” that outline potential scenarios for each of the watersheds for which they are responsible. In the event that a DMA does not develop a watershed report for a given area, the Cape Cod Commission will issue a report, which will stand as the DMA plan for that watershed unless and until a study is completed by the DMA and an alternative watershed report consistent with the Plan Update is developed by the DMA. MassDEP is supportive of this approach and, continuing our work in close coordination with the Commission, we are prepared to give communities sufficient time to establish their programs consistent with this collaborative framework.

The Baker Administration is also committed to providing resources to assist communities with efforts to implement the Plan Update. We are committed to providing support through loans and other forms of assistance from the Clean Water Trust’s State Revolving Fund. This Fund will be used for planning and construction projects that are consistent with the Plan Update. In addition, a key element of the plan will be the implementation of an effective monitoring program. To assist communities with this effort, Energy and Environmental Affairs Secretary Matt Beaton has committed to supporting the Cape Cod Water Quality Monitoring Initiative, which will involve four years of extensive water testing at stations situated along Cape Cod Bay, Buzzards Bay and Nantucket Sound. A commitment has been made to provide \$250,000 per year allocated over four years by the Executive Office of Energy and Environmental Affairs and will be equally matched by funds appropriated by Barnstable County. In addition, we are committed to continuing to work with the Cape Cod Commission to provide technical assistance to Cape communities as they move forward with planning and implementing solutions.

MassDEP also recognizes that successful implementation of the final 208 Plan Update will depend on the issuance of strong watershed permits – permits that result in the achievement of incremental nitrogen reductions targets over a 20-year permit duration. Under the watershed permit approach, nitrogen loads will be allocated on a watershed by watershed basis. MassDEP is working diligently to devise a watershed permitting program, including new regulations as necessary, to establish an adaptive management approach with performance standards. The watershed permit will identify all technology options considered for the particular watershed as well as each permittee’s specified annual discharge limit. This approach will allow permittees to consider non-traditional treatment alternatives in addition to traditional treatment alternatives, provided that the traditional and non-traditional alternatives are identified in a plan that establishes the conditions for implementation, monitoring for effectiveness and, in the event of any under-performing technologies, any necessary changes in approach needed to achieve water quality goals in a timely manner.

## ATTACHMENT 4

MassDEP believes the 208 Plan Update provides a unique opportunity to empower the Cape communities to develop and implement the most affordable and effective solutions to the water quality problems facing Cape Cod. The Plan Update discusses several existing authorities that are available to MassDEP and could be used if needed moving forward. These include the following:

### **Designation of Nitrogen Sensitive Areas (“NSAs”)**

MassDEP regulates wastewater flows less than 10,000 gallons per day under 310 CMR 15.000 (commonly known as “Title 5”). Title 5 typically covers such uses as conventional on-site septic systems, alternative systems, such as denitrifying systems, as well as composting toilets and other kinds of systems in use on individual properties or cluster developments. MassDEP is authorized by Title 5 to identify certain areas as particularly sensitive to pollution from on-site wastewater systems and, therefore, require the imposition of loading restrictions. MassDEP may consider watersheds to embayments on Cape Cod that exceed their critical load to be “nitrogen sensitive,” and it could proceed to designate, as needed, watersheds as NSAs if needed to support the goals of the 208 Plan.

### **Formation of Water Pollution Abatement Districts (“WPADs”)**

Under M.G.L. c. 21, § 28, MassDEP is authorized to form WPADs consisting of one or more cities or towns, or designated parts, or require the enlargement or consolidation of a district, if necessary “for the prompt and efficient abatement of water pollution.” After formation, the district would be an independent legal entity administered by a “district commission,” and it would be responsible for developing watershed plans, applying for the requisite permits, and constructing and operating the treatment works necessary to meet permitting requirements. The establishment of districts for those watersheds remains a tool available for consideration in the appropriate circumstances. These districts could serve as regional management agencies for purposes of carrying out the 208 Plan Update.

### **Eliminate Title 5 Exemption in Groundwater Discharge Regulations**

Discharges of pollutants to the ground waters of the Commonwealth are regulated through Massachusetts’ Groundwater Discharge Permit Program. Currently, the Groundwater Discharge regulations, at 310 CMR 5.05(1)(a) exempt on-site septic systems that receive less than 10,000 gallons per day provided they are approved, constructed and maintained in accordance with the Title 5 regulations, 310 CMR 15.000. This exemption is based on a presumption that compliant Title 5 systems meet water quality standards. Based on evaluation of Cape Cod’s waterbodies, MassDEP could consider and adopt revisions to Title 5 and groundwater discharge regulations for septic systems in certain areas, where there is sufficient evidence to demonstrate that septic systems are a significant contributor to nonattainment. Septic systems could continue to be presumed to be protective if the town in which the system is located has a MassDEP-approved Comprehensive Water Resources Management Plan and/or is part of a plan deemed consistent with the 208 plan.

## ATTACHMENT 4

In closing, it is important to reinforce that Governor Baker's certification of the 208 Plan Update is a key milestone -- the culmination of over two years of intensive work by the Commission's staff, consultants and 170 stakeholders from across the Cape. It's also a continuation of years of effort to address excessive nitrogen entering Cape Cod embayments, mainly from residential septic systems, through the Massachusetts Estuary Project. While there are certainly many challenges ahead, MassDEP applauds the Commission and citizens and stakeholders of Cape Cod for laying the groundwork through the draft 208 Plan Update for tailoring a management program that will support the Cape's water quality goals, financial interests, and governance style for generations to come.

Sincerely,



Gary Moran  
Deputy Commissioner

# ATTACHMENT 5

3225 MAIN STREET • P.O. BOX 226  
BARNSTABLE, MASSACHUSETTS 02630

---

(508) 362-3828 • Fax (508) 362-3136 • [www.capecodcommission.org](http://www.capecodcommission.org)

CAPE COD  
COMMISSION

August 25, 2015

Ken Moraff, Director, Office of Ecosystem Protection  
United States Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Boston, MA 02109

Re: Section 208 Cape Cod Areawide Water Quality Management Plan Update

Dear Mr. Moraff,

In 2013 the Massachusetts Department of Environmental Protection (MassDEP) directed the Cape Cod Commission to prepare an update to the 1978 Water Quality Management Plan for Cape Cod, pursuant to Section 208 of the Clean Water Act. The Plan Update was certified by Governor Charles D. Baker on June 12, 2015 and submitted to EPA. As requested, this memorandum provides additional information regarding the designation of Waste Treatment Management Agencies (WMAs) and the institutional arrangements between WMAs and the designated areawide planning and management agency, including a progress update, a detailed schedule for implementation actions between June 12, 2015 and June 12, 2016 and a summary of areawide enforcement options.

## **Institutional Arrangements**

The Cape Cod Commission is the designated areawide planning and management agency and the 15 municipalities of the planning area have been designated as WMAs. The general division of responsibilities between these two programs is as follows:

- **Regional Role:**

- Planning

- The identification and designation of nitrogen sensitive watersheds, assignment of nitrogen load responsibility for each WMA, identification of applicable technologies and strategies for development of Targeted Watershed Management Plans, including existing wastewater systems and treatment levels, and an overall plan for disposal of residual wastes will be included in areawide planning.

# ATTACHMENT 5

## Management

- Maintain and update a land use and water quality database.
- Support the development of Targeted Watershed Management Plans with locally deployed watershed teams.
- Establish a regulatory program to determine consistency of all water quality plans with the 208 Plan Update, the development of preliminary watershed reports, and the establishment of water quality performance criteria including regional standards and watershed permits.
- Receive and manage financial resources necessary for water quality projects determined consistent with the 208 Plan Update.
- **Role of WMAs:** The preliminary designs and studies related to Targeted Watershed Management Plans including detailed evaluation surveys, surface and sub-surface investigations of sites for treatment types, and preliminary design and detailed cost-effectiveness studies including the environmental assessment of individual treatment types.

## Areawide Planning and Management

The Cape Cod Commission has developed and will implement a comprehensive management plan to meet the responsibilities of Section 208 of the Clean Water Act. The plan encompasses the broader tasks of collecting, organizing, and disseminating information, providing technical assistance, and enforcing solutions. A comprehensive management approach to meeting the responsibilities set forth in Section 208 of the Clean Water Act. Responsibilities can be grouped into four main categories, outlining actions necessary to implement the 208 Plan Update and restore water quality: Information, Support, Regulatory Reform, and Funding.

### Information Program

#### *CCC Water Quality Data Center*

The Cape Cod Commission's Strategic Information Office (SIO) maintains an extensive database that includes parcel specific land use, water use, wastewater flow, and nitrogen load data, as well as buildout projections, zoning, and assessed values. The database stores a variety of static and dynamic spatial data, including planimetric features, watersheds, ponds, drinking water wells, groundwater contours, and wellhead protection areas and serves as the backbone of the regional water quality data center.

The center provides a centrally-located, stable platform for the performance monitoring data of the myriad of potential nutrient reduction, remediation and restoration technologies and approaches. Annual updates to the Technologies Matrix will be

## ATTACHMENT 5

maintained in this water quality data center and made available to the region. This information loop will provide a platform for a sustainable dialogue on information available to address the region's water quality problems.

The center's information and resources facilitate the development, implementation, and tracking of adaptive management plans for water quality improvements, in addition to a range of other capital improvements needed throughout the region.

The information hosted by the Commission is available and freely accessible to the public.

### Establish Support

#### *Watershed Teams*

The Cape Cod Commission will assist WMAs as they develop Targeted Watershed Management Plans. Staff expertise includes and is not limited to water resources and hydrology, land use planning, legal and regulatory, public participation and outreach and economic development planning. Staff is familiar with the information and resources of the regional water quality center and can assist in applying that data at different planning scales, targeted watersheds, sub-regional and regional.

Utilizing a Watershed Team positions a WMA to align their watershed planning efforts with the Section 208 Plan Update early in the process. The Watershed Team format will allow WMAs to expedite the regulatory review that would otherwise be required.

#### *Status Updates*

WMAs will be required to provide periodic status updates on their activities to ensure effective tracking of implementation and progress. This information will be used to develop annual reports, maintain a status website, and for early identification of areas that are failing to meet the requirements set forth in the 208 Plan Update.

### Establishment of a Regulatory Program

The 208 Plan Update outlines a framework for regional collaboration with the specific development of Targeted Watershed Management Plans remaining with WMAs. The many local planning efforts resulting from this process will be coordinated through a regulatory program to ensure implementation and encourage efficiencies. The regulatory program is detailed below.

#### *208 Consistency Review*

All nutrient management planning in the region will be subject to review for consistency with the 208 Plan Update. The review will include, but not be limited to, community engagement, hybrid watershed planning approach, nutrient growth management plan, applicable minimum performance standards and best management practices for siting technologies.

## ATTACHMENT 5

### *Capital Development of Regional Impact ("CDRI") Review*

Currently municipal wastewater management plans are reviewed by the Commission as Developments of Regional Impact (DRI) – by the same standards and best practices as single parcel commercial developments as set forth in the Cape Cod Commission Act and Regional Policy Plan (RPP). The Section 208 Plan Update recognizes the need to modify existing Commission regulations in order to accommodate the unique nature of wastewater management planning.

The Commission will be proposing for adoption and incorporation into the RPP and regulations, a new Capital Development of Regional Impact (CDRI) review process for larger, systemic phased projects such as comprehensive wastewater management plans and targeted watershed management plans. The CDRI process will require a 208 Consistency Review and any CDRI approval decision will include conditions requiring progress updates, an adaptive management plan and monitoring requirements, forming the basis for a watershed permit.

### *Development Agreement*

Pursuant to Section 14 of the Cape Cod Commission Act, a development agreement is a binding contract, the purpose of which is to negotiate and establish the development regulations that will apply to the subject property during the term of the agreement and to establish the conditions to which the development will be subject. The Commission, municipalities, state agencies and qualified applicants may enter into a development agreement. A development agreement takes the place DRI review and is typically appropriate for projects that involve a large area of development including multiple uses or structures, where construction is anticipated in phases, and where a project would benefit from comprehensive review of the foreseeable and planned development to allow for planning of efficient infrastructure. This would be an alternative to the CDRI review.

To address nitrogen impacts, a comprehensive management plan and/or targeted watershed management plan(s) for one or more nitrogen impacted subembayment watersheds, developed by one or more WMAs, would potentially be eligible for consideration as a development agreement. The agreement will be executed by the municipalities, the Commission, and appropriate state agencies if participants. The development agreement process will require a 208 Consistency Review and the voluntary binding contract will require progress updates, and an adaptive management plan and monitoring requirements, forming the basis for a watershed permit.

### *Watershed Permit*

The Massachusetts Department of Environmental Protection is authorized to issue watershed permits. The discussion of the development of appropriate regulations determining specifics of the permitting process is in progress. The watershed permit, as contemplated in the 208 Plan Update is a comprehensive nutrient control permit,

## ATTACHMENT 5

establishing water quality goals and providing an expedited path for permitting solutions and a full accounting of collective nitrogen related efforts of WMAs.

The Commission anticipates piloting at least one watershed permit in 2016 and will issue permitted watershed nitrogen limits for each nitrogen-sensitive watershed identified in the 208 Plan Update. The permit will incorporate water quality performance criteria and limits necessary in evaluation of proposed Targeted Watershed Management Plans and referenced in CDRI review.

### *Nitrogen Impact Fees*

Pursuant to Section 15 of the Cape Cod Commission Act and accompanying regulations, impact fees may be assessed by municipalities. In pertinent part, the impact fee must have a rational nexus and be roughly proportional to an impact created by the development; it shall reasonably benefit the proposed development; it shall be used for the development or improvement of municipal capital facilities; and it shall be spent, used, or obligated within a reasonable period of time, not to exceed 10 years.

Additionally, it shall be paid to and held in a separate account for each type of impact fee assessed in the municipality in which the proposed development is located, and in the event that the proposed development is located in or impacts more than one municipality, the impact fee shall be rationally apportioned among the municipalities with a certified comprehensive plan in accordance with the land area of the proposed development in each municipality or in such other allocation as may be jointly agreed upon by the participating municipalities. Impact fee bylaws/ordinances may authorize the creation of a service area/benefit district which encompasses more than one municipality, in which case the bylaw/ordinance shall specify the boundaries of the service area/benefit district and shall further specify that such impact fee shall be administered consistent with a valid intergovernmental agreement.

In addition, the Commission may impose impact fees on proposed developments for improvements to capital facilities after holding a public hearing and adopting regulations. Nitrogen impact fees as discussed in Chapter 7 of the 208 Plan Update take into account the direct capital costs required to accommodate new developments with wastewater infrastructure and, to the extent measureable, the costs of other negative consequences that may impact the public. The 208 Plan Update sets forth guiding principles for establishing a nitrogen impact fee system.

### *District of Critical Planning Concern ("DCPC")*

Cape Cod Commission Act Section 10(a) enables the Commission to propose the designation of certain geographic areas which are of critical value to Cape Cod as DCPCs that must be preserved and maintained due to one or more of the following factors:

- (1) The presence of significant natural, coastal, scientific, cultural, architectural, archaeological, historic, economic or recreational values of regional, state-wide or national significance; or

## ATTACHMENT 5

- (2) The presence of substantial areas of sensitive ecological conditions which render the area unsuitable for development; or
- (3) The presence or proposed establishment of a major capital public facility or area of public investment.

A DCPC is a planning tool that allows for the adoption of special regulations to protect, preserve or promote an area. With the district designation, comes a 12-15 month moratorium on certain development as deemed necessary to support the purposes of the district. A DCPC could be used to specify growth expectations in watersheds that are shared by more than one town. A DCPC could also be nominated by a municipality for land within a shared watershed to a nitrogen-sensitive embayment that is contained within a neighboring jurisdiction.

### Financial Program

The Commission will continue to develop the financial resources outlined in the 208 Plan Update and will provide additional detail in a financial resources chapter of the July 2016 implementation report.

The Commission will complete a financial model for WMAs to use in evaluating Targeted Watershed Management Plans.

The Commission will establish and administer a Cape Cod Capital Trust Fund. The Fund will be authorized to receive and manage financial resources necessary for the design and implementation of water quality projects determined consistent with the 208 Plan Update.

### **Waste Treatment Management Agencies**

The 15 towns of Barnstable County have been designated waste treatment management agencies (WMAs) consistent with their designation as designated management agencies (DMAs) in the 1978 Plan. Each town has the ability to meet the requirements set forth in Section 208(c)(2)(A-I) of the Clean Water Act and are the appropriate entities to develop and implement local decisions regarding technology selection and placement.

The town designations focus on developing watershed reports, building consensus through a public process at the local level, and operationalizing projects. The municipalities have traditionally been the responsible party for planning, design, construction and management of wastewater infrastructure and these efforts should continue.

### Progress to Date

Over the past decade or more Cape Cod communities have worked to address water quality issues identified by the Massachusetts Estuaries Project (MEP) technical reports and Total Maximum Daily Loads (TMDLs). However, the regulatory and funding schemes have encouraged town-wide solutions to watershed-based problems. The Cape Cod 208 Plan Update facilitates a watershed-based management approach to create affordable and effective solutions that communities can support.

## ATTACHMENT 5

Since submission of the draft 208 Plan Update on March 16, 2015, the majority of Cape Cod communities have utilized Watershed Team technical assistance from the Cape Cod Commission to supplement municipal expertise and proactively address the need for consistency between local planning and the regional plan. Each local plan will be reviewed for consistency with the 208 Plan Update and engaging with Commission staff early in the process will help to ensure compliance with this requirement.

The towns of Dennis and Eastham, both of which are working toward the development of their Comprehensive Wastewater Management Plans (CWMPs) requested staff meetings with their local consultants to discuss conceptual plans and the use of decision-support tools to develop scenarios, consider alternatives, and engage the community. Water Resources and GIS staff has assisted both communities.

The Pleasant Bay Alliance, representing the towns of Brewster, Chatham, Harwich, and Orleans, has requested assistance with data analysis to inform ongoing management efforts for the entire Pleasant Bay watershed and estuary. Planning, Water Resources, and GIS staff has been assisting this group. In addition, the Town of Brewster has submitted their Integrated Water Resources Management Plan (IWRMP) to the Cape Cod Commission for a 208 Plan Update consistency review.

The Town of Orleans initiated a Water Quality Advisory Panel (WQAP) to revisit their approved CWMP, re-evaluate alternatives, and develop a conceptual plan, which was funded at the spring 2015 Town Meeting. The WQAP met monthly and was modeled after the stakeholder process utilized to develop the 208 Plan Update. Cape Cod Commission staff, including Water Resources, legal staff and the Commission's Deputy Director, as well as MassDEP, sat at the table with local stakeholders, who worked together to develop a hybrid plan that has the potential to save 40% over the original plan developed for the town.

Most recently, the Town of Barnstable has requested that the Cape Cod Commission and MassDEP, participate on their reconstituted Citizen Advisory Committee (CAC). In addition, Three Bays Preservation, Inc. has provided funding for Commission staff and consultants to identify approaches that could be used throughout the Three Bays watershed, including the development of conceptual level designs for select projects. Early in 2014 the Town of Falmouth received a MEPA Certificate of Adequacy and a DRI approval from the Cape Cod Commission for their CWMP. Spring 2014 Town Meeting approved funds to construct the Little Pond watershed collection system and implement pilot projects, including the Bournes Pond inlet widening, installation of eco-toilets, and aquaculture, with the intent to develop a more detailed adaptive management plan moving forward.

Other communities are moving forward with CWMPs, including the Town of Mashpee, which is in the MEPA/DRI review process now and the Town of Harwich, which anticipates submitting their CWMP for review in the fall of 2015. Both will be subject to a 208 Plan Update consistency review. The Town of Mashpee has engaged Commission staff

## ATTACHMENT 5

in discussions around nitrogen allocation and the Town of Harwich engaged Commission staff early in the process to discuss opportunities and methods for public engagement.

### **Implementation Schedule**

A 12 month implementation schedule is described in the 208 Plan Update and adhering to this schedule is important to success. Achieving the goals of the 208 Plan Update will require continued participation from the WMAs, the Cape Cod Commission, MassDEP and EPA. Deliberate EPA involvement might include semi-annual progress meetings, involvement in the technologies matrix update and the Technologies Summit, and ongoing participation on the Monitoring Committee. The following implementation schedule is suggested:

September 2015: Issue technical guidance on disposal and monitoring protocols

October 2015: Formalize a Monitoring Program

The ad hoc Monitoring Committee is scheduled to provide technical guidance on monitoring protocols in September 2015, following which the mission and structure of the committee will be revisited and future tasks will be outlined.

November 2015: Issue Capital Development of Regional Impact regulations

January 2016: Joint EPA, MassDEP, CCC, WMA meeting

An EPA-sponsored joint meeting to review progress toward watershed plan development will allow for an evaluation of the status of watershed planning and the level of effort required to ensure milestones will be met.

January 2016: Technologies Panel and Technologies Matrix Update

The Cape Cod Commission will convene an ad hoc panel of experts to review and update the Technologies Matrix. It is anticipated that the panel will meet several times prior to the Technologies Summit in May and review the Matrix for both structure and content.

February 2016: Launch Regional Water Quality Data Center website

May 2016: Technologies Summit

The Cape Cod Commission anticipates holding the first annual Technologies Summit in May, with the participation of the WMAs, EPA and MassDEP, among others.

## ATTACHMENT 5

June 2016: Joint EPA, MassDEP, CCC, WMA meeting

An EPA sponsored joint meeting to review progress toward watershed plan development, review draft watershed plans, and discuss the draft implementation report detailing progress made in the first 12 months of implementation.

July 2016: Implementation Report

As described in the 208 Plan Update, the Cape Cod Commission will submit an implementation report to MassDEP and EPA describing the actions of WMAs to date. The report will include watershed reports that outline conceptual scenarios for each of the 53 watersheds. These watershed reports will outline a traditional and non-traditional scenario for each watershed and, in some cases, may begin to consider a hybrid scenario. Combined, these scenarios can form the basis for an adaptive management plan and a watershed permit. It is anticipated that Boards of Selectmen will sign off on each of the watershed reports for which their town has jurisdiction as a starting point for more detailed planning. In the event that a WMA does not provide a watershed report the Cape Cod Commission will issue a report pursuant to the watershed planning approach identified in chapter 5 of the 208 Plan Update, which will stand as the WMAs plan for that watershed unless or until a study is completed and an alternate watershed report consistent with the 208 Plan Update, is developed by the WMA.

July 2016: Release nitrogen impact fee schedule for all nitrogen sensitive watersheds

Participation by and coordination between all of the parties described in this memo will be necessary to ensure implementation of the 208 Plan Update and compliance with the schedule set forth. However, the Commission recognizes that EPA has the authority to request an update if implementation milestones are not achieved or if compliance is not adequate.

Sincerely,



Paul Niedzwiecki  
Executive Director