

**SELECTMEN'S MEETING AGENDA\***

*Griffin Room, Town Hall  
Regular Meeting 6:30 P.M.  
Monday, July 11, 2016*

I. **CALL TO ORDER**

II. **PLEDGE OF ALLEGIANCE**

III. **WEEKLY BRIEFING**

IV. **PUBLIC COMMENT/ANNOUNCEMENTS**

- A. Presentation of donation of \$500 from the Dennis Harwich Lion's Club to the Harwich Fire Department

V. **CONSENT AGENDA**

- A. Approve Minutes – June 27, 2016 Executive Session  
B. Accept the donation of \$500 from the Dennis Harwich Lion's Club to the Harwich Fire Department  
C. Approve recommendation of the Selectmen's Interview/Nominations Subcommittee to appoint new members to fill current committee vacancies  
D. Confirm the appointment of Peter Stovich as a new Disposal Area Heavy Equipment Operator / Tractor-Trailer Driver for the Town of Harwich  
E. Approve the Highway Director's request to MassDOT to extend the acceleration lanes at the Harwich exits on Route 6 and authorize the Chair to sign letter

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

- A. Public Hearing – Application for Transfer of Annual, All Alcoholic Beverages Package Store License from Harwich East Liquors to Portside Liquors and Pledge of said license  
B. Overview of Pleasant Bay Alliance activities – Carole Ridley

VII. **OLD BUSINESS**

- A. Fitzpatrick Settlement Agreement compliance – *discussion and possible vote*  
B. Request for a streetlight at Brooks Park – *discussion and possible vote*  
C. Request to look at environmental issues regarding W. Harwich – *discussion and possible vote*  
D. Finalize the Town Planner Job Description – *discussion and possible vote*

VIII. **NEW BUSINESS**

- A. Support the Town of Chatham's request for legislation to clarify the U.S. Fish and Wildlife Service's claim of the open waters and seabed to the west of Monomoy National Wildlife Refuge – *discussion and possible vote*  
B. Proposed Intermunicipal Agreement between the Town of Orleans and the Town of Harwich for adult day care program services – *discussion and possible vote to authorize the Chair to sign*  
C. Lease extension for Allen Harbor Marine Service for additional two years for boat storage on the Town's property at Allen Harbor – *discussion and possible vote*  
D. Amend the Personnel By-Law for seasonal, hourly wage employees – *discussion and possible vote*  
E. Finance Director/Town Accountant Job Title – *discussion and possible vote*

IX. **TOWN ADMINISTRATOR'S REPORT**

- A. MEMA Incident Command System and overview training completion by Assistant Town Administrator Charleen Greenhalgh

X. **SELECTMEN'S REPORT**

- A. Board of Selectmen FY17 Goals and Objectives

XI. **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

\_\_\_\_\_  
Sandra Robinson, Admin. Secretary

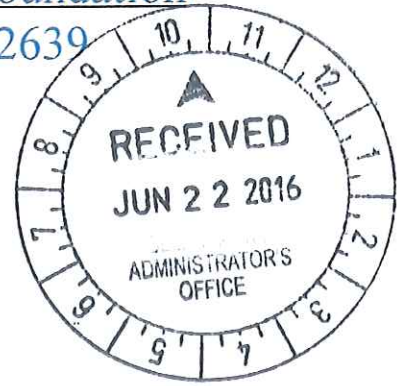
Date: \_\_\_\_\_  
July 7, 2016



## The Lions Club of Dennis-Harwich Foundation

P.O. Box 41, Dennisport, MA 02639

July 1, 2016



Board of Selectmen

Michael D. MacAskill, Chairman

732 Main Street

Harwich, MA 02645

Dear Chairman MacAskill,

The Dennis Harwich Lions Club has been serving the Communities of Dennis and Harwich for 46 years. The Club has raised funds and donated too many international, state, local and civic organizations and causes. Lion causes include Sight Conservation, Hearing Services, Diabetes Awareness, Environmental Services and Youth Programs and Exchange. We hold several youth competitions ~ Scholarships, Speech Contests, All State Band and Peace Poster Contests. More information may be found on our website [www.dennisharwichlions.org](http://www.dennisharwichlions.org).

Our volunteers have worked on many projects this last year, creating opportunities for our youth and changing lives here and abroad. This year we have accomplished many things such as:

- Collected and recycled over 1500 pair of eyeglasses and hearing aids.
- Collected and donated 300 winter coats
- Supported our Military overseas through our Operation Shoebox
- Processed applications for both eyeglass and hearing aid requests.
- Donated \$5,000 in grant requests to Boston Research Centers
- Held our Annual free Pancake Breakfast with Santa
- Supported 4 Dress A Live Doll recipients
- Sponsored and supported Brooks Library and Low Vision Center in Dennis
- Supported the Food Pantry, Hospice, Cape Abilities, Sight Loss Services
- Held our Annual Sight Impaired Picnic
- **AND ~ Donated 100% of what we collect!**

This coming year marks the 100<sup>th</sup> Anniversary of Lions. In 1917, challenged by Helen Keller to be the Knights of the Blind, Lions have worked for 100 years trying to eradicate preventable blindness. Lions recognize without a community partnership we cannot do what we do. As part of the Centennial Celebration the Dennis Harwich Lions would like to donate \$500 to the Harwich Fire Department to purchase equipment to help the residents and the Community. These funds may be spent at the discretion of the Fire Chief. We ask the Board of Selectmen to please accept this gift on behalf of the Dennis Harwich Lions Club.

From the Members of the Dennis Harwich Lions we thank you for all your hard work and the work of all Town Departments. Your and their support over the past 46 years has helped us support the Community. Thank you again.

Sincerely,

  
Sandy Fife

President Dennis Harwich Lions Foundation [www.dennisharwichlions.org](http://www.dennisharwichlions.org)

CC: Norman Clarke Jr., Fire Chief We are a registered 501(c)(3) non-profit organization



# MEMO

**TO:** Board of Selectmen

**FROM:** Angelo La Mantia, Jannell Brown  
Selectmen's Interview/Nominations Subcommittee

**RE:** Recommendation for Appointments

**DATE:** July 11, 2016

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Following posted interviews held on Thursday, July 7, 2016, the Selectmen's Interview and Nominations Sub-committee requests that the Board make the following appointments:

<u>Appointee:</u>	<u>Committee:</u>	<u>Expiration:</u>
Joseph Powers	By-Law / Charter Review Committee	June 30, 2017
	Historical/Historic District Committee (Alternate Member)	June 30, 2017

**Selectmen's Interview/Nominations Subcommittee**  
**Selectmen's Office, Town Hall**  
**Thursday, July 7, 2016**  
**3:00 p.m.**

I. **CALL TO ORDER**

II. **NEW BUSINESS**

- A. Approve Meeting Minutes from June 15, 2016
- B. Appointment procedures – *discussion and possible vote*
- C. Interview applicant(s) for various committee vacancies – *discussion and possible vote*

III. **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 are a person with a disability who requires an accommodation, contact the Selectmen's Office at (508) 430-7512 ext. 2*

**Authorized Posting Officer:**

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

\_\_\_\_\_  
Sandra Robinson, Admin. Secretary

**Date:** June 22, 2016



# TOWN OF HARWICH

## DEPARTMENT OF PUBLIC WORKS

273 Queen Anne Road • P.O. Box 1543 • Harwich, MA 02645

Telephone (508) 430-7555

Fax (508) 430-7598

### MEMORANDUM

**TO:** Chris Clark, Town Administrator  
**FROM:** Lincoln S. Hooper, Director   
**DATE:** July 6, 2016  
**RE:** Summary of Hiring Procedures for Tractor Trailer Driver

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The position of Tractor Trailer Driver / Heavy Equipment Operator for the Disposal Area was advertised in the Cape Cod Times on June 5, 6 and 7, and posted internally for HMEA members on May 25. We received a total of 8 applications and none from HMEA members.

I developed an interview team consisting of Dave Gilbert, Disposal Area Foreman, Sean Libby, Facilities Maintenance Manager, Mike Kiernan, Disposal Area Manager, Chris Nickerson, Highway Road Manager and myself. On June 21<sup>st</sup> we all met to review the applications we received and came to the consensus that 4 were worthy of further consideration. Interviews for all 4 applicants were scheduled for Tuesday, June 28, 2016.

The interview process was divided into two parts, with the first consisting of a semi-structured panel type interview with a list of prepared questions to be asked of each applicant. Each candidate was given a half-hour of our undivided attention, where Dave, Sean and I asked prepared questions as well as unplanned and probing questions. Every interviewee received a score by each of us based on their responses to our questions and other criteria such as openness, humility, knowledge, sincerity and fit.

The second part of the process consisted of a skills evaluation where each applicant was given written instructions to perform a mini project with a dump trailer and front end loader. They were graded by Mike and Chris on several criteria including the smoothness of equipment operation, efficiency of equipment operation, the ability to grade and load with the loader, ability to operate and back the tractor trailer, how well they accomplished the assigned task, how professional they were and the overall confidence of applicant.

After the interviews and skills assessments were complete, the scores were placed in a spreadsheet and averaged out. The 5 of us discussed the scores, merits and concerns of each candidate and were able to come to a decision on who should be offered the job. Peter Stovich received the highest overall score (see attached spreadsheet), was offered the job at step 3 (L4 – Step 2 - \$23.04 hr) and accepted the position. Peter has passed a DOT physical and drug screen and has a clean RMV driving record. His CORI contained decade old charges, without any convictions, that were discussed at length with him during a meeting on 7/5/16 that you and I conducted. We mutually agreed that his previous behavior was that of a juvenile and not indicative of his work history. Peter is scheduled to start his employment on July 26, 2016.

**OFFICE OF THE TOWN ADMINISTRATOR**

Phone (508) 430-7513

Fax (508) 432-5039



**Christopher Clark**, *Town Administrator*  
**Charleen L. Greenhalgh**, *Assistant Town Administrator*

732 MAIN STREET, HARWICH, MA 0264:

July 6, 2016

Peter Stovich  
79 Halyard Way  
Centerville, MA 02632

Dear Mr. Stovich:

I would like to offer you the position of Disposal Area Heavy Equipment Operator / Tractor-Trailer Driver for the Town of Harwich. I look forward to your positive contributions to the DPW.

This conditional offer letter confirms our understanding of your pre-employment terms with the Town.

- Pursuant to the Town Charter, the Town Administrator makes the appointment for this position subject to confirmation by the Board of Selectmen. Your name has been put forth for confirmation. Successful confirmation will be needed to finalize appointment.
- You have already passed a Pre-Employment / DOT Physical and Drug Screen.
- You have signed a C.O.R.I. information form due to your interaction with the public.

Please read the letter and confirm your understanding of the terms of your employment by signing the bottom of the letter and returning a copy to us for your personnel file.

Your position title will be Tractor-Trailer Driver and your starting date is July 26, 2016. This position is included in the HMEA contract and your employment is subject to the rights and obligations included in the HMEA contract. Your starting salary will be \$24.04 per hour (L4, Step 3).

Again, I am delighted that you are joining the Town's staff. Please feel free to contact me if you have any questions prior to beginning work.

Sincerely,

Christopher Clark  
Town Administrator

Attachment

\_\_\_\_\_  
Peter Stovich

\_\_\_\_\_  
Date

cc: Board of Selectmen  
Town Treasurer  
Town Accountant  
Personnel File  
DPW Director



# TOWN OF HARWICH

## DEPARTMENT OF PUBLIC WORKS

273 Queen Anne Road • P.O. Box 1543 • Harwich, MA 02645

Telephone (508) 430-7555

Fax (508) 430-7598

July 7, 2016

Mary Joe Perry  
District Highway Director  
MassDOT District 5  
1000 County Street  
Taunton, MA 02780

COPY

Subject: Harwich – Route 6 Resurfacing Project

Dear Ms. Perry:

I am writing you on behalf of the Town of Harwich requesting your consideration in providing proper acceleration lanes on Route 6 at the Exits 10 and 11 during your upcoming resurfacing project. Both of these locations lack any delineated acceleration lanes and are less than half the length of the modern merge lane at Exit 9. In our opinion, these deficiencies cause unnecessary traffic problems, including excessive accident rates at these locations, long backups on this stretch of highway all summer long and the use of Town resources responding to accidents.

At the suggestion of Mike Broderick, we have had our Town Engineer, Bob Cafarelli, P.E., develop a conceptual design of acceleration lanes at the Route 124 interchange, along with a short narrative and supporting documentation. It should be noted that although all four ramps should be considered, the primary cause of accidents and backups is the Route 124 westbound onramp. As such, I have estimated the cost to excavate and pave 6800 square feet to meet current design standards to be approximately \$70k, or 2.9% of the \$2.4M resurfacing project.

This request is being made by numerous entities within the Town of Harwich including the Board of Selectmen, the Town Administrator, Police Chief, Fire Chief, Traffic Safety Committee and the DPW, as they all know firsthand how the lack of acceleration lanes causes traffic jams and accidents at these locations.

Thank you for your consideration in the matter. I look forward to hearing from you.

Respectfully,

Lincoln Hooper, Director

Michael MacAskill  
Board of Selectmen  
Chairman

Chris Clark  
Town  
Administrator

David Guillemette  
Police Chief

Norm Clarke  
Fire Chief

Gerald Beltis  
Traffic Safety  
Chairman

NOTICE OF PUBLIC HEARING  
TOWN OF HARWICH  
BOARD OF SELECTMEN  
APPLICATION FOR LIQUOR LICENSE  
TRANSFER AND PLEDGE OF LICENSE

Notice is hereby given under Chapter 138 of the General Laws as amended that application has been made to this Board for a transfer of the Annual, Package Store, All Alcoholic Beverages License now held by John & Jon United Corporation d/b/a Harwich East Liquors, 1421 Route 39, East Harwich, John F. Kenney, Manager to Portside Liquors III, Inc. d/b/a Portside Liquors, 1421 Route 39, East Harwich, Zeina B. Metri, Manager, and pledge of said license, on the following described premises: The premise is approximately 5,750 sq. ft. of retail space. It's an open area with a walk in cooler. It's one floor. Two exits and three bathrooms.

The Board of Selectmen will hold a hearing upon the application on Monday, July 11, 2016 no earlier than 6:30 p.m. in the Donn B. Griffin Room at Town Hall, 732 Main Street, Harwich, at which time all interested parties will be heard.

Board of Selectmen  
Local Licensing Authority

Cape Cod Chronicle  
June 30, 2016

Cape Cod Times  
July 1, 2016





# HARWICH Police

DEPARTMENT

183 Sisson Road, Harwich, MA 02645

Tel 508-430-7541 Fax 508-432-2530



**DAVID J. GUILLEMETTE**  
Chief of Police

**THOMAS A. GAGNON**  
Deputy Chief

## Memorandum

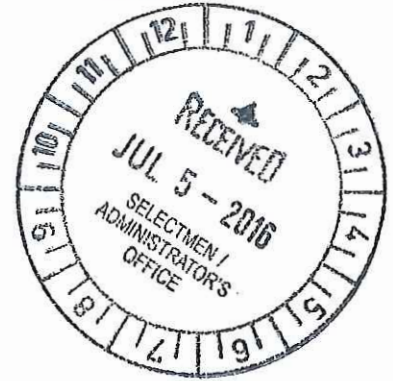
**TO:** Board of Selectmen

Christopher Clark  
Town Administrator

**FROM:** David J. Guillemette  
Chief of Police

**DATE:** July 1, 2016

**SUBJECT:** Application for a Transfer and Pledge of License for Harwich East Liquors, 1421 Route 39, Harwich MA 02645

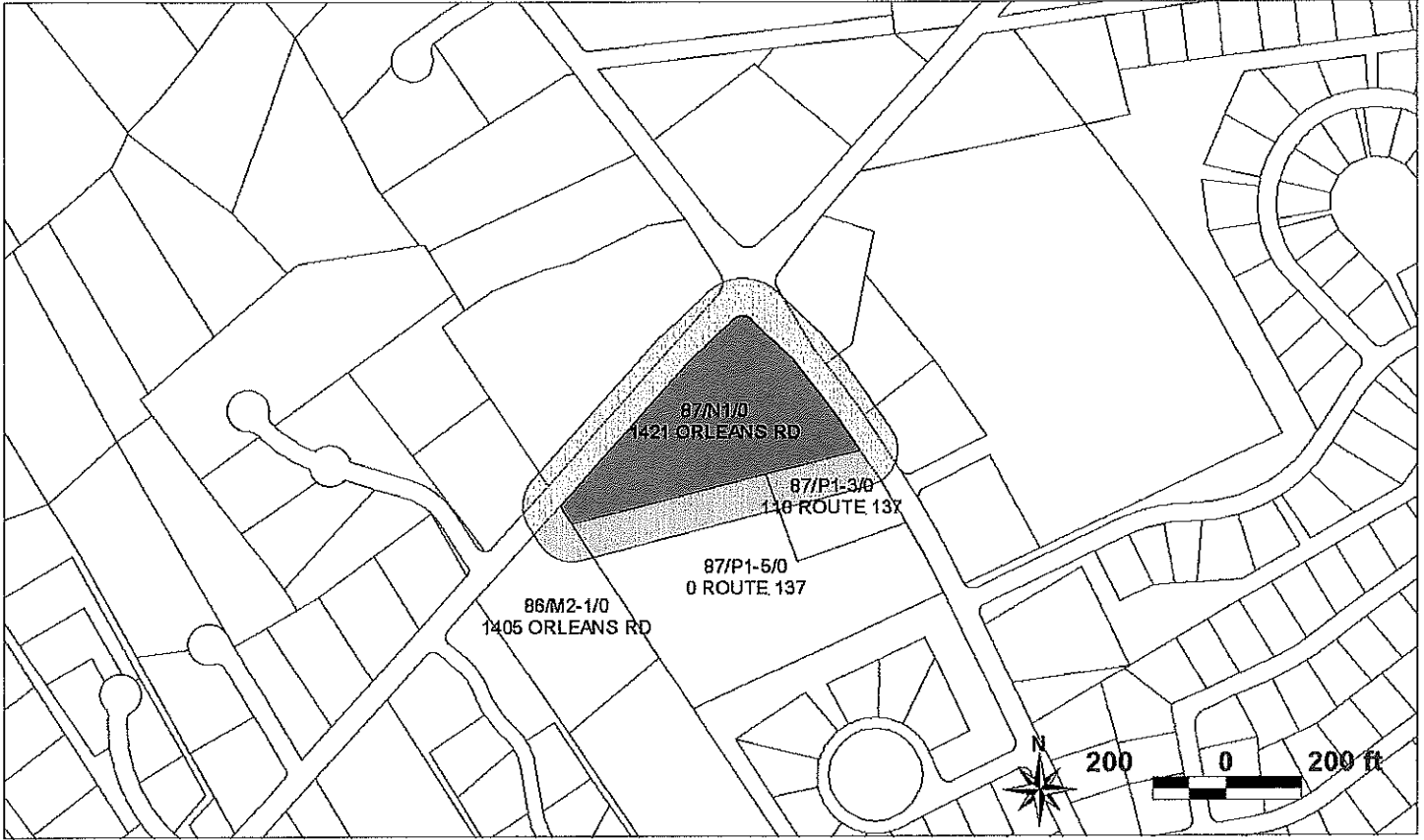


The Police Department has no objections regarding the Application for a Transfer and Pledge of License for Harwich East Liquors. A background investigation of the proposed individual(s) indicates no liquor code violations or disqualifying history.

If you have any questions or need further clarification, please feel free to contact me at your earliest convenience.

TOWN OF HARWICH, MA  
 BOARD OF ASSESSORS  
 732 Main Street, Harwich, MA 02645

Abutters List Within 100 feet of Parcel 87/N1/0



Key	Parcel ID	Owner	Location	Mailing Street	Mailing City	ST	ZipCd/Country
6759	86-M2-1-0-R ✓	MCKENNEY LEIGH W TRUSTEE	1405 ORLEANS RD	C/O CYNTHIA ELDREDGE 9 FORSYTHIA DR	HARWICH	MA	02645
19758	87-P1-5-0-R ✓	EASTWARD HOMES BUSINESS TRUST	0 ROUTE 137	155 CROWELL RD	CHATHAM	MA	02633
9806	87-N1-0-R ✓	LINEAR RETAIL HARWICH #1 LLC <i>LOCUS</i>	1421 ORLEANS RD	5 BURLINGTON WOODS DR	BURLINGTON	MA	01803
19757	87-P1-3-0-R	137 PROPERTIES LLC	110 ROUTE 137	1296 LONG POND RD	BREWSTER	MA	02631



June 27, 2016

Ms. Zeina Metri  
18 Weatherdeck Drive  
Bourne, MA 02532

Re: Application for a Transfer and Pledge of Annual, Package Store, All Alcoholic Beverages  
License – Harwich East Liquors to Portside Liquors

Dear Ms. Metri:

This is to confirm that the Liquor Hearing on the above-referenced application is scheduled for Monday, July 11, 2016 no earlier than 6:30 P.M. in the Donn B. Griffin meeting room at Town Hall, 732 Main Street, Harwich.

Enclosed please find a copy of the Legal Notice to be advertised on Friday, July 1, 2016 in the Cape Cod Times. You must send a copy of the Legal Notice to all abutters (list enclosed) by **certified mail, return receipt requested**, within three (3) days of publication. The return receipts must be brought to the hearing along with the "Affidavit of Notice of Mailing to Abutters and Others" form which you must have notarized.

Please feel free to contact this office should you have any questions.

Sincerely,

Ann Steidel  
Administrative Secretary

enclosures

## HARWICH BOARD OF SELECTMEN

### Policy on the Pledge of Alcoholic Beverage License

This policy is designed to assist licensees and prospective licensees in understanding the Board of Selectmen's policy regarding the pledging of alcoholic beverages licenses:

1. Although the Board of Selectmen may, in its discretion, approve a license pledge of the alcoholic beverage license as collateral for a loan pursuant to M.G.L. Ch. 138, § 23, the Board of Selectmen reserves any and all rights it has to suspend, revoke, not renew, or otherwise regulate the license under M.G.L. Ch. 138, § 1, et al.
2. By its approval of the alcoholic beverage license and pledge of the license as collateral, the Board of Selectmen does not intend to become a party to the loan agreement and does not intend to bind or obligate the Town to any of the terms of the loan agreement.
3. In the event the license holder's pledge of license is approved by the Board of Selectmen, the pledge agreement and any associated loan documents must contain the following language:

"Notwithstanding the Harwich Board of Selectmen's approval of the alcoholic beverage license of \_\_\_\_\_, and pledge of the same as collateral pursuant to the terms of the agreement, the Board of Selectmen expressly reserves any and all rights it has to suspend, revoke, not renew, or otherwise regulate this alcoholic beverage license under M.G.L. Ch. 138, § 1, et al. Furthermore, the Board of Selectmen does not intend to become a party to this loan agreement and does not intend to bind or obligate the Town of Harwich to any of the terms of this loan agreement."

4. In the event the lender requests a transfer of the alcoholic beverage license, the Board of Selectmen will not approve the transfer without the consent of the license holder or a final judgment from a court of competent jurisdiction adjudicating the lender as the sole holder of the pledged license under the terms of the loan documents.
5. The Board of Selectmen will not be bound or obligated to provide the notice to the lender of any actions that it takes relative to the alcoholic beverage license or license holder.
6. Upon suspension, revocation, or non-renewal of the alcoholic beverage license pledged as collateral, the lender shall immediately surrender the license to the Office of the Board of Selectmen in accordance with M.G.L. Ch. 138, § 65.

First Reading: September 25, 2006

Second Reading: October 2, 2006

Third Reading: October 10, 2006

Adopted: October 10/10/06



**Commonwealth of Massachusetts  
Alcoholic Beverages Control Commission  
239 Causeway Street, First Floor  
Boston, MA 02114**

**PETITION FOR TRANSFER OF OWNERSHIP, TRANSFER OF STOCK, NEW OFFICER(S),  
DIRECTOR(S), STOCKHOLDER(S) AND LLC MANAGER(S)**

050600037

ABCC License Number

Harwich

City/Town

The licensee A. John & John United Corporation and the proposed transferee B. Portside Liquors III, Inc. respectfully petition the Licensing Authorities to approve the following transfer of ownership. Any Corporation, LLC or Association, Partnership, Individual, Sole Proprietor Listed in box (A.) must submit a certificate of good standing from the Massachusetts Department of Revenue (DOR).

Is the PRESENT licensee a Corporation/LLC listed in box (A.), duly registered under the laws of the Commonwealth of Massachusetts?

Yes  No If YES, please list the officers, directors and stockholders, their residences, and shares owned by each.

Name	Title	Address	Stock or % Owned
John Kenney	President, Shareholder	20 Connors Road, Centerville, MA 02632	50%
John Alger	Secretary, Shareholder	327 Thousands Oaks Drive, Brewster, MA 02631	50%

Is the PROPOSED transferee a Corporation/LLC listed in box (B.), duly registered under the laws of the Commonwealth of Massachusetts?

Yes  No

TO: (Place an \* before the name of each DIRECTOR/LLC Manager.)

Name	Title	Address	Stock or % Owned
George Metri	director, shareholder	18 Weatherdeck Drive, Bourne, MA 02532	50%
Zeina B Metri	Officer, Director, shareholder	18 Weatherdeck Drive, Bourne, MA 02532	50%

The above named proposed transferee hereby joins in this petition for transfer of said license.

SIGNATURE OF LAST-APPROVED LICENSEE:

(If a Corporation/LLC, by its authorized representative)

Date Signed 6-9-16

SIGNATURE OF PROPOSED TRANSFEREE:



The Commonwealth of Massachusetts  
 Alcoholic Beverages Control Commission  
 239 Causeway Street  
 Boston, MA 02114  
[www.mass.gov/abcc](http://www.mass.gov/abcc)

PETITION FOR CHANGE OF LICENSE

050600037

ABCC License Number

Harwich

City/Town

The licensee Portside liquor III, Inc. respectfully petitions the Licensing Authorities to approve the following transactions:

- Change of Manager
- Pledge of License/Stock
- Change of Corporate Name/DBA
- Change of License Type (\$12 ONLY, e.g. "club" to "restaurant")
- Alteration of Premises
- Cordial & Liqueurs
- Change of Location

Change of Manager Last-Approved Manager:

Requested New Manager:

Pledge of License /Stock\* Loan Principal Amount: \$ 1,125,000 Interest Rate:

Payment Term: 10yrs Lender: Rockland trust

Change of Corporate Name/DBA\* Last-Approved Corporate Name/DBA:

Requested New Corporate Name/DBA:

Change of License Type Last-Approved License Type:

Requested New License Type:

Alteration of Premises: (must fill out attached financial information form)

Description of Alteration:

Change of Location: (must fill out attached financial information form)

Last-Approved Location:

Requested New Location:

Signature of Licensee Lena Row

(If a Corporation/LLC, by its authorized representative)

Date Signed 6-28-16

\*Must have Certificate of Good Standing from MA Department of Revenue

## APPLICATION FOR RETAIL ALCOHOLIC BEVERAGE LICENSE

City/Town

Harwich

### 1. LICENSEE INFORMATION:

A. Legal Name/Entity of Applicant:(Corporation, LLC or Individual) Portside Liquors III, Inc

B. Business Name (if different): Portside Liquors

C. Manager of Record: Zeina B Metri

D. ABCC License Number (for existing licenses only):

E. Address of Licensed Premises: 1421 Orleans Rd

City/Town: Harwich

State: MA

Zip: 02649

F. Business Phone: 508-432-1650

G. Cell Phone: 617/640-8778

H. Email: zeinabmetri@yahoo.com

I. Website:

J. Mailing address (if different from E.):

City/Town:

State:

Zip:

### 2. TRANSACTION:

- New License     New Officer/Director     Transfer of Stock     Issuance of Stock     Pledge of Stock  
 Transfer of License     New Stockholder     Management/Operating Agreement     Pledge of License

#### The following transactions must be processed as new licenses:

- Seasonal to Annual     (6) Day to (7)-Day License     Wine & Malt to All Alcohol

**IMPORTANT ATTACHMENTS (1):** The applicant must attach a vote of the entity authorizing all requested transactions, including the appointment of a Manager of Record or principal representative.

### 3. TYPE OF LICENSE:

- \$12 Restaurant     \$12 Hotel     \$12 Club     \$12 Veterans Club     \$12 Continuing Care Retirement Community  
 \$12 General On-Premises     \$12 Tavern (No Sundays)     \$15 Package Store

### 4. LICENSE CATEGORY:

- All Alcoholic Beverages     Wines & Malt Beverages     Wines     Malt  
 Wine & Malt Beverages with Cordials/Liqueurs Permit

### 5. LICENSE CLASS:

- Annual     Seasonal

**6. CONTACT PERSON CONCERNING THIS APPLICATION (ATTORNEY IF APPLICABLE)**

NAME: Zeina B Metri  
ADDRESS: 18 Weatherdeck Drive  
CITY/TOWN: Bourne STATE: MA ZIP CODE: 02532  
CONTACT PHONE NUMBER: 617-640-8778 FAX NUMBER: 508-819-3999  
EMAIL: zeinabmetri@yahoo.com

**7. DESCRIPTION OF PREMISES:**

Please provide a complete description of the premises. Please note that this must be identical to the description on the Form 43. **Your description MUST include: number of floors, number of rooms on each floor, any outdoor areas to be included in licensed area, and total square footage.** i.e.: "Three story building, first floor to be licensed, 3 rooms, 1 entrance 2 exits (3200 sq ft); outdoor patio (1200 sq ft); Basement for storage (1200 sq ft). Total sq ft = 5600."

The premise is approximately 5,750sq ft of retail space. It's an open area with a walk in cooler. It's one floor. Two exits and three bathrooms.

Total Square Footage: 5750 Number of Entrances: 2 Number of Exits: 2  
Occupancy Number: na Seating Capacity: na

**IMPORTANT ATTACHMENTS (2):** The applicant must attach a floor plan with dimensions and square footage for each floor & room.

**8. OCCUPANCY OF PREMISES:**

By what right does the applicant have possession and/or legal occupancy of the premises? Final Lease  
**IMPORTANT ATTACHMENTS (3):** The applicant must submit a copy of the final lease or documents evidencing a legal right to occupy the premises. Other:

Landlord is a(n): LLC Other:

Name: Linear Retail Properties, LLC Phone: 1-781-202-3547

Address: 5 Burlington Woods Drive City/Town: Burlington State: MA Zip: 01813

Initial Lease Term: Beginning Date 04/15/2016 Ending Date 4/15/2026

Renewal Term: 10 yr Options/Extensions at: 2/5yrs Years Each

Rent: \$92,000.00 Per Year Rent: \$7,666.67 Per Month

Do the terms of the lease or other arrangement require payments to the Landlord based on a percentage of the alcohol sales?  
Yes  No

If Yes, Landlord Entity must be listed in Question # 10 of this application.

If the principals of the applicant corporation or LLC have created a separate corporation or LLC to hold the real estate, the applicant must still provide a lease between the two entities.



**9. LICENSE STRUCTURE:**

The Applicant is a(n):

Other :

If the applicant is a Corporation or LLC, complete the following:

Date of Incorporation/Organization:

State of Incorporation/Organization:

Is the Corporation publicly traded? Yes  No

**10. INTERESTS IN THIS LICENSE:**

List all individuals involved in the entity (e.g. corporate stockholders, directors, officers and LLC members and managers) and any person or entity with a direct or indirect, beneficial or financial interest in this license.

**IMPORTANT ATTACHMENTS (4):**

A. All individuals or entities listed below are required to complete a Personal Information Form.

B. All shareholders, LLC members or other individuals with any ownership in this license must complete a CORI Release Form (unless they are a landlord entity)

Name	All Titles and Positions	Specific % Owned	Other Beneficial Interest
George Metri	Director, sharholder,	50%	
Zeina B Metri	Director, Shareholder, office	50%	

\*If additional space is needed, please use last page.

**11. EXISTING INTEREST IN OTHER LICENSES:**

Does any individual listed in §10 have any direct or indirect, beneficial or financial interest in any other license to sell alcoholic beverages? Yes  No  If yes, list said interest below:

Name	License Type	Licensee Name & Address
Portside Liquors	<input type="text" value="\$15 Package Store"/>	Portside Liquors, Inc. 590A MacArthur Blvd, Pocasset, MA 02559
Portside Liquors II	<input type="text" value="\$15 Package Store"/>	Portside Liquors II, Inc. 75 Washington St. Pembroke MA 02359
	<input type="text" value="Please Select"/>	
	<input type="text" value="Please Select"/>	
	<input type="text" value="Please Select"/>	
	<input type="text" value="Please Select"/>	

\*If additional space is needed, please use last page.

**12. PREVIOUSLY HELD INTERESTS IN OTHER LICENSES:**

Has any individual listed in §10 who has a direct or indirect beneficial interest in this license ever held a direct or indirect, beneficial or financial interest in a license to sell alcoholic beverages, which is not presently held? Yes  No  If yes, list said interest below:

Name	Licensee Name & Address	Date	Reason Terminated
Zeina B Metri	Liquor Warehouse, Mashpee MA, 02649	1/1/2004	Transferred
George Metri	Liquor Warehouse, Mashpee, MA 02649	1/1/2004	Transferred
			Please Select

**13. DISCLOSURE OF LICENSE DISCIPLINARY ACTION:**

Have any of the disclosed licenses to sell alcoholic beverages listed in §11 and/or §12 ever been suspended, revoked or cancelled? Yes  No  If yes, list said interest below:

Date	License	Reason of Suspension, Revocation or Cancellation

**14. CITIZENSHIP AND RESIDENCY REQUIREMENTS FOR A (§15) PACKAGE STORE LICENSE ONLY :**

**A.) For Individual(s):**

1. Are you a U.S. Citizen? Yes  No
2. Are you a Massachusetts Residents? Yes  No

**B.) For Corporation(s) and LLC(s) :**

1. Are all Directors/LLC Managers U.S. Citizens? Yes  No
2. Are a majority of Directors/LLC Managers Massachusetts Residents? Yes  No
3. Is the License Manager a U.S. Citizen? Yes  No

**C.) For Individual(s), Shareholder(s), Member(s), Director(s) and Officer(s):**

- 1.. Are all Individual(s), Shareholders, Members, Directors, LLC Managers and Officers involved at least twenty-one (21) years old? Yes  No

**15. CITIZENSHIP AND RESIDENCY REQUIREMENTS FOR (§12) RESTAURANT, HOTEL, CLUB, GENERAL ON PREMISE, TAVERN, VETERANS CLUB LICENSE ONLY:**

**A.) For Individual(s):**

1. Are you a U.S. Citizen? Yes  No

**B.) For Corporation(s) and LLC(s) :**

1. Are a majority of Directors/LLC Managers **NOT** U.S. Citizen(s)? Yes  No
2. Is the License Manager or Principal Representative a U.S. Citizen? Yes  No

**C.) For Individual(s), Shareholder(s), Member(s), Director(s) and Officer(s):**

- 1.. Are all Individual(s), Shareholders, Members, Directors, LLC Managers and Officers involved at least twenty-one (21) years old? Yes  No

**16. COSTS ASSOCIATED WITH LICENSE TRANSACTION:**

A. Purchase Price for Real Property:	\$0.00
B. Purchase Price for Business Assets:	\$1,500,000.00
C. Costs of Renovations/Construction:	\$5,000.00
D. Initial Start-Up Costs:	\$0.00
E. Purchase Price for Inventory:	\$10,000.00
F. Other: (Specify)	\$0.00
<b>G: TOTAL COST</b>	<b>\$1,515,000.00</b>
<b>H. TOTAL CASH</b>	<b>\$277,250.00</b>
<b>I. TOTAL AMOUNT FINANCED</b>	<b>\$1,125,000.00</b>

**IMPORTANT ATTACHMENTS (5):** Any individual, LLC, corporate entity, etc. providing funds of \$50,000 or greater towards this transaction, must provide proof of the source of said funds. Proof may consist of three consecutive months of bank statements with a minimum balance of the amount described, a letter from your financial institution stating there are sufficient funds to cover the amount described, loan documentation, or other documentation.

The amounts listed in subsections (H) and (I) must total the amount reflected in (G).

**17. PROVIDE A DETAILED EXPLANATION OF THE FORM(S) AND SOURCE(S) OF FUNDING FOR THE COSTS IDENTIFIED ABOVE (INCLUDE LOANS, MORTGAGES, LINES OF CREDIT, NOTES, PERSONAL FUNDS, GIFTS):**

Total price is 1,500,000. The current owner will finance 10% of the sale. The bank will provide a loan for 1,125,000. The buyer will pay for the rest from lines of credits, personal funds, business distribution, and Roth.

\*If additional space is needed, please use last page.

**18. LIST EACH LENDER AND LOAN AMOUNT(S) FROM WHICH "TOTAL AMOUNT FINANCED" NOTED IN SUB-SECTIONS 16(I) WILL DERIVE:**

Name	Dollar Amount	Type of Financing
Rockland Trust	\$1,125,000.00	Bank loan
John&John United Corp	\$150,000.00	note

\*If additional space is needed, please use last page.

B. Does any individual or entity listed in §17 or §18 as a source of financing have a direct or indirect, beneficial or financial interest in this license or any other license(s) granted under Chapter 138? Yes  No

If yes, please describe:

The license might be pledged to Rockland Trust.

**19. PLEDGE: (i.e. COLLATERAL FOR A LOAN)**

A.) Is the applicant seeking approval to pledge the license?  Yes  No

1. If yes, to whom:

2. Amount of Loan:  3. Interest Rate:  4. Length of Note:

5. Terms of Loan :

B.) If a corporation, is the applicant seeking approval to pledge any of the corporate stock?  Yes  No

1. If yes, to whom:

2. Number of Shares:

C.) Is the applicant pledging the inventory?  Yes  No

If yes, to whom:

**IMPORTANT ATTACHMENTS (6):** If you are applying for a pledge, submit the pledge agreement, the promissory note and a vote of the Corporation/LLC approving the pledge.

**20. CONSTRUCTION OF PREMISES:**

Are the premises being remodeled, redecorated or constructed in any way? If YES, please provide a description of the work being performed on the premises:  Yes  No

The Landlord will have some remodeling done.

21. ANTICIPATED OPENING DATE:

**IF ALL OF THE INFORMATION AND  
ATTACHMENTS ARE NOT COMPLETE  
THE APPLICATION WILL BE  
RETURNED**

**APPLICANT'S STATEMENT**

I, Zeina B Metri the:  sole proprietor;  partner;  corporate principal;  LLC/LLP member  
Authorized Signatory

of Portside Liquors III, Inc., hereby submit this application for Liquor license transfer  
Name of the Entity/Corporation Transaction(s) you are applying for

(hereinafter the "Application"), to the local licensing authority (the "LLA") and the Alcoholic Beverages Control Commission (the "ABCC" and together with the LLA collectively the "Licensing Authorities") for approval.

I do hereby declare under the pains and penalties of perjury that I have personal knowledge of the information submitted in the Application, and as such affirm that all statement and representations therein are true to the best of my knowledge and belief. I further submit the following to be true and accurate:

- (1) I understand that each representation in this Application is material to the Licensing Authorities' decision on the Application and that the Licensing Authorities will rely on each and every answer in the Application and accompanying documents in reaching its decision;
- (2) I state that the location and description of the proposed licensed premises does not violate any requirement of the ABCC or other state law or local ordinances;
- (3) I understand that while the Application is pending, I must notify the Licensing Authorities of any change in the information submitted therein. I understand that failure to give such notice to the Licensing Authorities may result in disapproval of the Application;
- (4) I understand that upon approval of the Application, I must notify the Licensing Authorities of any change in the Application information as approved by the Licensing Authorities. I understand that failure to give such notice to the Licensing Authorities may result in sanctions including revocation of any license for which this Application is submitted;
- (5) I understand that the licensee will be bound by the statements and representations made in the Application, including, but not limited to the identity of persons with an ownership or financial interest in the license;
- (6) I understand that all statements and representations made become conditions of the license;
- (7) I understand that any physical alterations to or changes to the size of, the area used for the sale, delivery, storage, or consumption of alcoholic beverages, must be reported to the Licensing Authorities and may require the prior approval of the Licensing Authorities;
- (8) I understand that the licensee's failure to operate the licensed premises in accordance with the statements and representations made in the Application may result in sanctions, including the revocation of any license for which the Application was submitted; and
- (9) I understand that any false statement or misrepresentation will constitute cause for disapproval of the Application or sanctions including revocation of any license for which this Application is submitted.

Signature: Zeina B Metri Digitally signed by Zeina B Metri  
Date: 2016.05.05 14:06:27 -04'00'

Date: 6-9-16

Title: President



The Commonwealth of Massachusetts  
 Alcoholic Beverages Control Commission  
 239 Causeway Street  
 Boston, MA 02114  
 www.mass.gov/abcc

**MANAGER APPLICATION**

All proposed managers are required to complete a Personal Information Form, and attach a copy of the corporate vote authorizing this action and appointing a manager.

**1. LICENSEE INFORMATION:**

Legal Name of Licensee:  Business Name (dba):

Address:

City/Town:  State:  Zip Code:

ABCC License Number:  Phone Number of Premise:   
 (If existing licensee)

**2. MANAGER INFORMATION:**

A. Name:  B. Cell Phone Number:

C. List the number of hours per week you will spend on the licensed premises:

**3. CITIZENSHIP INFORMATION:**

A. Are you a U.S. Citizen: Yes  No  B. Date of Naturalization:  C. Court of Naturalization:

(Submit proof of citizenship and/or naturalization such as U.S. Passport, Voter's Certificate, Birth Certificate or Naturalization Papers)

**4. BACKGROUND INFORMATION:**

A. Do you now, or have you ever, held any direct or indirect, beneficial or financial interest in a license to sell alcoholic beverages? Yes  No   
 If yes, please describe:

B. Have you ever been the Manager of Record of a license to sell alcoholic beverages that has been suspended, revoked or cancelled? Yes  No   
 If yes, please describe:

C. Have you ever been the Manager of Record of a license that was issued by this Commission? Yes  No   
 If yes, please describe:

D. Please list your employment for the past ten years (Dates, Position, Employer, Address and Telephone):

I hereby swear under the pains and penalties of perjury that the information I have provided in this application is true and accurate:

Signature  Date



The Commonwealth of Massachusetts  
 Alcoholic Beverages Control Commission  
 239 Causeway Street  
 Boston, MA 02114  
 www.mass.gov/abcc

**PERSONAL INFORMATION FORM**

Each individual listed in Section 10 of this application must complete this form.

**1. LICENSEE INFORMATION:**

A. Legal Name of Licensee	Portside Liquors III, Inc.	B. Business Name (dba)	Portside Liquors
C. Address	1421 Orleans Rd	D. ABCC License Number (if existing licensee)	050600037
E. City/Town	East Harwich	State	MA
		Zip Code	02645
F. Phone Number of Premise	508-432-1650	G. EIN of License	81-3013094

**2. PERSONAL INFORMATION:**

A. Individual Name	Zeina B Metri	B. Home Phone Number	508-759-4097
C. Address	18 Weatherdeck Drive		
D. City/Town	Bourne	State	MA
		Zip Code	02532
E. Social Security Number	[REDACTED]	F. Date of Birth	[REDACTED]
G. Place of Employment	Portside Liquors, Inc, 590A MacArthur Blvd, Pocasset, MA 02559		

**3. BACKGROUND INFORMATION:**

Have you ever been convicted of a state, federal or military crime? Yes  No

If yes, as part of the application process, the individual must attach an affidavit as to any and all convictions. The affidavit must include the city and state where the charges occurred as well as the disposition of the convictions.

**4. FINANCIAL INTEREST:**

Provide a detailed description of your direct or indirect, beneficial or financial interest in this license.

I will be owner/manager of this license.

I hereby swear under the pains and penalties of perjury that the information I have provided in this application is true and accurate:

Signature	<i>Zeina Metri</i>	Date	6-9-16
Title	President	(If Corporation/LLC Representative)	



The Commonwealth of Massachusetts  
 Alcoholic Beverages Control Commission  
 239 Causeway Street  
 Boston, MA 02114  
 www.mass.gov/abcc

**PERSONAL INFORMATION FORM**

Each individual listed in Section 10 of this application must complete this form.

**1. LICENSEE INFORMATION:**

A. Legal Name of Licensee	Portside Liquors III, Inc.	B. Business Name (dba)	Portside Liquors
C. Address	1421 Orleans Rd	D. ABCC License Number (If existing licensee)	050600037
E. City/Town	Harwich	State	MA
		Zip Code	02645
F. Phone Number of Premise	508-432-1650	G. EIN of License	30-0693495

**2. PERSONAL INFORMATION:**

A. Individual Name	George Metri	B. Home Phone Number	508-759-4097
C. Address	18 Weatherdeck Drive		
D. City/Town	Bourne	State	MA
		Zip Code	02532
E. Social Security Number	[REDACTED]	F. Date of Birth	[REDACTED]
G. Place of Employment	Portside Liquors, Inc.		

**3. BACKGROUND INFORMATION:**

Have you ever been convicted of a state, federal or military crime? Yes  No

If yes, as part of the application process, the individual must attach an affidavit as to any and all convictions. The affidavit must include the city and state where the charges occurred as well as the disposition of the convictions.

**4. FINANCIAL INTEREST:**

Provide a detailed description of your direct or indirect, beneficial or financial interest in this license.

I am a shareholder, director of this corporation that owns Portside Liquors III, Inc.

I hereby swear under the pains and penalties of perjury that the information I have provided in this application is true and accurate:

Signature George Metri Date 6-9-16  
 Title Director (If Corporation/LLC Representative)





**Commonwealth of Massachusetts  
Alcoholic Beverages Control Commission  
239 Causeway Street, First Floor  
Boston, MA 02114**

**STEVEN GROSSMAN  
TREASURER AND RECEIVER GENERAL**

**CORI REQUEST FORM**

**KIM S. GAINSBORO, ESQ.  
CHAIRMAN**

The Alcoholic Beverages Control Commission has been certified by the Criminal History Systems Board to access conviction and pending Criminal Offender Record Information. For the purpose of approving each shareholder, owner, licensee or applicant for an alcoholic beverages license, I understand that a criminal record check will be conducted on me, pursuant to the above. The information below is correct to the best of my knowledge.

**ABCC LICENSE INFORMATION**

ABCC NUMBER: <small>(IF EXISTING LICENSEE)</small>	050600037	LICENSEE NAME:	Portside Liquors III, Inc	CITY/TOWN:	East Harwich
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**APPLICANT INFORMATION**

LAST NAME:	Metri	FIRST NAME:	Zeina	MIDDLE NAME:	Bouserhal
MAIDEN NAME OR ALIAS (IF APPLICABLE):	Bouserhal		PLACE OF BIRTH:	Lebanon	
DATE OF BIRTH:	[REDACTED]	SSN:	[REDACTED]	ID THEFT INDEX PIN (IF APPLICABLE):	
MOTHER'S MAIDEN NAME:	merheb	DRIVER'S LICENSE #:	[REDACTED]	STATE LIC. ISSUED:	Massachusetts
GENDER:	FEMALE	HEIGHT:	[REDACTED]	WEIGHT:	[REDACTED]
EYE COLOR:	[REDACTED]	CURRENT ADDRESS:			
18 Weatherdeck Drive					
CITY/TOWN:	Bourne	STATE:	MA	ZIP:	02532
FORMER ADDRESS:	117 Old Plymouth rd				
CITY/TOWN:	Sagamore	STATE:	MA	ZIP:	02562

**PRINT AND SIGN**

PRINTED NAME:	Zeina B Metri	APPLICANT/EMPLOYEE SIGNATURE:	<i>Zeina B Metri</i>
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**NOTARY INFORMATION**

On this June 22, 2016 before me, the undersigned notary public, personally appeared Zeina Met  
(name of document signer), proved to me through satisfactory evidence of identification, which were Mass license  
to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he) (she) signed it voluntarily for its stated purpose.

Karen L. Fuller  
NOTARY

**DIVISION USE ONLY**

REQUESTED BY:	[REDACTED]
<small>SIGNATURE OF COM-AUTHORIZED EMPLOYEE</small>	

The DCI Identify Theft Index PIN Number is to be completed by those applicants that have been issued an Identity Theft PIN Number by the DCI. Certified agencies are required to provide all applicants the opportunity to include this information to ensure the accuracy of the CORI request process. ALL CORI request forms that include this field are required to be submitted to the DCI via mail or by fax to (617) 660-4614.



**KAREN L. FULLER**  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires July 8, 2016



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

DEBORAH B. GOLDBERG  
TREASURER AND RECEIVER GENERAL

KIM S. GAINSBORO, ESQ.  
CHAIRMAN

**CORI REQUEST FORM**

The Alcoholic Beverages Control Commission has been certified by the Criminal History Systems Board to access conviction and pending Criminal Offender Record Information. For the purpose of approving each shareholder, owner, licensee or applicant for an alcoholic beverages license, I understand that a criminal record check will be conducted on me, pursuant to the above. The information below is correct to the best of my knowledge.

**ABCC LICENSE INFORMATION**

ABCC NUMBER: <small>(IF EXISTING LICENSEE)</small>	50600037	LICENSEE NAME:	John & John United Corporation	CITY/TOWN:	Harwich
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**APPLICANT INFORMATION**

LAST NAME:	Metri	FIRST NAME:	George	MIDDLE NAME:	Rafic
MAIDEN NAME OR ALIAS (IF APPLICABLE):		PLACE OF BIRTH:	Lebanon		
DATE OF BIRTH:	[REDACTED]	SSN:	[REDACTED]	ID THEFT INDEX PIN (IF APPLICABLE):	
MOTHER'S MAIDEN NAME:	[REDACTED]	DRIVER'S LICENSE #:	[REDACTED]	STATE LIC. ISSUED:	Massachusetts
GENDER:	MALE	HEIGHT:	[REDACTED]	WEIGHT:	[REDACTED]
EYE COLOR:	[REDACTED]				
CURRENT ADDRESS:	18 Weatherdeck Drive				
CITY/TOWN:	Bourne	STATE:	MA	ZIP:	02532
FORMER ADDRESS:	117 Old Plymouth Rd				
CITY/TOWN:	Sagamore	STATE:	MA	ZIP:	02562

**PRINT AND SIGN**

PRINTED NAME:	George Metri	APPLICANT/EMPLOYEE SIGNATURE:	<i>George Metri</i>
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**NOTARY INFORMATION**

On this June 22 2016 before me, the undersigned notary public, personally appeared George Me  
(name of document signer), proved to me through satisfactory evidence of identification, which were Mass license  
to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he) (she) signed it voluntarily for its stated purpose.

Karen L. Fuller  
NOTARY

**DIVISION USE ONLY**

REQUESTED BY:	[REDACTED]
	SIGNATURE OF CORI AUTHORIZED EMPLOYEE

The DCII Identify Theft Index PIN Number is to be completed by those applicants that have been issued an Identify Theft PIN Number by the DCII. Certified agencies are required to provide all applicants the opportunity to include this information to ensure the accuracy of the CORI request process. ALL CORI request forms that include this field are required to be submitted to the DCII via mail or by fax to (617) 660-4614.



KAREN L. FULLER  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires July 8, 2016

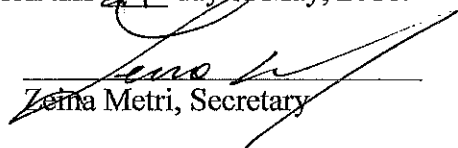
CERTIFICATE OF VOTE OF PORTSIDE LIQUORS, III, INC.

The undersigned, Zeina Metri, Secretary of **PORTSIDE LIQUORS III, INC.**, a Massachusetts corporation with its registered office at 75 Washington Street, Pembroke, MA 02359 hereby represent and certify that at A Special Meeting of **PORTSIDE LIQUORS III, INC.**, duly called and legally held on May 29, 2016 it was:

**VOTED:** That Zeina Metri, Secretary of **PORTSIDE LIQUORS III, INC.**, be and hereby is authorized to execute and file for and on behalf of the Corporation any and all Applications and other documentation with the appropriate authorities. Including without limitation, take all necessary steps to secure an All Alcohol Beverage License in its name, an Application to the Alcoholic Beverage Control Commission of the Commonwealth of Massachusetts and that she is further authorized to take such other and further action as she deems necessary for and on behalf of the corporation in connection with the foregoing votes.

This writing shall be kept with the records of the Corporation and shall be deemed to be a vote duly taken by Zeina Metri, Secretary.

**IN WITNESS WHEREOF**, I have hereunto set my hand as secretary of the corporation and affixed the seal of the corporation this 29<sup>th</sup> day of May, 2016.

  
\_\_\_\_\_  
Zeina Metri, Secretary



MASSACHUSETTS DEPARTMENT OF REVENUE  
PO BOX 7044  
BOSTON, MA 02204-7044  
CONTACT CENTER  
(617) 887-6367

Letter ID: L1725626368  
Notice Date: June 15, 2016  
Case ID: 0-000-137-357

## CERTIFICATE OF GOOD STANDING AND/OR TAX COMPLIANCE



JOHN & JON UNITED CORPORATION  
1421 ORLEANS RD  
EAST HARWICH MA 02645-2148

### *Why did you receive this notice?*

The Commissioner of Revenue certifies that, as of the date of this certificate, JOHN & JON UNITED CORPORATION is in compliance with its tax obligations under Chapter 62C of the Massachusetts General Laws.

This certificate doesn't certify that the taxpayer is compliant in taxes such as unemployment insurance administered by agencies other than the Department of Revenue, or taxes under any other provisions of law.

**This is not a waiver of lien issued under Chapter 62C, section 52 of the Massachusetts General Laws.**

### *Where can you find additional information?*

Visit our website at [mass.gov/dor](http://mass.gov/dor) for one-stop access to taxpayer information. You can learn more about state tax laws and DOR policies and procedures, including your Taxpayer Bill of Rights and the appeals process.

You can file your returns, make payments and manage your account at [mass.gov/masstaxconnect](http://mass.gov/masstaxconnect). You may also contact us by phone at (617) 887-6367 or toll-free in Massachusetts at (800) 392-6089, Monday through Friday, 9:00 a.m. to 5:00 p.m.

Charlene Hannaford  
Acting Deputy Commissioner

June 20, 2016

George Metri  
Zeina Metri  
18 Weather Deck Dr.  
Bourne, MA 02532

RE: Retail Liquor store located @ 1421 Route 139, East Harwich MA known as Harwich East Liquors

Dear George & Zeina

We are pleased to inform you that *Rockland Trust Company* (the "Bank") has pre-approved your application for a Small Business Administration (SBA) \$1,125,000.00 secured loan. The loan will be subject to the following terms and conditions:

BORROWER: George Metri & Zeina Metri or Nominee

ORIGINAL LOAN AMOUNT: \$1,125,000.00. The final loan amount is subject to receipt of a satisfactory business valuation for the subject business.

MATURITY: Ten years from the date of closing.

INTEREST RATE: Final interest rate to be set 10 days prior to closing.

MONTHLY PAYMENT: Monthly principal and interest payments sufficient to amortize the loan over a 10-year amortization schedule.

COLLATERAL: First security interest in all business assets, along with a pledge of the liquor license.

GUARANTEE: Any individual owner that maintains an ownership interest of 20% or more in the subject entity.

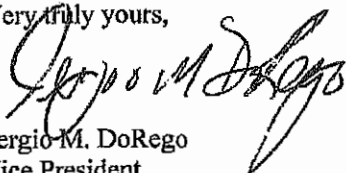
COSTS: The Borrower will pay all related closing costs associated with this closing:

CLOSING: The closing of the loan must occur no later than October 15, 2016.

ADDITIONAL REQUIREMENTS:

- Internal and SBA Credit approval
- Business Valuation
- Landlord Waiver

Very truly yours,



Sergio M. DoRego  
Vice President  
Commercial Banking

## PLEDGE OF ALCOHOLIC BEVERAGE LICENSE AGREEMENT

This AGREEMENT entered into at \_\_\_\_\_, Massachusetts, as of \_\_\_\_\_, between \_\_\_\_\_, with an address of \_\_\_\_\_ (the "Pledgor") and Rockland Trust Community Development LLC with an address of 288 Union Street, Rockland, Massachusetts 02370 (the "Bank").

1. Pledge. In consideration of the Bank's extending credit and other financial accommodations to the Pledgor, whether evidenced by notes or not, the Pledgor hereby, in accordance with Massachusetts General Laws, Chapter 138, grants, pledges, assigns and transfers to the Bank a security interest in the alcoholic beverage license more particularly described as follows: Assignment of Alcoholic Beverage License issued to \_\_\_\_\_. (the "License").

2. Obligations. The security interest granted by this Agreement is given to and shall be held by the Bank as security for the payment and performance of all Obligations (as hereinafter defined), including without limitation, all amounts due and owing to the Bank and all obligations respecting (i) that certain \_\_\_\_\_ Note, dated \_\_\_\_\_, by \_\_\_\_\_ in favor of the Bank in the original principal amount of \$ \_\_\_\_\_ and (ii) that certain \_\_\_\_\_ Note, dated \_\_\_\_\_, by \_\_\_\_\_ in favor of the Bank in the original principal amount of \$ \_\_\_\_\_ (the "Notes"; and collectively, along with all other agreements, documents, certificates and instruments delivered in connection therewith, the "Loan Documents"), and any substitutions, modifications, extensions or amendments to any of the Loan Documents. "Obligation(s)" shall mean without limitation all loans, advances, indebtedness, notes, liabilities and amounts, liquidated or unliquidated, owing by the Pledgor to the Bank at any time, of each and every kind, nature and description, whether arising under this Agreement, any of the Loan Documents or otherwise, and whether secured or unsecured, direct or indirect (that is, whether the same are due directly by the Pledgor to the Bank; or are due indirectly by the Pledgor to the Bank as endorser, guarantor or other surety, or as obligor of obligations due third persons which have been endorsed or assigned to the Bank, or otherwise), absolute or contingent, due or to become due, now existing or hereafter contracted. Obligations shall also include all interest and other charges chargeable to the Pledgor or due from the Pledgor to the Bank from time to time and all costs and expenses referred to in this Agreement.

3. Representations and Warranties. The Pledgor hereby represents and warrant to the Bank as follows: (i) the Pledgor has the power and authority to enter into this Agreement; (ii) the License is not subject to any prior lien or encumbrance, the Pledgor will not transfer, agree to or apply for a transfer or pledge of, or sell the License to any other individual or entity for so long as any Obligations are outstanding, without the prior written consent of the Bank; (iii) the Pledgor will pay when due all taxes, charges, liens and assessments against the License and the beverages authorized to be sold under the License; and the Pledgor will perform any and all acts required to keep the License in good standing, including filing timely applications of the renewal thereof, and will not suffer or permit the License to lapse; (iv) the Pledgor shall promptly report in writing to the Bank the occurrence of any event which might impair the value of the License, including, but not limited to, any action taken by any local or state regulatory agencies which in any manner restricts the use of the License; and (v) the Pledgor will comply with all applicable laws and regulations with respect to the License or its use.

4. Further Assurance. The undersigned agrees to do such further acts or execute such further documents as may be determined necessary by the Bank to perfect the interest granted herein, including executing any application for approval of the pledge made pursuant to this Agreement.

5. Costs and Expenses. The Pledgor shall pay to the Bank any and all costs and expenses (including, without limitation, reasonable attorneys' fees, court costs, litigation and other expenses) incurred or paid by the Bank in establishing, maintaining, protecting or enforcing any of the Bank's rights or the Obligations, including, without limitation, any and all such costs and expenses incurred or paid by the Bank in defending the Bank's security interest in, title or right to the License or in collecting or attempting to collect or enforcing or attempting to enforce payment of any of the Obligations.

6. Default. "Event of Default" shall mean the occurrence of any one or more of the following events: (i) default of any liability, obligation or undertaking of the Pledgor to the Bank, hereunder or otherwise, including failure to pay in full and when due any installment of principal or interest or default under any other Loan Document; (ii) failure of the Pledgor to maintain aggregate collateral security value satisfactory to the Bank; (iii)

default of any material liability, obligation or undertaking of the Pledgor to any other party; (iv) if any statement, representation or warranty heretofore, now or hereafter made in connection with this Agreement or in any supporting financial statement of the Pledgor shall be determined by Bank to have been false in any material respect when made; (v) if the Pledgor or any guarantor is a corporation, trust, partnership or limited liability company, the liquidation, termination or dissolution of any such organization, or the merger or consolidation of such organization into another entity, or its ceasing to carry on actively its present business or the appointment of a receiver for its property; (vi) the death of the Pledgor or of any guarantor of the Obligations and, if any of the Pledgor or any guarantor of the Obligations is a partnership or limited liability company, the death of any partner or member; (vii) the institution by or against the Pledgor or guarantor of the Obligations of any proceedings under the Bankruptcy Code, 11 USC §101 *et seq.* or any other law in which the Pledgor or any guarantor of the Obligations is alleged to be insolvent or unable to pay their respective debts as they mature, or the making by the Pledgor or any guarantor of the Obligations of an assignment for the benefit of creditors or the granting by the Pledgor or any guarantor of the Obligations of a trust mortgage for the benefit of creditors; (viii) the service upon the Bank hereof of a writ in which the Bank is named as trustee of the Pledgor or of any guarantor of the Obligations; (ix) a judgment or judgments for the payment of money shall be rendered against the Pledgor or guarantor hereof, and any such judgment shall remain unsatisfied and in effect for any period of thirty (30) consecutive days without a stay of execution; (x) any levy, seizure, attachment, execution or similar process shall be issued or levied on any of the property of the Pledgor or guarantor hereof; (xi) the termination of any guaranty of the Obligations; or (xii) the occurrence of such a change in the condition or affairs (financial or otherwise) of the Pledgor or any guarantor or other surety for any of the Obligations or the occurrence of any event or circumstance such that the Bank, in its sole discretion, deems that it is insecure or that the prospects for timely or full payment or performance of any of the Obligations has been or may be impaired.

7. Remedies. If an Event of Default shall occur, at the election of the Bank, all Obligations shall become immediately due and payable without notice or demand, except with respect to Obligations payable on demand, which shall be due and payable on demand, whether or not an Event of Default has occurred. The Bank is hereby authorized, at its election, after an Event of Default or after demand, without any further demand or notice except to such extent as notice may be required by applicable law, to sell or otherwise dispose of the License at public or private sale; and the Bank may also exercise any and all other rights and remedies of a secured party under the Massachusetts Uniform Commercial Code or which are otherwise accorded to it by applicable law, all as the Bank may determine. The proceeds of any sale or disposition of the License shall be applied towards the Obligations in such order and manner as the Bank determines in its sole discretion, any statute, custom or usage to the contrary notwithstanding.

8. Waivers. The Pledgor waives notice of nonpayment, demand, presentment, protest or notice of protest of the Collateral, and all other notices, consents to any renewals or extensions of time of payment thereof, and generally waives any and all suretyship defenses and defenses in the nature thereof. No delay or omission of the Bank in exercising or enforcing any of its rights, powers, privileges, remedies, immunities or discretions (all of which are hereinafter collectively referred to as the "Bank's Rights and Remedies") hereunder or under applicable law shall constitute a waiver thereof; and no waiver by the Bank of any default of the Pledgor hereunder or of any demand hereunder shall operate as a waiver of any other default hereunder or any other demand hereunder. No term or provision hereof shall be waived, altered or modified except with the prior written consent of the Bank, which consent makes explicit reference to this Agreement. Except as provided in the preceding sentence, no other agreement or transaction, of whatsoever nature, entered into between the Bank and the Pledgor at any time (whether before, during or after the effective date or term of this Agreement) shall be construed in any particular way as a waiver, modification or limitation of any of the Bank's Rights and Remedies under this Agreement (nor shall anything in this Agreement be construed as a waiver, modification or limitation of any of the Bank's Rights and Remedies under any such other agreement or transaction) but all the Bank's Rights and Remedies not only under the provisions of this Agreement but also under any such other agreement or transaction shall be cumulative and not alternative or exclusive, and may be exercised by the Bank at such time or times and in such order of preference as the Bank in its sole discretion may determine.

9. Severability. If any provision of this Agreement or portion of such provision or the application thereof to any person or circumstance shall to any extent be held invalid or unenforceable, the remainder of this Agreement (or the remainder of such provision) and the application thereof to other persons or circumstances shall not be affected thereby.

10. Binding Effect of Agreement. This Agreement shall be binding upon and inure to the benefit of the

respective heirs, executors, administrators, legal representatives, successors and assigns of the parties hereto. The Bank may transfer and assign this Agreement and deliver the Collateral to the assignee, who shall thereupon have all of the Bank's Rights and Remedies.

11. Notices. Any notices under or pursuant to this Agreement shall be deemed duly received and effective if delivered in hand to any officer or agent of the Pledgor or Bank, or if mailed by registered or certified mail, return receipt requested, addressed to the Pledgor or Bank at the address set forth in this Agreement or as any party may from time to time designate by written notice to the other party.

12. Governing Law. This Agreement is intended to take effect as a sealed instrument and has been executed or completed and/or is to be performed in Massachusetts, and it and all transactions thereunder or pursuant thereto shall be governed as to interpretation, validity, effect, rights, duties and remedies of the parties thereunder and in all other respects by the domestic laws of Massachusetts.

13. Jurisdiction and Venue. Pledgor irrevocably submits to the nonexclusive jurisdiction of any Federal or state court sitting in Massachusetts, over any suit, action or proceeding arising out of or relating to this Agreement. Pledgor irrevocably waives, to the fullest extent it may effectively do so under applicable law, any objection it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court and any claim that the same has been brought in an inconvenient forum. Pledgor irrevocably appoints the Secretary of State of Massachusetts as its authorized agent to accept and acknowledge on its behalf any and all process which may be served in any such suit, action or proceeding, consents to such process being served (i) by mailing a copy thereof by registered or certified mail, postage prepaid, return receipt requested, to Pledgor's address shown in this Agreement or as notified to the Bank and (ii) by serving the same upon such agent, and agrees that such service shall in every respect be deemed effective service upon Pledgor.

14. JURY WAIVER. THE PLEDGOR AND BANK EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY, AND AFTER AN OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL, (A) WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING IN CONNECTION WITH THIS AGREEMENT, THE OBLIGATIONS, ALL MATTERS CONTEMPLATED HEREBY AND DOCUMENTS EXECUTED IN CONNECTION HEREWITH AND (B) AGREE NOT TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CAN NOT BE, OR HAS NOT BEEN WAIVED. THE PLEDGOR CERTIFIES THAT NEITHER THE BANK NOR ANY OF ITS REPRESENTATIVES, AGENTS OR COUNSEL HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE BANK WOULD NOT IN THE EVENT OF ANY SUCH PROCEEDING SEEK TO ENFORCE THIS WAIVER OF RIGHT TO TRIAL BY JURY.

15. The Parties agree and acknowledge that notwithstanding the Harwich Board of Selectmen's approval of the alcoholic beverage license of Portside Liquors III, Inc. and pledge of the same as collateral pursuant to the terms of the agreement, the Board of Selectmen expressly reserves any and all rights it has to suspend, revoke, not renew, or otherwise regulate this alcoholic beverage license under M.G.L Ch. 138 1, et. al. Furthermore, the Board of Selectmen does not intend to bind or obligate the Town of Harwich to any terms of this loan agreement.

} per  
BOS  
policy



Executed under seal and dated \_\_\_\_\_, 2012.

Witness

Pledgor:

\_\_\_\_\_  
, Witness to All

# COMMERCIAL PROMISSORY NOTE

\$ \_\_\_\_\_, 20 \_\_\_\_\_

FOR VALUE RECEIVED, the undersigned \_\_\_\_\_ a \_\_\_\_\_ organized under the laws of [State/Commonwealth] of \_\_\_\_\_ having a principal place of business at \_\_\_\_\_ (the "Borrower") (jointly and severally if more than one) promises(s) to pay to the order of ROCKLAND TRUST COMPANY having a principal place of business at 288 Union Street, Rockland, Massachusetts 02370 (hereinafter, with any subsequent holder, the "Bank") at an office of the Bank, the sum of \_\_\_\_\_ Dollars with interest thereon, in accordance with the provisions as indicated below. This Note is the "Note" referred to in the Loan Agreement to which the Borrower and the Bank are parties dated the date hereof [OPTION: as of \_\_\_\_\_] (the "Agreement") and reference is made to said Agreement for additional terms applicable hereto. Capitalized terms used in this Note and not otherwise defined herein but defined in the Agreement shall have the same meaning as ascribed to such terms in the Agreement.

**[USE THIS PARAGRAPH ONLY IF THIS IS A REVOLVING NOTE, OTHERWISE DELETE]** This Note evidences advances made to the Borrower under a revolving credit arrangement as set forth in the Agreement. The principal of this Note shall be such amount as may from time to time be advanced under the Agreement, whether or not greater than the amount first set forth above.

**[USE THIS PARAGRAPH ONLY IF THIS IS A NON-REVOLVING ADVANCING NOTE, OTHERWISE DELETE]** This Note evidences advances made to the Borrower under a non-revolving credit arrangement as set forth in the Agreement. The principal of this Note shall be such amount as may from time to time be advanced under the Agreement. Amounts advanced by the Bank and repaid by the Borrower prior to maturity may not be re-borrowed.

**INTEREST RATE:** Interest on the unpaid principal balance of this Note (based upon a year consisting of twelve (12) months of thirty (30) days each and calculated on the actual number of days elapsed) shall accrue as follows:

**< pick one - delete all sections that do not apply >**

**[FIXED RATE:]** At the rate of \_\_\_\_\_ percent (\_\_\_\_\_% ) per annum.]

**[FLOATING RATE:]** At a floating rate of interest equal to the aggregate of ..... **< pick one if a Floating Rate loan - delete all sections that do not apply >**

[the Bank's Base Lending Rate, as that rate may change from time to time (the "Index") plus \_\_\_\_\_ % per annum. The term "Base Lending Rate" shall mean the per annum rate of interest announced by the Bank from time to time as its "base lending rate" which rate need not necessarily be the lowest interest rate charged by Bank. Changes in the Index shall take effect, for the purposes of the determination of interest hereunder, when made effective generally by the Bank to floating rate loans measured by the Bank's Base Lending Rate.]

[the National Prime Rate, as that rate may change from time to time (the "Index"), plus \_\_\_\_\_ % per annum. The term "National Prime Rate" shall mean the rate of interest published in the Wall Street Journal as the so-called National "Prime Rate" or if no such rate is published, an equivalent rate published by another financial publication of national standing as determined by the Bank. Changes in the Index shall take effect on the effective date of any change in the "Prime Rate."]

[ADJUSTABLE RATE:] This is an Adjustable Rate Loan. The Note has an "Initial Interest Rate" of \_\_\_\_\_ %. The interest rate may be increased or decreased beginning on \_\_\_\_\_, 20\_\_ and on the like day of every \_\_\_ [month][quarter][year] interval thereafter (the "Adjustment Date(s)"). The interest rate shall be adjusted, up or down, at a rate of \_\_\_\_\_ % per annum over the Index Rate. The Index Rate is.....

< pick one if an Adjustable Rate loan - delete all sections that do not apply >

[the \_\_\_ Year Classic Advance Rate which is utilized on the Adjustment Date by the Bank in its commercial lending activities . The term "\_\_\_ Year Classic Advance Rate" shall be the rate listed by the Federal Home Loan Bank Boston (FHLBB) as the so-called \_\_\_ Year Classic Advance Rate. If no such rate is published, an equivalent index will be selected by the Bank in the exercise of its reasonable commercial judgment.]

[the so-called [one (1)][three (3)][six (6)] month London Interbank Offered Rate "LIBOR." The term "LIBOR" shall be the rate listed by the Wall Street Journal two business days prior to the Adjustment Date as the so-called "[one month][three month][six month] LIBOR Rate" or if no such rate is published, an equivalent rate published by another financial publication of national standing as determined by the Bank.]

[OPTION FOR FLOOR RATE] Notwithstanding the foregoing, under no circumstances shall the rate of interest payable be less than \_\_\_\_\_% per annum.

**PAYMENT PROVISIONS:** Borrower shall repay all outstanding principal under this Note together with interest accrued thereon as set forth below:

< PICK APPLICABLE SECTION - delete all sections that do not apply >

[INTEREST ONLY UNTIL STATED MATURITY] The Borrower will make monthly payments of interest only, in arrears, with the entire principal balance due on \_\_\_\_\_ (the "Maturity Date"). The first such payment shall be due on \_\_\_\_\_, 20\_\_ with each subsequent payment being due on the like day of each month thereafter.

[INTEREST ONLY FOR STATED PERIOD AND THEN AMORTIZATION] The Borrower will make monthly payments of interest only in arrears beginning on \_\_\_\_\_, 20\_\_ and continuing on the like day of each month thereafter through (and including) \_\_\_\_\_, 20\_\_. Thereafter, Borrower will make [INSERT APPLICABLE PRINCIPAL REPAYMENT PROVISION FROM BELOW SELECTIONS]

[LEVEL PAYMENTS OF PRINCIPAL WITH INTEREST ADDED] \_\_\_\_\_ consecutive monthly installments of principal of \$\_\_\_\_\_ each, plus interest accrued for such month. The first such monthly installment shall be due on \_\_\_\_\_, 20\_\_ and each subsequent installment shall be due on the like day of each month thereafter. The total monthly payment due on any installment payment date shall be equal to the combined total of the monthly principal installment plus interest due. The final such monthly payment shall be due on \_\_\_\_\_ (the "Maturity Date") in an amount equal to the entire unpaid balance of principal plus all unpaid accrued interest.

**[LEVEL PAYMENTS CONSISTING OF PRINCIPAL AND INTEREST]** \_\_\_\_\_ consecutive monthly payments of which each but the last shall be \$\_\_\_\_\_ consisting of principal and interest. The first such monthly installment shall be due and payable on \_\_\_\_\_, 20\_\_ and each subsequent installment shall be due on the like day of each month thereafter. The final such monthly payment shall be due on \_\_\_\_\_ the ("Maturity Date") in an amount equal to the entire unpaid balance of principal plus all unpaid accrued interest. **[ADD THE FOLLOWING FOR FLOATING RATE LOANS; NOTWITHSTANDING THE FOREGOING, IF IN RESPECT TO ANY MONTH THE AMOUNT OF THE MONTHLY PAYMENT ABOVE SHALL BE LESS THAN THE AMOUNT OF INTEREST DUE FOR SUCH MONTH, THE PAYMENT DUE FOR SUCH MONTH SHALL BE INCREASED TO AN AMOUNT EQUAL TO THE INTEREST DUE FOR SUCH MONTH.]**

**[LEVEL PAYMENTS CONSISTING OF PRINCIPAL AND INTEREST; ADJUSTABLE RATE AND ADJUSTED PAYMENTS]** \_\_\_\_\_ consecutive monthly payments consisting of principal and interest. The initial amount of such payments shall be \$\_\_\_\_\_ with the first such payment shall be due and payable on \_\_\_\_\_, 20\_\_ and each subsequent installment shall be due on the like day of each month thereafter. Such payments will be subject to change every Adjustment Date, up or down, depending upon any changes in the Index Rate as established above, and calculated by the Bank based upon the then outstanding principal balance and the number of months remaining from an original amortization period of \_\_\_\_\_ months (although the Maturity Date may be at an earlier date). The final monthly payment shall be due on \_\_\_\_\_ (the "Maturity Date") in an amount equal to the entire unpaid balance of principal plus all unpaid accrued interest.

**[DEMAND W/INTEREST ONLY PAYMENTS NOTE: ALWAYS USE THIS OPTION IF YOU ARE SELECTING "CREDIT EXPIRATION DATE"]** **ON DEMAND**, with interest payable monthly in arrears on the \_\_\_ day of each month. The first such payment shall be due on \_\_\_\_\_, 20\_\_ and unless and until demand is so made, each subsequent payment shall be due on the like day of each month thereafter.

**[DEMAND W/LEVEL PRINCIPAL PAYMENTS PLUS INTEREST]** **ON DEMAND**, with principal payments of \$\_\_\_\_\_ each, plus interest accrued for such month, to be made monthly unless and until such demand is made. The first such payment shall be due on \_\_\_\_\_, 20\_\_ (no previous demand having been made hereunder) and unless and until demand is so made, each subsequent payment shall be due on the like day of each month thereafter.

**[LEVEL PAYMENTS OF PRINCIPAL PLUS INTEREST]** In \_\_\_\_\_ consecutive monthly installments of principal of \$\_\_\_\_\_ each, plus interest accrued for such month. The first such monthly installment shall be due on \_\_\_\_\_, 20\_\_ and each subsequent installment shall be due on the like day of each month thereafter. The final such monthly payment shall be due on \_\_\_\_\_ (the "Maturity Date") in an amount equal to the entire unpaid balance of principal plus all unpaid accrued interest.

**[LEVEL PAYMENTS CONSISTING OF PRINCIPAL AND INTEREST]** In \_\_\_\_\_ consecutive monthly payments of which each but the last shall be \$\_\_\_\_\_ consisting of principal and interest. The first such monthly installment shall be due and payable on \_\_\_\_\_, 20\_\_ and each subsequent installment shall be due on the like day of each month thereafter. The final such monthly payment shall be due on \_\_\_\_\_ ) (the "Maturity Date") in an amount equal to the entire unpaid balance of principal plus all unpaid accrued interest. **[ADD THE FOLLOWING FOR**

FLOATING RATE LOANS: NOTWITHSTANDING THE FOREGOING, IF IN RESPECT TO ANY MONTH THE AMOUNT OF THE MONTHLY PAYMENT ABOVE SHALL BE LESS THAN THE AMOUNT OF INTEREST DUE FOR SUCH MONTH, THE PAYMENT DUE FOR SUCH MONTH SHALL BE INCREASED TO AN AMOUNT EQUAL TO THE INTEREST DUE FOR SUCH MONTH.]

[LEVEL PAYMENTS CONSISTING OF PRINCIPAL AND INTEREST; ADJUSTABLE RATE AND ADJUSTED PAYMENTS] In \_\_\_\_ consecutive monthly payments consisting of principal and interest. The initial amount of such payments shall be \$\_\_\_\_\_. The first such payment shall be due and payable on \_\_\_\_\_, 20\_\_ and each subsequent installment shall be due on the like day of each month thereafter. Such level payments will be subject to change every Adjustment Date, up or down, depending upon any changes in the Index Rate as established above, and calculated by the Bank based upon the then outstanding principal balance and the number of months remaining from an original amortization period of \_\_\_\_\_ months (although the Maturity Date may be at an earlier date). The final monthly payment shall be due on \_\_\_\_\_ (the "Maturity Date") in an amount equal to the entire unpaid balance of principal plus all unpaid accrued interest.

**PREPAYMENT: [Select Option A or B (delete option not selected)]**

**[OPTION A]** The Borrower may prepay the loan in full at any time without premium or penalty.

**[OPTION B]** The Borrower may at its option prepay the loan at any time. However, if the loan is prepaid (including without limitation, a prepayment made due to an acceleration by the Bank of the principal of this Note) the Borrower shall be obligated to pay the Bank simultaneously with such prepayment, a prepayment premium in an amount

***[If Option B selected - Select one (delete options not selected)]***

**[OPTION 1]** equal to \_\_\_\_ (\_\_\_\_.00%) percent of the amount of principal prepaid if prepayment is made within five years after the date of the note.

**[OPTION 2]** equal to:

- 3.00% of the amount of principal prepaid during the first year of the term;
- 2.00% of the amount of principal prepaid during the second year of the term; and
- 1.00% of the amount of principal prepaid during the third year of the term.

**[OPTION 3]** equal to:

- 5.00% of the amount of principal prepaid during the first year of the term;
- 4.00% of the amount of principal prepaid during the second year of the term;
- 3.00% of the amount of principal prepaid during the third year of the term;
- 2.00% of the amount of principal prepaid during the fourth year of the term; and
- 1.00% of the amount of principal prepaid during the fifth year of the term.

**[OPTION 4]** equal to:

- 5.00% of the amount of principal prepaid during the first and sixth year of the term;
- 4.00% of the amount of principal prepaid during the second and seventh year of the term;
- 3.00% of the amount of principal prepaid during the third and eighth year of the term;
- 2.00% of the amount of principal prepaid during the fourth and ninth year of the term; and

- 1.00% of the amount of principal prepaid during the fifth and tenth year of the term.

Partial prepayments shall be applied to installments due in the inverse order of their maturity.

**LATE CHARGES:** If Borrower shall fail for more than fifteen (15) days after the date due to make any installment payment of principal or interest on this Note, the Borrower agrees to pay the Bank, upon demand, in addition to all other amounts payable hereunder, a late charge equal to five percent (5%) of the payment due. Late charges are not interest and shall not be subject to refund or rebate or credited against any other amount due.

**APPLICATION OF PAYMENTS; RETURNED ITEMS:** Any payments received by the Bank on account of this Note prior to demand shall be applied first, to any costs, expenses, or charges then owed the Bank by the Borrower, second, to accrued and unpaid interest, and third, to the unpaid principal balance hereof. Any payments so received after demand shall be applied in such manner as the Bank may determine.

**EVENTS OF DEFAULT:** Upon the occurrence of any one or more of the following ("Events of Default"), at the Bank's option and without presentment, demand, notice or protest (all of which are hereby waived), the entire unpaid balance of this Note and all unpaid accrued interest hereunder shall become immediately due and payable and without altering the demand nature of this Note if principal is due on demand:

- (a) The failure by the Borrower to pay when due (or upon demand, if payable on demand) any amount due hereunder or any other amount then owing by the Borrower to the Bank;
- (b) the occurrence of any "Event of Default" under the Agreement.

**RATE OF INTEREST UPON DEFAULT:** The Borrower agrees to pay, upon default, interest on all amounts not paid when due (pursuant to the terms hereof, by acceleration or otherwise) at the per annum rate equal to the aggregate of (a) the interest rate which would otherwise be applicable in the absence of default (b) plus six (6%) percent.

**NO WAIVER:** No delay or omission by the Bank in exercising any of its powers, rights, privileges or remedies hereunder shall operate as a waiver thereof on that occasion nor on any other occasion. No waiver of any default hereunder shall operate as a waiver of any other default hereunder, nor as a continuing waiver. The Borrower waives presentment, demand, protest, and notices of any kind and assents to any extension or other indulgence (including, without limitation, the release or substitution of collateral) permitted the Borrower by the Bank with respect to this Note.

**EXPENSES:** The Borrower will pay on demand all reasonable attorneys' fees and out-of-pocket expenses incurred by the Bank in the administration or enforcement of this Note or the administration or enforcement of any collateral given the Bank to secure this Note (whether or not suit is instituted by or against the Bank).

**RELEASES; NO CONTRIBUTION:** The liabilities of the Borrower and any endorser or guarantor of this Note are joint and several; provided, however, the release by the Bank of the Borrower or any one or more endorser or guarantor shall not release any other person obligated on account of this Note. No person obligated on account of this Note may seek contribution from any other person also obligated unless and until all liabilities to the Bank of the person from whom contribution is sought have been satisfied in full.

**MAXIMUM RATE OF INTEREST:** If, by the terms of this Note, the Borrower is at any time required or obligated to pay interest on the principal balance hereof at a rate in excess of the maximum rate which the Borrower is permitted by law to contract or agree to pay, the rate of interest under this Note shall be deemed to be immediately reduced to such maximum rate, and interest payable hereunder shall be computed at such maximum rate and the portion of all prior interest payments in excess of such maximum rate shall be applied and shall be deemed to have been payments in reduction of the principal balance hereof and not on account of the interest due hereunder.

**JURISDICTION, ETC.:** This Note shall be governed by the internal laws of the Commonwealth of Massachusetts, and shall take effect as a sealed instrument. The Borrower submits to the jurisdiction of the courts of the Commonwealth of Massachusetts for all purposes with respect to this Note, any collateral given to secure its liabilities to the Bank, or its relationships with the Bank.

**BINDING EFFECT:** This Note shall be binding upon the Borrower and upon its heirs, successors, assigns, and representatives, and shall inure to the benefit of the Bank and its successors and assigns.

**IN ANY CASE, CONTROVERSY OR MATTER WHICH ARISES OUT OF, OR IS IN RESPECT OF, THIS NOTE AND/OR THE LOAN EVIDENCED HEREBY, THE BORROWER KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY NOW EXISTING AND/OR HEREAFTER ARISING RIGHT TO A TRIAL BY JURY.**

**COMPLETION OF NOTE; MISCELLANEOUS:** The Borrower authorizes the Bank to complete this Note if delivered incomplete in any respect. The use of headings in this Note is for convenience only and shall not limit in any manner the terms of this Note. All agreements and documents of any kind in the Bank's possession which relate to any loans from Bank to Borrower may be reproduced by the Bank by photographic, computer imaging, or similar process, and the Bank may destroy the original from which any documents was so reproduced. Any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made in the regular course of business) and any enlargement, facsimile or further reproduction shall likewise be admissible in evidence. Any signatures of the Borrower upon any such agreement or document which are transmitted as a facsimile or as a scanned or pdf (portable document format) shall be deemed a valid and binding signature of the Borrower with the same effect as if a manually signed original signature.

IN WITNESS WHEREOF, this Commercial Promissory Note is executed under seal as of the date first above written.

WITNESS:

[INSERT NAME OF BORROWER]

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

CERTIFICATE OF VOTE OF PORTSIDE LIQUORS, III, INC.

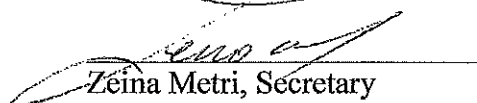
The undersigned, Zeina Metri, Secretary of **PORTSIDE LIQUORS III, INC.**, a Massachusetts corporation with its registered office at 75 Washington Street, Pembroke, MA 02359 hereby represent and certify that at A Special Meeting of **PORTSIDE LIQUORS III, INC.**, duly called and legally held on June 15<sup>th</sup>, 2016 it was:

**VOTED:** That Zeina Metri, Secretary of **PORTSIDE LIQUORS III, INC.**, be and hereby is authorized to execute and file for and on behalf of the Corporation any and all Applications and other documentation with the appropriate authorities. Including without limitation, take all necessary steps to secure an All Alcohol Beverage License in its name, an Application to the Alcoholic Beverage Control Commission of the Commonwealth of Massachusetts and that she is further authorized to take such other and further action as she deems necessary for and on behalf of the corporation in connection with the foregoing votes. This shall include pledging the license to Rockland Trust Bank in conjunction with a loan to acquire the business and operate a liquor store in Harwich, Massachusetts.

Zeina Metri may only pledge an approved liquor license to the bank with the following language “notwithstanding the Harwich Board of Selectmen’s approval of the alcoholic beverage license of Portside Liquors III, and pledge of the same as collateral pursuant to the terms of the agreement, the Board of Selectmen expressly reserves any and all rights it has to suspend, revoke, not renew, or otherwise regulate tis alcoholic beverage license under M.G.L. Ch. 138 §1, et al. Furthermore, the Board of Selectmen does not intend to become a party to this loan agreement and does not intend to bind or obligate the Town of Harwich to any of the terms of this loan agreement.”

This writing shall be kept with the records of the Corporation and shall be deemed to be a vote duly taken by Zeina Metri, Secretary.

**IN WITNESS WHEREOF**, I have hereunto set my hand as secretary of the corporation and affixed the seal of the corporation this 15<sup>th</sup> day of June, 2016.

  
Zeina Metri, Secretary





**The Commonwealth of Massachusetts**  
**William Francis Galvin**

Minimum Fee: \$250.00

Secretary of the Commonwealth, Corporations Division  
 One Ashburton Place, 17th floor  
 Boston, MA 02108-1512  
 Telephone: (617) 727-9640

Special Filing Instructions

**Articles of Organization**

(General Laws, Chapter 156D, Section 2.02; 950 CMR 113.16)

Identification Number: 001220216

**ARTICLE I**

The exact name of the corporation is:

PORTSIDE LIQUORS, III, INC.

**ARTICLE II**

Unless the articles of organization otherwise provide, all corporations formed pursuant to G.L. C156D have the purpose of engaging in any lawful business. Please specify if you want a more limited purpose:

RETAIL LIQUOR STORE

**ARTICLE III**

State the total number of shares and par value, if any, of each class of stock that the corporation is authorized to issue. All corporations must authorize stock. If only one class or series is authorized, it is not necessary to specify any particular designation.

Class of Stock	Par Value Per Share Enter 0 if no Par	Total Authorized by Articles of Organization or Amendments		Total Issued and Outstanding Num of Shares
		Num of Shares	Total Par Value	
CNP	\$0.00000	200,000	\$0.00	20,000

G.L. C156D eliminates the concept of par value, however a corporation may specify par value in Article III. See G.L. C156D Section 6.21 and the comments thereto.

**ARTICLE IV**

If more than one class of stock is authorized, state a distinguishing designation for each class. Prior to the issuance of any shares of a class, if shares of another class are outstanding, the Business Entity must provide a description of the preferences, voting powers, qualifications, and special or relative rights or privileges of that class and of each other class of which shares are outstanding and of each series then established within any class.

CTORS IN THE FOLLOWING MANNER. HE SHALL NOTIFY THE FULL BOARD OF DIRECTORS OF HIS DESIRE TO SELL OR TRANSFER BY NOTICE IN WRITING. THIS NOTICE SHALL CONTAIN THE PRICE AT WHICH HE IS WILLING TO SELL OR TRANSFER AND THE NAME OF ONE ARBITRATOR. THE DIRECTORS SHALL WITHIN THIRTY DAYS THEREAFTER EITHER ACCEPT THE OFFER OR BY NOTICE IN WRITING NAME A SECOND ARBITRATOR AND THESE TWO SHALL NAME A THIRD. IT SHALL THEN BE THE DUTY OF THE ARBITRATORS TO ASCERTAIN THE VALUE OF THE STOCK, AND IF AN ARBITRATOR SHALL NEGLECT OR REFUSE TO APPEAR AT ANY MEETING APPOINTED BY THE ARBITRATORS, THEN THE MAJORITY OF THE ARBITRATORS MAY ACT IN THE ABSENCE OF SUCH ARBITRATOR. AFTER THE ACCEPTANCE OF THE OFFER OR REPORT OF THE ARBITRATORS AS TO THE VALUE OF THE STOCK, THE DIRECTORS SHALL HAVE THIRTY DAYS TO PURCHASE THE STOCK AT SUCH VALUE, BUT IF AT THE EXPIRATION OF THIRTY DAYS, THE CORPORATION SHALL NOT HAVE EXERCISED THE RIGHT TO SO PURCHASE, THE OWNER OF THE STOCK IS AT LIBERTY TO DISPOSE OF THE STOCK IN ANY MANNER AS HE SEES FIT. NO STOCK SHALL BE SOLD OR TRANSFERRED ON THE BOOKS OF THE CORPORATION WITHOUT COMPLIANCE OF THE ABOVE UNLESS WAIVED BY THE BOARD OF DIRECTORS.

#### ARTICLE VI

Other lawful provisions, and if there are no provisions, this article may be left blank.

OTHER LAWFUL PROVISIONS FOR THE CONDUCT AND REGULATION OF THE BUSINESS AND AFFAIRS OF THE CORPORATION, FOR ITS VOLUNTARY DISSOLUTION, OR FOR LIMITING, DEFINING OR REGULATING THE POWERS OF THE CORPORATION, OR IF ITS DIRECTORS OR STOCKHOLDERS, OR ANY CLASS OF STOCKHOLDERS: (A) THE DIRECTORS MAY MAKE, AMEND OR REPEAL THE BY-LAWS IN WHOLE OR IN PART, EXCEPT WITH RESPECT TO ANY PROVISION THEREOF WHICH BY-LAW OR BY THE BY-LAWS REQUIRES ACTION BY THE STOCKHOLDERS. (B) MEETINGS OF THE STOCKHOLDERS MAY BE HELD ANYWHERE IN THE UNITED STATES. (C) THE CORPORATION MAY BE A PARTNER IN ANY BUSINESS ENTERPRISE IT WOULD HAVE POWER TO CONDUCT BY ITSELF. (D) THE DIRECTORS SHALL HAVE THE POWER TO FIX FROM TIME TO TIME THEIR COMPENSATION. NO PERSON SHALL BE DISQUALIFIED FROM HOLDING ANY OFFICE BY REASON OF ANY INTEREST. IN THE ABSENCE OF FRAUD, ANY DIRECTOR, OFFICER OR STOCKHOLDER OF THIS CORPORATION INDIVIDUALLY, OR ANY INDIVIDUAL HAVING ANY INTEREST IN ANY CONCERN WHICH IS A STOCKHOLDER OF THIS CORPORATION, OR ANY CONCERN IN WHICH ANY SUCH DIRECTORS, OFFICERS, STOCKHOLDERS OR INDIVIDUALS HAVE ANY INTEREST, MAY BE A PARTY TO, MAY BE PECUNIARILY OR OTHERWISE INTERESTED IN, ANY CONTRACT, TRANSACTION OR OTHER ACT OF THIS CORPORATION, AND (1) SUCH CONTRACT, TRANSACTION OR ACT SHALL NOT BE IN ANY WAY INVALIDATED OR OTHERWISE AFFECTED BY THAT FACT; (2) NO SUCH DIRECTOR, OFFICER, STOCKHOLDER OR INDIVIDUAL SHALL BE LIABLE TO ACCOUNT TO THIS CORPORATION FOR ANY PROFIT OR BENEFIT REALIZED THROUGH ANY SUCH CONTRACT, TRANSACTION OR ACT; AND (3) ANY SUCH DIRECTOR OF THIS CORPORATION MAY BE COUNTED IN DETERMINING THE EXISTENCE OF A QUORUM AT ANY MEETING OF THE DIRECTORS OR OF ANY COMMITTEE HEREOF WHICH SHALL AUTHORIZE ANY SUCH CONTRACT, TRANSACTION OR ACT, AND MAY VOTE TO AUTHORIZE THE SAME. (E) THIS ENTITY IS INCORPORATING AS A SMALL BUSINESS CORPORATION AS DEFINED BY SECTION 1244 OF THE INTERNAL REVENUE CODE AS AMENDED. \*\* THE TERM INTEREST INCLUDING PERSONAL INTEREST AND INTEREST AS A DIRECTOR, OFFICER, STOCKHOLDER, SHAREHOLDER, TRUSTE

PERSONS WHO WOULD SUCCEED TO THE OWNERSHIP OF ITS STOCK BUT FOR HIS, HER OR THEIR INELIGIBILITY BY LAW, TO OWN SUCH STOCK AND BUT FOR THESE PROVISIONS.

Note: The preceding six (6) articles are considered to be permanent and may be changed only by filing appropriate articles of amendment.

#### ARTICLE VII

The effective date of organization and time the articles were received for filing if the articles are not rejected within the time prescribed by law. If a *later* effective date is desired, specify such date, which may not be later than the 90th day after the articles are received for filing.

Later Effective Date: Time:

#### ARTICLE VIII

The information contained in Article VIII is not a permanent part of the Articles of Organization.

a,b. The street address of the initial registered office of the corporation in the commonwealth and the name of the initial registered agent at the registered office:

Name: ZEINA METRI  
No. and Street: 18 WEATHERDECK DRIVE  
City or Town: BUZZARDS BAY State: MA Zip: 02532 Country: USA

c. The names and street addresses of the individuals who will serve as the initial directors, president, treasurer and secretary of the corporation (an address need not be specified if the business address of the officer or director is the same as the principal office location):

Title	Individual Name First, Middle, Last, Suffix	Address (no PO Box) Address, City or Town, State, Zip Code
PRESIDENT	ZEINA METRI	18 WEATHERDECK DRIVE BUZZARDS BAY, MA 02532 USA
TREASURER	ZEINA METRI	18 WEATHERDECK DRIVE BUZZARDS BAY, MA 02532 USA
SECRETARY	ZEINA METRI	18 WEATHERDECK DRIVE BUZZARDS BAY, MA 02532 USA
DIRECTOR	ZEINA METRI	18 WEATHERDECK DRIVE BUZZARDS BAY, MA 02532 USA
DIRECTOR	GEORGE METRI	18 WEATHERDECK DRIVE BUZZARDS BAY, MA 02532 USA

d. The fiscal year end (i.e., tax year) of the corporation:  
January

e. A brief description of the type of business in which the corporation intends to engage:

City or Town: HARWICH State: MA Zip: 02645 Country: USA

**g. Street address where the records of the corporation required to be kept in the Commonwealth are located (post office boxes are not acceptable):**

No. and Street: 18 WEATHERDECK DRIVE  
City or Town: BUZZARDS BAY State: MA Zip: 02532 Country: USA

which is

its principal office  an office of its transfer agent  
 an office of its secretary/assistant secretary  its registered office

**Signed this 17 Day of May, 2016 at 10:01:31 AM by the incorporator(s).** *(If an existing corporation is acting as incorporator, type in the exact name of the business entity, the state or other jurisdiction where it was incorporated, the name of the person signing on behalf of said business entity and the title he/she holds or other authority by which such action is taken.)*

ZEINA METRI, PRESIDENT

MINUTES OF THE SPECIAL MEETING OF  
THE BOARD OF DIRECTORS AND SHAREHOLDERS OF  
PORTSIDE LIQUORS, INC.

The Special Meeting of the Board of Directors of the Corporation was held on April 26, 2016 at \_\_\_\_\_ pm 590A MacArthur Blvd Pocasset, Massachusetts at the call of a majority of the Board of Directors. The following were present:

Zeina Metri

George Metri

The above constituted a quorum.

The meeting was called to order and the Board unanimously voted to allow the incorporation and use of the name of Portside Liquors III.

There being no further business presented, the meeting was adjourned.

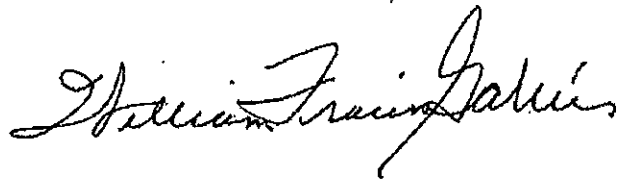
  
\_\_\_\_\_  
Zeina Metri - Clerk

MA SOC Filing Number: 201680944990 Date: 5/17/2016 10:00:00 AM

THE COMMONWEALTH OF MASSACHUSETTS

I hereby certify that, upon examination of this document, duly submitted to me, it appears that the provisions of the General Laws relative to corporations have been complied with, and I hereby approve said articles; and the filing fee having been paid, said articles are deemed to have been filed with me on:

May 17, 2016 10:00 AM

A handwritten signature in cursive script, reading "William Francis Galvin".

WILLIAM FRANCIS GALVIN

*Secretary of the Commonwealth*



PLEASANT BAY ALLIANCE  
PO BOX 1584  
HARWICH, MA 02645  
[www.pleasantbay.org](http://www.pleasantbay.org)

Memorandum

To: Michael MacAskill, Chairman  
Harwich Board of Selectmen  
From: Carole Ridley  
Date: July 6, 2016  
Re: Pleasant Bay Alliance

The following background information about the Pleasant Bay Alliance is provided in advance of the Board's meeting on July 11, 2016.

Due to Pleasant Bay's unique and sensitive resources, the Towns of Harwich, Chatham, Orleans and Brewster petitioned the state in 1986 to designate Pleasant Bay as an Area of Critical Environmental Concern (ACEC). The towns' farsighted action was based on the awareness that the long-term health of Pleasant Bay would be safe-guarded through coordinated regional action.

Following the ACEC designation in 1987, the four towns worked collaboratively to develop a Resource Management Plan (plan) for Pleasant Bay and its watershed. The plan was presented to Town Meetings in the four towns for adoption in 1998. Town Meetings in Harwich, Chatham and Orleans voted to adopt the plan and enter into an inter-municipal agreement (IMA, attached) to form the Pleasant Bay Alliance. Brewster voted to join the Alliance in 2007. Every five years, the updated plan and IMA are submitted to each member's Town Meeting for renewal. Once locally approved, the plan is submitted to the Massachusetts Secretary of the Executive Office of Energy and Environmental Affairs for approval.

The plan encompasses technical research, policy development and public education in the areas of biodiversity, navigation, public access, wetlands protection, fisheries, watershed planning, and coastal shoreline management. Over the years, the Alliance has undertaken a number of projects with substantial benefit to the Town of Harwich. Some of these projects include:

- The Alliance undertook numerous studies and modeling efforts that led to the recommendation to replace culverts under Muddy Creek with a bridge, and to secure state status as a priority wetlands restoration project. The project will reduce the Town's sewerage costs, will improve water quality and will restore 55 acres of coastal wetlands. The technical work undertaken by the Alliance was used as the basis for grant-writing that generated \$4.6 million in federal grants.
- The comprehensive study of Pleasant Bay by the Massachusetts Estuaries Project increased the accuracy of findings used as the basis for local comprehensive wastewater management plans. This helps to ensure the value of the Bay as a fisheries and recreational resource.
- On-going local engagement such as development of a watershed fertilizer management plan and distribution of information about best practices for lawn care through the media, local organizations, and an insert in Harwich Water Department bills.

- The Alliance's water quality monitoring program, entering its 17<sup>th</sup> season, generates data used to develop the Town's comprehensive wastewater management plan, and will be used to monitor the effectiveness of nutrient management efforts into the future.
- The Alliance coordinated the push for state regulatory changes that will allow the Town of Chatham to proceed with permitting for improvement dredging in the ACEC, as needed to maintain historic navigation access. This measure benefits Harwich boaters and was strongly supported by the Harwich Waterways Committee.
- The Alliance has undertaken numerous resource studies and projects to assist local resource managers and Conservation Commissions including: permitting guidance for docks, piers and walkways; barrier beach migrations studies; baseline measurements of navigation channel depths, aerial photography; analysis of shoreline and marshline change; statistical trend analysis of water quality data; and development of a coastal resource guide for Chatham Harbor and Pleasant Bay.

Additional work currently underway includes: placement of acoustic receivers to track tagged shark activity in Pleasant Bay (with Dr. Greg Skomol); combined analysis of the four towns' nutrient management efforts in concert with town technical consultants (with Wright-Pierce); a study of the effects of Sea Level Rise on the barrier beach and inner shoreline (with Center for Coastal Studies); guidelines for managing coastal erosion (with Alliance's Coastal Work Group), and an ecological interpretation of statistical trends found in water quality data (with UMASS-Dartmouth School for Marine Science and Technology).

#### Governance and Funding

The IMA creates two committees whose members are appointed by each member town's Board of Selectmen. The Steering Committee, which is the Alliance's governing committee, has one member and one alternate member from each town. Harwich's current Steering Committee members are Allin Thompson and Dorothy (Dolly) Howell (past member: Larry Ballantine). The IMA also creates a Technical Resource Committee to advise the Steering Committee. Harwich's current TRC members are Heinz Proft, Amy Usowski and John Rendon (past members: Frank Sampson, Tom Leach, David Spitz, John Chatham, Elizabeth Hude and Charleen Greenhalgh). The Alliance convenes work groups of Steering and TRC members along with experts from WHOI Sea Grant, Barnstable County Cooperative Extension, Cape Cod Commission, MassDEP, Center for Coastal Studies, and Cape Cod National Seashore.

The formula for member financial support of the Alliance is set forth in the IMA: Chatham and Orleans each contribute 35%, Harwich contributes 18% and Brewster contributes 12%. Every year, the Alliance submits a budget to the Town Administrator or Manager in each of the four towns for inclusion in the respective towns' operating budget to be voted at the Annual Town Meeting.

The approved FY 2017 budget is attached. The total amount of the operating budget is \$94,000, of which Harwich's contribution is \$16,920. This is roughly the same amount Harwich has contributed on an annual basis during the past fourteen years.

The Alliance has been successful in securing more than \$300,000 in non-municipal grants and in-kind support for projects.

The IMA identifies Chatham as the Alliance's fiscal agent. The Alliance's procurements, receipts and disbursements are managed by the Town of Chatham.





PLEASANT BAY ALLIANCE  
PO BOX 1584  
HARWICH, MA 02645

Mr. Chris Clark  
Town Administrator  
Town of Harwich  
732 Main Street  
Harwich, MA 02645

November 5, 2015

Dear Chris:

Enclosed please find the FY2017 budget request for the Pleasant Bay Resource Management Alliance. The amount of funds requested from Harwich, \$16,920, represents 18% of the Alliance's total budget amount per the Memorandum of Agreement among the Alliance towns, and is the same amount as was requested in FY2016. We respectfully request that this amount, \$16,920, be put into the Town's FY2017 operating budget.

Please let me know if you need any additional information pertaining to this request.

Thank you.

Sincerely,

Carole Ridley  
Coordinator

Cc: Allin Thompson, Dolly Howell

Pleasant Bay Alliance  
 FY2017 Budget - Voted October 30, 2015

Category	FY13		FY14		FY15		FY16		FY17	
Coordinator		54,000		54,000		54,000		57,000		57,000
Expenses										
Travel	500		500		500		500		500	
Telecommunications	600		600		600		600		600	
Postage	200		200		200		200		200	
Office Supplies	600		600		600		600		600	
Conferences & Publications	100		100		100		100		100	
Printing, Photocopying, vide	500		500		500		500		500	
Total		2500		2500		2500		2500		2500
Total Administrative Expense		56500		56,500		56,500		59,500		59,500
Program Expenses		37,140		37,140		37,140		34,500		34,500
(itemized on accompanying sheets)										
TOTAL		93,640		93,640		93,640		94,000		94,000

Shares of Funds Requested Allocated Per Memorandum of Agreement					
	FY13	FY14	FY15	FY 16	FY 17
35% Chatham	\$32,774	\$32,774	\$32,774	\$32,900	\$32,900
35% Orleans	\$32,774	\$32,774	\$32,774	\$32,900	\$32,900
18% Harwich	\$16,855	\$16,855	\$16,855	\$16,920	\$16,920
12% Brewster	\$11,237	\$11,237	\$11,237	\$11,280	\$11,280
Total	\$93,640	\$93,640	\$93,640	\$94,000	\$94,000

**Pleasant Bay Alliance  
FY2017 Budget**

		FY17 Total
Water Quality		
Volunteer Appr/Training		
Update QAPP		
Equipment & Supplies	250	
Lab Analysis (20 stations)	23,500	
Data Analysis	0	
Total		23,750
Shoreline Management		
Coastal Resiliency/SLR Studies	4000	
Total		4,000
Ecological Monitoring		
Fisheries related	1,500	
Total		1,500
Watershed Modeling		
Combined watershed planning	4,250	
Total		4,250
Outreach a Publications		
Website	500	
Symposium	500	
Total		1,000
<b>Total programs</b>		<b>34500</b>

MEMORANDUM OF AGREEMENT  
Between the Towns of Orleans, Chatham, Harwich and Brewster  
TO ESTABLISH THE PLEASANT BAY RESOURCE MANAGEMENT ALLIANCE

Article I. Recitals

WHEREAS, the estuary known as Pleasant Bay and its watershed lies within the municipal boundaries of Orleans, Chatham, Harwich and Brewster, and

WHEREAS, in 1995 the four towns entered into an agreement to develop a resource management plan ("plan") to protect the vast natural resources of the Bay, and

WHEREAS, the agreement established as a goal of the plan to have the towns adopt uniform polices and regulations for the management of the Bay, and

WHEREAS, the plan developed in accordance with the agreement provides management recommendations concerning the towns' policies and regulations relative to water quality, wetlands, wildlife, fisheries, boating, shorelines structures, and public access, and

WHEREAS, the Towns of Harwich, Orleans, Chatham and Brewster have approved the plan and subsequent five-year plan updates (herein collectively referred to as "the plan");

NOW THEREFORE, the undersigned towns, in consideration of the mutual covenants contained herein, hereby agree as follows:

Article II. Policy and Purpose

1. This agreement forms the Pleasant Bay Resource Management Alliance ("Alliance"). Through participation in the Alliance the undersigned towns agree to implement the plan recommendations, acting by and through their designated officers, employees or agents. The towns also agree to seek funding through Town Meeting for implementation of the plan in accordance with the terms of this agreement.
2. Each town participating in the Alliance shall retain authority over the resources and activities within its jurisdiction. The Alliance shall coordinate, and not duplicate or compete with, the functions of existing regulatory and planning organizations in each of the undersigned towns as they pertain to the Pleasant Bay Resource Management Plan.

Article III: Steering Committee

1. A Steering Committee shall be created, with one member appointed by the Board of Selectmen of each undersigned town.
2. The Board of Selectmen of each undersigned town may appoint an alternate Steering Committee member to vote in place of the appointed member when the appointed member is absent.

*Memorandum of Agreement to Establish the Pleasant Bay Resource Management Alliance*

3. The members of the Steering Committee shall serve at the pleasure of the Board of Selectmen of the Town by whom they were appointed.
4. Provided there is a quorum of three-quarters of the members or designated alternates present, the Steering Committee shall act by majority vote.
5. The Steering Committee shall elect a Chairman, Vice-Chairman, and Treasurer annually.
6. During any fiscal year for which a Town Meeting in one or more of the undersigned towns fails to appropriate funds in accordance with the provisions of Article VI of this agreement, the Steering Committee member and alternate from such town shall serve as an ex officio member and alternate and shall not vote.
7. The Steering Committee shall be authorized to expend funds, subject to the conditions contained herein, from the Pleasant Bay Resource Management Alliance Account as described in Article V of this agreement. The Steering Committee shall have no authority to contract for services or expend funds in excess of the amount available in said account. All contracts shall be in writing and no contract shall be entered into without a certification of the Town of Chatham Finance Department in accordance with Article V of this agreement.
8. The Steering Committee shall have overall responsibility and accountability for coordinating with officers, employees or agents of the undersigned towns to implement the plan.

Article IV: Technical Resource Committee

1. A Technical Resource Committee shall be created, with four members from each of the undersigned towns. The Committee members may include the harbormaster, shellfish constable, conservation agent, health agent, town planner, or their equivalent as determined by the town's Board of Selectmen, of each undersigned town.
2. The members of the Technical Resource Committee representing each town shall be appointed by their respective Board of Selectmen.
3. The Technical Resource Committee shall provide technical assistance, advice, and recommendations to the Steering Committee in the implementation of the plan.

Article V: Alliance Account

1. An account shall be established under the jurisdiction of the Town of Chatham Finance Department to be known as the Pleasant Bay Resource Management Alliance Account ("Alliance Account").
2. The Alliance Account shall be the depository for all non-municipal funds and municipal appropriations made for the implementation of the plan.
3. Expenditures from the Alliance Account shall be authorized by a majority vote of the Steering Committee as provided herein. Any expenditure so authorized shall be subject to the customary and ordinary requirements for the expenditure of funds in the Town of Chatham.
4. The Steering Committee is authorized to release funds from the Alliance Account for consultant services, or other goods and services related to the Pleasant Bay Resource Management Plan's implementation.

Article VI: Budgeting and Reporting

1. The Steering Committee shall prepare a proposed annual budget and operating plan for the coming fiscal year.
2. The proposed annual budget and operating plan shall be presented to the Boards of Selectmen of the undersigned towns per each town annual budget schedule.
3. The proposed annual budget shall indicate the amount of funds requested from the Towns of Orleans, Chatham, Harwich and Brewster for the coming fiscal year, as well as the amount and source of all non-municipal funds. The total amount of funds requested from the Towns of Orleans, Chatham, Harwich and Brewster, shall be apportioned as follows: thirty-five (35) percent to Orleans, thirty-five (35) percent to Chatham, eighteen (18) percent to Harwich, and twelve (12) percent to Brewster. In accordance with current practice, all participating towns shall include their share of funds as a line item in their annual town budget.
4. The proposed annual budget shall present the expenditures planned for the coming year.
5. At the end of each fiscal year the Steering Committee shall submit a financial statement and a report of activities to the Boards of Selectmen of the undersigned towns to be publicized in annual town reports.
6. Funds in the Alliance Account not expended by the end of the current fiscal year shall remain in said account and applied toward approved expenditures related to the implementation of the Pleasant Bay Resource Management Plan in the following fiscal year.

Article VII: Renewal and Termination

1. The approved plan shall be reviewed and updated as necessary every five years. Any proposed amendments to the approved plan shall be submitted to the Board of Selectmen in each of the undersigned towns for review and may be submitted to Town Meetings in the undersigned towns for approval.
2. This agreement shall expire December 31, 2018 unless prior to that date the undersigned towns take action either to extend or terminate the agreement.
3. Upon termination of the Alliance, the assets remaining in the Alliance Account after all outstanding obligations have been paid shall be returned to the source of funds. If the source of funds is not discernible, then remaining funds shall be distributed among the undersigned towns in accordance with Article IV. Section 3 of this agreement.
4. This agreement shall be subject to the applicable provisions of General Laws, Chapter 40, Section 4A governing contracts between municipalities except such provisions of Chapter 40, Section 4A requiring Town Meeting approval in which case each town's process shall be governed by applicable provisions of that town's Home Rule Charter.

Executed this 9<sup>th</sup> day of December, 2013 by

Memorandum of Agreement to Establish the Pleasant Bay Resource Management Alliance

\_\_\_\_\_  
Florence Feldman  
\_\_\_\_\_  
\_\_\_\_\_  
M. M.  
\_\_\_\_\_  
\_\_\_\_\_  
Chatham Board of Selectmen

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Daryl G. Manta  
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P. M.  
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R. Ballantyne  
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Harwich Board of Selectmen

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Orleans Board of Selectmen

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\_\_\_\_\_  
Brewster Board of Selectmen

*Report of the*  
**Pleasant Bay Alliance**

The Pleasant Bay Alliance ([www.pleasantbay.org](http://www.pleasantbay.org)) is an organization of the Towns of Chatham, Orleans, Harwich, and Brewster charged with implementing the Pleasant Bay Resource Management Plan. The plan incorporates the Pleasant Bay Area of Critical Environmental Concern (ACEC) and the 21,600-acre Pleasant Bay watershed. The Alliance develops public policy recommendations, technical studies and public education tools to support the Bay's natural resources and safe public enjoyment of the Bay. Highlights from 2015 are listed below:

The Pleasant Bay Citizen Water Quality Monitoring Program completed its 16th monitoring season. Trained volunteers collected samples at 24 bay-wide sites. Data from the monitoring program are used to guide local and regional nutrient management planning. The Alliance selected the Cadmus Group to conduct a statistical trend analysis of multi-year water quality data, and this analysis was presented at a forum in July.

The Alliance continued to spearhead a watershed approach to nutrient management. Wright-Pierce was selected by the Alliance to assess the watershed-wide effects associated with all four town's nutrient management plans, and to coordinate this information with the regional 208 Plan Update. When completed, this effort is expected to identify opportunities to increase cost effectiveness and foster regional cooperation among efforts to reduce nutrient loads in Pleasant Bay.

The Alliance continued development of guidelines for managing shoreline erosion, with the release of draft guidelines expected in 2016. The Alliance also continued tide level monitoring in concert with the Center for Coastal Studies, and issued a report analyzing multi-year tide data. Late this year a Request for Proposals was released to assess the effects of Sea Level Rise on the barrier beach and inner shoreline of Pleasant Bay. This project will be undertaken in 2016. Also in 2016, the Alliance also is planning the placement of an acoustic receiver to monitor tagged shark activity.

At the request of local officials, the Alliance also provided comment on a range of projects concerning consistency with the Resource Management Plan, including the Muddy Creek Restoration Bridge, Pleasant Bay Dredging, and Ryder's Cove Landing access plans, as well as private projects,

The Alliance wishes to thank the citizens of Harwich for your ongoing support.

Respectfully submitted by:

Allin P. Thompson, Jr., Steering Committee

Dorothy Howell, Steering Committee

Heinz Proft, Director of Natural Resources, Technical Advisory Committee

Amy Usowski, Conservation Agent, Technical Resource Committee

David Spitz, Town Planner, Technical Advisory Committee

John Rendon, Harbormaster, Technical Advisory Committee

Carole Ridley, Alliance Coordinator



**OFFICE OF THE TOWN ADMINISTRATOR**

Phone (508) 430-7513

Fax (508) 432-5039



**Christopher Clark**, *Town Administrator*

**Charleen Greenhalgh**, *Assistant Town Administrator*

732 MAIN STREET, HARWICH, MA

To: Board of Selectmen

From: Christopher Clark, Town Administrator 

Re: Review of Material Related to Settlement Agreement with the Fitzpatrick's Beach Road

Date: July 7, 2016

Pursuant to Administration's acknowledgments to the Board of Selectmen, we have undertaken a review of the files relevant to the Beach Road issue. I have asked for review from our Conservation Administrator in terms of specifically item 6 which calls for a plan to address erosion control issues within the layout of Beach Road. The Conservation Administrator has commented on this topic and agrees that the work done today works towards preventing erosion in the easement area. I have also requested that the Town Surveyor provide some maps that show the property boundary lines as well as the high tide and low tide markings of not only Beach Road that the two adjoining town owned parcels. Lastly, I have requested that Kopelman and Paige, the town's current legal counsel, review the materials and comment and advise on this matter. This material is also attached. I will seek to provide a summary of the findings below and would direct any persons seeking additional information to review the extensive attached materials related to this matter.

In summary, it appears that during the laying out of this development back in the 1920s there was an intent to have the house lots defined and it was further the intent that a public beach be created as part of this overall development with access to the public beach coming in the form of Beach Road. The Town in the 1970s formally voted through Town Meeting an easement allowing the Town to cross and maintain for roadway purposes access to the public beaches. A critical item to remember in this circumstance is that a section of Beach Road is still owned to the centerline by the abutting property owners and the Town only achieved an easement over this property that limits the ability of the property owner to place structures that would prohibit access to the public beach. The property owners do have rights over their own property. Due to items of litigation, the Town and the Fitzpatricks did enter into a Settlement Agreement relevant to operations of this easement. This agreement is still operative today. The issue has emerged about access to town-owned property located on lots 36 and 37 adjacent to Beach Road. I have attached a plan that shows in fact this is Town of Harwich property but the plan also shows the location of the low-water mark and the high water mark. These public beaches in general are accessible during mid to low water tides and are inaccessible during high tides. The public would be able to use these beaches during the accessible phases but would not if it necessitated trespassing

onto private property in order to stay out of the water. I believe that the Settlement Agreement allows for access by residents in that area and to the general public (although no public parking is available in the area) to continue to have access to these public beaches that due to erosion have become a more limited nature. It is my general understanding that when a property is bounded by a high water mark or a low-water mark that boundary is dependent upon nature and whether the tidal influences create conditions of erosion or accretion.

It is my recommendation, due to the highly polarized nature of this issue that the Board of Selectmen continue to support and uphold the Settlement Agreement reached in 2013. Due to the vandalism resulting in the destruction of the erosion control measures, the Town may wish to consider reinstalling the erosion control measures. I would caution that any significant change to the easement may result in the necessity to renegotiate the Settlement Agreement as well as regulatory approval would need to be sought initially through the Conservation Commission to make any significant adjustments. Whereas, the Town only has easement over this property such changes beyond what has already been negotiated should be seriously considered.

July 8, 2016

**John Goldrosen**  
jgoldrosen@k-plaw.comHon. Peter S. Hughes and  
Members of the Board of Selectmen  
Harwich Town Hall  
732 Main Street  
Harwich, MA 02645Re: Beach Road Easement

Dear Members of the Board of Selectmen:

You have requested an opinion concerning the Town's rights in the portion of Beach Road that extends south from Shore Road to Nantucket Sound ("Road"), and the extent of the rights of the immediate abutters to the Road to undertake activities within the Road. Your request is in response to concerns expressed by neighborhood residents as to the placement within the Road of plantings and a split-rail fence, made by the owners of the abutting property at 43 Shore Road ("Abutters"). In this letter, I will review the history and extent of the Town's rights, and offer guidance to the Selectmen in addressing these concerns.

1923 Subdivision Plan, and conveyance of Lots 36 and 37 to the Town

As shown on a Land Court (i.e., registered land) plan, No. 5265-B, that was filed in 1923 ("1923 Plan"), Beach Road was located both north of Shore Road and south of Shore Road, running between Shore Road and Nantucket Sound. The 1923 Plan shows narrow lots labeled 36, 37, and 38 along Nantucket Sound. Beach Road runs between Lots 36 and 37 on the 1923 Plan. What is now the Abutters' property is Lot 4 on the 1923 Plan, and is bounded on the north by Shore Road, on the east by Lot 3, on the south by Lot 36, and on the west by the Road.

In 1924, the owner of the subdivision land conveyed to the Town Lots 36 and 37 (as well as Lot 38, to the west of Lot 37), with the provision that the lots were to be "restricted to use of the public as a bathing beach."

In their recent correspondence with the Town, some current residents of the subdivision have stated that their properties have deeded rights to an easement over Beach Road to Nantucket Sound. I have not examined any of these deeds, and offer no opinion as to the nature of these private rights. If such rights exist, it would support a view that (i) the subdivision developer located Beach Road within the subdivision, and subsequently conveyed the beachfront lots to the Town, so as to create access to the beachfront lots for the residents of the subdivision, and that (ii) a private right to the use

Hon. Peter S. Hughes and  
Members of the Board of Selectmen  
July 8, 2016  
Page 2

of Beach Road for access to the beachfront lots was granted when the residential lots were conveyed out of the subdivision property.

#### Public Layout of Beach Road

In 1972, the Town, through the Board of Selectmen, laid out the Road, south of Shore Road, as a Town (i.e., public) way. The layout was approved by Town Meeting, and the Selectmen filed an "Order of Taking" to take, by eminent domain, "an easement of Town Way for all purposes for which Town Ways are or may be commonly used," over the Road. The dimensions of the eastern boundary of the Road in the Order of Taking correspond to the boundary of Lot 4, as shown on the 1923 Plan. As a result of the layout and the taking, it is my opinion that the general public gained rights to the use of the Road, including the right to access Lots 36 and 37 by means of the Road.

#### The 2013 Settlement Agreement

In 2010, the Abutters brought an action against the Town in Barnstable Superior Court, seeking to void the Order of Taking. In 2013, the parties entered into a Settlement Agreement, whereby the Abutters agreed to dismiss the action, with prejudice. (The Town was represented in this matter and the settlement negotiations by other counsel.) Some of the terms of the Settlement Agreement were unrelated to the use of the Road; for example, the Town agreed not to extend the groin at the southeastern end of the Abutters' property, and not to seek a Chapter 91 license to place dredged materials seaward of the Abutters' property. With respect to the Road, the Town agreed to install signage concerning the permissible uses of the Road, and to consult with the Abutters before presenting plans to the Conservation Commission for grading the Road. (It is my understanding that the Town has not undertaken such a project.)

In addition, the Town agreed that the "Town will maintain the responsibility for trimming vegetation and will not delegate nor permit that work to be undertaken by private property owners in the adjacent neighborhood." While it has been suggested that this provision bars the Abutters from undertaking any alteration to vegetation within the Road, I interpret this provision differently. Based on the wording, it is my opinion that the provision was a commitment by the Town to the Abutters, by which the Town agreed to undertake any vegetation trimming itself, and not to assign this work to, or permit it to be done by, other neighborhood residents who were not parties to the Agreement. As noted above, this firm did not represent the Town in negotiating the Settlement Agreement; there may be Town officials who were directly involved in the negotiations and can help to explain its intent.

Hon. Peter S. Hughes and  
Members of the Board of Selectmen  
July 8, 2016  
Page 3

## Determination of the Town's and the Abutters' Rights to Use the Road

As noted above, the interest in land obtained by the Town was an easement, and not the fee interest. Generally, the owners of land abutting a way own the fee to the center line of the way. Pursuant to G.L. c. 183, §58, the so-called "Derelict Fee Statute," there is a presumption that, when a grantor has an ownership interest in a way and owns land on both sides of the way, a deed from the grantor for a lot bounded by the way also conveys ownership of the way to the center line of the way. Although I have not examined the title to the Abutters' property, it is likely that this rule applies, and that the Abutters own the fee in the portion of the Road that abuts their property, to the center line of the Road. (This would be consistent with the Order of Taking, which specified the Abutters' predecessor in title, as well as the then-owner of the lot on the west side of the Road, as the owners of the easement areas that were being taken by the Town.)

As a result of the Taking, the Abutters' ownership interest in their portion of the Road is subject to the Town's rights to use its easement for all purposes for which a way is commonly used. This means that the Abutters may continue to make use of their portion of the Road for all purposes that are not inconsistent with, or that do not interfere with, the Town's uses of its easement. Whether the Abutters' usage interferes with the Town's uses is a question of fact, for which I do not offer an opinion. Interference, if any, should be determined based on the current usage of the Road made by both parties.

The determination of interference is not static, in my opinion, because the Town retains the right to modify or increase its uses of the Road, consistent with its easement rights. The Town's rights include those associated with access and travel on the Road, as well as rights to install drainage or utilities, as these are purposes for which ways are commonly used. My understanding is that a narrow walkway (consisting of wooden planks) is currently located in the Road. If the Town determined that a wider footpath, or a way suitable for vehicular use, should be installed, the Town could undertake that project at a location within the Road of the Town's choosing--subject, of course, to other legal constraints and necessary approvals, such as the requirements of the Wetlands Protection Act. As a result, there may be uses by the Abutters that do not currently interfere with the Town's uses, but that might become inconsistent with the Town's future uses. If this occurs, it is my opinion that the Town could require that the Abutters cease to use the Road for purposes that are no longer compatible with the Town's exercise of its easement rights.

## The Uses of Lots 36 and 37

You have provided me with plans indicating that, in recent decades, there has been considerable erosion of Lots 36 and 37, and that the high water mark (i.e., the high tide line) has moved landward. As a result, based on the plans, while most of Lots 36 and 37 are above water at

Hon. Peter S. Hughes and  
Members of the Board of Selectmen  
July 8, 2016  
Page 4

low tide, all of Lot 36 and a significant portion of Lot 37 are under water at high tide (as is a portion of the Abutters' property). As a result, there may be confusion as to where the boundary between the Town and the Abutters' property is now located, and whether the Abutters' activities block access to Town property.

In my opinion, the landward boundaries of Lots 36 and 37 are fixed lines, established by the 1924 deed to the Town, and do not change in response to changes in sea level. By contrast, the Town's properties could expand seaward, if coastal processes resulted in "accretion," i.e., addition, to the properties. See White v. Hartigan, 464 Mass. 400 (2013) ("A littoral property thus contains a moveable shoreline boundary, but its other boundaries ordinarily are fixed.")

Consequently, the public rights to use Lots 36 and 37 are limited, on the landward side, by the 1924 boundaries. If the "beach," in a geological sense, has migrated inland and now includes portions of the Abutters' property, members of the public would not have the right to use the portion of the beach that is now located on the Abutters' property, in my opinion.

Conservation Commission Permitting of Activities on the Abutters' Property and within the Road

I have been provided with a memorandum from the Conservation Commission, concerning the issuance of an Administrative Review Permit to the Abutters in 2015, which permitted the Abutters to remove invasive species, plant native species, and install a split rail fence and snow fencing within the Abutters' property and portions of the Road. In my opinion, it was not the Commission's responsibility to determine whether this work was consistent with the Town's easement rights in the Road and/or with the terms of the Settlement Agreement. The Commission's responsibility and authority under the Wetlands Protection Act and the Town Wetlands Bylaw is to determine whether a proposed project is consistent with, and contributes to, the wetland interests that are protected by the Act and the Bylaw. A conservation commission is not expected to examine and make determinations related to property rights, in my opinion. Indeed, as stated in DEP regulations, an Order of Conditions "does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights." (310 CMR 10.05(6)(i)). In short, a conservation commission should not consider a dispute over property rights when making wetlands permitting decisions, and a decision by the Commission to deny a project based on property-rights considerations would be subject to challenge, in my opinion.

Hon. Peter S. Hughes and  
Members of the Board of Selectmen  
July 8, 2016  
Page 5

Please feel free to contact me with any further questions concerning this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'John J. Goldrosen', written in a cursive style.

John J. Goldrosen

JJG/eon

cc: Town Administrator  
558901/HARW/9999

## **Ann Steidel**

---

**From:** Amy Usowski  
**Sent:** Tuesday, June 21, 2016 3:28 PM  
**To:** Christopher Clark; Charleen Greenhalgh; Ann Steidel; Sandy Robinson; iloveharwich@gmail.com; jgkavanagh@comcast.net; Peter Hughes; Michael MacAskill; Angelo LaMantia  
**Attachments:** CCF06212016\_0001.pdf; letter to selectmen june 2016.doc

Dear Administration and Selectmen,

Attached is a letter addressing Mr. Fitzpatrick's compliance with the conservation permit I issued him as well as the plan that accompanied his request for a permit. I will be at your June 27<sup>th</sup> meeting on this if anyone has any questions. Of course you may contact me beforehand as well.

Amy Usowski  
Conservation Administrator  
Town of Harwich





TOWN OF

HARWICH

*732 Main Street  
Harwich, MA 02645*

CONSERVATION COMMISSION

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

**June 21, 2016**

**To: The Harwich Board of Selectmen**

**From: Amy Usowski, Conservation Administrator**

**RE: Fitzpatrick Administrative Review Compliance**

On July 23, 2015 I issued an Administrative Review Permit to Mr. Fitzpatrick to remove invasive plants, replant natives, and add split-rail fence with snow fencing in between at his property of 43 Shore Rd, next to the access path to water. At this time, I was not aware of the language in the Settlement Agreement that prohibited the Town letting abutters to the easement to alter the planting within it themselves. I simply viewed the removal of invasive plants and the planting of natives as an improvement to the stability of the soils and to wildlife.

In regards to the fencing at this site, approval of the installation of split rail and/or snow fence by Administrative Review for the purpose of protecting the dunes/banks from erosion and to keep people off sensitive wetland areas such as this has been the policy of my Department in recent years. Before this, waterfront homeowners were erecting fences with no permit at all, which is illegal.

I understand there may be outstanding legal issues as far as whether this fence violates the terms of the Settlement Agreement, and those issues are not in the Conservation Department's purview. However, in response to your request for me to weigh in on whether or not Mr. Fitzpatrick complied with the Administrative Review Permit that I issued him, yes, he is in substantial compliance.

If you have any questions, feel free to ask, and I will be at your June 27<sup>th</sup> meeting.

Amy Usowski  
Conservation Administrator  
Town of Harwich

Elev. 21.4

# SHORE ROAD

Driveway

EXISTING BEACH ACCESS

REMOVE INVASIVE BITTERSWEET  
 & RUDDY ROSE ALONG PATH & PLANT  
 ARROWWOOD (*VIBURNUM PELTATIUM*)  
 BAYBERRY (*MYRICA PENNSYLVANICA*)  
 VIRGINIA ROSE (*ROSA VIRGINIANA*)  
 FRAGRANT SUMAC (*RHUS AROMATICA*)  
 USE 2 GAL, MILK OIL CENTER

PLANT INVASIVE GRASSES ALONG PATH EDGE  
 LITTLE BLUESTEM (*SETZACHYRIUM SCOPARIUM*)  
 BIG BLUESTEM (*ANDROPOGON GERARDI*)  
 INDIAN GRASS (*SORGHASTRUM NUTRANS*)  
 SUPPLEMENT W/ LATIVE ASTER & SEASIDE GOLDENROD  
 USE PLUGS

PLANT  
 BEARBERRY (*CARTOSTAPHYLOS UVA-URSI*)  
 COASTAL LEUCOTHOE (*LEUCOTHOE AXILLARIS*)  
 USE 1 GAL POTS

EXIST. PILE

Beach grass slope

Bottom Bank

4" SHOWN FENCING W/ 4" POSTS  
 MAY BE FIELD ADJUSTED  
 PLANT WITH AMERICAN BEACH GRASS (*AMPHIPHILA BREVILIGULA*)  
 SWITCH GRASS (*PANICUM VIRGATUM*) SG  
 USE PLUGS, PLANT BEACH GRASS 18" O.C

NEW SPLIT RAIL FENCE SECTION

EXIT SPLIT RAIL FENCE

BLEND BEACH GRASS & SWITCH GRASS W/ BLUESTEM,  
 ASTER, & INDIAN GRASS TOWARDS NORTH

PLANT LOCATIONS MAY BE FIELD ADJUSTED

UTIL POLE

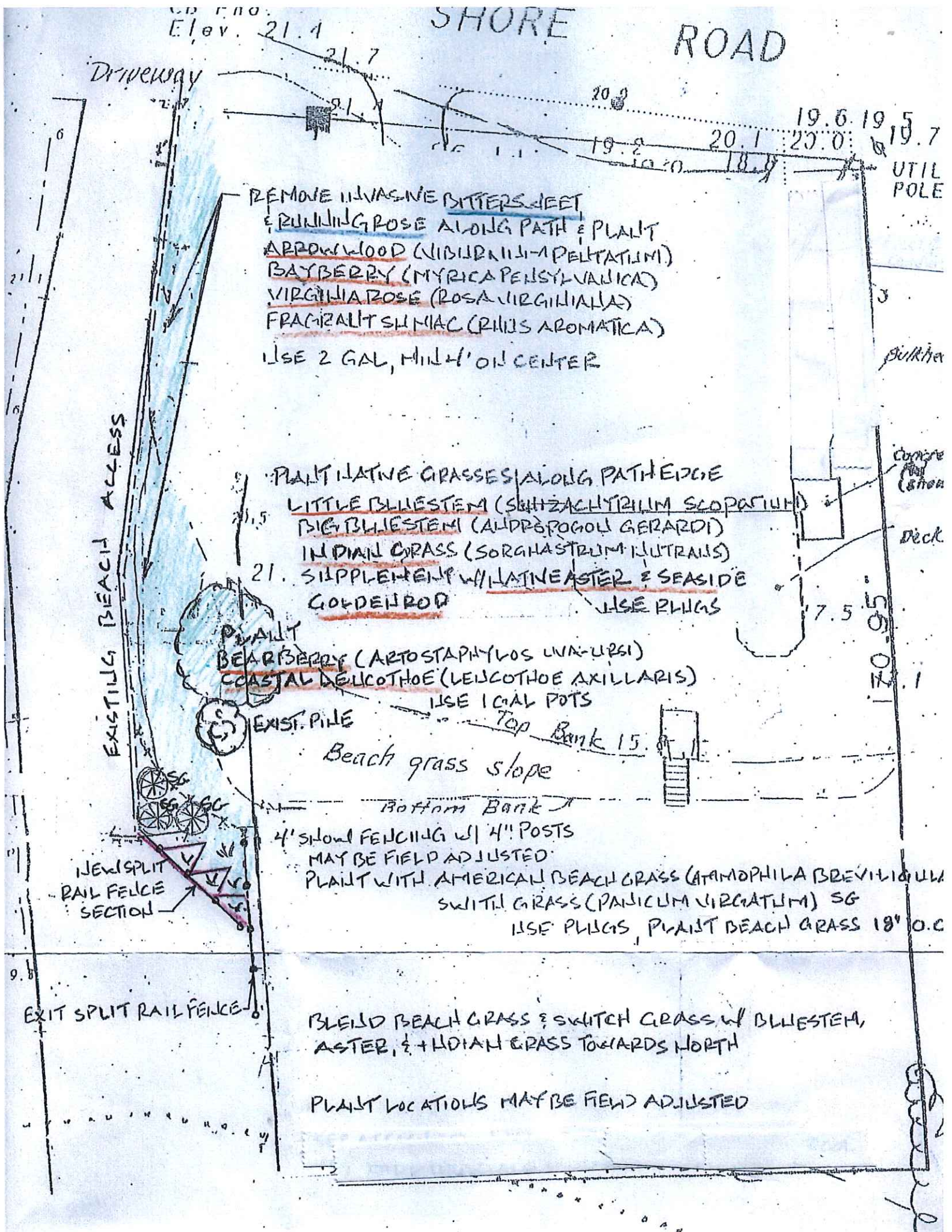
Further

Concrete (stone)

Deck

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17.0  
16.5  
16.1

21.7  
21.4  
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19.6  
19.5  
19.7



**SETTLEMENT AGREEMENT**

Now come the undersigned parties and hereby enter into this Settlement Agreement.

WHEREAS, Margaret M. Fitzpatrick and Daniel J. Fitzpatrick, Trustees of the Margaret M. Fitzpatrick Revocable Trust of 219 Candlelight Drive, Glastonbury, CT 06033 ("Fitzpatricks") are the owners of Lot 4 on Land Court Plan 5265-B ("Fitzpatrick Property");

WHEREAS, Town of Harwich, is a Massachusetts municipal corporation with an address of 732 Main Street, Harwich, MA 02645 ("Town");

WHEREAS, the Fitzpatricks, as Plaintiffs, and the Town, as Defendant, are parties to a civil action currently pending in the Barnstable Superior Court as Case No. BACV 2010-00527 (the "pending case");

WHEREAS, pursuant to the Vote under Article 20 of the March 6, 1972 Annual Town Meeting the Town of Harwich took an easement in Beach Road as more particularly set forth in the Order of Taking dated April 10<sup>th</sup>, 1972;

WHEREAS, the Fitzpatricks initiated the pending case seeking to void the Town's Order of Taking;

WHEREAS, the parties desire to enter into a settlement agreement and to dismiss the pending case with prejudice;

NOW THEREFORE, in consideration of the mutual promises set forth herein the parties do agree as follows:

1. At the northerly portion of the Beach Road access, the Town will place signage noting public access to water, no boat storage is allowed, private property is not available for public use, and dogs are banned from June 1<sup>st</sup> to September 30<sup>th</sup>. The Town will install the signage and maintain/replace as necessary.
2. The Town will maintain the responsibility for trimming vegetation and will not delegate nor permit that work to be undertaken by private property owners in the adjacent neighborhood.
3. The Board of Selectmen of the Town of Harwich will authorize the Town Administrator to forward a letter to the Fitzpatricks informing them that the Town has no present plans to seek an extension of the groin that presently exists and extends seaward from the southeast portion of the Fitzpatrick Property.

4. The Town will remove and will agree to keep off any Town website any reference to Beach Road being a town beach. While the Town shall be under no obligation to respond to complaints regarding the public's use of Beach Road, the Town will respond if, in its discretion, the circumstances warrant.
5. The Town will amend its pending Chapter 91 license application and accompanying plans for the proposed beach nourishment (DEP File No.:SE32-2028) to eliminate the request to be granted a license for the placement of dredged materials seaward of the Fitzpatrick Property.
6. The Town, through its appropriate agents, will consult with the Fitzpatricks in creating a plan to address erosion control within the layout of Beach Road. In addition, the Fitzpatricks will consult with the Town and its appropriate agents to address re-grading of Beach Road, the principal focus being the creation of a more gradual change in elevation versus the sharper change that presently exists. Whether it be through bringing sand to the site or moving accumulated sand from the northern portion of the right of access towards the water, the Fitzpatricks will be provided with plans prepared by the Town to show the proposed change in grades at least two (2) weeks prior to any filing with the Conservation Commission for any further review and comment. These plans, at the Town's option, would then be presented by the Town for approval by the Conservation Commission, and all work authorized will be under the exclusive control of the Town at its sole expense.
7. The parties agree to file a Stipulation of Dismissal dismissing the case with prejudice.
8. To the extent permitted by law, this Settlement Agreement shall be binding upon and inure to the benefit of all parties and their respective legal representative, successors and assigns.

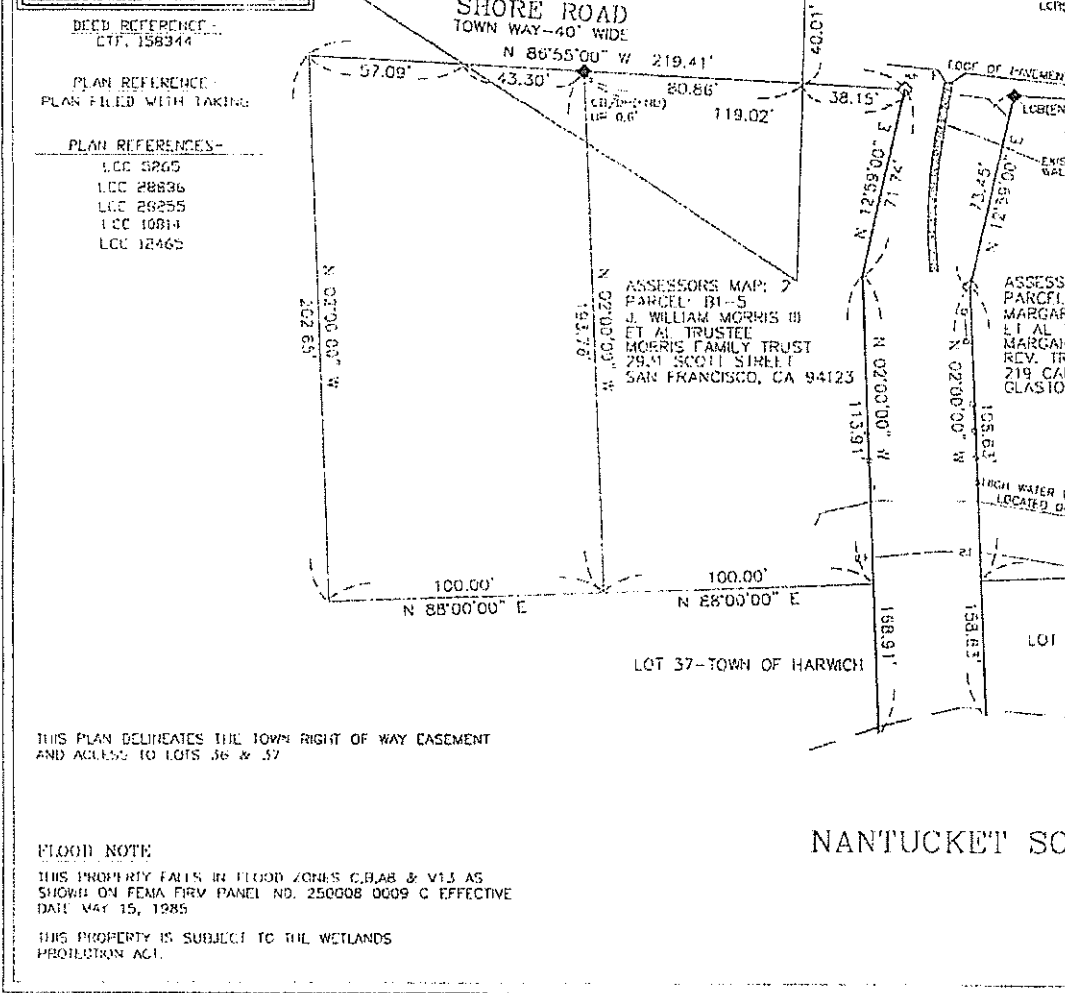
Executed as a sealed agreement this 6<sup>th</sup> day of May, 2013.

Margaret M. Fitzpatrick  
 Margaret M. Fitzpatrick, Trustee  
 Margaret M. Fitzpatrick Revocable Trust

Daniel J. Fitzpatrick  
 Daniel J. Fitzpatrick, Trustee  
 Margaret M. Fitzpatrick Revocable Trust

Board of Selectmen of the  
 Town of Harwich:

[Signature]  
[Signature]  
[Signature]



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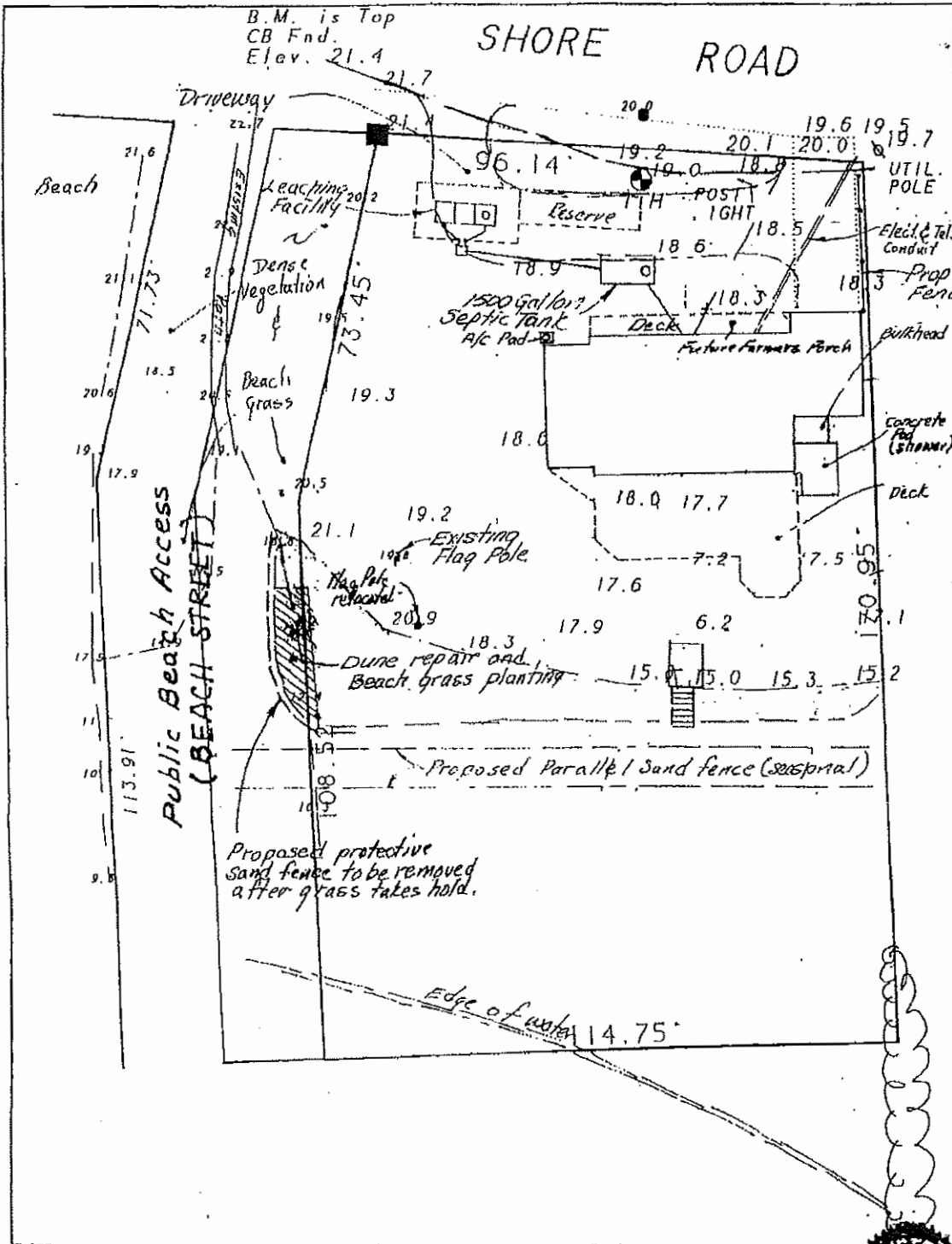
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**MORAN ENGINEERING, INC.**

941 MAIN STREET, 50. HARWICH, MA 02661  
432-2878

SITE IMPROVEMENTS PLAN FOR  
Daniel Fitzpatrick

43 Shore Road West Harwich, Mass.

PROJECT: 95-428 SCALE: 1" = 20' DATE: 2/15/96



Dune Repair  
Beach Grass Planting  
Flag Pole relocated  
Install new fence

TOWN OF HARWICH  
732 Main Street  
Harwich, MA 02645

CONSERVATION  
DEPARTMENT

(508) 430-7538

# 2015-41

TOWN OF HARWICH CONSERVATION DEPARTMENT  
APPLICATION FOR PROJECTS  
REQUESTING ADMINISTRATIVE REVIEW

DATE 7/23/15

REPRESENTATIVE: Jan Fitzpatrick

MAILING ADDRESS: \_\_\_\_\_

PHONE # 508-430-1674

OWNER'S NAME: Margaret Fitzpatrick ET AL Trust

MAILING ADDRESS: 43 Shore Road West Harwich, Ma 02671

ADDRESS OF PROPOSED WORK 43 Shore Road MAP # 2 PARCEL B1-4

DESCRIPTION OF PROJECT: Renovish Coastal Dune & dune, remove invasive bitter sweet & rose bushes running along the path.

	YES	NO
1. Will proposed work take place within 50 ft. of any resource area?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Is excavation by machinery required?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Is uprooting of vegetation or mowing to the ground proposed?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Is tree removal proposed?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5. Is pruning of trees proposed?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6. Is cutting of shrubs proposed?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7. Is removal of briars, brambles or bittersweet vine proposed?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Is removal of poison ivy proposed?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
9. Is planting proposed?	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**APPROVED**

pd cash

**APPROVED**

FOR OFFICE USE ONLY

SITE INSPECTION DATE: June 2015

COMMENTS: Notify office of start work. Only certified applicator to use herbicides and only on bittersweet. Replant as per plan from Lynne Hamlyn / Keith Johnston.

CONSERVATION ADMINISTRATOR Amy Wash

DATE APPROVED: 8/10/15

DATE DENIED: \_\_\_\_\_

DATE OF COMPLETION: \_\_\_\_\_

DATE OF FINAL INSPECTION: \_\_\_\_\_

Let conservation administrator know volume of sand to be added to face of bank. Sand to be clean, coarse, and compatible. Planting to take place in same growing season as removal.

\*If anyone other than Billingsgate Land Management is to do the work they must be approved by conservation.



Elev. 21.1

STURGE

ROAD

DRIVEWAY

21.7

20.9

19.6 19.5

UTIL POLE

REMOVE INVASIVE BITTERSWEET  
 & PRUNING ROSE ALONG PATH & PLANT  
 ARROWWOOD (*VIBURNUM PELTATUM*)  
 BAYBERRY (*MYRICA PENNSYLVANICA*)  
 VIRGINIA ROSE (*ROSA VIRGINIANA*)  
 FRAGRANT SUMAC (*RHUS AROMATICA*)

USE 2 GAL, HIGH OIL CENTER

EXISTING BEACH ACCESS

PLANT LATE GRASSES ALONG PATH EDGE

LITTLE BLUESTEM (*SETZACHYRUM SCOPARIUM*)

BIG BLUESTEM (*AHRPPOGON GERARDI*)

INDIAN GRASS (*SORGHASTRUM INTRANS*)

21. SUPPLEMENT W/ LATE ASTER & SEASIDE GOLDENROD

USE PLUGS

PLANT  
 BEARBERRY (*ARTOSTAPHYLOS LUN-URSI*)  
 COASTAL DELICOTHOE (*LEUCOTHOE AXILLARIS*)

USE 1 GAL POTS

EXIST. PILE

Top Bank 15'

Beach grass slope

Bottom Bank

4' SLOW FENCING W/ 4" POSTS

MAY BE FIELD ADJUSTED

PLANT WITH AMERICAN BEACH GRASS (*AMPHILA BREVILIGULA*)

SWITL GRASS (*PANICUM VIRGATUM*) SG

USE PLUGS, PLANT BEACH GRASS 18" O.

NEW SPLIT RAIL FENCE SECTION

EXIT SPLIT RAIL FENCE

BLEND BEACH GRASS & SWITCH GRASS W/ BLUESTEM, ASTER, & INDIAN GRASS TOWARDS NORTH

PLANT LOCATIONS MAY BE FIELD ADJUSTED



Keith R Johnson, Manager  
2130 Main Street  
Brewster, MA 02631

T (774) 212-6500

billingsgatelm@comcast.net

**Invasive Plant Management Timeline Integrated Herbicide and Mechanical Protocols 43 Shore Road, West Harwich**

**Spring 2015 (Integrated mechanical and herbicide)**

- All proposed herbicide treatments will be conducted by a licensed, trained and insured applicator all herbicides used in wetlands will be approved wetland formulations.
- Pre-work start notification to Harwich Conservation Commission
- All invasives plants/vines/shrubs in proposed work area will pre-treated with a stem injection of Glyphosate or basal bark treatment of Triclopyr
- Mechanical removal by hand clippers and saws on the Coastal Bank will start on the above invasive plants three to five weeks after initial herbicide treatment – timing variable per plant response. All cut plant material will be removed daily from the Coastal Bank project area and disposed of properly.
- Plant native species in accordance with Landscape Sketch dated 4/27/15.

**Late Summer/Fall 2015**

- Monitor of invasive re-sprout and spot treat with 1% solution of Triclopyr or Glyphosate typically starting in July through October

Sincerely,

Keith R Johnson

LEONARD KOPELMAN  
DONALD G. PAIGE  
ELIZABETH A. LANE  
JOYCE FRANK  
JOHN W. GIORGIO  
BARBARA J. SAINT ANDRE  
JOEL B. BARD  
EVERETT J. MARDER  
PATRICK J. COSTELLO  
JOSEPH L. TEHAN, JR.

WILLIAM HEWIG III  
THERESA M. DOWDY  
DEBORAH A. ELIASON

KOPELMAN AND PAIGE, P. C.

ATTORNEYS AT LAW

31 ST. JAMES AVENUE

BOSTON, MASSACHUSETTS 02116-4102

BOSTON OFFICE  
(617) 556-0007  
FAX (617) 654-1735

NORTHAMPTON OFFICE  
(413) 585-8632

WORCESTER OFFICE  
(508) 752-0203

JEANNE S. MCKNIGHT  
JUDITH C. CUTLER  
ANNE-MARIE M. HYLAND  
RICHARD BOWEN  
CHERYL ANN PERRY  
DAVID J. DONESKI  
SANDRA CHARTON  
ILANA M. QUIRK  
BRIAN W. RILEY  
JOHN J. KENNEY, JR.  
MARY L. GIORGIO  
KATHLEEN E. CONNOLLY  
MICHELE E. RANDAZZO  
PETER J. FEUERBACH  
MARY JO HARRIS  
ANNE C. PREISIG  
THOMAS W. MCENANEY  
WILLIAM J. MURPHY  
MELISSA A. GRACE  
JONATHAN M. SILVERSTEIN

January 6, 1997

Hon. Dana DeCosta and  
Members of the Board of Selectmen  
Harwich Town Hall  
732 Main Street  
Harwich, MA 02645

Re: Beach Road

Dear Members of the Board of Selectmen:

You have requested an opinion as to the construction of a sand dune on a portion of Beach Road Extension by an abutter, Margaret M. Fitzpatrick of 43 Shore Road. According to the documents provided to me, Beach Road Extension was laid out by the Board of Selectmen on January 20, 1972, and accepted as a public way by vote of the March 6, 1972 Town Meeting. The Extension runs from Shore Road south to town owned land on Nantucket Sound. An order of taking to take an easement for purposes of a public way in Beach Road Extension was adopted by the Board of Selectmen and recorded on April 1, 1972 at the Barnstable County Registry of Deeds. I have not conducted an independent title search or examined the original town records, but for purposes of this opinion I will assume that all the proper procedures were followed and that Beach Road Extension was lawfully laid out and accepted and that the order of taking effectively acquired an easement in the Extension on behalf of the town. The Extension has never been paved and consists only of pedestrian access.

According to the letter from attorney Falla, Ms. Fitzpatrick owns a parcel of land shown as Lot 4 on Land Court Plan 5265B, Sheet 1. Beach Road Extension is located to the west of and abutting Lot 4. In 1994, the Conservation Commission granted an order of conditions to Ms. Fitzpatrick for the creation of a dune and planting of beach grass. A portion of the dune was constructed within Beach Road Extension. A number of neighbors have asserted that the creation of the dune within the Extension violates the town's property rights under the 1972 order of

Hon. Dana DeCosta and  
Members of the Board of Selectmen  
January 6, 1997  
Page 2.

taking. They also claim that the dune interferes with the town beach. The town owned land has apparently eroded over the years, so there is some question as to the extent of the town beach. You have requested that I review and comment on attorney Falla's opinion, and advise as to the Board's position relative to the decision of the Conservation Commission and the neighbor's access concerns.

In my opinion, attorney Falla's opinion is essentially correct. The town obtained only an easement when it adopted the 1972 order of taking, and the owner of the underlying fee, presumably Ms. Fitzpatrick, has the right to use the portion of her land which is subject to the easement in any fashion which does not interfere with the town's easement. Any rights asserted by the neighbors must be decided between the private parties.

1. Ownership issues - Based upon the documents provided to me, I agree with attorney Falla's conclusion that the "instrument of taking did not include the fee in this portion of Beach Road but affected the acquisition of an easement only and the purposes of that easement were limited to an easement of way." The ownership of the underlying fee cannot be definitively determined without a title search. A few observations can be made, however, from the available documents.

First, it is true that the abutters to a public or private way often own the fee to the center line of the way. General Laws c.183, §58 provides that:

Every instrument passing title to real estate abutting a way, whether public or private ... shall be construed to include any fee interest of the grantor in such way...unless (a) the grantor retains other real estate abutting such way...in which case,... (ii) if the retained real estate is on the other side of such way...the title conveyed shall be to the center line of such way...as far as the grantor owns, or (b) the instrument evidences a different intent by an express exception or reservation and not alone by bounding by a side line.

This statute creates a presumption that, to the extent a grantor has an ownership interest in a way abutting a lot, a deed from the grantor for the lot also conveys ownership of the abutting way. If the grantor owns the land on both sides of the way, a deed for the lot includes land to the center line of the way. In

Hon. Dana DeCosta and  
Members of the Board of Selectmen  
January 6, 1997  
Page 3.

order to determine the extent of Ms. Fitzpatrick's ownership of the underlying fee in the extension, it would be necessary to conduct a title search. Under the statute, whatever interest was owned by her grantor would have passed to her unless specifically excluded from her deed. Since I am informed there was a private way in that same location prior to the public taking, it is likely that Ms. Fitzpatrick owns to the center line by virtue of a previous subdivision of the land creating the private way. Thus, it is not unlikely that Ms. Fitzpatrick owns to the center line of the road.

Whoever owns the fee to the Extension holds title, in my opinion, subject to the town's easement for a public way. The general rule in determining whether a given proposed use of land, such as the construction of the dune, is forbidden to the owner of a parcel which is subject to an easement, is that the owner may use the land for all purposes which are not inconsistent with the easement. Western Massachusetts Electric Co. v. Sambo's of Massachusetts, Inc., 8 Mass. App. Ct. 815, 818 (1979). The owner of the property may not use his land in a way that will interfere with the easement owner's use. Texon, Inc. v. Holyoke Machine Co., 8 Mass. App. Ct. 363, 365 (1979). Whether the dune interferes with the town easement is a question of fact. If the Board of Selectmen is of the opinion that the dune interferes with the town easement, the town may address the issue with Ms. Fitzpatrick. I do not offer an opinion as to what rights, if any, the neighbors may have in Beach Road Extension, and whether those rights may have been interfered with by the construction of the dune. In my opinion, this is an issue between the private parties and the town should not be involved.

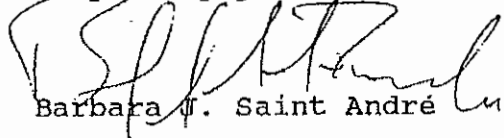
2. Conservation Commission - As stated above, the owner of the underlying fee to the Extension has the right to use the land so long as it does not interfere with the town easement. In my opinion, the determination as to whether the town easement is being interfered with by the construction of the dune is a determination for the Board of Selectmen, not the Conservation Commission. Accordingly, in my opinion the Conservation Commission proceeded properly in acting on the notice of intent. Moreover, under the Wetlands Protection Act, there is no requirement that the applicant be the owner of the property. See 310 C.M.R. 10.04 and 10.05(4)(a) and (7)(a). In my opinion, the Commission was not required to make a determination as to who owns the land in order to act on the notice of intent.

KOPELMAN AND PAIGE, P.C.

Hon. Dana DeCosta and  
Members of the Board of Selectmen  
January 6, 1997  
Page 4.

If you have further questions in this regard, do not  
hesitate to contact me.

Very truly yours,



Barbara J. Saint André

BJS/ja

F:\docs\harw\opinion\bos.bjs

JAMES M. FALLA  
ATTORNEY AND COUNSELLOR AT LAW



TEL: AREA CODE 508  
432-4343

261 MAIN STREET  
P. O. BOX 637  
WEST HARWICH, MASSACHUSETTS  
02671

August 3, 1995

Mr. William A. Doherty, Jr., Chairman  
Board of Selectmen  
Town Hall  
732 Main Street  
Harwich, MA 02645

RE: Conservation Commission Order of Conditions, Case  
1033, artificial dune, 43 Shore Road, West Harwich

Dear Bill:

I have reviewed the letter of July 31, 1995 from the Conservation Commission to the Board of Selectmen relative to the above matter. I have also reviewed the Conservation Commission file, the records of the Town Clerk and Assessors as well as my own records on this property and submit the following. 43 Shore Road is a parcel of land shown as Lot 4 on Land Court Plan 5265B, Sheet 1 (copy enclosed). The parcel is owned by Margaret M. Fitzpatrick, per Certificate of Title No. 131747 which issued against a deed from Betsy L. Neal and Melissa E. Neal, Trustees to the said Margaret M. Fitzpatrick dated October 21, 1993 recorded at Barnstable County Registry of Deeds, Land Registration Section as Document No. 131747 (copy enclosed). Lot 4 has as its westerly boundary Beach Road as shown on the above referenced plan. This road when originally created was a private way.

In 1972, the Board of Selectmen acting pursuant to authority conferred upon them by vote of the town meeting under Article 20 of the annual town meeting held January 28 of that year, adopted an order of taking by the terms of which that portion of Beach Road south of Shore Road and between the said Shore Road and Nantucket Sound was taken for purposes of a town way. I enclose a copy of the instrument of taking.

The instrument of taking did not include the fee in this portion of Beach Road but affected the acquisition of an easement only and the purposes of that easement were limited to an easement of way. The logic of the acquisition was to provide access to town owned property at the Nantucket Sound

(2)

Chairman Doherty

-2-

August 3, 1995

end of this road. Reference to the included Land Court plan shows two lots at the end of Beach Road, namely lot 36 to the east of the road and lot 37 to the west of the road. These lots were and (to the extent that erosion has left any portion of them remaining) still are owned by the town.

Because the town acquired an easement only, the fee in the road was not acquired and remains in the parties who owned the fee prior to the road taking or their successors in title. The normal rule of law relative to the fee in a way is that the owners of the adjacent property own the fee to the center line of the way abutting their land. Accordingly, absent some unusual occurrence in the title history of the properties in this area, the owners of lot 4 would own one half of Beach Road and the owners of lot 5 (see plan) would own the other half subject to easements of way in the public secured by the 1972 taking.

Examination of the plan by Moran Engineering, Inc., submitted to the Conservation Commission by the Fitzpatrick's shows a proposed dune the westerly end of which encroaches on Beach Road approximately 8 feet. The layout width of Beach Road in this area is 40 feet. Accordingly, the dune as constructed is, in all probability, on land the fee in which is owned by Mrs. Fitzpatrick.

In any event, the fee in this road is not in the town of Harwich. Accordingly, it is not legally accurate to refer to this property as town-owned land. If the dune interferes with the town's exercise of its easement rights, the town would have a right to require the removal of the dune or for that matter any other object or obstruction which unreasonably interfered with the town's easement rights as set forth in the instrument of taking.

From my examination of the plan and the pictures of the dune as constructed by the Fitzgeralds which pictures are in the Conservation Commission file, I would doubt very much that a court would conclude that the dune as constructed unreasonably interferes with the town's easement rights. As you know, the town has not installed any paving within the layout of Beach Road and it is not an area used by motor vehicles. It is strictly a pedestrian walkway to the shores of Nantucket Sound.

Although I have not done sufficient title work on this property to say for certain I suspect that owners of the lots shown on the Land Court plan have a private right of way appurtenant to their lots over Beach Road. If this is the case and any of them feel strongly enough about the matter, they have a right to petition the court to determine if



3

Chairman Doherty

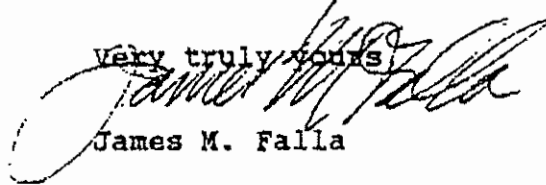
-3-

August 3, 1995

construction of the dune within a portion of the road layout unreasonably interferes with the right of way that they enjoy as appurtenant to their lot. I do not think that effort would be productive, however.

I trust this will be of assistance to the Board and the Conservation Commission. If any further information is needed, please advise.

Very truly yours



James M. Falla

jmf:jmf  
hawped/doc./8

4

The names of the owners, area of taxing and awards, if any, are as follows:

<u>PARCEL</u>	<u>OWNER</u>	<u>RASINMENT AREA SQUARE FEET (More or Less)</u>	<u>AWARDS</u>
X.	Lula A. MacKenzie Ref. Cert. No. 7720. Mortgagee: None	3412	None
X.	Forrest I. Neal, Jr. Ref. Cert. No. 10488 Mortgagee: None	3341	None

Box 1  
w HAR.  
100 Quincy Ave  
Quincy, Mass.  
02169

Adopted and dated at Harwich, this \_\_\_\_\_ day of \_\_\_\_\_, 1972.

\_\_\_\_\_ Denn B. Griffin

\_\_\_\_\_ Haden G. Greenhalgh

\_\_\_\_\_ Harry A. Hansen

SELECTIONMEN OF THE TOWN OF HARWICH

Registry District

APR 1 1972

RECEIVED FOR REGISTRATION

158-344

JAMES  
ATTORNEY AT LAW  
181 MAIN STREET  
HARWICH MASSACHUSETTS

5

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

Office of the  
Selectmen of the  
Town of Harwich

ORDER OF TAKING OF AN EASEMENT  
IN LAND IN HARWICH, BARNSTABLE  
COUNTY, MASSACHUSETTS, BY THE  
SELECTMEN FOR TOWN WAY KNOWN AS

BEACH ROAD

We, DONN B. GRIPPIN, HADEN G. GREENHALGH and BARRY A. HEMMON, the duly elected and qualified Selectmen of the Town of Harwich, a municipal corporation, located in the County of Barnstable, in the Commonwealth of Massachusetts, having adjudged and determined that public convenience and necessity required the layout as a Town Way, a certain way in said Harwich called Beach Road, and having given notice as required by law to the owners of the land to be taken for such layout, we thereafter, to-wit: on the 28th day of January, 1972, laid out said way, as will more particularly appear by reference to our report of said layout and plan accompanying the same filed by us in the Town Clerk's Office in said Town of Harwich, on the 28th day of January, 1972, which report was thereafter unanimously accepted by Vote of said Town of Harwich while acting under Article 20 of the Warrant for the Annual Town Meeting of the inhabitants of the Town of Harwich duly called and held on the 6th day of March, 1972, which meeting was finally adjourned on the 13th day of March, 1972, as will particularly appear by reference to the records of the Town Clerk of said Town of Harwich, acting for and on behalf of said Town under provisions of Chapter 82 of the General Laws and Acts in amendment thereof or in addition thereto and under the power conferred upon us as said Selectmen by the aforesaid Vote of said Town and having complied with all the preliminary requirements prescribed, by law do ADOPT and DECREE this Order of Taking and do hereby take by eminent domain

6

are or may be commonly used, in, over and upon the land situated in the Town of Harwich, within the following described parcel, bounded and described as follows:

Beginning at a bound in the southerly sideline of Shore Road, a Forty (40) feet wide Town Way in the Town of Harwich;

Thence South Eighty-Six degrees Fifty-Five minutes Zero Zero seconds (86° 55' 00") east Forty and 60/100 (40.60) feet by said Shore Road to a point;

Thence south Twelve degrees Fifty-Nine minutes Zero Zero seconds (12° 59' 00") west Seventy-Three and 45/100 (73.45) feet by land of Forrest I. Neal, Jr. to a point;

Thence south Two degrees Zero Zero minutes Zero Zero seconds (2° 00' 00") east One Hundred Eight and 63/100 (108.63) feet by land of said Neal to a point;

Thence westerly by Nantucket Sound Forty (40) feet more or less to a point;

Thence north Two degrees Zero Zero minutes Zero Zero seconds (2° 00' 00") west One Hundred Thirteen and 91/100 (113.91) feet by land of Lula A. Mac Kenzie to a point;

Thence north Twelve degrees Fifty-Nine minutes Zero Zero seconds (12° 59' 00") east Seventy-One and 74/100 (71.74) feet by said Mac Kenzie land to the point of beginning.

For a more particular description of said layout, reference is made to the Plan filed with this Order of Taking, entitled: "Town of Harwich - Massachusetts Beach Road - West Harwich As Laid Out by the Board of Selectmen Article 35 - 1971 Scale 1" - 40' Martin E. Moran Town Engineer", and said land so taken is shown and delineated on said Plan; and that said Order of Taking and Plan were submitted to the Planning Board and that said Planning Board gave approval as provided by the General Laws, Section 81 - 1, Chapter 41.

This Order of Taking is subject to the rights of easements of the New England Telephone & Telegraph Company, and to the Cape & Vineyard Electric Company.

Any trees on the above described land, or structures affixed thereto are not included in this Order of Taking, and the owner or owners are allowed to remove from such land above described, such trees or structures, if any there be, in or within thirty days from the date of this Order of Taking.

JAMES M. FALLA  
ATTORNEY AND  
COUNSELLOR AT LAW  
181 MAIN STREET  
WEST HARWICH,  
MASSACHUSETTS

10

08/07/1995 09:25

508-432-4343

JAMES M FALLA

PAGE 05

...subject to and with the benefit of any drain easements, flowage rights, main sewer easements, easements, rights of   , common driveway easements, and restrictions    of record, and in so far as the force and applicable.

...easement is also made with the right to use the streets and ways shown on any plan by which the above described    are hereinbefore bounded or described for all purposes for which streets or ways are commonly used in the town or where said premises are located, together with others entitled thereto.

Witness our hands and seals this 21st day of October 1995

THE FORREST I. NEAL, JR. TRUST

Raymond H. Neal, Trustee

Melinda E. Neal, Trustee

Harsuch

Harsuch

596539

106-919

131717

1080-107

Oct 21 3 42 PM '95

BARNSLEY COUNTY  
REGISTRY OF DEEDS  
JOHN E. EMMETT

Harsuch

158344

*Bennington Registry District*

APR 11 1972

RECEIVED FOR REGISTRATION

AT 10 O'CLOCK AM

NOON 7:20

5 O'CLOCK 4:20

*Also Cf. 10488 &*

TOWN OF HARWICH

BEACH ROAD

ROAD TAKING

JAMES M. FALLA  
ATTORNEY AND COUNSELLOR AT LAW  
121 MAIN STREET  
WEST HARWICH, MASSACHUSETTS 02671

PLAN FILED  
IN PLAN DEPT.

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

Office of the  
Selectmen of the  
Town of Harwich

ORDER OF TAKING OF AN EASEMENT  
IN LAND IN HARWICH, BARNSTABLE  
COUNTY, MASSACHUSETTS, BY THE  
SELECTMEN FOR TOWN WAY KNOWN AS

BEACH ROAD

We, DONN B. GRIFFIN, HADEN G. GREENHALGH and BARRY A.

HEMEON, the duly elected and qualified Selectmen of the Town of Harwich, a municipal corporation, located in the County of Barnstable, in the Commonwealth of Massachusetts, having adjudged and determined that public convenience and necessity required the layout as a Town Way, a certain way in said Harwich called Beach Road, and having given notice as required by law to the owners of the land to be taken for such layout, we thereafterwards, to-wit: on the 28th day of January, 1972, laid out said way, as will more particularly appear by reference to our report of said layout and plan accompanying the same filed by us in the Town Clerk's Office in said Town of Harwich, on the 28th day of January, 1972, which report was thereafterwards unanimously accepted by Vote of said Town of Harwich while acting under Article 20 of the Warrant for the Annual Town Meeting of the inhabitants of the Town of Harwich duly called and held on the 6th day of March, 1972, which meeting was finally adjourned on the 13th day of March, 1972, as will particularly appear by reference to the records of the Town Clerk of said Town of Harwich acting for and on behalf of said Town under provisions of Chapter 82 of the General Laws and Acts in amendment thereof or in addition thereto and under the power conferred upon us as said Selectmen by the aforesaid Vote of said Town and having complied with all the preliminary requirements prescribed, by law do ADOPT and DECREE this Order of Taking and do hereby take by eminent domain on behalf of said Town of Harwich, under the provisions of Chapter 79 of the General Laws and Acts in amendment or in addition thereto, an easement of Town Way for all purposes for which Town Ways

JAMES M. FALLA  
ATTORNEY AND  
COUNSELLOR AT LAW  
121 MAIN STREET  
WEST HARWICH,  
MASSACHUSETTS

5265-B (Rev. 1)

cc - Rec. Dept. of Trans. & State to Northwick Land Plan

are or may be commonly used, in, over and upon the land situated in the Town of Harwich, within the following described parcel, bounded and described as follows:

Beginning at a bound in the southerly sideline of Shore Road, a Forty (40) feet wide Town Way in the Town of Harwich;

Thence South Eighty-Six degrees Fifty-Five minutes Zero Zero seconds ( $86^{\circ} 55' 00''$ ) east Forty and  $60/100$  (40.60) feet by said Shore Road to a point;

Thence south Twelve degrees Fifty-Nine minutes Zero Zero seconds ( $12^{\circ} 59' 00''$ ) west Seventy-Three and  $45/100$  (73.45) feet by land of Forrest I. Neal, Jr. to a point;

Thence south Two degrees Zero Zero minutes Zero Zero seconds ( $2^{\circ} 00' 00''$ ) east One Hundred Eight and  $63/100$  (108.63) feet by land of said Neal to a point;

Thence westerly by Nantucket Sound Forty (40) feet more or less to a point;

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This Order of Taking is subject to the rights of easements of the New England Telephone & Telegraph Company, and to the Cape & Vineyard Electric Company.

Any trees on the above described land, or structures affixed thereto are not included in this Order of Taking, and the owner or owners are allowed to remove from such land above described, such trees or structures, if any there be, in or within thirty days from the date of this Order of Taking.

JAMES M. FALLA  
ATTORNEY AND  
COUNSELLOR AT LAW  
121 MAIN STREET  
WEST HARWICH  
MASSACHUSETTS

5265-B (Rev.)  
- Rev. Beach Rd. to Shore of Nantucket Sound Plan



PINEWOOD TO PRIVATE WAY LANE

112.00  
N 86° 55' 00" W  
R.L.G. 46.03' R.L.G.

SHORE 40' TOWN WAY ROAD  
1946 LAYOUT

ASE No 5265

IN ACCORDANCE WITH THE  
PLAN L.C. 5265  
CHASE

PARCEL 1  
LULA A MACKENZIE

L.C. CERT 1720  
OK. C3C PG. 510  
TAKING = 3412 ±

N 07° 00' 00" W 113.91'

N 71° 59' 00" E 71.74'

S 88° 00' 00" W

S 88° 00' 00" W

Flag pole

PARCEL 2  
FORREST I. NEAL, JR.

L.C. CERT. 10488  
TAKING = 3341 ±

TOWN OF HARW  
BEACH ROAD

AS LAID OUT BY T  
ARTIC

SCALE 1" = 40'

CIVIL ENGINEER  
BRIAN W. MURPHY

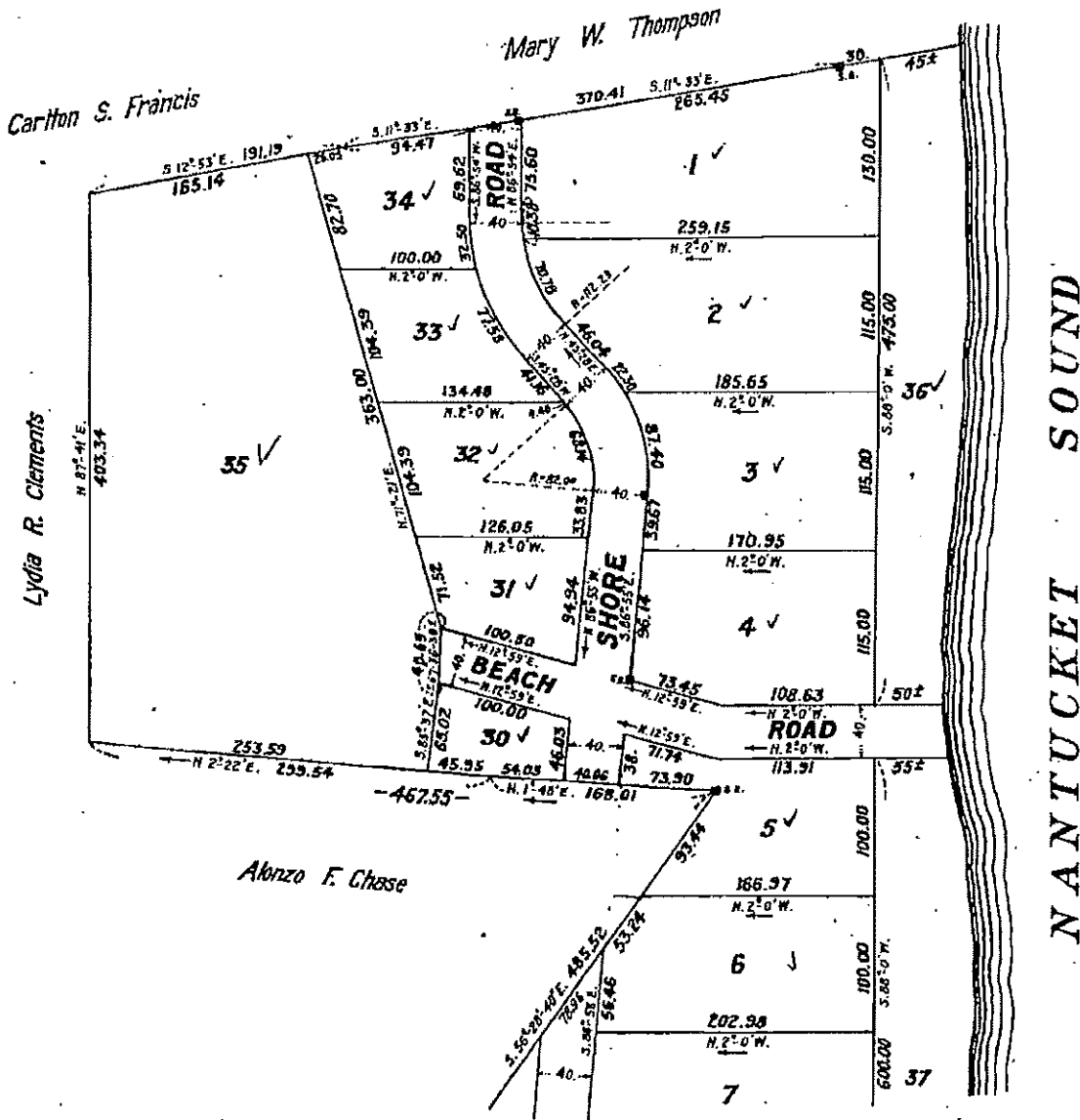
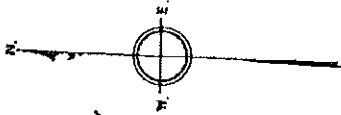
*Brian W. Murphy*  
ENGINEER

Subdivision of Land shown on plan filed with  
 Cert. of Title No. 288 Registry District of Barnstable County

5265B  
 Sheet 1.

**LAND IN HARWICH**  
 Scale 60 feet to an inch  
 JUNE, 1923.

Morse & Chase, Engineers.



(See Sheet 2)

Separate certificates of title may be issued  
 for the numbered lots as shown hereon  
 By the Court and on the following Sheet

*James Smith*  
 Recorder

AUG. 8, 1923

This plan filed with Certificate No. 691.

Copy of part of plan  
 filed in  
**LAND REGISTRATION OFFICE**  
 AUG. 2, 1923.

Scale of this plan 100 feet to an inch  
 C. B. Humphrey, Surveyor for Court

**MINUTES  
SELECTMEN'S MEETING  
GRIFFIN ROOM, TOWN HALL  
TUESDAY, MAY 31, 2016  
6:30 P.M.**

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

**OTHERS PRESENT:** Town Administrator Christopher Clark, Assistant Town Administrator Charleen Greenhalgh, Chief Clarke, David LeBlanc, Ginny Hewitt, Mary Warde, Joann Brown, and others.

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

Chairman Hughes reported that the Board just came out of Executive Session where they discussed collective bargaining with non-union personnel and reviewed performance evaluations for the Fire Chief and Finance Director/Town Accountant.

**CONSENT AGENDA**

- A. Approve Minutes
  - 1. May 9, 2016 – Regular Session
  - 2. May 16, 2016 – Regular Session
  - 3. May 16, 2016 – Executive Session
- B. Approve application for One Day Entertainment License by Harwich Conservation Trust for Wildlands Music & Art Stroll for September 10, 2016, waive \$25 application fee, and approve use of Harbormaster's Bank Street building parking lot
- C. Approve petition by Eversource Energy to install approximately 30' of conduit and cable to provide service at 23 Soundview Road contingent upon removal of extraneous cables they may have at the site
- D. Approve petition by Eversource Energy to install 30' of conduit and cable to provide service at 19 Quason Lane
- E. Approve petition by Verizon Wireless to locate small cell wireless antennas on existing utility poles at 24 Patricia Lane, 40 Harbor Road and 17 Uncle Venies Road
- F. Amend the Personnel By-Law Compensation Plan for FY 2017 in keeping with union increases

Chairman Hughes stated that Item F would be brought back next week as they had some issues with it. Ms. Brown moved approval of Items A through E of the Consent Agenda. Mr. MacAskill seconded the motion and the motion carried by a unanimous vote.

**NEW BUSINESS**

- A. Candidates for Board of Registrars submitted by Republican Town Committee –  
*discussion and vote to appoint one*

Chairman Hughes recused himself on this item. Mr. LaMantia moved to appoint Susan Mills as a Registrar. Mr. MacAskill seconded the motion and the motion carried by a unanimous vote.

- B. Acknowledge receipt of Performance Evaluation for Finance Director/Town Accountant and approve compensation increase – *discussion and possible vote*

Chairman Hughes said this item would be brought back on June 27, 2016.

- C. Acknowledge receipt of Performance Evaluation for Fire Chief and approve compensation increase – *discussion and possible vote*

Mr. MacAskill moved to approve the acknowledgement of the receipt of the Performance Evaluation for the Fire Chief and approve compensation increase. Ms. Brown seconded the motion and the motion carried by a unanimous vote.

- D. Library CPA Project Plan – *discussion and possible vote*

Mr. Clark explained that there was a feasibility study done by an outside consultant and that was used for a basis for requesting funding from CPC for this project. He stated that our Engineer had indicated that MGL allows the Board of Selectmen, acting as the approving authority for the Designer Selection of the Town, to allow the consultant to continue with the services of the current firm for design improvements if the Library Trustees are comfortable with the consultant. He stated that it makes sense to continue to use the same design consultant to put together the specifications. He questioned if the Board is comfortable having the feasibility study consultant go on and be the designer of the project. There was discussion about the responsibility of the procurement process and who that would fall to. Mr. LaMantia urged that the Trustees to be involved in the decision making. It was agreed that Mr. Libby and Mr. Cafarelli would oversee the project. Mr. MacAskill said the Town should take ownership of this and the Trustees and Library Director should advise when needed and the Board agreed. No vote was taken.

## **TOWN ADMINISTRATOR'S REPORT**

Mr. Clark reported that the neighbors on Beach Road are concerned that the work the Fitzpatricks are doing is not adherence with the agreement between the Town and the Fitzpatricks. He said it would go on the agenda for the next meeting.

## **SELECTMEN'S REPORT**

- A. Selectmen's re-organization – election of Chairman, Vice Chairman, Clerk and Interview/Nominations subcommittee – *discussion and possible vote*

Ms. Brown moved that commencing the end of this meeting that we move Michael MacAskill into the Chair position, Peter Hughes into the Vice-Chair position, Julie Kavanagh into the Clerk position, Angelo LaMantia into the Interview Committee position and Jannell Brown into the Interview Committee position. Mr. LaMantia seconded the motion and the motion carried by a unanimous vote.

B. Reminder – Board of Selectmen Summer meeting schedule starts June 20, 2016

Chairman Hughes noted that the Board's summer meeting schedule starts June 20, 2016.

**ADJOURNMENT**

Chairman Hughes adjourned the meeting at 7:17 p.m.

Respectfully submitted,

Ann Steidel  
Recording Secretary









**SETTLEMENT AGREEMENT**

Now come the undersigned parties and hereby enter into this Settlement Agreement.

WHEREAS, Margaret M. Fitzpatrick and Daniel J. Fitzpatrick, Trustees of the Margaret M. Fitzpatrick Revocable Trust of 219 Candlelight Drive, Glastonbury, CT 06033 ("Fitzpatricks") are the owners of Lot 4 on Land Court Plan 5265-B ("Fitzpatrick Property");

WHEREAS, Town of Harwich, is a Massachusetts municipal corporation with an address of 732 Main Street, Harwich, MA 02645 ("Town");

WHEREAS, the Fitzpatricks, as Plaintiffs, and the Town, as Defendant, are parties to a civil action currently pending in the Barnstable Superior Court as Case No. BACV 2010-00527 (the "pending case");

WHEREAS, pursuant to the Vote under Article 20 of the March 6, 1972 Annual Town Meeting the Town of Harwich took an easement in Beach Road as more particularly set forth in the Order of Taking dated April 10<sup>th</sup>, 1972;

WHEREAS, the Fitzpatricks initiated the pending case seeking to void the Town's Order of Taking;

WHEREAS, the parties desire to enter into a settlement agreement and to dismiss the pending case with prejudice;

NOW THEREFORE, in consideration of the mutual promises set forth herein the parties do agree as follows:

1. At the northerly portion of the Beach Road access, the Town will place signage noting public access to water, no boat storage is allowed, private property is not available for public use, and dogs are banned from June 1<sup>st</sup> to September 30<sup>th</sup>. The Town will install the signage and maintain/replace as necessary.
2. The Town will maintain the responsibility for trimming vegetation and will not delegate nor permit that work to be undertaken by private property owners in the adjacent neighborhood.
3. The Board of Selectmen of the Town of Harwich will authorize the Town Administrator to forward a letter to the Fitzpatricks informing them that the Town has no present plans to seek an extension of the groin that presently exists and extends seaward from the southeast portion of the Fitzpatrick Property.

4. The Town will remove and will agree to keep off any Town website any reference to Beach Road being a town beach. While the Town shall be under no obligation to respond to complaints regarding the public's use of Beach Road, the Town will respond if, in its discretion, the circumstances warrant.
5. The Town will amend its pending Chapter 91 license application and accompanying plans for the proposed beach nourishment (DEP File No.:SE32-2028) to eliminate the request to be granted a license for the placement of dredged materials seaward of the Fitzpatrick Property.
6. The Town, through its appropriate agents, will consult with the Fitzpatricks in creating a plan to address erosion control within the layout of Beach Road. In addition, the Fitzpatricks will consult with the Town and its appropriate agents to address re-grading of Beach Road, the principal focus being the creation of a more gradual change in elevation versus the sharper change that presently exists. Whether it be through bringing sand to the site or moving accumulated sand from the northern portion of the right of access towards the water, the Fitzpatricks will be provided with plans prepared by the Town to show the proposed change in grades at least two (2) weeks prior to any filing with the Conservation Commission for any further review and comment. These plans, at the Town's option, would then be presented by the Town for approval by the Conservation Commission, and all work authorized will be under the exclusive control of the Town at its sole expense.
7. The parties agree to file a Stipulation of Dismissal dismissing the case with prejudice.
8. To the extent permitted by law, this Settlement Agreement shall be binding upon and inure to the benefit of all parties and their respective legal representative, successors and assigns.

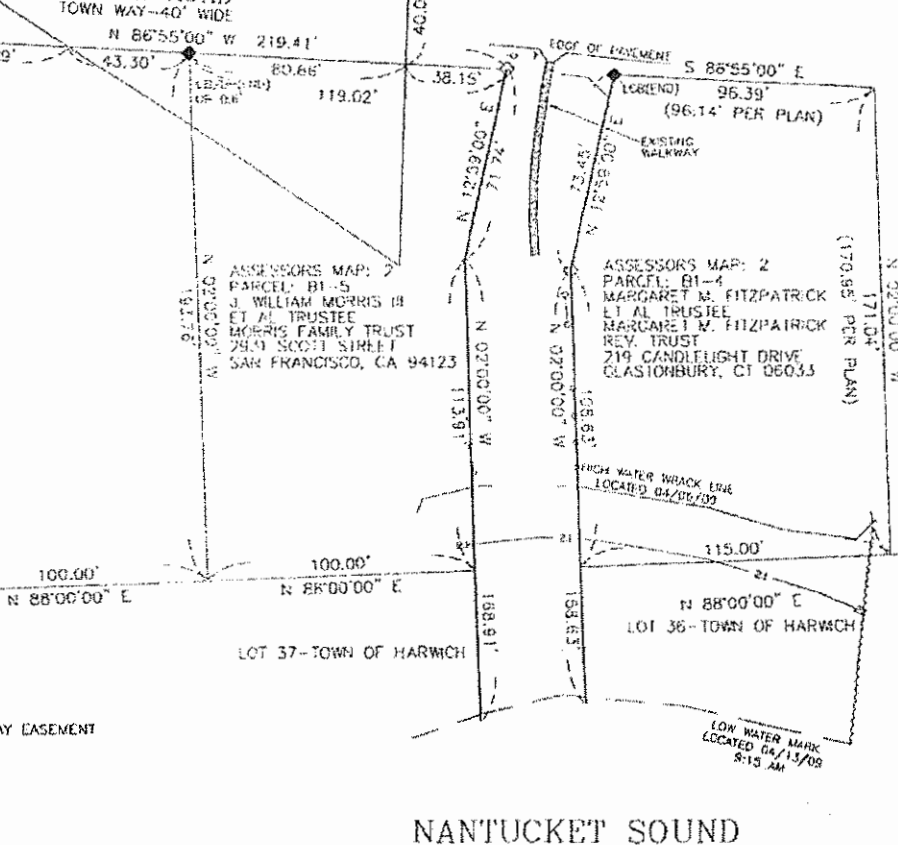
Executed as a sealed agreement this 6<sup>th</sup> day of May, 2013.

Margaret M. Fitzpatrick  
 Margaret M. Fitzpatrick, Trustee  
 Margaret M. Fitzpatrick Revocable Trust

Daniel J. Fitzpatrick  
 Daniel J. Fitzpatrick, Trustee  
 Margaret M. Fitzpatrick Revocable Trust

Board of Selectmen of the  
 Town of Harwich:

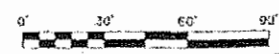
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PEACH ROAD TAKING  
RECORDED IN:  
DOC. 158344



PLAN OF LAND IN HARWICH,  
MASSACHUSETTS  
AS PREPARED FOR  
TOWN OF HARWICH



APRIL 13, 2009  
ENGINEERING DEPARTMENT  
TOWN OF HARWICH  
732 MAIN STREET  
HARWICH, MA  
02845

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REV. 04-15-09 ADU MEAN HIGH WATER

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PLAN OF LAND  
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AS PREPARED FOR  
TOWN OF HARWICH

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**KOPELMAN AND PAIGE, P.C.***The Leader in Municipal Law*101 Arch Street  
Boston, MA 02110  
T. 617.558.6007  
F. 617.654.1735  
www.k-p-law.com

February 24, 2009

Ilana M. Quirk  
iquirk@k-plaw.comBY FACSIMILE – (508) 432-5039  
AND FIRST CLASS MAILMr. James Merriam  
Town Administrator  
Harwich Town Hall  
732 Main Street  
Harwich, MA 02645Re: Beach Road Easement Issues

Dear Mr. Merriam:

You have asked for an opinion regarding a Notice of Intent filed by Ms. Margaret Fitzpatrick, owner of 43 Shore Road, with the Conservation Commission to make the "resource improvements" shown on a plan entitled "Site Improvements Plan for Daniel Fitzpatrick, 43 Shore Road, West Harwich" and dated December 16, 2008 as prepared by Moran Engineering, Inc. (the "Moran Plan"). Some of the "improvements" are proposed for a 40-foot wide easement owned by the Town. In 1923, a subdivision plan created Ms. Fitzpatrick's lot (i.e., Lot 4) and Beach Road and they are shown on the "Subdivision of Land shown on plan filed with Certificate of Title No. 288" and recorded as Plan 5265B with the Barnstable Registry (the "1923 Subdivision Plan"). During 1972, the Town laid out the portion of Beach Road that runs south from Shore Road as a public way and took the necessary easement by eminent domain (the "Easement"). The April 10, 1972 taking instrument was recorded as Plan 158344 in the Barnstable Registry and recites that the layout hearing took place and Town Meeting voted on January 28, 1972 to accept the way for "all purposes for which Town Ways are or may commonly be used...." It appears that the requirements of G.L. c.82 to perfect a public way were met, including that the necessary land interest be acquired within 120 days after the termination of the town meeting at which the way was accepted. G.L.c.82, §24. The Easement conforms to the portion of Beach Road shown on the 1923 Subdivision Plan that runs south from Shore Road. I understand that a path within the Easement is used for public beach access. I also understand that residents assert that Ms. Fitzgerald has erected a fence across the top portion of the Easement, has removed vegetation from the sides of the Easement and has added sand to the southerly portion of the Easement to create a dune to protect her property. The Moran Plan shows a 4' wide walkway and three fences, two 4' stockade fences and one 3 rail split fence, all within the Easement. It is not clear whether the new walkway would be in the same location as the existing path. You ask who has authority to enforce the Easement and whether the proposed work would interfere with or encroach upon the Easement.

In my opinion, the Board of Selectmen has the authority to enforce the Easement. In my further opinion, the Selectmen may order Ms. Fitzgerald to cease and desist any work that they determine would interfere with or encroach on the Easement. Alternatively, if the Selectmen

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

Mr. James Merriam  
Town Administrator  
February 24, 2009  
Page 2

determine that all or part of the proposed work would benefit the Easement, they may provide Ms. Fitzgerald with a revocable license to make and maintain the desired improvements.

I recommend that the Board of Selectmen contact Ms. Fitzgerald and ask her to present her proposed plan to the Selectmen and to explain how and why the proposed improvements within the Easement would benefit the Easement. An existing conditions plan would be particularly helpful and I recommend that the Selectmen require Ms. Fitzgerald to produce one, to show the location of the existing walkway, fencing and vegetation within the Easement.

As to the sidewalk, I recommend that the Board of Selectmen confirm whether the proposed new walkway would be in the same location as the existing path and whether any disturbance of land or existing vegetation would be necessary. If the new walkway is proposed for the same location as the existing path, then the relocation may be deemed desirable. If so, the Selectmen may wish to grant Ms. Fitzgerald a revocable license to perform the necessary work to install it. Alternatively, if the walkway is proposed for a different location and would require new areas to be disturbed and new vegetation to be removed, then that may be deemed undesirable. If so, the Selectmen may wish to issue Ms. Fitzgerald a cease and desist order.

As to the fencing, I recommend that the Board of Selectmen determine whether the proposed fencing would serve any beneficial purpose (e.g., to protect the area and the walkway from wind and water erosion and inadvertent use by pedestrians of adjacent sensitive areas or whether the only purpose of the fencing is to create a buffer for Ms. Fitzgerald's property). It appears that the two stockade fencing segments could have a conservation purpose (i.e., to protect existing vegetation and an existing beach grass or dune); however, the Selectmen would need to consult with a beach erosion expert as to whether this is the case or not and whether the height and type of fencing proposed is appropriate.

If there is a beneficial purpose found for the fencing, then the Selectmen may wish to grant Ms. Fitzgerald a revocable license to perform the proposed work. If such a license is provided, then the Selectmen may wish to require Ms. Fitzgerald to provide surety to guarantee removal of the fence should the license be revoked or if the fencing falls into disrepair. If the Selectmen determine that the proposed fencing does not serve a beneficial purpose or that the fencing would impede the historical use of the Easement in a manner that is not desired, then the Selectmen may wish to issue Ms. Fitzgerald a cease and desist order.

I note that, in particular, the "3 rail split" fence shown on the Improvement Plan does not appear to attempt to address a conservation issue and seems to have, as its sole purpose, the protection of Ms. Fitzgerald's property line; however, it is within the Easement and thus would encroach upon an area that the public may have freely accessed as part of the adjacent beach historically. If the only purpose of the split rail fence is protection of Ms. Fitzgerald's property line,

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

Mr. James Merriam  
Town Administrator  
February 24, 2009  
Page 3

then the Selectmen may wish to order Ms. Fitzgerald to place it on her own property, not within the Easement. I note, of course, if Ms. Fitzgerald were able to obtain the necessary approval from the Conservation Commission, she could place all of the proposed fencing on her own property.

If the Board of Selectmen do provide Ms. Fitzgerald with a revocable license to perform any part of the proposed work, I recommend that the license include a statement that informs Ms. Fitzgerald that neither she nor any of her agents or servants should encroach upon the Easement in an effort to treat any portion of the Easement as part of her property. While adverse possession will not result by a private citizen against a public easement in a public way and certainly all of the land involved is registered with the Land Court (foreclosing adverse possession), I still recommend, under the circumstances, that Ms. Fitzgerald be reminded that she should not undertake any activities within the Easement without first contacting the Board of Selectmen and obtaining the Board's permission in the form of a revocable license before proceeding with any activity within the Easement, either now or in the future.

If you have any further questions regarding this matter, please contact me.

Very truly yours,



Ilana M. Quirk

IMQ/ja  
cc: Board of Selectmen  
368058/HARW/9999

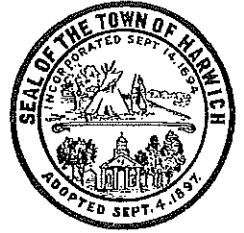
**OFFICE OF THE TOWN ADMINISTRATOR**

**JAMES R. MERRIAM**, *Town Administrator*

PHONE (508) 430-7513

FAX (508) 432-5039

732 MAIN STREET, HARWICH, MA 02645



June 11, 2013

Mr. and Mrs. Daniel Fitzpatrick  
43 Shore Road  
West Harwich, MA 02671

Re: Beach Road Agreement

Dear Mr. and Mrs. Fitzpatrick:

Please be advised that in accordance with the Agreement approved and executed by the Board of Selectmen dated May 6, 2013, the Board voted on June 10, 2013 to authorize the Town Administrator to write this letter to you, advising you that the Board has no intentions at the present time, to extend a groin located seaward of your Shore Road property.

Sincerely,

James R. Merriam  
Town Administrator

CC: Board of Selectmen  
Attorney Michael Ford  
Conservation Agent Amy Usowski  
Harbormaster John Rendon

WILLIAM C. ELY  
28 Green Needle Lane  
West Harwich, MA 02671  
spike.ely@gmail.com

June 22, 2016

*Via Email*

Christopher Clark  
Town Administrator  
Harwich, MA

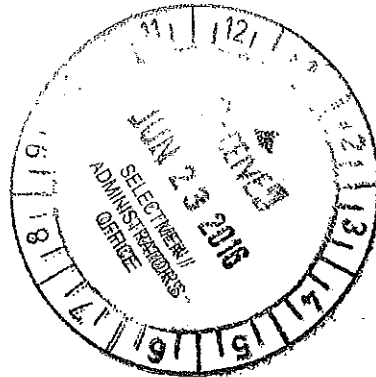
Re: **Beach Road**

Dear Mr. Clark:

Since my May 2<sup>nd</sup> email to you regarding the Beach Road easement, there have been further developments as you know. At the June 6 Selectman's meeting many West Harwich residents, including my wife Audrey, attended to express their views regarding the current situation. I also read the February 24, 2009 Koppleman and Page opinion regarding the Beach Road easement.

The opinion clarifies a number of legal issues principally the nature of the rights acquired by the Town when it took the easement in 1972. Simply put this easement is a public way. The Fitzpatrick's may "own" a portion of it under the Derelict Way Statute, but they cannot interfere in any way with the public's use of the easement. In fact the taking (Land Court Document #158344 required the owners to remove trees within 30 days. The inference is that the abutting owners cannot make plantings or install structures in the easement. By my estimate the Fitzpatrick's have encroached at least 12 feet into the Town way with fencing and plantings. By dismissing their lawsuit with prejudice, the Fitzpatrick's acknowledged the existence and validity of the 1972 taking. However, to fully protect the residents' use of the way and to avoid future disputes, I suggest again that the Town take the remaining fee interest in the Beach Road Way by eminent domain.

The Fitzpatrick's actions over the years have caused the Town and local residences to focus solely on Beach Road and the area between the Fitzpatrick's lot and Nantucket Sound. However, the original purpose of Beach Road was to provide access to beach Lots 37 and 36 as shown on the original subdivision plans (see Land Court Plan 5265B). Lot 36 fronted the now Fitzpatrick property and Lot 37 fronted the Lot on the West side of the Beach Road Way. It does appear that the Lot 36 beach has been almost completely lost to erosion. However, this is not true of Lot 37 that extends west to the Pleasant Road public beach. The remaining beach area of Lot 37 is enough to support the need to fully maintain the Beach Road Town Way to permit residents and visitors to access Lot 37. It also permits residents and visitors to walk from the Pleasant Road beach and then return to Shore Road via the Beach Road Way.





Christopher Clark  
June 22, 2016  
Page 2

West Harwich is a vibrant seaside neighborhood that should not lose basic enjoyment of and to access Nantucket Sound due to the actions of one neighbor.

I appreciate your consideration. Please reply to [spike.ely@gmail.com](mailto:spike.ely@gmail.com). We do not receive mail in Harwich.

Very truly yours,

William C. Ely

/tac

Enclosure

cc: Board of Selectman

## Amy Usowski

---

**From:** The O'Shea Family <knmoshea@comcast.net>  
**Sent:** Wednesday, May 18, 2016 8:43 PM  
**To:** Amy Usowski  
**Subject:** Fence on Little Beach off Shore Road

Ms. Usowski,

I am writing in regards to the split rail fence installed on Little Beach in West Harwich. As you no doubt are aware this beach access issue has been around for almost 20 years. Local residents of the area have been in a continuous struggle with Mr. Fitzpatrick who continues to operate under his own set of rules as to what is his property, who has access to what portion of the beach and influencing whether or not the beach gets re-nourished. The town has not one time stood up and exercised it's prerogative as the owner of the beach to provide the same maintenance as it does it's other town beaches. Each spring neighbors return to deal with a new set of issues he has initiated over the winter.

It has been communicated to some of our neighbors that Mr. Fitzpatrick was given permission to make some improvements in order to "prevent erosion and preserve dunes". I would be very interested in the towns explanation as to how a split rail fence accomplishes this. In addition as you have no doubt heard from others, the placement of the fence appears to exceed his property lines. Others who have communicated their displeasure/concern to the town have been told "they will look into it". I would appreciate your view of this matter and whether this is within the spirit of the 2013 agreement made between the town and Mr. Fitzpatrick.

Kevin O'Shea  
11 Rabbit Run  
West Harwich

## Amy Usowski

---

**From:** Gerard Elias <osprey1955@aol.com>  
**Sent:** Thursday, May 19, 2016 6:54 AM  
**To:** Amy Usowski  
**Subject:** Illegal fence on The Little Beach

Amy,

My name is Gerard L. Elias and my wife and I are year round, tax paying and voting residents of the Town of Harwich, residing at 16 Pinewood Lane. I am writing to voice my concern and strong objection to the stockade fence that has been illegally constructed on Town owned property, directly adjacent to the boardwalk that provides access to The Little Beach on Shore Road, West Harwich. It is my understanding that the Town granted Mr. Fitzpatrick with its consent to construct a smaller snow fence in the general vicinity of the boardwalk and with that consent in hand he has taken it upon himself to construct the larger, obstructing stockade fence as well.

Please advise as to when the Town will be directing Mr. Fitzpatrick to remove this illegal fence, as it is not in keeping with the previous agreement reached between the parties. Since it was constructed on Town owned property, I assume that his refusal to do so, will result in the Town taking an action to have it removed.

Your prompt response would be appreciated.

Gerard L. Elias  
16 Pinewood Lane  
West Harwich, Ma. 02671  
410-371-9607 Cell  
774-237-9963 Home  
osprey1955@aol.com

Sent from my iPad

## Amy Usowski

---

**From:** Stephen McKenna <mckortho@aol.com>  
**Sent:** Thursday, May 19, 2016 2:15 PM  
**To:** Amy Usowski  
**Subject:** Re: Shore Road Beach

Amy  
Thank you for your quick response. I appreciate your attention to this. I can't tell how upset the neighborhood is because of Mr. Fitzpatrick's abuse of the trust the town has extended to him. He is absolutely obsessed with conquering this land and making everyone else miserable.

Steve  
McKenna Orthodontics Inc  
1285 Springfield Street  
Feeding Hills, MA 01030

9 Trilby Ave  
Chicopee, MA 01020

666 Bliss Road  
Longmeadow MA. 01106

mckortho@aol.com

-----Original Message-----

**From:** Amy Usowski <ausowski@town.harwich.ma.us>  
**To:** Stephen McKenna <mckortho@aol.com>  
**Sent:** Thu, May 19, 2016 1:01 pm  
**Subject:** RE: Shore Road Beach

Hello Mr. McKenna,

The Harwich Conservation Department is aware of this, and is investigating it. I did give permission for Mr. Fitzpatrick to plant alongside the path going down to the water with native species and remove the invasives, as well as to put a sand drift fence on his property, but not on the town's. After I conducted a site visit there last week, there appears to be a split rail fence on Town property. Mr. Fitzpatrick disagrees, and claims this is his property. I have been talking to the town surveyor and he and I will determine that it is in fact on town property, and then Mr. Fitzpatrick will have to remove any portion that is on town property. I am familiar with all the legal issues that have taken place down there over the years, and in no way wanted to or plan on restricting access down there further. We are dealing with this as expeditiously as possible. Thank you.

Amy Usowski  
Conservation Administrator  
Town of Harwich

**From:** Stephen McKenna [<mailto:mckortho@aol.com>]  
**Sent:** Thursday, May 19, 2016 12:25 PM  
**To:** Amy Usowski <ausowski@town.harwich.ma.us>  
**Cc:** [wbarr18136@aol.com](mailto:wbarr18136@aol.com); [omarybeth179@aol.com](mailto:omarybeth179@aol.com); [cyne435@aol.com](mailto:cyne435@aol.com); [gkrowka@comcast.net](mailto:gkrowka@comcast.net); [jecook01@earthlink.net](mailto:jecook01@earthlink.net); [eakelly@comcast.net](mailto:eakelly@comcast.net); [louisgeorgantas@verizon.net](mailto:louisgeorgantas@verizon.net); [stevensr@union.edu](mailto:stevensr@union.edu);

[wnhendricks@yahoo.com](mailto:wnhendricks@yahoo.com); [mckenna1@comcast.net](mailto:mckenna1@comcast.net); [cawstewart@yahoo.com](mailto:cawstewart@yahoo.com); [sfrawley@emeryonline.com](mailto:sfrawley@emeryonline.com);  
[drshush@juno.com](mailto:drshush@juno.com); [carolandjack66@comcast.net](mailto:carolandjack66@comcast.net); [lincolnchase@comcast.net](mailto:lincolnchase@comcast.net); [gregandbobbie@meganet.net](mailto:gregandbobbie@meganet.net);  
[robert.pannazzo@att.net](mailto:robert.pannazzo@att.net); [judy\\_mcginn@MEEI.harvard.edu](mailto:judy_mcginn@MEEI.harvard.edu); [caphilips@verizon.net](mailto:caphilips@verizon.net); [vangiepatey@rcn.com](mailto:vangiepatey@rcn.com);  
[littleshotzie@yahoo.com](mailto:littleshotzie@yahoo.com); [belmontbaileys@comcast.net](mailto:belmontbaileys@comcast.net); [jbenevides@conveyco.com](mailto:jbenevides@conveyco.com); [rerat33@comcast.net](mailto:rerat33@comcast.net);  
[bigfinch11@verizon.net](mailto:bigfinch11@verizon.net); [dental3661@yahoo.com](mailto:dental3661@yahoo.com); [pjc61779@comcast.net](mailto:pjc61779@comcast.net); [a.marsh@cox.net](mailto:a.marsh@cox.net); [jjiben@aol.com](mailto:jjiben@aol.com);  
[MurphySSKC@aol.com](mailto:MurphySSKC@aol.com)

**Subject:** Shore Road Beach

Dear Amy

I am writing to you as a property owner in West Harwich whose property is being devalued due to the actions of a Mr. Fitzpatrick of 43 Shore Road, West Harwich MA. I live 1000 feet from the small beach on Shore Road which the community fondly calls "Little Beach". The proximity of my home to the beach increase the value of my property significantly and I pay more taxes because of the perceived benefit of access to the water. Mr. Fitzpatrick has always opined that he owned the 20 feet of the 40 foot wide beach that is adjacent to his property. When he purchased the property, he rebuild his house and dug a foundation and piled the displaced dirt and building debris on the southwest side of his property and spilling on to the public beach. The mound covered the existing dune and added 10 feet of height to the property and took away about 10 feet of flat beach. He then covered it with beach sand, planted eel grass and said he was "restoring a dune". In reality, he extended his property at the expense of the community.

This act was fought over by the surrounding neighbors (approximately 90 families) and brought to the town selectman. The area was surveyed and Mr. Fitzpatrick was told in absolute terms that the 40 foot access and beach were public property. Since that time, every winter Mr. Fitzpatrick has taken the liberty of removing the natural growth next to his lawn and planting more and more trees and bushes. The split rail fence by the street at the opening that he placed is entirely on town property. He has removed all of the rosa rugosa on the east side of the walkway which was an ideal way to prevent erosion and it did not allow the sand to blow off the beach which preserved the dunes. He replaced the rosa rugosa with trees and shrubs which grow much higher and will block the view of the water from the street as well as cut off the water view from surrounding homes.

A few years ago, the community had the option to have the town replenish the beach with sand when they were dredging Allen Harbor. Mr. Fitzpatrick told the town "if any of that sand gets on his beach, he would sue the town". Because of that, the beach was not replenished. This winter , he drew a permit from the town (I was told this but I have not confirmed it with the town) to "restore a dune" and take away more of the public beach. He has erected an new stockade fence and wind fence and planted more eel grass. This disingenuous act is insulting to everyone in the town. First of all, you can not "restore " something that was never there and, secondly, if he would like to do this, why is he not doing it on his own property. The answer is very simple. He was told that the beach was not his property and he refuses to accept it and he will steal it any way he can.

I am asking the town to take action against Mr Fitzpatrick to have him remove all of the structures and illegal plantings that he has put on public property and make it a policy for any requests by Mr Fitzpatrick or his estate to alter the public access in any way be summarily reject now and in the future

Steve  
McKenna Orthodontics Inc  
1285 Springfield Street  
Feeding Hills, MA 01030

9 Trilby Ave  
Chicopee, MA 01020

666 Bliss Road  
Longmeadow MA. 01106

[mckortho@aol.com](mailto:mckortho@aol.com)

## Amy Usowski

---

**From:** SFrawley@emeryonline.com  
**Sent:** Thursday, May 19, 2016 2:23 PM  
**To:** Amy Usowski  
**Cc:** mckortho@aol.com  
**Subject:** Shore and Beach Rd. Beach

Dear Amy,

I am 20 year resident of Green Needle Lane in West Harwich and I am writing in support of Steve McKenna's well thought out letter regarding the public beach at the end of Beach and Shore Rd. I hope we are all in agreement that the town is responsible for preserving and maintaining access to public property supported by the tax payers. It is clear we have a resident attempting to circumvent the public's right for unimpeded access to this beach. We have all seen the character and profile of Shore Rd. change dramatically on the last 20 years we should step up here and protect the beach for future generations. Also, blatant disregard for the property rights of the public should be met with an approximate response. We would appreciate you sharing the Town's planned action to deal with this situation.

Regards,

Steve Frawley  
President/CEO  
207-535-2639, 800-283-0236

**emery | waterhouse**  
Driven by your success.

## Amy Usowski

---

**From:** Gerard Elias <osprey1955@aol.com>  
**Sent:** Thursday, May 19, 2016 5:07 PM  
**To:** Amy Usowski  
**Cc:** Stephen McKenna  
**Subject:** Re: Illegal fence on The Little Beach

Amy

In giving this matter further thought, it occurs to me that the agreement reached between the Town and Mr. Fitzpatrick was, to my knowledge, not shared with the community. If it was, I did not receive a copy. Please provide one at your earliest convenience as I would like to have it reviewed by my attorney.

Thank you

Gerard L. Elias  
16 Pinewood Lane  
West Harwich, Ma. 02671  
410-371-9607 Cell  
774-237-9963 Home  
osprey1955@aol.com

Sent from my iPad

> On May 19, 2016, at 10:10 AM, Amy Usowski <ausowski@town.harwich.ma.us> wrote:

>

> Hello Mr. Elias,

> The Conservation Department has been made aware of this split-rail fence, and has been in conversation with Mr. Fitzpatrick to remove it. Mr. Fitzpatrick is still claiming ownership, which is not what the agreement says. I am speaking today or tomorrow with the town surveyor to go over the agreement, and then, if the fence is on town property, Mr. Fitzpatrick will need to remove it.

>

> Amy Usowski

> Conservation Administrator

> Town of Harwich

>

>

>

> -----Original Message-----

> From: Gerard Elias [mailto:osprey1955@aol.com]

> Sent: Thursday, May 19, 2016 6:54 AM

> To: Amy Usowski <ausowski@town.harwich.ma.us>

> Subject: Illegal fence on The Little Beach

>

> Amy,

>

> My name is Gerard L. Elias and my wife and I are year round, tax paying and voting residents of the Town of Harwich, residing at 16 Pinewood Lane. I am writing to voice my concern and strong objection to the stockade fence that has

been illegally constructed on Town owned property, directly adjacent to the boardwalk that provides access to The Little Beach on Shore Road, West Harwich. It is my understanding that the Town granted Mr. Fitzpatrick with its consent to construct a smaller snow fence in the general vicinity of the boardwalk and with that consent in hand he has taken it upon himself to construct the larger, obstructing stockade fence as well.

>

> Please advise as to when the Town will be directing Mr. Fitzpatrick to remove this illegal fence, as it is not in keeping with the previous agreement reached between the parties. Since it was constructed on Town owned property, I assume that his refusal to do so, will result in the Town taking an action to have it removed.

>

> Your prompt response would be appreciated.

>

> Gerard L. Elias

> 16 Pinewood Lane

> West Harwich, Ma. 02671

> 410-371-9607 Cell

> 774-237-9963 Home

> osprey1955@aol.com

>

> Sent from my iPad

>

>



## Amy Usowski

---

**From:** The O'Shea Family <knmoshea@comcast.net>  
**Sent:** Thursday, May 19, 2016 6:41 PM  
**To:** Amy Usowski  
**Subject:** Re: Fence on Little Beach off Shore Road

Thank you for your prompt response.

**From:** Amy Usowski  
**Sent:** Thursday, May 19, 2016 10:16 AM  
**To:** The O'Shea Family  
**Subject:** RE: Fence on Little Beach off Shore Road

Hello Mr. O'Shea,

Mr. Fitzpatrick was given permission to put fence on his property; but not on the town's. It is my understanding he has put it on the town property. Of course, this is not as per the agreement, and we are working with Mr. Fitzpatrick and I will be speaking with the town administrator on this topic as well. Mr. Fitzpatrick will have to remove the fence that is on town property.

Amy Usowski  
Conservation Administrator  
Town of Harwich

**From:** The O'Shea Family [mailto:knmoshea@comcast.net]  
**Sent:** Wednesday, May 18, 2016 8:43 PM  
**To:** Amy Usowski <ausowski@town.harwich.ma.us>  
**Subject:** Fence on Little Beach off Shore Road

Ms. Usowski,

I am writing in regards to the split rail fence installed on Little Beach in West Harwich. As you no doubt are aware this beach access issue has been around for almost 20 years. Local residents of the area have been in a continuous struggle with Mr. Fitzpatrick who continues to operate under his own set of rules as to what is his property, who has access to what portion of the beach and influencing whether or not the beach gets re-nourished. The town has not one time stood up and exercised it's prerogative as the owner of the beach to provide the same maintenance as it does it's other town beaches. Each spring neighbors return to deal with a new set of issues he has initiated over the winter.

It has been communicated to some of our neighbors that Mr. Fitzpatrick was given permission to make some improvements in order to "prevent erosion and preserve dunes". I would be very interested in the towns explanation as to how a split rail fence accomplishes this. In addition as you have no doubt heard from others, the placement of the fence appears to exceed his property lines. Others who have communicated their displeasure/concern to the town have been told "they will look into it". I would appreciate your view of this matter and whether this is within the spirit of the 2013 agreement made between the town and Mr. Fitzpatrick.

## Amy Usowski

---

**From:** Charles Phillips <caphillips@verizon.net>  
**Sent:** Thursday, May 19, 2016 6:46 PM  
**To:** Amy Usowski  
**Subject:** Town beach at Beach Rd

My family has owned our property on Beach Rd since 1944 with deeded rights to the beach and the beach has always been an important part of the Cape experience. Mr Fitzpatrick has gone out of his way to take over the beach with his actions. He has no regard for the neighbors and thumbs his nose at the Town. I find it very difficult to understand why the Town lets him get away with his actions and why the Town doesn't permanently shut him down and take over the entire easement. We all know he will continue to disregard the Town and the neighbors as he is arrogant in everything he does. The Town appears to be intimidated by him for some unknown reason when the Town holds all the cards. It is time to stop this.

Charles Phillips, 18 Beach Rd

Sent from [Mail](#) for Windows 10

## Amy Usowski

---

**From:** Vangie Patey <vangiepatey@gmail.com>  
**Sent:** Sunday, May 22, 2016 3:43 PM  
**To:** Stephen McKenna  
**Cc:** Amy Usowski; wbarr18136@aol.com; omarybeth179@aol.com; cyne435@aol.com; gkrowka@comcast.net; jecook01@earthlink.net; eakelly@comcast.net; louisgeorgantas@verizon.net; stevensr@union.edu; wnhendricks@yahoo.com; mckenna1@comcast.net; cawstewart@yahoo.com; sfrawley@emeryonline.com; drshush@juno.com; carolandjack66@comcast.net; lincolnchase@comcast.net; gregandbobbie@meganet.net; robert.pannazzo@att.net; judy\_mcginn@meei.harvard.edu; caphilips@verizon.net; vangiepatey@rcn.com; littleshotzie@yahoo.com; belmontbaileys@comcast.net; jbenevides@conveyco.com; rerat33@comcast.net; bigfinch11@verizon.net; dental3661@yahoo.com; pjc61779@comcast.net; a.marsh@cox.net; jjjbeno@aol.com; MurphySSKC@aol.com  
**Subject:** Re: Shore Road Beach

Hello Everyone,

Even tho I don't use "Little Beach" anymore I am happy to be on the emails and kept up to date on what is happening. Rick and I stopped at the walkway this morning because I wanted to see the fence Fitzgerald put up. When I got out of the car he was coming out of his house, as I walked I just glared at him and he did the same.

When I came back up the walk he was at his door and he appeared to be writing down our license plate. Just wanted to pass this on.

Vangie Patey

On Thursday, May 19, 2016, Stephen McKenna <mckortho@aol.com> wrote:  
Dear Amy

I am writing to you as a property owner in West Harwich whose property is being devalued due to the actions of a Mr. Fitzpatrick of 43 Shore Road, West Harwich MA. I live 1000 feet from the small beach on Shore Road which the community fondly calls "Little Beach". The proximity of my home to the beach increase the value of my property significantly and I pay more taxes because of the perceived benefit of access to the water. Mr. Fitzpatrick has always opined that he owned the 20 feet of the 40 foot wide beach that is adjacent to his property. When he purchased the property, he rebuild his house and dug a foundation and piled the displaced dirt and building debris on the southwest side of his property and spilling on to the public beach. The mound covered the existing dune and added 10 feet of height to the property and took away about 10 feet of flat beach. He then covered it with beach sand, planted eel grass and said he was "restoring a dune". In reality, he extended his property at the expense of the community.

This act was fought over by the surrounding neighbors (approximately 90 families) and brought to the town selectman. The area was surveyed and Mr. Fitzpatrick was told in absolute terms that the 40 foot access and beach were public property. Since that time, every winter Mr. Fitzpatrick has taken the liberty of removing the natural growth next to his lawn and planting more and more trees and bushes. The split rail fence by the street at the opening that he placed is entirely on town property. He has removed all of the rosa rugosa on the east side of the walkway which was an ideal way to prevent erosion and it did not allow the sand to blow off the beach which preserved the dunes. He replaced the rosa rugosa with trees and shrubs which grow much higher and will block the view of the water from the street as well as cut off the water view from surrounding homes.

A few years ago, the community had the option to have the town replenish the beach with sand when they were dredging Allen Harbor. Mr. Fitzpatrick told the town "if any of that sand gets on his beach, he would sue the town". Because of that, the beach was not replenished. This winter, he drew a permit from the town (I was told this but I have not confirmed it with the town) to "restore a dune" and take away more of the public beach. He has erected an new stockade fence and wind fence and planted more eel grass. This disingenuous act is insulting to everyone in the town. First of all, you can

not "restore " something that was never there and, secondly, if he would like to do this, why is he not doing it on his own property. The answer is very simple. He was told that the beach was not his property and he refuses to accept it and he will steal it any way he can.

I am asking the town to take action against Mr Fitzpatrick to have him remove all of the structures and illegal plantings that he has put on public property and make it a policy for any requests by Mr Fitzparick or his estate to alter the public access in any way be summarily reject now and in the future

Steve  
McKenna Orthodontics Inc  
1285 Springfield Street  
Feeding Hills, MA 01030

9 Trilby Ave  
Chicopee, MA 01020

666 Bliss Road  
Longmeadow MA. 01106

[mckortho@aol.com](mailto:mckortho@aol.com)

## Amy Usowski

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**From:** Judy Shankman <sommerof56@gmail.com>  
**Sent:** Sunday, May 22, 2016 9:18 PM  
**To:** Amy Usowski  
**Subject:** Fence on Little Beach off Shore Road

Dear Ms Usowski,

I am a resident of West Harwich and would like to echo some of the sentiments about Little Beach that have already been expressed to you. We moved to Shore Road nine years ago and each year there has been turmoil and disappointment with regard to the status of Little Beach and the unconscionable actions of the Fitzpatrick Family.

It has been definitively stated that Little Beach is public property. It is a tiny strip of beach that is enjoyed and cherished by our neighborhood. There is no parking in the vicinity so it is simply frequented by residents who can walk to the beach. Rarely, are there more than 10 people sitting on the beach at one time and we are quiet and respectful of the properties adjacent to the beach. Mr. Fitzpatrick clearly believes that his neighbors should not have the right to sit on this beach and has made every effort to encroach on this very small neighborhood oasis.

Over the years, a tremendous amount of time, energy, and resources have been spent requesting that your office and the Town of Harwich protect the rights of the residents and to prevent Mr. Fitzpatrick from usurping those rights. The residents of the neighborhood have no recourse with this individual; it is the responsibility and the obligation of the municipality to do the right thing in this matter.

On a personal note, we have an extremely friendly and harmonious neighborhood with only one exception. Mr. Fitzpatrick continues to live up to his reputation of a selfish and extremely unpleasant individual with absolutely no sense of community. I implore you and your office to put a stop to his actions and to set firm boundaries so that he does not continue to plague the neighborhood year after year.

Thank you very much for your attention to this issue and I hope it can be resolved in the very near future.

Judy Shankman

> Amy,

>

> My name is Gerard L. Elias and my wife and I are year round, tax paying and voting residents of the Town of Harwich, residing at 16 Pinewood Lane. I am writing to voice my concern and strong objection to the stockade fence that has been illegally constructed on Town owned property, directly adjacent to the boardwalk that provides access to The Little Beach on Shore Road, West Harwich. It is my understanding that the Town granted Mr. Fitzpatrick with its consent to construct a smaller snow fence in the general vicinity of the boardwalk and with that consent in hand he has taken it upon himself to construct the larger, obstructing stockade fence as well.

>

> Please advise as to when the Town will be directing Mr. Fitzpatrick to remove this illegal fence, as it is not in keeping with the previous agreement reached between the parties. Since it was constructed on Town owned property, I assume that his refusal to do so, will result in the Town taking an action to have it removed.

>

> Your prompt response would be appreciated.

>

> Gerard L. Elias

> 16 Pinewood Lane

> West Harwich, Ma. 02671

> 410-371-9607 Cell

> 774-237-9963 Home

> osprey1955@aol.com

>

> Sent from my iPad

>

>

## Amy Usowski

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**From:** Gerard Elias <osprey1955@aol.com>  
**Sent:** Monday, May 23, 2016 7:36 AM  
**To:** Amy Usowski  
**Cc:** Stephen McKenna  
**Subject:** Re: Illegal fence on The Little Beach

Amy

I am following up on a prior email which I sent to you wherein I requested a copy of the agreement executed between Mr. Fitzpatrick and the Town. Please forward said copy at your earliest convenience.

Can you also provide an update on the current situation, in particular with regard to when our community can anticipate the removal of the split rail fence that Mr. Fitzpatrick has illegally erected on Town property at The Little Beach.

Your prompt response would be appreciated.

Thank you,

Gerard L. Elias  
16 Pinewood Lane  
West Harwich, Ma. 02671  
410-371-9607 Cell  
774-237-9963 Home  
osprey1955@aol.com

Sent from my iPad

> On May 19, 2016, at 10:10 AM, Amy Usowski <ausowski@town.harwich.ma.us> wrote:

>

> Hello Mr. Elias,

> The Conservation Department has been made aware of this split-rail fence, and has been in conversation with Mr. Fitzpatrick to remove it. Mr. Fitzpatrick is still claiming ownership, which is not what the agreement says. I am speaking today or tomorrow with the town surveyor to go over the agreement, and then, if the fence is on town property, Mr. Fitzpatrick will need to remove it.

>

> Amy Usowski

> Conservation Administrator

> Town of Harwich

>

>

>

> -----Original Message-----

> From: Gerard Elias [mailto:osprey1955@aol.com]

> Sent: Thursday, May 19, 2016 6:54 AM

> To: Amy Usowski <ausowski@town.harwich.ma.us>

> Subject: Illegal fence on The Little Beach

>

## Amy Usowski

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**From:** Louis Georgantas <louisgeorgantas@verizon.net>  
**Sent:** Monday, May 23, 2016 7:36 PM  
**To:** Amy Usowski  
**Subject:** Public Beach 22  
**Attachments:** 470128-267-79.jpg

Dear Ms. Usowski: The Georgantas family has lived at 6 Pine Needle Lane, West Harwich, since 1956. Our family, along with our neighbors and other residents of Harwich, have enjoyed use of the beach at the end of Beach Road (Public Beach 22, also known as "Little Beach") continually since 1956. Our Certificate of Title to the property (#19992, Doc.50,227, Book 149, Page 52) grants us a right of way over Beach Road to Nantucket Sound. A number of our neighbors have the same right of way grant in their Certificates of Title as well. In addition, I note that the Town of Harwich in April, 1972 took by eminent domain a forty-foot right of way for all public purposes with respect to Public Beach 22 (Land Court Record #158344), which is duly listed as an encumbrance on the Fitzpatrick's Certificate of Title (#156,059).

I am writing in support of the letters (in the form of e-mails) written to you by Stephen McKenna, Kevin O'Shea and Gerald Elias requesting that Mr. Fitzpatrick of 43 Shore Road be required to remove the illegal fence and illegal plantings that he has placed on public property. I am attaching hereto a photograph of Little Beach taken 3 years ago which reflects the rosa rugosa along the beach which Mr. Fitzpatrick has supplanted with his own private plantings. The actions that Mr. Fitzpatrick has taken over the years to extend his property at the expense of the community has diminished the value of the homes in the neighborhood. The Town of Harwich has a legal responsibility to protect the Town's rights to Public Beach #22 for the enjoyment of all of us who reside in Harwich and who pay taxes to the Town. As so aptly stated by Mr. McKenna in his letter: "I am asking the town to take action against Mr. Fitzpatrick to have him remove all of the structures and illegal plantings that he has put on public property and make it a policy for any requests by Mr. Fitzpatrick or his estate to alter the public access in any way be summarily rejected now and in the future." Respectfully submitted by The Georgantas Family



## Amy Usowski

---

**From:** Melina Georgantas <melina4boston@gmail.com>  
**Sent:** Wednesday, May 25, 2016 11:55 AM  
**To:** Amy Usowski  
**Subject:** Public Beach 22

Dear Ms. Usowski,

My name is Melina Georgantas and I have been a resident of 6 Pine Needle Lane in West Harwich since 1978. I wanted to thank you for your assistance regarding the matter of Public Beach 22 and the problems the community has been experiencing with Mr. Fitzpatrick for a few years now.

I also wanted to inform you that I fully support the statements, opinions and letters written by Steve McKenna, Kevin O'Shea, Gerald Elias and Louis Georgantas. Thank you for your time.

Regards,

Melina Georgantas

Peristyle Properties of Boston  
Real Estate Brokerage, Renovations & Property Management  
Μιλώ Ελληνικά  
Mobile in U.S. +1 (617) 417-3174 | Email: [Melina4Boston@gmail.com](mailto:Melina4Boston@gmail.com)  
Website: [www.peristyleproperties.com](http://www.peristyleproperties.com)  
Skype: MelinaGeorgantas | Mobile in G.R. +30 (698) 091-9983

## Amy Usowski

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**From:** Nicole Elena Bassi <yeefti11@gmail.com>  
**Sent:** Wednesday, May 25, 2016 12:14 PM  
**To:** Amy Usowski  
**Subject:** Public Beach 22

Dear Ms. Usowski,

My name is Nicole-Elena Bassi and I have been a resident of 6 Pine Needle Lane in West Harwich since 1970. Thank you for your assistance regarding the matter of Public Beach 22 and the problems the community has been experiencing with Mr. Fitzpatrick for a several years now.

In addition, I fully agree and support the statements, opinions and letters written by Steve McKenna, Kevin O'Shea, Gerald Elias and Louis Georgantas. Thanks so much for your time and attention to this matter and hopefully we can get a final resolution to this matter.

Thank you,

Nicole-Elena Bassi

## Amy Usowski

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**From:** Joanne Sullivan <joapatsull@aol.com>  
**Sent:** Wednesday, May 25, 2016 3:18 PM  
**To:** Amy Usowski  
**Subject:** Public Beach 22

Dear Ms. Usowski,

My name is JoAnne Ferrucci Sullivan and I have been a resident of 40 Shore Road since 1988. I would like to thank you in advance for your assistance with the preservation of Public Beach 22 and the problems the community has been experiencing with Mr. Fitzpatrick since he moved in.

It is important for you to know that my family and I fully support the letters written by Steve McKenna, Kevin O'Shea, Gerald Elias, Louis Georgantas and any other community member who has written in opposition to Fitzpatrick's actions.

We would greatly appreciate anything you can do to aid in our efforts to protect Public Beach 22.

Sincerely,  
the Ferrucci/Sullivan family  
40 Shore Road  
West Harwich, MA

## Amy Usowski

---

**From:** belmontbaileys@comcast.net  
**Sent:** Wednesday, May 25, 2016 3:35 PM  
**To:** Amy Usowski  
**Subject:** Public Beach #22

Ms. Usowski,

I am writing you regarding Public Beach number 22, also known as "Little Beach". I know you have received many letters regarding the fence that was put up on the beach, as well as, the several new plantings placed on the beach. My family supports the sentiment in all of the letters sent questioning these actions.

I spend the summer, along with my husband and four children on Beach Road in West Harwich and we spend a great deal of time at Little Beach. Unfortunately each year it seems there are new obstacles to overcome in order to fully enjoy this public beach. In all of the time that I have spent at Little Beach I have only witnessed people being very respectful of the owners and their private property. Given this I am not sure why one family would want to deprive the public of their right to enjoy this property.

I am hoping that this issue gets resolved quickly so that we can fully enjoy "Little Beach".

Thank you,  
Meg Bailey

## Amy Usowski

---

**From:** Peter Georgantas <peter@pegproperties.com>  
**Sent:** Wednesday, May 25, 2016 4:06 PM  
**To:** Amy Usowski  
**Subject:** Public Beach 22

Dear Ms. Usowski,

My name is Peter Georgantas and I have been a resident of 6 Pine Needle Lane in West Harwich since 1971. I wanted to thank you for your assistance regarding the matter of Public Beach 22 and the problems the community has been experiencing with Mr. Fitzpatrick for a few years now. It is pretty sad how the town keeps kicking the can down the road and doesn't address this guy head on with more legal action. You have about 50 residents on one side of the isle on this issue and one rogue resident who thinks he can take over public land.

I also wanted to inform you that I fully support the statements, opinions and letters written by Steve McKenna, Kevin O'Shea, Gerald Elias and Louis Georgantas.

Regards -

Peter Georgantas

## Amy Usowski

---

**From:** Jane Crapulli <janecrapulli@aol.com>  
**Sent:** Wednesday, May 25, 2016 4:55 PM  
**To:** Amy Usowski  
**Subject:** Public Beach 22

Dear Amy,

I am a property owner at 10 Rabbit Run in West Harwich and fully support the letters written by Steve McKenna, Kevin O'Shea, Gerald Elias, Louis Georgantas, as well as any other community member who has written in opposition to Mr. Fitzpatrick's actions. It has been disheartening to witness Mr. Fitzpatrick's unethical actions over the years and shocking that he has gotten away with it.

I have enjoyed "Little Beach" for over 40 years, as a child my family owned property on Manderville Rd. Many years later I purchased my own house specifically for its proximity to "Little Beach."

I respectfully ask you to please have the fence and any other plantings by Mr. Fitzpatrick removed immediately.

Sincerely,  
Jane Crapulli and Family

## Amy Usowski

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**From:** paul louko <bylosh2010@hotmail.com>  
**Sent:** Wednesday, May 25, 2016 9:27 PM  
**To:** Amy Usowski  
**Subject:** Public Beach 22

Dear Ms. Usowski,

My name is Paul Louko and I have been a resident of 24 Pinewood Lane in West Harwich since 2010. I wanted to thank you for your assistance regarding the matter of Public Beach 22 and the problems our community has been experiencing with Mr. Fitzpatrick over the last 4 years.

I also fully support the statements, opinions and letters written by Steven McKenna, Kevin O'Shea, Gerald Elias and Louis Georgantas. I appreciate your devoted time to our concerns.

Paul Louko  
Sent from my iPhone

## Amy Usowski

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**From:** Matt Kelly <kellymek@gmail.com>  
**Sent:** Thursday, May 26, 2016 9:01 PM  
**To:** Amy Usowski  
**Subject:** Public Beach #22 (little beach)

Dear Ms Usowski-

My name is Matthew Kelly and my family has resided at 15 Pine Needle Lane and enjoyed Public Beach #22 for over 40 years. Thank you for assisting us with the periodic issues we continue to experience with Mr. Fitzpatrick.

We are requesting that the Town enforce and protect our rights. Kindly have Mr. Fitzpatrick restore our right of way to its original status, including the removal of any fences and including the restoration of the landscaping to its original condition.

I thank you in advance for your interest in enforcing a permanent solution to this flagrant disregard of our rights.

Best,

Matthew Kelly  
15 Pine Needle Lane



## Amy Usowski

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**From:** Joanne Sullivan <joapatsull@aol.com>  
**Sent:** Saturday, June 04, 2016 9:30 AM  
**To:** Amy Usowski; Christopher Clark; Eric Beebe; Ann Steidel  
**Subject:** Re: Public Beach 22

>  
>  
> To Whom It May Concern,  
>  
> Our family has lived at 40 Shore Road, West Harwich, MA since February of 1988. In the beginning, we had remarkably happy and friendly neighbors who all shared Public Beach #22 (better known as Little Beach) comfortably each summer.  
>  
> However, when Mr. Fitzpatrick moved on to Shore Road around 1992, he attempted to interfere with his actual property line which abutted Public Beach #22. He has continually done whatever he can to discourage all beach goers from continuing to use Public Beach #22.  
>  
> Mr. Fitzpatrick has upset the homeowner community considerably, and he continues to mislead Harwich town officials by claiming to be 'preserving an established dune.' We would greatly appreciate anything you can do to aid in our efforts to protect Public Beach #22.  
>  
> Sincerely,  
> Dr. James C. Ferrucci, M.D.  
> 40 Shore Road  
> West Harwich, MA  
>  
>  
>

## Amy Usowski

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**From:** The O'Shea Family <knmoshea@comcast.net>  
**Sent:** Friday, June 03, 2016 10:14 AM  
**To:** Sandy Robinson; Amy Usowski  
**Subject:** Board Of Selectmen information- Conservation dept. information

Good Morning

I am writing in advance of the June 6th meeting to make sure I am on record if I cannot get there on time. The meeting is supposed to address the easement issue for Public beach 22. The town of Harwich has allowed a fence to be put on the beach by Mr. Fitzpatrick, and should have removed it immediately, rather than discussing it at a meeting. Mr. Fitzpatrick has had a long string of issues that have encroached on the beach, allowed no nourishment to take place and pulled vegetation which was perfectly fine in order to extend the boundaries of his property and minimize the access to the water for the public. The amount of time and energy, and money that has been thrown at this, with unfavorable results for the taxpayers, is beyond ludicrous. If a fence had been put on pleasant road beach or grey neck beach it would have been removed. This is a clear example, once again, of somebody taking full advantage of The Town Of Harwich, asking for a permit to enhance the nourishment of the dunes, getting approval for that and then throwing in a fence while at it.

I expect that the town will have had somebody on record that has visited the beach and has a clear picture of the fence, and the vote will be immediate, swift and concise. Take the fence off the beach as you would if anyone put a fence on a public beach !!

Thank you,

Nancy O'Shea  
11 Rabbit Run  
W Harwich, MA

cc: Michael MacAskill  
Amy Usowski

## Amy Usowski

---

**From:** mikefitzw@aol.com  
**Sent:** Thursday, June 02, 2016 4:32 PM  
**To:** Amy Usowski  
**Subject:** Little beach

Hi Amy,

I reside at 27 Pinewood Lane and have owned my home since 1981 and have used pretty much only used Little Beach when visiting the cape. I share my neighbors disgust with what Mr. Fitzpatrick has recently done to our beach by installing an absurd fence on the easement and continuing his expansion onto little beach. His continued dissing of the neighborhood and the town have now reached new levels. I hope the town this time the town will step up and assert itself on this matter and not leave it to the neighborhood to deal with this matter.  
Mike Fitzwilliam

Sent from AOL Mobile Mail

## Sandy Robinson

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**From:** The O'Shea Family <knmoshea@comcast.net>  
**Sent:** Friday, June 03, 2016 10:14 AM  
**To:** Sandy Robinson; Amy Usowski  
**Subject:** Board Of Selectmen information- Conservation dept. information

Good Morning

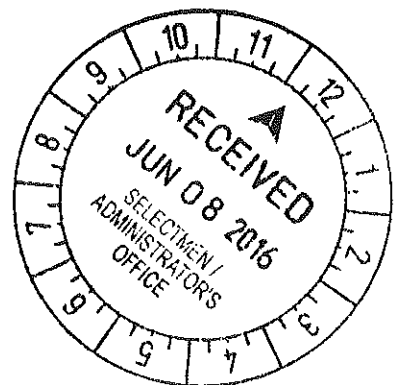
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I expect that the town will have had somebody on record that has visited the beach and has a clear picture of the fence, and the vote will be immediate, swift and concise. Take the fence off the beach as you would if anyone put a fence on a public beach !!

Thank you,

Nancy O'Shea  
11 Rabbit Run  
W Harwich, MA

cc: Michael MacAskill  
Amy Usowski



## Ann Steidel

---

**From:** Joanne Sullivan <joapatsull@aol.com>  
**Sent:** Saturday, June 04, 2016 9:30 AM  
**To:** Amy Usowski; Christopher Clark; Eric Beebe; Ann Steidel  
**Subject:** Re: Public Beach 22

>  
>  
> To Whom It May Concern,  
>  
> Our family has lived at 40 Shore Road, West Harwich, MA since February of 1988. In the beginning, we had remarkably happy and friendly neighbors who all shared Public Beach #22 (better known as Little Beach) comfortably each summer.  
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> However, when Mr. Fitzpatrick moved on to Shore Road around 1992, he attempted to interfere with his actual property line which abutted Public Beach #22. He has continually done whatever he can to discourage all beachgoers from continuing to use Public Beach #22.  
>  
> Mr. Fitzpatrick has upset the homeowner community considerably, and he continues to mislead Harwich town officials by claiming to be 'preserving an established dune.' We would greatly appreciate anything you can do to aid in our efforts to protect Public Beach #22.  
>  
> Sincerely,  
> Dr. James C. Ferrucci, M.D.  
> 40 Shore Road  
> West Harwich, MA  
>  
>  
>

Date: Mon, 27 Jun 2016 13:16:54 +0000

Subject: Lighting at Brooks Park

Good Morning, Mike,

Time to don your Selectman's cap.

As a representative of the Friends of Harwich Town Band (FHTB), I spoke with Eric Beebe about 10 days ago about having a street light (perhaps) installed at Brooks Park to light the parking lot, and possibly the audience area and the path to parking at the tennis courts. I also mentioned it to Tom Gagnon at the police station, who helps FHTB with the electronic sign. The primary reason is safety.

Tom informed me that I would need to contact the Selectmen. Thus this message. If you've ever brought your family to the concerts of the Harwich Town Band, and I imagine other groups that entertain at Brooks Park during the summer, you know that it gets quite dark there as the evening progresses.

Many families leave early because of the impending darkness.

FHTB believes a light for the parking lot would be a great addition.

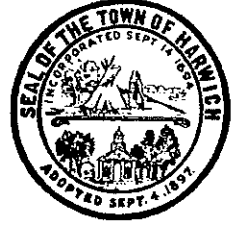
There is an existing telephone pole at the entrance to the lot.

Would it be possible to add a light there? It could be on a timer, set to work only when concerts are scheduled (most Monday and Tuesday evening throughout the summer).

I believe the greatest benefit would be improved safety.

Can you help?

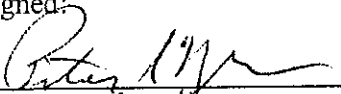
Marge

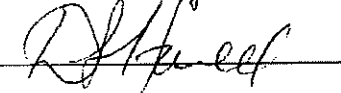


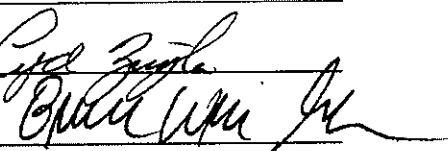
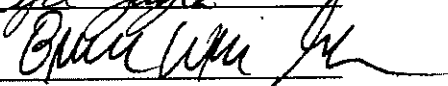
**Board of Selectmen  
Policy Relative to Approval of Streetlight Installation**

At a Public Meeting of the Board of Selectmen held on Monday, March 3, 2003, the Board voted to adopt a policy concerning the installation of streetlights in the Town. It was voted to observe a moratorium on the installation of streetlights until the Town is found to be in a better fiscal position.

Signed:





Harwich Board of Selectmen

**TOWN OF HARWICH  
STREET LIGHTING POLICY**

ARTICLE 12: (April, 1982 Annual Town Meeting)

To see if the Town will vote to adopt the following policy relative to street lighting in order to provide for the most effective and economical use of street lighting in the Town, no street light shall hereafter be approved for installation or maintenance by the Board of Selectmen except as follows:

- 1) Streetlighting for roadways adjacent to municipal facilities where the vehicular and pedestrian safety of employees and the public will be served, or where the lighting will aid in the protection of municipal facilities from vandalism, theft or other damage.
- 2) Streetlighting for all crosswalks throughout both business districts and residential locations are subject to evaluation, need for community improvement and public safety. Installation may be authorized by the Board of Selectmen at their discretion. Input and recommendation may be sought from the Harwich Streetlighting Committee.
- 3) Streetlighting for major intersections, where well-traveled access roads meet or cross main thoroughfares. Subject to public safety need, investigation, approval and support of the Harwich Streetlighting Committee.
- 4) Streetlighting for intersections, curves, or sidewalks with a history of past (or potential for future) pedestrian or vehicular traffic mishaps which can be directly attributed to a lack of adequate street lighting.
- 5) Streetlighting for roadways adjacent to public buildings such as stores, post offices, churches and libraries, where it has been shown that there are general traffic and pedestrian problems because of the building's usage.
- 6) Streetlighting on public ways near any industrial or commercially zoned area where it is proved that such lighting is needed for public safety.
- 7) Streetlighting for public roadways within residential subdivision(s) of the Town that are heavily traveled locations which have proven to be of public safety concern in terms of walking, bicycling traffic and have sufficient year-round residents to warrant and justify the long-term installation and commitment of lighting a specific area. Roadways which are private and haven't been accepted by Town Meeting vote will not be considered for new installations, unless exceptional circumstances for public safety exist.
- 8) Streetlighting for public roadways within the Town and locations that have experienced and documented consistent and unusually high levels of vandalism(s), larcenies and breaking and entering(s), where enhanced streetlighting would be a deterrent to crime.

and further, to authorize the Board of Selectmen to appoint a committee of not less than three (3) nor more than five (5) members to advise the Selectmen, and from time to time, Town Meeting concerning future modifications to the Street Light Policy. The policy set forth herein may, from time to time, be modified by the Selectmen if, in the opinion of the Board, public safety and convenience requires such modification, and to act fully thereon. By request of the Board of Selectmen.

Street Light Policy adopted at the April, 1982 Annual Town Meeting.  
Revised at a Public Meeting of the Board of Selectmen, February 27, 1996.



June 23, 2016

To the Selectmen and Town Administrator of Harwich:

For almost 20 years since the solvents at the Dennisport Laundry were released into the groundwater, there has been concern from residents of W. Harwich about the safety of the air inside their homes, drinking water if it came from a well, and contamination of their soil to grow food crops.

While Mass Dep officials oversaw the cleanup and did a few tests over the years, the major concern by some residents is that the contaminated aquifer takes a number of paths in the larger surrounding neighborhoods before it arrives at the Herring River at North Street. But presumably only the air quality of the homes around North St. was tested.

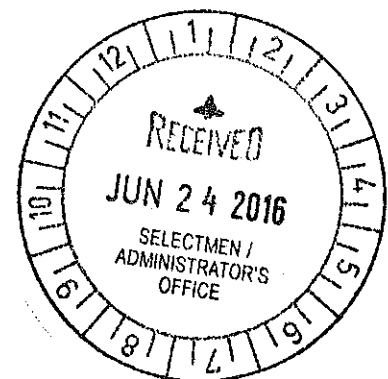
On two occasions, at a selectmen's meeting this spring, one selectmen spoke up, and at town meeting this May, a Barnstable County Commissioner, and the Finance Committee expressed reservations about the advisability of using the West Harwich Schoolhouse as a public venue because of the chemical spill in 1997. It would be assumed that they read the various State and Federal reports about this. So, my question is, if those town and county officials are concerned about the Schoolhouse, why aren't they concerned about all the residents of West Harwich who have been living with this since then?

This is either a concern which is no longer relevant to the health of the West Harwich people, or it is a potentially scary issue like the water in Flint Michigan.

How do you propose to have this matter cleared up and understood by those residents? Should Federal and State agencies be called in? Please share your thoughts.

Sincerely,

Anne Stewart  
Pleasant Lake



# Memo

**To:** Christopher Clark, Town Administrator

**From:** Paula Champagne, Health Director



**Date:** July 6, 2016

**Re:** West Harwich/ Dennisport Groundwater Contamination

---

I have been asked to give a brief response to the letter dated 6/23/2016 from Anne Stewart to the BOS and Town Administrator regarding groundwater contamination issues in West Harwich.

My comments to the BOS this spring were limited to the redevelopment and/or reuse of the West Harwich Schoolhouse. Ms Stewarts questions are much broader in scope, however my remarks will continue to be limited to the Schoolhouse redevelopment topic.

There is sufficient documentation that groundwater contamination exists in the West Harwich/ Dennisport area due to petroleum solvent releases at several locations. This information has been documented by the MADEP and most recently collated into reports to the Town by Bennett & Associates in 2011.

Questions posed to the Health Director in March 2016 concerned the suitability and viability of using the Schoolhouse site given the probability of groundwater contamination and possible air migration into buildings. The response is that anyone wishing to rehab/redevelop this site needs to be aware of the contamination and plan for mitigation factors in a building design. Viable engineering options exist in order to reuse this site safely. Construction materials, vapor barriers, groundwater redirection, active ventilation systems, surface construction only, are all examples of solutions to site contamination problems.

**OFFICE OF THE TOWN ADMINISTRATOR**

Phone (508) 430-7513

Fax (508) 432-5039



**Christopher Clark**, *Town Administrator*

**Charleen Greenhalgh**, *Assistant Town Administrator*

732 MAIN STREET, HARWICH, MA

To: Board of Selectmen

From: Christopher Clark, Town Administrator

Re: Town Planner Job Description Revisions

Date: July 7, 2016

Pursuant to our discussion at the last Board of Selectmen's meeting, I have met with a representative of the SEIU union which represents management positions including that of the Town Planner. They have indicated that the change from five years of experience down to three years of experience would be detrimental. In order to continue to move this process forward, I have agreed to leave the five years with clear acknowledgment that the job description includes the combination of education and experience. Therefore, if we were to receive an application from an individual with a Master's degree and three years experience in an applicable planning capacity that individual would be qualified. All other changes have been agreed to by the union and a note to that effect has been sent.

The union has not agreed to waive the requirement to post first prior to any external advertisement. I do believe that this is unfortunate as I indicated we could go through the internal recruitment process while simultaneously advertising. The union has requested the contract be adhered to and so my recommendation is to comply with the collective bargaining agreements terms and conditions.

I believe with the favorable Board vote on Monday, July 11, 2016, we can commence the recruitment process for the Town Planner as laid out in my previous memorandums.

## TOWN PLANNER

### DEFINITION

The Town Planner performs technical and administrative work evaluating information, preparing reports, and assisting the Planning Board with making land use related decisions; other related work, as required.

### ESSENTIAL DUTIES AND RESPONSIBILITIES

*The essential functions or duties listed below are illustrations of the type of work performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related, or a logical assignment to the position.*

Provides information and assistance to the general public regarding planning matters; provides assistance to the Planning Board, as requested; provides assistance to town boards, such as Real Estate and Open Space and Harwich Center Initiative.

Works with the Planning Board to maintain the comprehensive plan and updates plan; helps facilitate and promote implementation of the Local Comprehensive Plan; in conjunction with the Planning Board and other town boards, develops new zoning bylaws and amendments to the zoning bylaw and regulations.

Works with local and regional planning agencies to undertake studies to better understand local and regional trends and develop approaches to addressing local and regional concerns; works with the regional planning agency on the review of Developments of Regional Impact.

Represents the town on regional committees; provides assistance to the Zoning Board of Appeals; reviews applications, discusses applications with applicants, and prepares staff reports for the Planning Board; conducts site work to review areas of proposed development.

Performs special projects as directed by the Town Administrator and/or the Assistant Town Administrator

Prepare maps using the GIS system; works with town departments to develop methods to streamline the permit process and share information.

Performs similar or related work as required, or as situation dictates.

### SUPERVISION

Works under the administrative direction of the Town Administrator and/or Assistant Town Administrator; the employee functions independently, consulting with the Planning Board and the Town Administrator when clarification or interpretation of policies or procedures is required.

### SUPERVISORY RESPONSIBILITIES

Supervises one employee.

### WORK ENVIRONMENT

Work is generally performed in office conditions; some field work is required to perform inspections; the employee is required to attend frequent evening meetings.

The employee operates standard office equipment.

The employee has regular contact with town departments, such as Building, Engineering, Conservation, Health, and Assessors, as well as state, regional and local agencies; also has frequent contact with the general public and applicants.

The employee has access to department-related legal proceedings.

Errors could result in monetary loss or legal repercussions.

## **RECOMMENDED MINIMUM QUALIFICATIONS**

### **EDUCATION AND EXPERIENCE**

Bachelor's Degree required, Master's Degree in planning preferred; five years of professional planning experience, preferably in local or regional government; or an equivalent combination of education and experience.

### **KNOWLEDGE, ABILITY, SKILL**

Knowledge of Massachusetts zoning law and local zoning practices; knowledge of planning and environmental issues; working knowledge of GIS.

Ability to work independently, conduct independent research and analyze and interpret results; ability to read plans, prepare reports and formulate recommendations; ability to draft bylaw amendments and regulations; ability to establish and maintain effective working relationships with local officials and the general public.

Ability to read and interpret engineering and survey plans (site, subdivision and building.)

Written and oral communication skills; oral presentation skills; planning and organizational skills.

### **PHYSICAL REQUIREMENTS**

Minimal physical effort is generally required to perform administrative duties; moderate physical effort is required to perform field work. The employee is frequently required to speak and hear and use hands to operate equipment. Vision requirements include the ability to read routine and complex documents, use a computer and operate a motor vehicle.

*This job description does not constitute an employment agreement between the employer and employee, and is subject to change by the employer, as the needs of the employer and requirements of the job change.*



# TOWN OF HARWICH HARWICH MANAGEMENT ASSOCIATION



## MEMO

To: Christopher Clark, Town Administrator  
From: Paula Champagne, Chapter Chair, SEIU  
Cc: Charleen Greenhalgh, Assistant Town Administrator  
Re: Job Description Revisions to Town Planner Position  
Date: July 7, 2016

A handwritten signature in blue ink, appearing to read "Paula Champagne".

Per your request, the SEIU Executive Team has met and voted to agree to the changes on the draft dated 6/29/16 Town Planner. There is one additional correction which we discussed with Charleen . In the section Essential Duties and Responsibilities under "Performs special projects.." change Director of Community Development to Assistant Town Administrator.

Regarding the request for concurrent posting within the union and public advertising, the Executive Team did not vote in favor of that request. The consensus was to follow the protocol set at the last vacancy—one week advertised within SEIU , week two open to any Harwich Employee, then go to public posting.

The Executive Committee has reviewed the chart labeled, "Town Planner Salaries-June 2016", and the memo of June 23, 2016 from Christopher Clark to Board of Selectmen, RE: Job Description Revisions to Town Planner Position". We wish to go on record as being in disagreement with the assessment and philosophy that the salary is adequate to attract an experienced Department Head to fill this position. A review of the conditions when the position was filled 6 years ago indicates that the current employee was hired at step 8 ( \$73,510) on a pay scale range of \$61,841-\$77,231. In six years time the pay scale has only increased \$3000 at the upper range. If the successful candidate brings the same level of expertise as the incumbent, we would expect the same results on salary requirements. Department Head positions require experienced, seasoned individuals as they are immediately put into a situation of policy interpretation, enforcement and expectation of technical knowledge and skill set.

Further comments regarding the salary chart – we would like it noted that since a comment is made that "Harwich Longevity Package is very good", it is misleading to think that this is an automatic salary adjustment . The longevity package begins after 10 years and takes another 7 years to reach top step. It can sometimes be misleading to state that the package is competitive and comparable to the other groupings when it takes 17 years on the job to reach that level, and even when taken into account, the Harwich salary is 10% lower than comparables such as Dennis and Brewster. The chart also does not include any mention of longevity packages for other communities, only that ours is very good.

Given that we are initiating the salary survey as agreed upon in the FY17 contract, the executive team would like the opportunity to discuss the support documents and abstracts used in reaching this conclusion and to better understand how the remaining positions will be reviewed.

The Honorable William R. Keating  
315 Cannon House Office Bldg.  
Washington, DC 20515

Dear Representative Keating:

We write today in support of the Town of Chatham's request for a legislative remedy to reverse the U.S. Fish and Wildlife Service's (Service) unsubstantiated claim over the open waters and seabed to the west of Monomoy National Wildlife Refuge (Refuge) implemented as part of the recently adopted Comprehensive Conservation Plan.

The Refuge, and the waters that surround it, are some of the Cape's most valuable natural resources. For decades residents, and visitors alike, have utilized Monomoy and the surrounding waters for fishing, shellfishing, swimming, boating, birding, and other recreational pursuits. These historic and traditional uses are now threatened by the federal government's claim that the open waters and seabed to the west of Monomoy Island are part of the Refuge and subject to restrictions determined by the Service.

The Refuge boundary dispute with the Service is not about stewardship of the area's natural resources. The Town of Chatham and the Commonwealth have spent millions of dollars over decades ensuring the areas fisheries and shellfish resources are sustainably managed and endangered species protected. The Town and Commonwealth have much greater capacity to monitor and enforce rules and regulations necessary to ensure long-term management, especially on the open waters. The proposed legislation would permanently resolve this dispute and eliminate any possibility of the issue arising in future Refuge management plan revisions.

We ask that you demonstrate your support for the Town of Chatham and the Commonwealth by introducing and supporting legislation clarifying the Refuge's western boundary.

Sincerely,

cc: Chatham Board of Selectmen



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

**CHARLES D. BAKER**  
GOVERNOR

**KARYN E. POLITO**  
LIEUTENANT GOVERNOR

July 6, 2016

The Honorable Elizabeth A. Warren  
317 Hart Senate Office Bldg.  
Washington, DC 20510

The Honorable William R. Keating  
315 Cannon House Office Bldg.  
Washington, DC 20515

The Honorable Edward J. Markey  
255 Dirksen Senate Office Bldg.  
Washington, DC 20510

The Honorable Niki Tsongas  
1714 Longworth House Office Bldg.  
Washington, DC 20515

Dear Senator Warren, Senator Markey, Representative Tsongas, and Representative Keating:

Recently members of my Administration met with state and local officials representing the Town of Chatham to discuss the U.S. Fish and Wildlife Service ("Service") unsubstantiated claim that the Service acquired any submerged land under Nantucket Sound pursuant to the 1944 Judgment on the Declaration of Taking. I write to express my strong support for their position and for the request they made of you to seek legislative action.

The Monomoy National Wildlife Refuge is one of the Commonwealth's most spectacular natural treasures. For hundreds of years Cape Cod residents and visitors alike have enjoyed the natural beauty of Monomoy Island. Regrettably, the Service overreached in its recently finalized Comprehensive Conservation Plan (CCP) by claiming that the open waters and seabed to the west of Monomoy Island are part of the Refuge. Prior to the new CCP the Service had never made this assertion. In truth, this area is owned by the Commonwealth and for centuries the Town of Chatham and the Commonwealth have jointly managed the fisheries and other activities in the area. The legal basis for this position is well documented in the Commonwealth's Office of Attorney General's December 7, 2015 CCP comment letter.

The refuge boundary dispute with the Service is not about environmental concerns or the proper stewardship of the area's natural resources. Indeed, for centuries the Commonwealth and the Town of Chatham have done an exemplary job of protecting and managing the areas fisheries and shellfish resources and we will continue to do so. Unfortunately, the position of the Service ignores this commitment to the stewardship and sustainable use of all the area's natural resources.



While the Commonwealth and Town may be forced to take legal action, we are hoping to avoid this substantial cost through Federal legislation clarifying the Refuge boundary. My Administration stands ready to assist you in this legislative effort and to provide whatever help may be needed to secure success.

Sincerely,



Charles D. Baker  
Governor

cc: Attorney General Maura Healey  
Secretary Matthew Beaton

# ALLEN HARBOR MARINE SERVICE Inc.

~Established 1927~

335 Lower County Road - Post Office Box 445 - Harwich Port, MA 02646  
Tel. 508-432-0353 - Fax 508-432-0487 - E-mail: Info@allenharbor.com



June 29, 2016

Town of Harwich  
Board of Selectmen  
732 Main Street  
Harwich, MA 02645

**RE: Extension of Lease**

Dear Board of Selectmen,

We would like to extend the lease between Allen Harbor Marine Service, Inc. and the Town of Harwich for an additional two years for boat storage on the Town's property at Allen Harbor. The additional two lease periods would run from 11/01/16 to 05/20/17 and 11/01/17 to 05/20/18. This option for a two-year extension is referenced in the lease which expired in May of 2014.

Please contact me with any thoughts or questions and let me know as soon as possible whether or not the extension is approved.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Craig M. LeBlanc".

Craig M. LeBlanc  
President



T O W N O F



H A R W I C H

*Harwich, Massachusetts*  
02645

September 18, 2014

Mr. Craig LeBlanc, General Manager  
**Allen Harbor Marine Service**  
P.O. Box 445  
335 Lower County Road  
Harwich Port, MA 02646

Dear Mr. LeBlanc,

At a public meeting of the Board of Selectmen held on Monday, September 15, 2014 the Selectmen considered and approved your request to extend the Lease of town-owned property to Allen Harbor Marine Service for winter boat storage at Saquatucket Harbor's west lot.

Please find enclosed, three (3) original Lease Amendments for your signature. Once you have signed all three, retain one for your files and kindly return two (2) original documents back to the Town. Thank you for your assistance.

Sincerely,

Sandra Robinson  
Administrative Secretary  
Selectmen/Administrator's Office

Enclosures

LEASE AMENDMENT  
FOR USE OF TOWN PROPERTY AT SAQUATUCKET HARBOR  
PARKING LOT FOR WINTER BOAT STORAGE

This Lease Agreement is made and entered into on September 15, 2014 by and between the Town of Harwich, a municipal corporation having its principal office at 732 Main Street, Harwich, 02645 ("Lessor") and Allen Harbor Marine Service, Inc., a (corporation/partnership/individual) with an address 335 Lower County Road, Harwich Port, MA ("Lessee").

- A. The Lessor hereby leases to the Lessee a portion of the west lot of the town-owned property at Saquatucket Harbor in Harwich Port equal to the dimensions of the space leased at Allen Harbor. This Agreement will be in effect for a period of two years, from November 1, 2014 to May 20, 2015, and from November 1, 2015 to May 20, 2016.
- B. The Lessee shall pay rent to the Lessor in the amount of \$15,847.25 per year. This payment may be paid in two installments as in past years.
- C. The Lessee shall adhere to the same Terms and Conditions stated in the *Lease of Town Property at Allen Harbor for Winter Boat Storage* dated November 8, 2011.

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

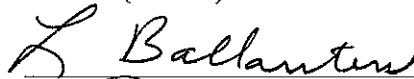
FOR: Allen Harbor Marine Service, Inc.  
(Lessee)

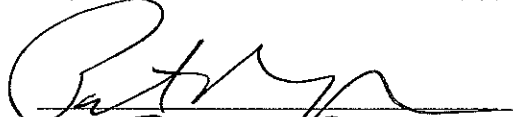
  
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Authorized signature

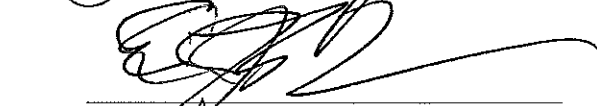
Craig LaBlanc  
Printed Name

10/28/14  
Date

FOR The Town of Harwich  
(Lessor)

  
\_\_\_\_\_

  
\_\_\_\_\_

  
\_\_\_\_\_

  
\_\_\_\_\_

  
\_\_\_\_\_

BOARD OF SELECTMEN

September 15, 2014  
Date

## Sandy Robinson

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**From:** Christopher Clark  
**Sent:** Tuesday, July 05, 2016 5:02 PM  
**To:** Sandy Robinson  
**Cc:** Barbara-Anne Foley; Charleen Greenhalgh; Michael MacAskill  
**Subject:** FW: Day Center Program MOA  
**Attachments:** Day Center Program MOA w-Harwich.docx

Sandy,

For BOS agenda. I would like BOS to sign as IMA not just contract.

Chris

**From:** John Kelly [mailto:[jkelly@town.orleans.ma.us](mailto:jkelly@town.orleans.ma.us)]  
**Sent:** Thursday, June 23, 2016 3:21 PM  
**To:** Christopher Clark <[cclark@town.harwich.ma.us](mailto:cclark@town.harwich.ma.us)>  
**Cc:** Judi Wilson <[jwilson@town.orleans.ma.us](mailto:jwilson@town.orleans.ma.us)>  
**Subject:** Day Center Program MOA

Chris,

Attached is a copy of the proposed agreement for FY17 as we have discussed. Please review the MOA and let me know if you have any questions. If there are no questions I would ask that your BOS sign two originals and return them to me. In turn I will have the my BOS sign the agreements on July 6 at their next meeting and return one executed copy to you for your file.

Thanks.

John

John F. Kelly  
Town Administrator

19 School Road  
Orleans, MA 02653  
508-240-3700 x 415  
[jkelly@town.orleans.ma.us](mailto:jkelly@town.orleans.ma.us)

Memorandum of Agreement  
Between

COPY

Town of Orleans through  
Board of Selectmen  
19 School Road  
Orleans, MA 02653

and

Town of Harwich through  
Board of Selectmen  
732 Main Street  
Harwich, MA 02645

This Memorandum of Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016 by and between the Town of Orleans (hereinafter referred to as "Orleans") and the Town of Harwich (hereinafter referred to as "Harwich.")

WHEREAS, Orleans Council on Aging operates an adult supportive day care program (hereinafter referred to as the "Program"), which provides a safe, welcoming environment for older adults, and

WHEREAS, Orleans Program has capacity to accept residents of Harwich into the Program, but the daily reimbursement rate of \$55 per non-resident participant that Orleans receives through a contract with Elder Services of Cape Cod or through private pay fee does not cover the full daily cost of \$75 per participant, and

WHEREAS, Harwich desires to provide Program access for their residents and has offered to make a supplemental payment of \$20 per day for each Harwich participant to Orleans to cover the full cost of the Program,

NOW THEREFORE, Orleans and Harwich enter into this Agreement.

RESPONSIBILITIES OF ORLEANS

- A) Provide adult supportive day care program to Harwich participants that includes lunch and snacks; fitness classes; discussions of current events; art and music therapy; and activities which promote independence and wellness.
- B) Provide staff assessments to determine eligibility and monitor the well-being of all participants.
- C) Provide the Harwich Council on Aging with a monthly report of resident Program participation.

RESPONSIBILITIES OF HARWICH

- A) Coordination of Program participants from Harwich will be through the Council on Aging.
- B) Process supplemental payments to the Orleans Council on Aging for Harwich participants on a monthly basis following receipt of the monthly report of Program participation from Orleans.

DURATION

- A) This Memorandum of Agreement shall be effective from July 1, 2016 through June 30, 2017.

B) Either Orleans or Harwich may terminate this Agreement by thirty (30) days written notice to the other party, if the other party substantially fails to fulfill its obligations hereunder through no fault of the terminating party.

C) Orleans may terminate this Agreement at any time if Orleans contract with Elder Services of Cape Cod is terminated.

AMENDMENT

This Agreement may be amended as mutually agreed by both parties in writing.

IN WITNESS WHEREOF, ORLEANS and HARWICH execute this Agreement the \_\_\_\_\_ day of \_\_\_\_\_ in the year two thousand and sixteen.

FOR TOWN OF ORLEANS

FOR TOWN OF HARWICH

\_\_\_\_\_  
Chairman, Board of Selectmen

\_\_\_\_\_  
Chairman, Board of Selectmen

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

SEASONAL HOURLY WAGE SCHEDULE

GRADE	JOB TITLE	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5
9	Golf Instructor	30.60	45.90	61.20	76.50	
8	Golf Employee and Operations Manager Shellfish Instructor	21.42	22.44	23.46	24.48	25.50
7	Waterfront Director (S7) Beach Supervisor (S7A) Asst Animal Control Officer (S7B) Seasonal Laborer (3C)*	13.52	14.03	14.54	15.05	15.56
6	Ass't. Harbormaster (S6) Ass't Beach Supervisor (S6A) Playground Director (S6B) Activities Coordinator (S6C)	12.50	13.01	13.52	14.03	14.54
5	Kayak Instructor (S5) (\$14.00)* Parking Enforcement Officer (S5A)	11.99	12.50	13.01	13.52	14.03
4	Lifeguard (S4B) Swimming Instructor (S4C) Golf Ass't. (S4) Golf Maintenance Person (S4A) Work Leader (S4D) GIS Ass't (S4E) Project Ass't. (S4F) Summerball Director	11.48	11.99	12.50	13.01	13.52
3	Tennis Instructor (S3) Golf Utility Person (S3B) Playground Instructor (S2) Harbor Assistant (S2A) Parking Attendant (S2B) Summerball Instructor	10.50	11.00	11.50	12.00	12.50
2		9.44	9.95	10.46	10.97	11.48
1	Shellfish Interns (S1)	9.18	9.44	9.95	10.46	10.97

\*Board of Selectmen approval on 5/9/16



# CERTIFICATIONS REQUIRED FOR SEASONAL POSITIONS

S7A					◆ LIFEGUARD TRAINING CERTIFICATE
<u>BEACH SUPERVISOR:</u>					◆ STANDARD FIRST AID & CPR HEALTHCARE PROVIDER LEVEL - AMERICAN RED CROSS OR AMERICAN HEART ASSN
S1	S2	S3	S4	S5	◆ MINIMUM 4 YEARS AS LIFEGUARD, 1 YEAR SUPERVISORY OR HEAD GUARD
\$13.50	\$14.00	\$14.50	\$15.00	\$15.50	◆ ORIENTATION IN-HOUSE TRAINING - UPON BEING HIRED
S7					◆ WSI SWIM INSTRUCTOR
<u>WATERFRONT DIRECTOR:</u>					◆ LIFEGUARD TRAINING CERTIFICATE
S1	S2	S3	S4	S5	◆ STANDARD FIRST AID & CPR HEALTHCARE PROVIDER LEVEL - AMERICAN RED CROSS OR AMERICAN HEART ASSN
\$13.50	\$14.00	\$14.50	\$15.00	\$15.50	◆ MINIMUM 4 YEARS AS LIFEGUARD, 1 YEAR SUPERVISORY OR HEAD GUARD
					◆ ORIENTATION IN-HOUSE TRAINING - UPON BEING HIRED
S6A					◆ LIFEGUARD TRAINING CERTIFICATE
<u>ASST. BEACH SUPERVISOR:</u>					◆ STANDARD FIRST AID & CPR HEALTHCARE PROVIDER LEVEL - AMERICAN RED CROSS OR AMERICAN HEART ASSN
S1	S2	S3	S4	S5	◆ MINIMUM 3 YEARS AS LIFEGUARD, 1 YEAR SUPERVISORY OR HEAD GUARD
\$12.50	\$13.00	\$13.50	\$14.00	\$14.50	◆ ORIENTATION IN-HOUSE TRAINING - UPON BEING HIRED
S6B					◆ STANDARD FIRST AID & CPR HEALTHCARE PROVIDER LEVEL - AMERICAN RED CROSS OR AMERICAN HEART ASSN
<u>PLAYGROUND DIRECTOR:</u>					◆ MINIMUM OF 4 YEARS SUPERVISORY WORK
S1	S2	S3	S4	S5	◆ ORIENTATION IN-HOUSE TRAINING - UPON BEING HIRED
\$12.50	\$13.00	\$13.50	\$14.00	\$14.50	
S5					◆ ACA KAYAK CERTIFICATION
<u>KAYAK DIRECTOR:</u>					◆ STANDARD FIRST AID & CPR HEALTHCARE PROVIDER LEVEL - S1 AMERICAN RED CROSS OR AMERICAN HEART ASSN
	S2	S3	S4	S5	◆ ORIENTATION IN-HOUSE TRAINING - UPON BEING HIRED
\$12.00	\$12.50	\$13.00	\$13.50	\$14.00	
S5A					◆ STANDARD FIRST AID & CPR HEALTHCARE PROVIDER LEVEL - AMERICAN RED CROSS OR AMERICAN HEART ASSN
<u>PARKING OFFICER:</u>					◆ HARWICH POLICE DEPARTMENT IN-HOUSE TRAINING
S1	S2	S3	S4	S5	◆ ORIENTATION IN-HOUSE TRAINING - UPON BEING HIRED
\$12.00	\$12.50	\$13.00	\$13.50	\$14.00	
S4B					◆ LIFEGUARD TRAINING CERTIFICATE
<u>LIFEGUARD:</u>					◆ STANDARD FIRST AID & CPR HEALTHCARE PROVIDER LEVEL - AMERICAN RED CROSS OR AMERICAN HEART ASSN
S1	S2	S3	S4	S5	◆ ORIENTATION IN-HOUSE TRAINING - UPON BEING HIRED
\$11.50	\$12.00	\$12.50	\$13.00	\$13.50	
S4C					◆ WSI SWIM INSTRUCTOR
<u>SWIMMING INSTRUCTOR:</u>					◆ LIFEGUARD TRAINING CERTIFICATE
S1	S2	S3	S4	S5	◆ STANDARD FIRST AID & CPR HEALTHCARE PROVIDER LEVEL - AMERICAN RED CROSS OR AMERICAN HEART ASSN
\$11.50	\$12.00	\$12.50	\$13.00	\$13.50	◆ ORIENTATION IN-HOUSE TRAINING - UPON BEING HIRED
S4G					◆ STANDARD FIRST AID & CPR HEALTHCARE PROVIDER LEVEL - AMERICAN RED CROSS OR AMERICAN HEART ASSN
<u>SUMMERBALL DIRECTOR:</u>					◆ ORIENTATION IN-HOUSE TRAINING - UPON BEING HIRED
S1	S2	S3	S4	S5	
\$11.50	\$12.00	\$12.50	\$13.00	\$13.50	
S3					◆ STANDARD FIRST AID & CPR HEALTHCARE PROVIDER LEVEL - AMERICAN RED CROSS OR AMERICAN HEART ASSN
<u>TENNIS INSTRUCTORS:</u>					◆ ORIENTATION IN-HOUSE TRAINING - UPON BEING HIRED
S1	S2	S3	S4	S5	
\$10.50	\$11.00	\$11.50	\$12.00	\$12.50	
S2 <u>PLAYGROUND INSTRUCTORS</u>					◆ STANDARD FIRST AID & CPR HEALTHCARE PROVIDER LEVEL - AMERICAN RED CROSS OR AMERICAN HEART ASSN
S2B <u>GATE ATTENDANTS</u>					◆ ORIENTATION IN-HOUSE TRAINING - UPON BEING HIRED
S2C <u>SUMMERBALL INSTRUCTORS:</u>					
S1	S2	S3	S4	S5	
\$10.50	\$11.00	\$11.50	\$12.00	\$12.50	

EXECUTIVE SESSION MINUTES  
BOARD OF SELECTMEN  
GRIFFIN ROOM TOWN HALL  
Monday February 4, 2008  
6:30 PM

RELEASED  
CONFIDENTIAL

SELECTMEN PRESENT: Piekarski, Marsland, McManus, Cole, Wilkins

OTHERS PRESENT: Town Administrator Jim Merriam, Assistant Town Administrator Nan Balmer, Town Accountant David Ryan

Mr. Wilkins opened the meeting at 6:30 PM.

**On a motion by Dr. Cole seconded by Mr. Marsland, Mr. McManus, Dr. Cole, Mr. Marsland, and Mr. Wilkins voted to go into Executive Session. Mr. Marsland, Dr. Cole, Mr. McManus, and Mr. Wilkins voted yes.**

Contract with David Ryan

Mr. Merriam presented a contract with David Ryan for the position of Finance Director / Town Accountant. The contract is retroactive to 7/1/07 and is based on a recent salary study for similar positions on the Cape and a performance evaluation. The contract provides for annual increases equivalent to a 2.5% step increase and a cost of living increase of 3%, 3% and 3.25% over 3 years consistent with other town employees. The Board discussed whether the Town Administrator's signature should be included on the contract signature page and the consensus was that it should.

**On a motion by Dr. Cole seconded by Mr. Marsland, the Board voted to approve the employment agreement with David Ryan as presented by the Town Administrator. Mr. Marsland, Dr. Cole, Mr. McManus and Mr. Wilkins voted yes. Mr. Piekarski voted no.**

32 B: Section 18

Mr. Merriam discussed with the Board MGL 32B, Section 18 saying it will require impact bargaining with the Town's organized employees. Mr. Merriam also reported an unfair labor practice filed by the teachers because of joining the Cape Cod Municipal Health group effective July 1, 2008.

**On a motion by Mr. Marsland, seconded by Dr. Cole, the Board voted at 7:02 PM to adjourn the Executive Session and reconvene in open session. Mr. Marsland, Dr. Cole, Mr. McManus, Mr. Piekarski and Mr. Wilkins voted yes.**

Respectfully Submitted,

Nan Balmer  
Assistant Town Administrator

**MINUTES  
SELECTMEN'S MEETING  
GRIFFIN ROOM, TOWN HALL  
MONDAY, FEBRUARY 4, 2008  
7:00 P.M.**

**SELECTMEN PRESENT:** Cole, Marsland, McManus, Piekarski, Wilkins

**SELECTMEN ABSENT:** None

**OTHERS PRESENT:** Town Administrator James Merriam, Asst. Town Administrator Nan Balmer, David Ryan, Carolyn Carey, Sheila House, Cathy Comeau, Tom Gould, Gerry Loftus, Jack Brown, Liz Argo, Barry Worth, Bill Doherty, Pete Watson, Vickie Goldsmith, and others.

**MEETING CALLED TO ORDER** at 7:05 p.m. by Chairman Wilkins.

Chairman Wilkins reported that the Board had just come out of Executive Session where they approved a contract between the Town and David Ryan as a result of the Town Administrator's recommendation to reorganize the financial departments. He briefly explained the details of the contract and noted that Mr. Ryan has been given the title of Financial Director/Town Accountant.

On the recent passing of Mr. James Noonan, Chairman Wilkins described Mr. Noonan's numerous contributions to the Town through serving as Town Constable and on various committees, most notably on the Human Services Committee where he served as Chair from 1988 to 2004. He called for a moment of silence in remembrance of Mr. Noonan.

**WEEKLY BRIEFING**

Chairman Wilkins read a letter from Douglas Levings in which he informed the Board that he is no longer proceeding with his venture of providing transitional drug and alcohol free housing at his property located on Old County Way due to an overwhelming negative response from the public.

Carolyn Carey reported that she was notified that there will be a change of fees for passports. She added that there will be a celebratory event on February 14<sup>th</sup> in recognition of the 8<sup>th</sup> anniversary of the Community Center.

Sheila House and Cathy Comeau addressed the Board with regard to acceptance of a grant and approval of a contract to fund a series of concerts in Brooks Park to be sponsored by Citizens Bank. The Board agreed to take this item up under New Business.

**PUBLIC COMMENT/ANNOUNCEMENTS**

Tom Gould, speaking on behalf of the Health Insurance Advisory Committee, expressed concerns about a lack of communication between the Committee, Administration and the Board of Selectmen. He explained that they had sent a number of recommendations to the Board to



# Massachusetts Emergency Management Agency



## Certificate of Completion

*Presented to*

**Charleen L. Greenhalgh**

For completion of the  
ICS-402: Incident Command System (ICS) Overview for Executives and Senior Officials (G402) Training  
Brewster Town Hall - Brewster, MA

June 23, 2016

Handwritten signature of Michael E. Russas in blue ink.

Michael E. Russas  
Response and Field Services Section Chief



Handwritten signature of Kurt N. Schwartz in blue ink.

Kurt N. Schwartz  
Director

USDA



FEMA



# ICS-402: ICS Overview for Executives/Senior Officials

## G0402

Student Manual  
October 2013



FEMA

# **ICS-402 Incident Command System (ICS) Overview for Executives/ Senior Officials**



ICS-402 – October 2013  
ICS Overview for Executives/Senior Officials

## **Objectives (1 of 2)**

- Describe the Incident Command System (ICS).
- Describe the various ways ICS can be applied.
- Define the role of an Executive/Senior Official relative to the ICS.
- Describe the major responsibilities of an Executive/Senior Official as related to an incident.
- Demonstrate basic familiarity with ICS terminology.
- Describe the basic organization of ICS and know the functional responsibilities of the Command and General Staffs.
- Describe issues that influence incident complexity and the tools available to analyze complexity.

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ICS Overview for Executives/Senior Officials

## **Objectives (2 of 2)**

- Describe the differences between on-incident ICS organizations and activities and the activities accomplished by Emergency Operations Centers (EOCs), Area Commands, and Multiagency Coordination Systems (MACS).
- Explain the administrative, logistical, financial, and reporting implications of large incident operations.
- Describe the sources of information regarding the incident and how to access them.
- Describe types of agency(ies) policies and guidelines that influence management of incident or event activities.

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## **Part 1: What Is ICS?**

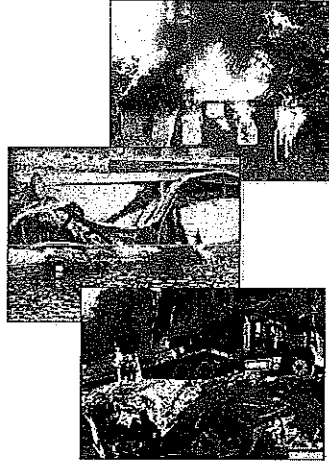


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## What Is an Incident?

An incident is . . .

. . . an occurrence, caused by either human or natural phenomena, that requires response actions to prevent or minimize loss of life, or damage to property and/or the environment.



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## Incident Timeframes

How long will a complex incident last?

How long do we need to be self-sufficient?

How will you know that the incident is over?

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## What Is ICS?

### The Incident Command System:

- Is a standardized, on-scene, all-hazards incident management concept.
- Allows its users to adopt an integrated organizational structure to match the complexities and demands of single or multiple incidents without being hindered by jurisdictional boundaries.



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## ICS Purposes

Using management best practices, ICS helps to ensure:

- The safety of responders and others.
- The achievement of tactical objectives.
- The efficient use of resources.

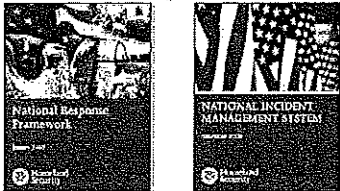


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## Legal Basis for ICS

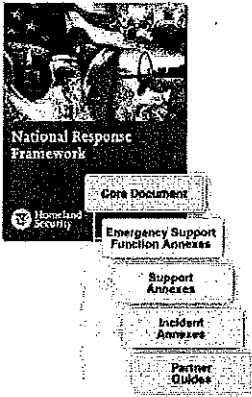
HSPD-5	Management of Domestic Incidents
PPD-8	National Preparedness

**Mandates**



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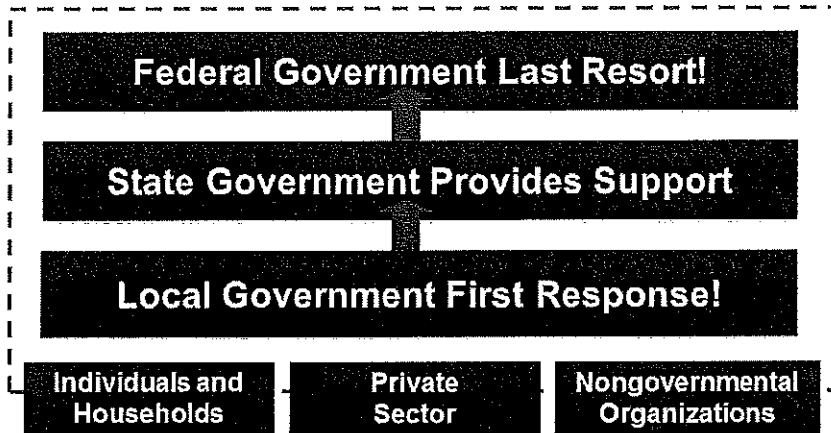
## National Response Framework (NRF)



- Establishes a comprehensive, national, all-hazards approach to domestic incident response.
- Presents an overview of key response principles, roles, and structures that guide the national response.
- Includes the Core Document, Annexes, and Partner Guides.
- Replaces the National Response Plan.

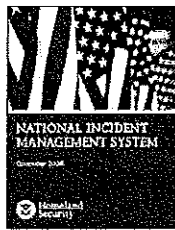
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## NRF Emphasizes Partnerships



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## National Incident Management System



- What? . . . NIMS provides a consistent nationwide template . . .
- Who? . . . to enable Federal, State, tribal, and local governments, the private sector, and nongovernmental organizations to work together . . .
- How? . . . to prepare for, prevent, respond to, recover from, and mitigate the effects of incidents regardless of cause, size, location, or complexity . . .
- Why? . . . in order to reduce the loss of life and property, and harm to the environment.

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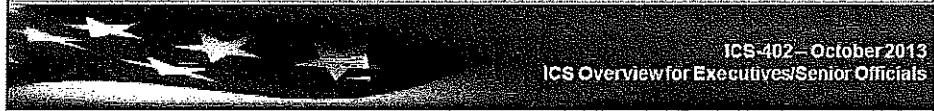
## NIMS: What It Is/What It's Not

### NIMS is . . .

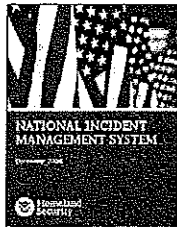
- A flexible framework of:
  - Doctrine
  - Concepts
  - Principles
  - Terminology
  - Organizational processes
- Applicable to all hazards and jurisdictions

### NIMS is not . . .

- An operational incident management plan
- A resource allocation plan
- A terrorism/WMD-specific plan
- Designed to address international events



## NIMS Components



Preparedness

Communications and Information Management

Resource Management

Command and Management

Ongoing Management and Maintenance

Incident Command System

Multiagency Coordination Systems

Public Information



## NIMS & Institutionalizing ICS

### Governmental officials must:

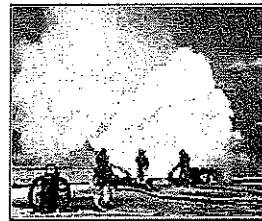
- Adopt the ICS through executive order, proclamation, or legislation as the agency's/jurisdiction's official incident response system.
- Direct that incident managers and response organizations train, exercise, and use the ICS.
- Integrate ICS into functional and system-wide emergency operations policies, plans, and procedures.
- Conduct ICS training for responders, supervisors, and command-level officers.
- Conduct coordinating ICS-oriented exercises that involve responders from multiple disciplines and jurisdictions.



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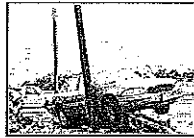
## Other ICS Mandates

- **Hazardous Materials Incidents**
  - Superfund Amendments and Reauthorization Act (SARA) – 1986
  - Occupational Safety and Health Administration (OSHA) Rule 29 CFR 1910.120
- **State and Local Regulations**



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## Examples of Incidents Managed Using ICS



- Fire, both structural and wildland
- Natural disasters, such as tornadoes, floods, ice storms, or earthquakes
- Human and animal disease outbreaks
- Search and rescue missions
- Hazardous materials incidents
- Criminal acts and crime scene investigations
- Terrorist incidents, including the use of weapons of mass destruction
- National Special Security Events, such as Presidential visits or the Super Bowl
- Other planned events, such as parades or demonstrations

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## ICS Benefits



- Meets the needs of incidents of any kind or size.
- Allows personnel from a variety of agencies to meld rapidly into a common management structure.
- Provides logistical and administrative support to operational staff.
- Is cost effective by avoiding duplication of efforts.

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## Part 2: ICS Organization & Features



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### ICS Organization

Differs from the day-to-day, administrative organizational structures and positions.

- Unique ICS position titles and organizational structures are designed to avoid confusion during response.
- Rank may change during deployment. A “chief” may not hold that title when deployed under an ICS structure.

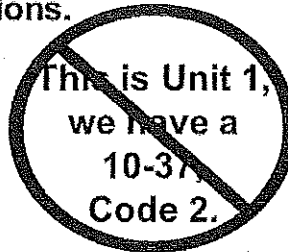


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## Common Terminology

ICS requires the use of common terminology. Common terminology helps to define:

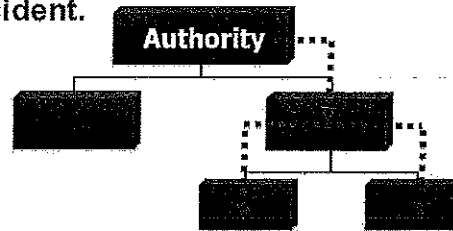
- Organizational functions.
- Incident facilities.
- Resource descriptions.
- Position titles.



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## Chain of Command

- Chain of command is an orderly line of authority within the ranks of the incident management organization.
- Unity of command means that every individual has a designated supervisor to whom he or she reports at the scene of the incident.

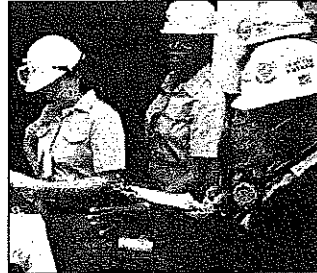


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## Incident Commander

Upon arriving at an incident, the higher ranking person will either assume command, maintain command as is, or transfer command to a third party.



The most qualified person at the scene is designated as the Incident Commander.

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## Incident Commander's Role



The Incident Commander:

- Provides overall leadership for incident response.
- Takes policy direction from the Executive/Senior Official.
- Delegates authority to others.
- Ensures incident safety.
- Provides information to internal and external stakeholders.
- Establishes and maintains liaison with other agencies participating in the incident.
- Establishes incident objectives.
- Directs the development of the Incident Action Plan.

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## Executives'/Senior Officials' Role & Responsibilities

### Executives/Senior Officials:

- Provide policy guidance on priorities and objectives based on situational needs and the Emergency Plan.
- Oversee resource coordination and support to the on-scene command from the Emergency Operations Center (EOC) or through dispatch.



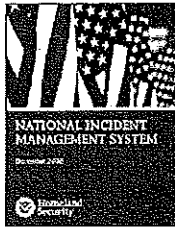
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## Command vs. Coordination

What is the difference between  
command and coordination?

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## NIMS: Command

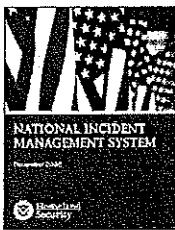


**Command:** The act of directing, ordering, or controlling by virtue of explicit statutory, regulatory, or delegated authority.

Who has the explicit authority for the management of all incident operations?

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## NIMS: Coordination

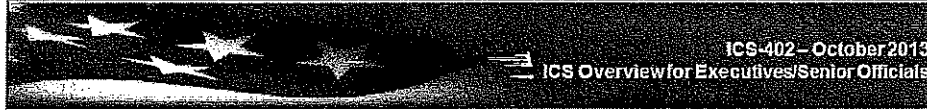


Multiagency coordination is a process that allows all levels of government and all disciplines to work together more efficiently and effectively.

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## Executives/Senior Officials Delegate Command Authority

- Executives/Senior Officials delegate authority to the designated Incident Commander for on-scene operations.
- The Incident Commander has direct tactical and operational responsibility for conducting incident management activities.

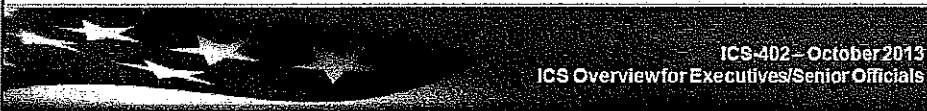


## Delegation of Authority

Delegation of authority may be in writing (established in advance) or verbal, and include:

- Legal authorities and restrictions.
- Financial authorities and restrictions.
- Reporting requirements.
- Demographic issues.
- Political implications.
- Agency or jurisdictional priorities.
- Plan for public information management.
- Process for communications.
- Plan for ongoing incident evaluation.

Delegation  
of  
Authority



## Summary: Incident Management Roles

### Incident Commander's Role

#### The Incident Commander:

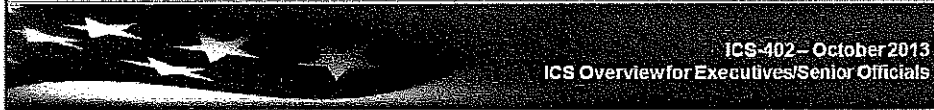
- Manages the incident at the scene.
- Keeps the EOC informed on all important matters pertaining to the incident.

### Agency Executives'/Senior Officials' Role

These officials provide the following to the Incident Commander:

- Policy
- Mission
- Strategic direction
- Authority

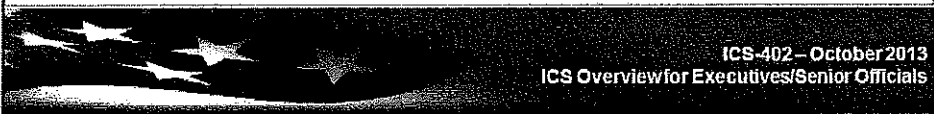
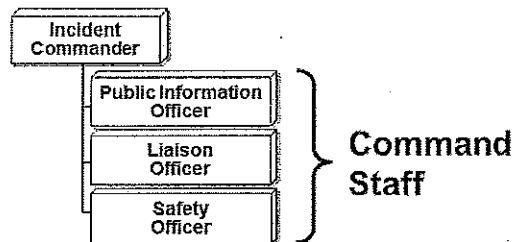
To maintain unity of command and safety of responders, the chain of command must NOT be bypassed.



## Command Staff

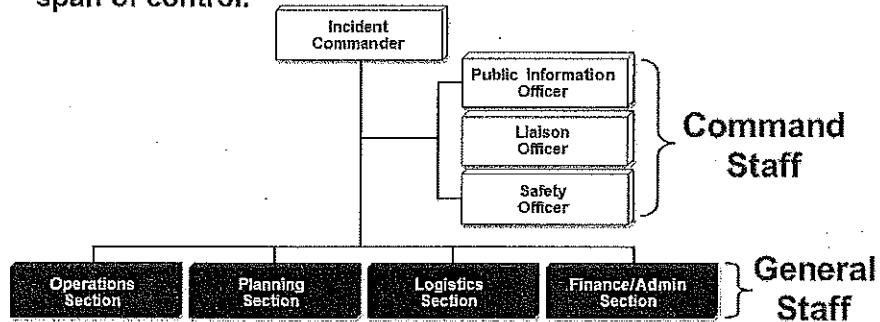
The Incident Commander may designate a Command Staff who:

- Provide information, liaison, and safety services for the entire organization.
- Report directly to the Incident Commander.



## General Staff

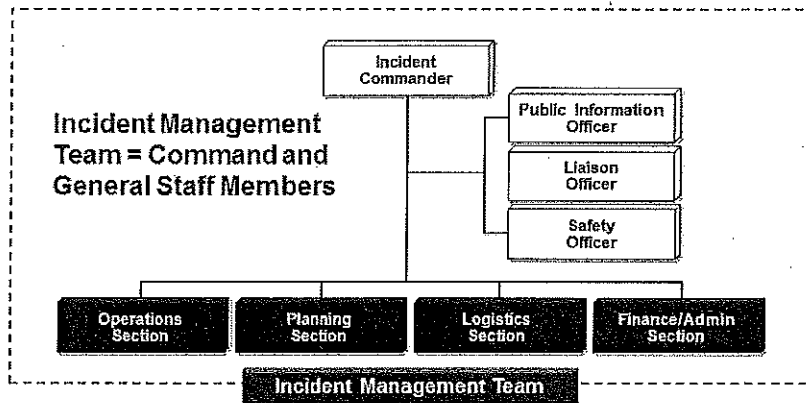
As the incident expands in complexity, the Incident Commander may add General Staff Sections to maintain span of control.



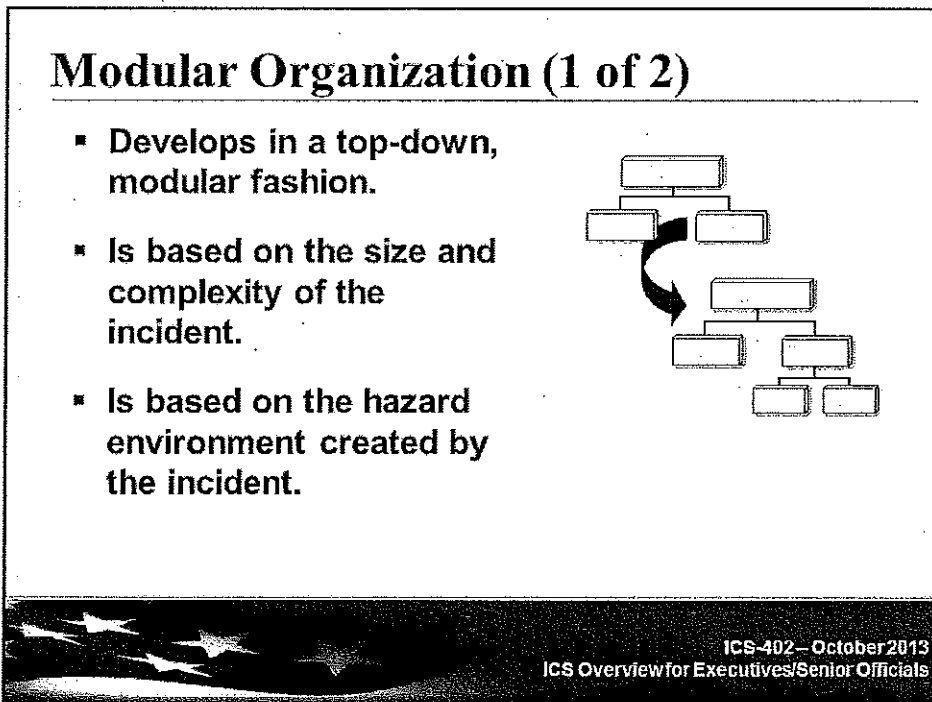
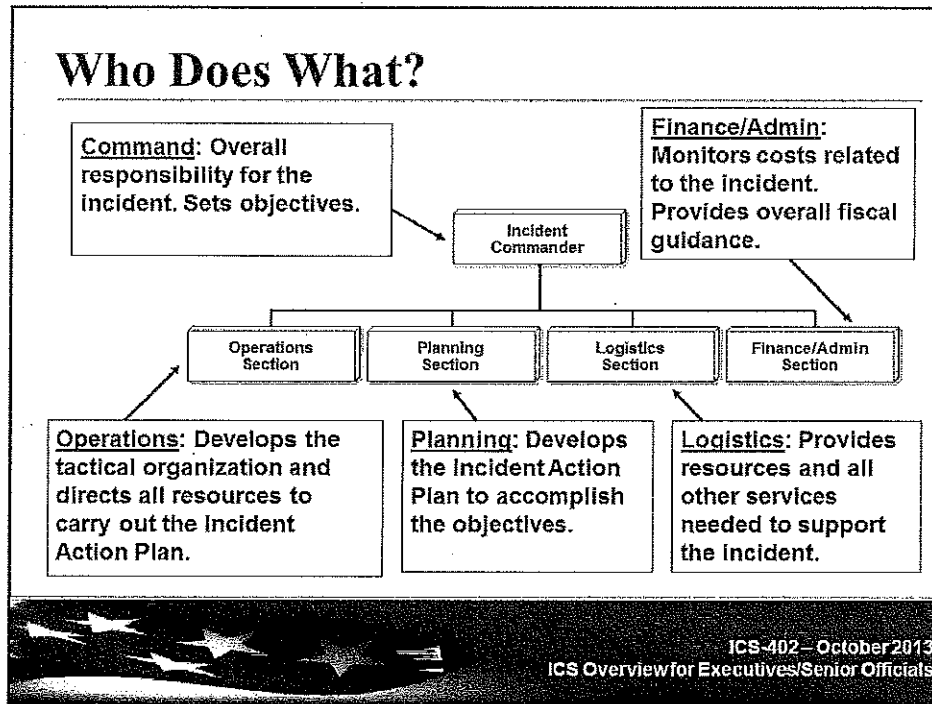
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## Incident Management Team

Incident Management Team = Command and General Staff Members

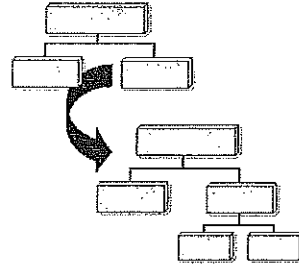


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## Modular Organization (2 of 2)

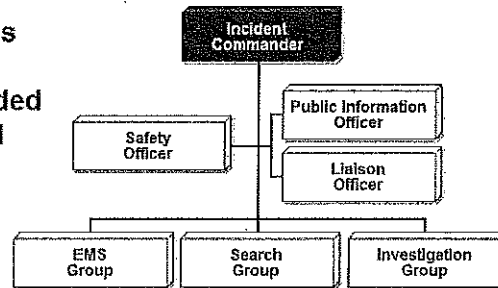
- Incident objectives determine the organizational size.
- Only functions/positions that are necessary will be filled.
- Each element must have a person in charge.



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## Example: Expanding Incident (1 of 3)

**Scenario:** On a chilly autumn day, a parent calls 911 to report a missing 7-year-old child in a wooded area adjacent to a coastal area.



Initially, the Incident Commander manages the General Staff resources.

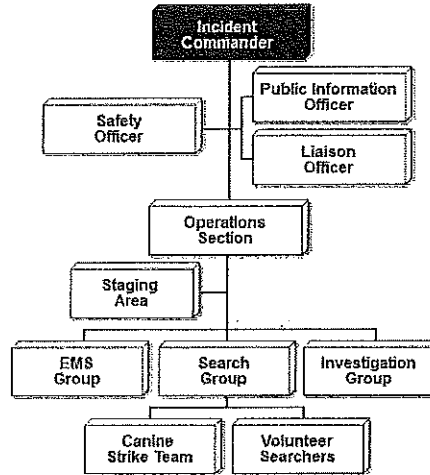
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### Example: Expanding Incident (2 of 3)

**Scenario:** As additional resource personnel arrive, the Incident Commander assigns an Operations Section Chief to maintain span of control.

As the incident expands, an Operations Section Chief is assigned.

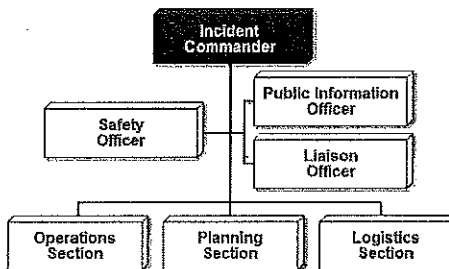


### Example: Expanding Incident (3 of 3)

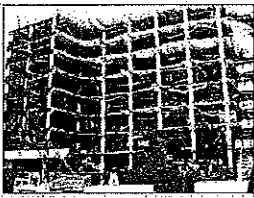




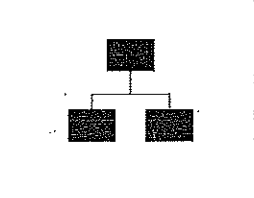
**Scenario:** With hundreds of responders and volunteers arriving, there is a need for on-scene support of the planning and logistics functions.

The Incident Commander adds a Planning Section Chief and Logistics Section Chief.

Remember . . . Not all Sections need to be activated.

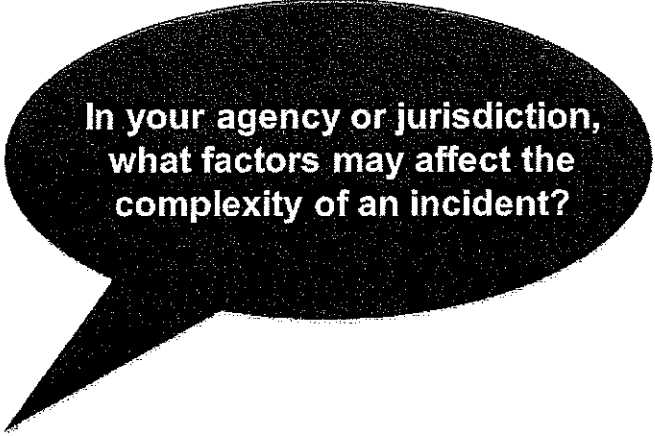


### Incident Complexity and Resource Needs

	Incident Complexity	Resource Needs	ICS Structure
<b>Complexity</b> ↑			
			

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### Complexity Analysis Factors



In your agency or jurisdiction,  
what factors may affect the  
complexity of an incident?

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## Management by Objectives

- ICS is managed by objectives.
- Objectives are communicated throughout the entire ICS organization.



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## Overall Priorities

Initial decisions and objectives are established based on the following priorities:

- #1: Life Safety
- #2: Incident Stabilization
- #3: Property/Environmental Conservation

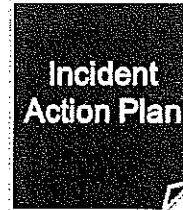


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## Reliance on an Incident Action Plan

The Incident Commander creates an Incident Action Plan (IAP) that:

- Specifies the incident objectives.
- States the activities to be completed.
- Covers a specified timeframe, called an operational period.
- May be oral or written—except for hazardous materials incidents, which require a written IAP.
- Takes into account legal and policy considerations and direction.



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## Resource Management

Resource management includes processes for:

- Categorizing resources.
- Ordering resources.
- Dispatching resources.
- Tracking resources.
- Recovering resources.



It also includes processes for reimbursement for resources, as appropriate.

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## Integrated Communications

Incident communications are facilitated through:

- The development and use of a common communications plan.
- The interoperability of communication equipment, procedures, and systems.

Before an incident, it is critical to develop an integrated voice and data communications system (equipment, systems, and protocols).



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## Interoperability Saves Lives

Jan. 13, 1982: 70 people lost their lives when Air Florida Flight 90 crashed in Washington, DC. Police, fire, and EMS crews responded quickly but couldn't coordinate their efforts because they couldn't talk to each other by radio.

Sept. 11, 2001: When American Airlines Flight 77 crashed into the Pentagon, 900 users from 50 different agencies were able to communicate with one another. Response agencies had learned an invaluable lesson from the Air Florida tragedy.

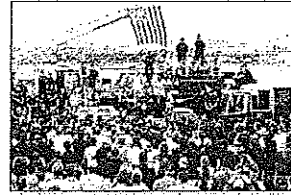
Interoperability makes sense. It's a cost-saver, a resource-saver, and a lifesaver.

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## Mobilization

At any incident:

- The situation must be assessed and the response planned.
- Managing resources safely and effectively is the most important consideration.
- Personnel and equipment should not be dispatched unless requested by the on-scene Incident Command.



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## Part 3: Unified & Area Command



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## Unified Command

**As a team effort, Unified Command allows all agencies with jurisdictional authority or functional responsibility for an incident to jointly provide management direction to the incident.**

In Unified Command, no agency's legal authorities will be compromised or neglected.



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## Unified Command

- Establishes a common set of incident objectives and strategies.
- Allows Incident Commanders to make joint decisions by establishing a single command structure.
- Maintains unity of command. Each employee reports to only one supervisor.



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## Example: Unified Command

A football team is returning home from a State tournament. Their bus is involved in an accident on the bridge that marks the county line.

- Most of the bus is in Franklin County.
- A small part of the bus is in Revere County (their home county).

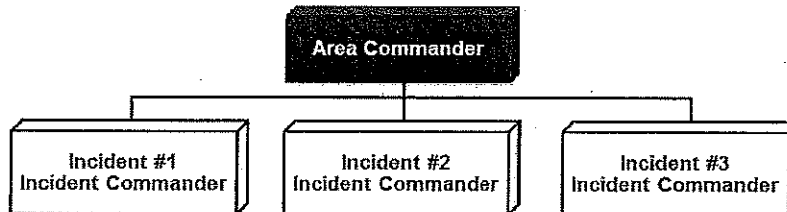
Why might a Unified Command be used to manage this incident?

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## Definition of Area Command

Area Command is used to oversee the management of:

- Multiple incidents that are each being handled by an Incident Command System organization; or
- A very large incident that has multiple incident management teams assigned to it.



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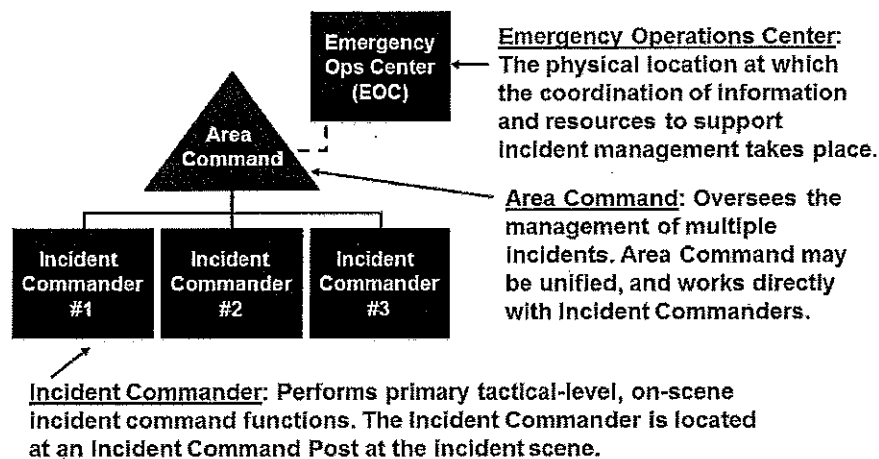
## Area Command: Primary Functions

- Provide agency or jurisdictional authority for assigned incidents.
- Ensure a clear understanding of agency expectations, intentions, and constraints.
- Establish critical resource use priorities between various incidents.
- Ensure that Incident Management Team personnel assignments and organizations are appropriate.
- Maintain contact with officials in charge, and other agencies and groups.
- Coordinate the demobilization or reassignment of resources between assigned incidents.



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## Key Terms



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## Part 4: Coordination & Incident Management Assessment

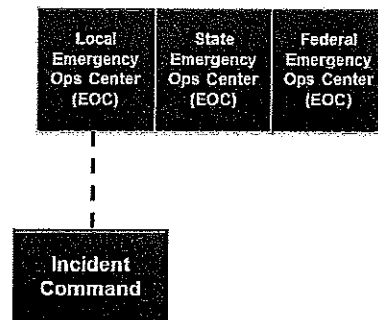


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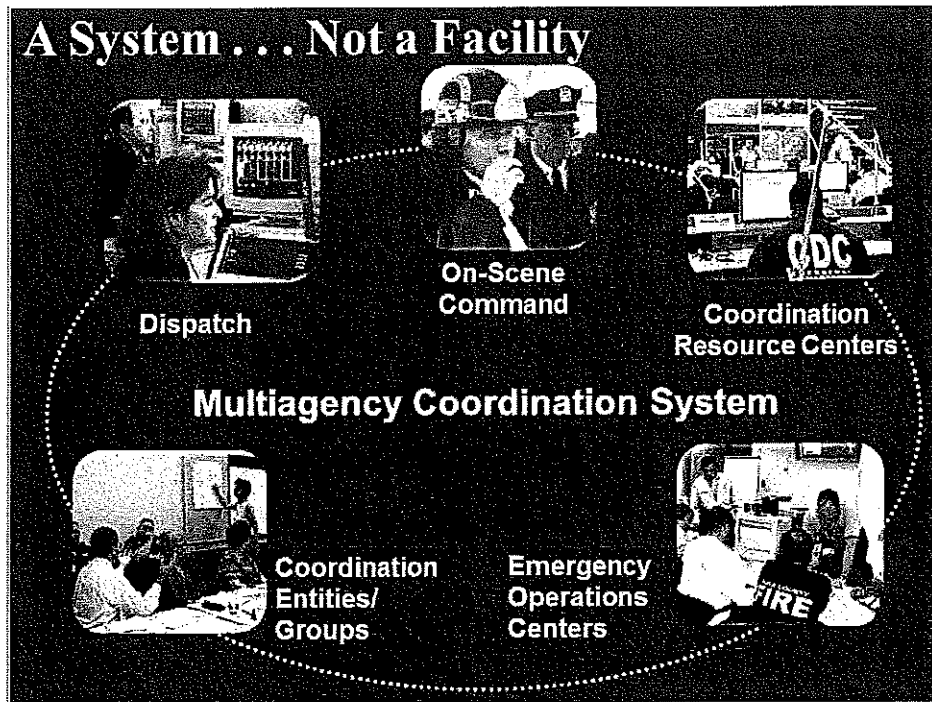
### Multiagency Support and Coordination

Provide support and coordination to incident command by:

- Making policy decisions.
- Establishing priorities.
- Resolving critical resource issues.
- Facilitating logistics support and resource tracking.
- Collecting, analyzing, and disseminating information.



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## Managing Public Information



The Public Information Officer:

- Represents and advises the Incident Command.
- Manages on-scene media and public inquiries.



The Joint Information Center (JIC) is a physical location used to coordinate:

- Critical emergency information.
- Crisis communications.
- Public affairs functions.

## Speaking With One Voice

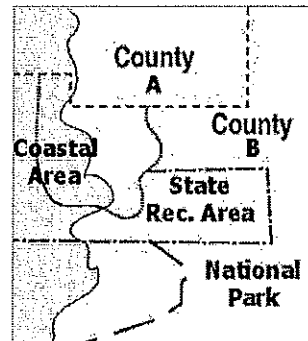


- Executives/Senior Officials must coordinate and integrate messages with on-scene Public Information Officers and other agencies.
- A Joint Information System (established procedures and protocols) is used to help ensure coordination of messages.

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## Coordination Among Agencies

A wide-area search is underway for a child who is missing. The search covers the areas shown on the map.



What agencies may be part of the MACS?

What activities are being coordinated?

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## Incident Management Assessment

Assessment is an important leadership responsibility. Assessment methods include:

- Corrective action report/ after-action review.
- Post-incident analysis.
- Debriefing.
- Post-incident critique.
- Mitigation plans.



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## After-Action Review

Ensure an after-action review is conducted and answers the following questions:

- What did we set out to do?
- What actually happened?
- Why did it happen?
- What are we going to do different next time?
- Are there lessons learned that should be shared?
- What followup is needed?

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## Part 5: NIMS Preparedness



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### Check Plans, Policies, and Laws

Do your agency's/jurisdiction's preparedness plans, policies, and laws:

- Comply with NIMS, including ICS?
- Cover all hazards?
- Include delegations of authority (as appropriate)?
- Include up-to-date information?



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## Establish Resource Management Systems

- Do you have established systems for:
  - Describing, inventorying, requesting, and tracking resources?
  - Activating and dispatching resources?
  - Managing volunteers?
  - Demobilizing or recalling resources?
  - Financial tracking, reimbursement, and reporting?
- Do you have mutual aid and assistance agreements for obtaining resources, facilities, services, and other required support during an incident?



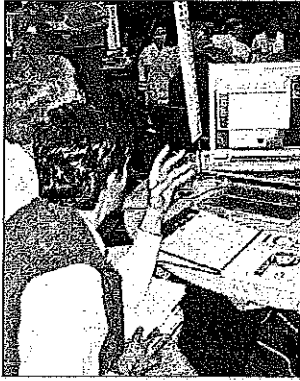
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## Establish Communications and Information Systems

- Do you have protocols and procedures for:
  - Formulating and disseminating indications and warnings?
  - Formulating, executing, and communicating operational decisions?
  - Preparing for potential requirements and requests supporting incident management activities?
  - Developing and maintaining situation awareness?
- Can responders from different agencies (e.g., fire, police, public works) or mutual aid and assistance partners communicate with one another?
- Do you have a plan/budget for maintaining and replacing your emergency communication systems?

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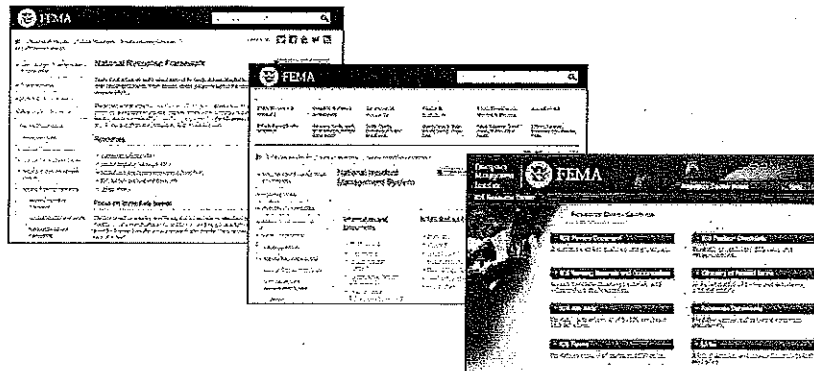
## Training, Credentialing, and Exercising



- Do you have sufficient qualified personnel to assume ICS Command and General Staff positions?
- Can you verify that personnel meet established professional standards for:
  - Training?
  - Experience?
  - Performance?
- When was the last tabletop or functional exercise that practiced command and coordination functions? Did you participate in that exercise?

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## Additional Resources



- NRF Resource Center: [www.fema.gov/national-response-framework](http://www.fema.gov/national-response-framework)
- NIMS Resource Center: [www.fema.gov/national-incident-management-system](http://www.fema.gov/national-incident-management-system)
- ICS Resource Center: [training.fema.gov/EMIWeb/IS/ICSResource/](http://training.fema.gov/EMIWeb/IS/ICSResource/)

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## Leadership



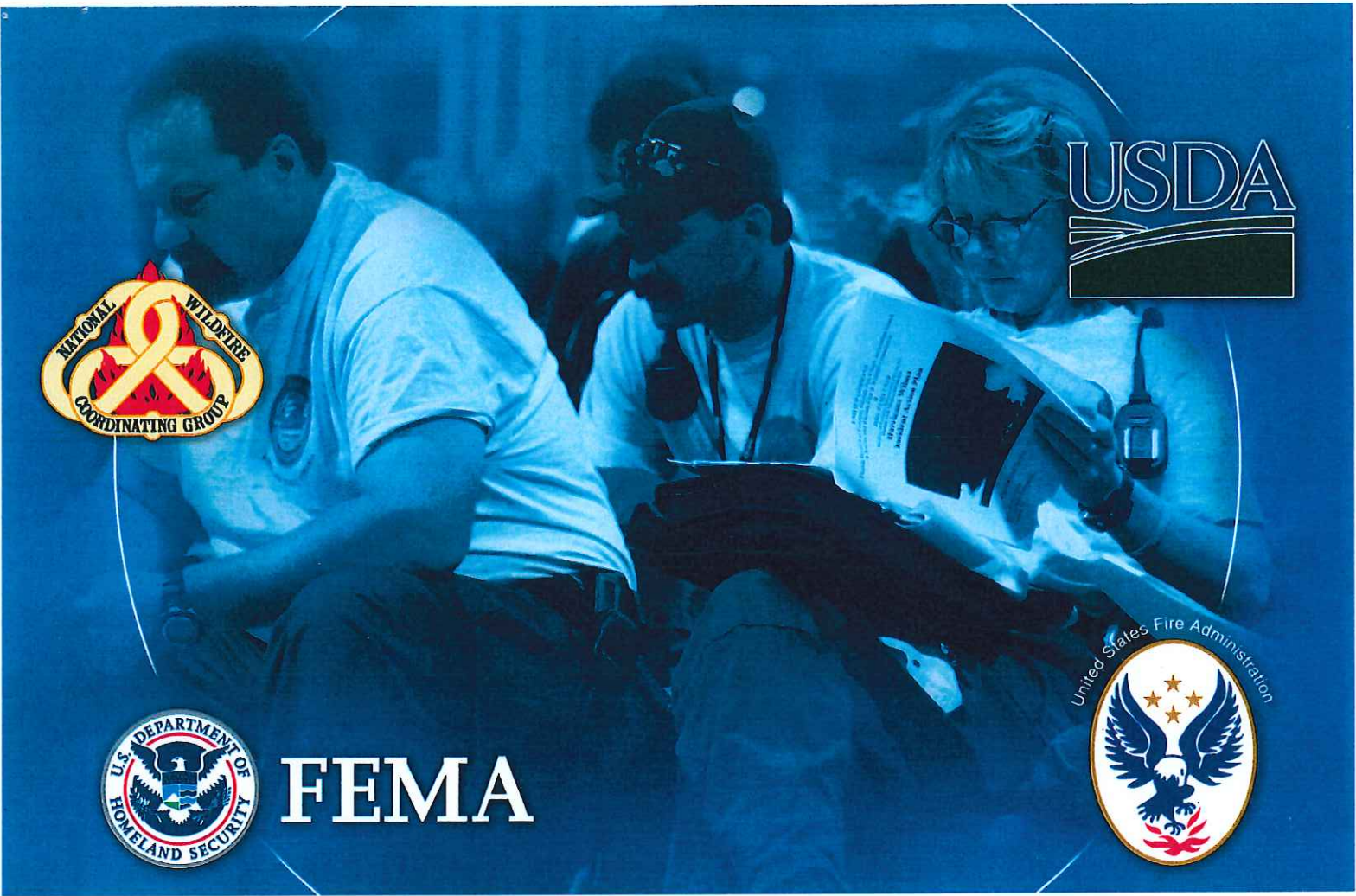
Most importantly, Executives/Senior Officials provide leadership.

Leadership means . . .

- Motivating and supporting trained, on-scene responders so that they can accomplish difficult tasks under dangerous, stressful circumstances.
- Instilling confidence in the public that the incident is being managed effectively.



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# ICS-402: ICS Overview for Executives/Senior Officials

## G0402

Resource Information and Checklists  
October 2013



**FEMA**

## Incident Command System (ICS)

ICS was developed in the 1970s following a series of catastrophic fires in California's urban interface. Property damage ran into the millions, and many people died or were injured. The personnel assigned to determine the causes of these outcomes studied the case histories and discovered that response problems could rarely be attributed to lack of resources or failure of tactics. Surprisingly, studies found that response problems were far more likely to result from inadequate management than from any other single reason.

The Incident Command System:

- Is a standardized management tool for meeting the demands of small or large emergency or nonemergency situations.
- Represents "best practices" and has become the standard for emergency management across the country.
- May be used for planned events, natural disasters, and acts of terrorism.
- Is a key feature of the National Incident Management System (NIMS).

As stated in NIMS, "ICS is a widely applicable management system designed to enable effective, efficient incident management by integrating a combination of facilities, equipment, personnel, procedures, and communications operating within a common organizational structure. ... ICS is used to organize on-scene operations for a broad spectrum of emergencies from small to complex incidents, both natural and manmade. ... ICS is used by all levels of government—Federal, State, tribal, and local—as well as by many nongovernmental organizations and the private sector. ICS is also applicable across disciplines. It is normally structured to facilitate activities in five major functional areas: Command, Operations, Planning, Logistics, and Finance and Administration."

## ICS and Executives/Senior Officials: Frequently Asked Questions

Any incident can have a mix of political, economic, social, environmental, and cost implications with potentially serious long-term effects. Also, more and more incidents are multiagency and/or multijurisdictional. As the Executive or Senior Official, you need to be aware of how ICS and interagency (regional) multiagency coordination systems can work to ensure cooperative response efforts.

- **How do I maintain control when an incident occurs?** As the Executive or Senior Official, you establish the overall policy, and provide guidelines on priorities, objectives, and constraints to a qualified Incident Commander. In many agencies, this is done as a matter of policy through a written delegation of authority.
- **Where do I fit in the incident management process?** ICS has a well-defined hierarchy of command. After you have clearly articulated the policy you wish followed and delegated certain authorities, the Incident Commander who reports to you will have the necessary authority and guidance to manage the incident. The Incident Commander is the primary person in charge at the incident. In addition to managing the incident scene, he or she is responsible for keeping you informed and up to date on all important matters pertaining to the incident. Your continuing role is to ensure that you are informed and that your Incident Commander is functioning in a responsible manner.

## ICS Features

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The 14 essential ICS features are listed below:

- **Common Terminology:** Using common terminology helps to define organizational functions, incident facilities, resource descriptions, and position titles.
- **Modular Organization:** The Incident Command organizational structure develops in a top-down, modular fashion that is based on the size and complexity of the incident, as well as the specifics of the hazard environment created by the incident.
- **Management by Objectives:** Includes establishing overarching objectives; developing and issuing assignments, plans, procedures, and protocols; establishing specific, measurable objectives for various incident management functional activities; and directing efforts to attain the established objectives.
- **Reliance on an Incident Action Plan:** Incident Action Plans (IAPs) provide a coherent means of communicating the overall incident objectives in the contexts of both operational and support activities.
- **Chain of Command and Unity of Command:** Chain of command refers to the orderly line of authority within the ranks of the incident management organization. Unity of command means that every individual has a designated supervisor to whom he or she reports at the scene of the incident. These principles clarify reporting relationships and eliminate the confusion caused by multiple, conflicting directives. Incident managers at all levels must be able to control the actions of all personnel under their supervision.
- **Unified Command:** In incidents involving multiple jurisdictions, a single jurisdiction with multiagency involvement, or multiple jurisdictions with multiagency involvement, Unified Command allows agencies with different legal, geographic, and functional authorities and responsibilities to work together effectively without affecting individual agency authority, responsibility, or accountability.
- **Manageable Span of Control:** Span of control is key to effective and efficient incident management. Within ICS, the span of control of any individual with incident management supervisory responsibility should range from three to seven subordinates.
- **Predesignated Incident Locations and Facilities:** Various types of operational locations and support facilities are established in the vicinity of an incident to accomplish a variety of purposes. Typical predesignated facilities include Incident Command Posts, Incident Bases, Camps, Staging Areas, Mass Casualty Triage Areas, and others as required.
- **Resource Management:** Resource management includes processes for categorizing, ordering, dispatching, tracking, and recovering resources. It also includes processes for reimbursement for resources, as appropriate. Resources are defined as personnel, teams, equipment, supplies, and facilities available or potentially available for assignment or allocation in support of incident management and emergency response activities.
- **Information and Intelligence Management:** The incident management organization must establish a process for gathering, sharing, and managing incident-related information and intelligence.
- **Integrated Communications:** Incident communications are facilitated through the development and use of a common communications plan and interoperable communications processes and architectures.

### ICS Features (Continued)

- **Transfer of Command:** The command function must be clearly established from the beginning of an incident. When command is transferred, the process must include a briefing that captures all essential information for continuing safe and effective operations.
- **Accountability:** Effective accountability at all jurisdictional levels and within individual functional areas during incident operations is essential. To that end, the following principles must be adhered to:
  - **Check-In:** All responders, regardless of agency affiliation, must report in to receive an assignment in accordance with the procedures established by the Incident Commander.
  - **Incident Action Plan:** Response operations must be directed and coordinated as outlined in the IAP.
  - **Unity of Command:** Each individual involved in incident operations will be assigned to only one supervisor.
  - **Span of Control:** Supervisors must be able to adequately supervise and control their subordinates, as well as communicate with and manage all resources under their supervision.
  - **Resource Tracking:** Supervisors must record and report resource status changes as they occur.
- **Deployment:** Personnel and equipment should respond only when requested or when dispatched by an appropriate authority.

### Position Titles

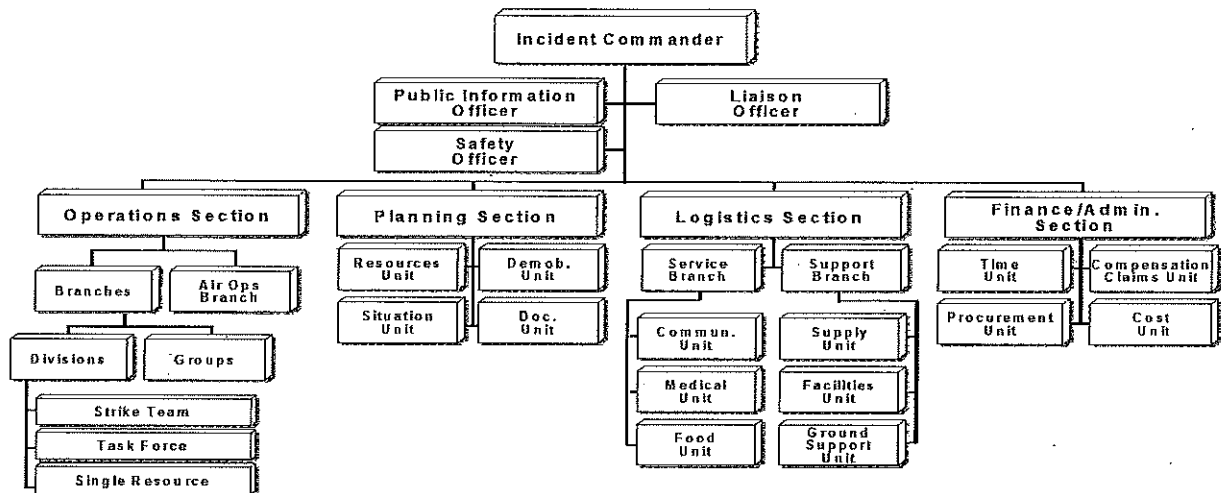
At each level within the ICS organization, individuals with primary responsibility positions have distinct titles. Titles provide a common standard for all users. For example, if one agency uses the title Branch Chief, another Branch Manager, etc., this lack of consistency can cause confusion at the incident.

The use of distinct titles for ICS positions allows for filling ICS positions with the most qualified individuals rather than by seniority. Standardized position titles are useful when requesting qualified personnel. For example, in deploying personnel, it is important to know if the positions needed are Unit Leaders, clerks, etc.

Listed below are the standard ICS titles:

Organizational Level	Title	Support Position
Incident Command	Incident Commander	Deputy
Command Staff	Officer	Assistant
General Staff (Section)	Chief	Deputy
Branch	Director	Deputy
Division/Group	Supervisor	N/A
Unit	Leader	Manager
Strike Team/Task Force	Leader	Single Resource Boss

## ICS Organization



- **Command Staff:** The Command Staff consists of the Public Information Officer, Safety Officer, and
- **Liaison Officer.** They report directly to the Incident Commander.
- **General Staff:** The organization level having functional responsibility for primary segments of incident management (Operations, Planning, Logistics, Finance/Administration). The Section level is organizationally between Branch and Incident Commander.
- **Branch:** That organizational level having functional, geographical, or jurisdictional responsibility for major parts of the incident operations. The Branch level is organizationally between Section and Division/Group in the Operations Section, and between Section and Units in the Logistics Section. Branches are identified by the use of Roman Numerals, by function, or by jurisdictional name.
- **Division:** That organizational level having responsibility for operations within a defined geographic area. The Division level is organizationally between the Strike Team and the Branch.
- **Group:** Groups are established to divide the incident into functional areas of operation. Groups are located between Branches (when activated) and Resources in the Operations Section.
- **Unit:** That organization element having functional responsibility for a specific incident planning, logistics, or finance/administration activity.
- **Task Force:** A group of resources with common communications and a leader that may be pre-established and sent to an incident, or formed at an incident.
- **Strike Team:** Specified combinations of the same kind and type of resources, with common communications and a leader.
- **Single Resource:** An individual piece of equipment and its personnel complement, or an established crew or team of individuals with an identified work supervisor that can be used on an incident.

## Overall Organizational Functions

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ICS was designed by identifying the primary activities or functions necessary to effectively respond to incidents. Analyses of incident reports and review of military organizations were all used in ICS development. These analyses identified the primary needs of incidents.

As incidents became more complex, difficult, and expensive, the need for an organizational manager became more evident. Thus in ICS, and especially in larger incidents, the Incident Commander manages the organization and not the incident.

In addition to the Command function, other desired functions and activities were:

- To delegate authority and to provide a separate organizational level within the ICS structure with sole responsibility for the tactical direction and control of resources.
- To provide logistical support to the incident organization.
- To provide planning services for both current and future activities.
- To provide cost assessment, time recording, and procurement control necessary to support the incident and the managing of claims.
- To promptly and effectively interact with the media, and provide informational services for the incident, involved agencies, and the public.
- To provide a safe operating environment within all parts of the incident organization.
- To ensure that assisting and cooperating agencies' needs are met, and to see that they are used in an effective manner.

## Incident Commander

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The Incident Commander is technically not a part of either the General or Command staff. The Incident Commander is responsible for overall incident management, including:

- Ensuring clear authority and knowledge of agency policy.
- Ensuring incident safety.
- Establishing an Incident Command Post.
- Obtaining a briefing from the prior Incident Commander and/or assessing the situation.
- Establishing immediate priorities.
- Determining incident objectives and strategy(ies) to be followed.
- Establishing the level of organization needed, and continuously monitoring the operation and effectiveness of that organization.
- Managing planning meetings as required.
- Approving and implementing the Incident Action Plan.
- Coordinating the activities of the Command and General Staffs.
- Approving requests for additional resources or for the release of resources.
- Approving the use of students, volunteers, and auxiliary personnel.
- Authorizing the release of information to the news media.
- Ordering demobilization of the incident when appropriate.
- Ensuring incident after-action reports are complete.

## Command Staff

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The Command Staff is assigned to carry out staff functions needed to support the Incident Commander. These functions include interagency liaison, incident safety, and public information.

Command Staff positions are established to assign responsibility for key activities not specifically identified in the General Staff functional elements. These positions may include the Public Information Officer, Safety Officer, and Liaison Officer, in addition to various others, as required and assigned by the Incident Commander.

The table on the following page summarizes the responsibilities of the Command Staff.

## General Staff

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The General Staff represents and is responsible for the functional aspects of the Incident Command structure. The General Staff typically consists of the Operations, Planning, Logistics, and Finance/Administration Sections.

General guidelines related to General Staff positions include the following:

- Only one person will be assigned to each General Staff position.
- General Staff positions may be filled by qualified persons from any agency or jurisdiction.
- Members of the General Staff report directly to the Incident Commander. If a General Staff position is not activated, the Incident Commander will have responsibility for that functional activity.
- Deputy positions may be established for each of the General Staff positions. Deputies are individuals fully qualified to fill the primary position. Deputies can be designated from other jurisdictions or agencies, as appropriate. This is a good way to bring about greater interagency coordination.
- General Staff members may exchange information with any person within the organization.
- Direction takes place through the chain of command. This is an important concept in ICS.
- General Staff positions should not be combined. For example, to establish a "Planning and Logistics Section," it is better to initially create the two separate functions, and if necessary for a short time place one person in charge of both. That way, the transfer of responsibility can be made easier.

Following the first table is a table that summarizes the responsibilities of the General Staff.



Command Staff	Responsibilities
<b>Public Information Officer</b>	The Public Information Officer is responsible for interfacing with the public and media and/or with other agencies with incident-related information requirements. The Public Information Officer develops accurate and complete information on the incident's cause, size, and current situation; resources committed; and other matters of general interest for both internal and external consumption. The Public Information Officer may also perform a key public information-monitoring role. Only one incident Public Information Officer should be designated. Assistants may be assigned from other agencies or departments involved. The Incident Commander must approve the release of all incident-related information.
<b>Safety Officer</b>	The Safety Officer monitors incident operations and advises the Incident Commander on all matters relating to operational safety, including the health and safety of emergency responder personnel. The ultimate responsibility for the safe conduct of incident management operations rests with the Incident Commander or Unified Command and supervisors at all levels of incident management. The Safety Officer is, in turn, responsible to the Incident Commander for the set of systems and procedures necessary to ensure ongoing assessment of hazardous environments, coordination of multiagency safety efforts, and implementation of measures to promote emergency responder safety, as well as the general safety of incident operations. The Safety Officer has emergency authority to stop and/or prevent unsafe acts during incident operations. In a Unified Command structure, a single Safety Officer should be designated, in spite of the fact that multiple jurisdictions and/or functional agencies may be involved. The Safety Officer must also ensure the coordination of safety management functions and issues across jurisdictions, across functional agencies, and with private-sector and nongovernmental organizations.
<b>Liaison Officer</b>	The Liaison Officer is the point of contact for representatives of other governmental agencies, nongovernmental organizations, and/or private entities. In either a single or Unified Command structure, representatives from assisting or cooperating agencies and organizations coordinate through the Liaison Officer. Agency and/or organizational representatives assigned to an incident must have the authority to speak for their parent agencies and/or organizations on all matters, following appropriate consultations with their agency leadership. Assistants and personnel from other agencies or organizations (public or private) involved in incident management activities may be assigned to the Liaison Officer to facilitate coordination.
<b>Assistants</b>	In the context of large or complex incidents, Command Staff members may need one or more assistants to help manage their workloads. Each Command Staff member is responsible for organizing his or her assistants for maximum efficiency.
<b>Additional Command Staff</b>	Additional Command Staff positions may also be necessary depending on the nature and location(s) of the incident, and/or specific requirements established by the Incident Commander. For example, a Legal Counsel may be assigned directly to the Command Staff to advise the Incident Commander on legal matters, such as emergency proclamations, legality of evacuation orders, and legal rights and restrictions pertaining to media access. Similarly, a Medical Advisor may be designated and assigned directly to the Command Staff to provide advice and recommendations to the Incident Commander in the context of incidents involving medical and mental health services, mass casualty, acute care, vector control, epidemiology, and/or mass prophylaxis considerations, particularly in the response to a bioterrorism event.

Source: NIMS

General Staff	Responsibilities
<b>Operations Section Chief</b>	<p>The Operations Section Chief is responsible for managing all tactical operations at an incident. The Incident Action Plan provides the necessary guidance. The need to expand the Operations Section is generally dictated by the number of tactical resources involved and is influenced by span of control considerations.</p> <p>Major responsibilities of the Operations Section Chief are to:</p> <ul style="list-style-type: none"> <li>• Manage tactical operations.</li> <li>• Assist in the development of the operations portion of the Incident Action Plan. This usually requires filling out the ICS 215 Form prior to the Planning Meeting.</li> <li>• Supervise the execution of the operations portion of the Incident Action Plan.</li> <li>• Maintain close contact with subordinate positions.</li> <li>• Ensure safe tactical operations.</li> <li>• Request additional resources to support tactical operations.</li> <li>• Approve release of resources from active assignments (not release from the incident).</li> <li>• Make or approve expedient changes to the operations portion of the Incident Action Plan.</li> <li>• Maintain close communication with the Incident Commander.</li> </ul>
<b>Planning Section Chief</b>	<p>The Planning Section Chief is responsible for providing planning services for the incident. Under the direction of the Planning Section Chief, the Planning Section collects situation and resources status information, evaluates it, and processes the information for use in developing action plans. Dissemination of information can be in the form of the Incident Action Plan, in formal briefings, or through map and status board displays.</p> <p>Major responsibilities of the Planning Section Chief are to:</p> <ul style="list-style-type: none"> <li>• Collect and manage all incident-relevant operational data.</li> <li>• Provide input to the Incident Commander and Operations Section Chief for use in preparing the Incident Action Plan.</li> <li>• Supervise preparation of the Incident Action Plan.</li> <li>• Conduct and facilitate planning meetings.</li> <li>• Reassign personnel already on site to ICS organizational positions as needed and appropriate.</li> <li>• Establish information requirements and reporting schedules for Planning Section units.</li> <li>• Determine the need for specialized resources to support the incident.</li> <li>• Assemble and disassemble task forces and strike teams not assigned to Operations.</li> <li>• Establish specialized data collection systems as necessary (e.g., weather).</li> <li>• Assemble information on alternative strategies and contingency plans.</li> <li>• Provide periodic predictions on incident potential.</li> <li>• Report any significant changes in incident status.</li> <li>• Compile and display incident status information.</li> <li>• Oversee preparation of the Demobilization Plan.</li> <li>• Incorporate Traffic, Medical, Communications Plans, and other supporting material into the Incident Action Plan.</li> </ul>

General Staff	Responsibilities
<b>Logistics Section Chief</b>	<p>The Logistics Section Chief provides all incident support needs with the exception of logistics support to air operations. The Logistics Section is responsible for providing:</p> <ul style="list-style-type: none"> <li>• Facilities.</li> <li>• Transportation.</li> <li>• Communications.</li> <li>• Supplies.</li> <li>• Equipment maintenance and fueling.</li> <li>• Food services (for responders).</li> <li>• Medical services (for responders).</li> <li>• All off-incident resources.</li> </ul> <p>Major responsibilities of the Logistics Section Chief are to:</p> <ul style="list-style-type: none"> <li>• Manage all incident logistics.</li> <li>• Provide logistical input to the Incident Commander in preparing the Incident Action Plan.</li> <li>• Brief Logistics Branch Directors and Unit Leaders as needed.</li> <li>• Identify anticipated and known incident service and support requirements.</li> <li>• Request additional resources, as needed.</li> <li>• Develop, as required, the Communications, Medical, and Traffic Plans.</li> <li>• Oversee demobilization of the Logistics Section.</li> </ul>
<b>Finance/ Administration Section Chief</b>	<p>The Finance/Administration Section Chief is responsible for managing all financial aspects of an incident. Not all incidents will require a Finance/Administration Section. Only when the involved agencies have a specific need for finance services will the Section be activated.</p> <p>Major responsibilities of the Finance/Administration Section Chief are to:</p> <ul style="list-style-type: none"> <li>• Manage all financial aspects of an incident.</li> <li>• Provide financial and cost analysis information as requested.</li> <li>• Ensure compensation and claims functions are being addressed relative to the incident.</li> <li>• Gather pertinent information from briefings with responsible agencies.</li> <li>• Develop an operating plan for the Finance/Administration Section; fill Section supply and support needs.</li> <li>• Determine need to set up and operate an incident commissary.</li> <li>• Meet with assisting and cooperating agency representatives as needed.</li> <li>• Maintain daily contact with agency(ies) administrative headquarters on finance matters.</li> <li>• Ensure that all personnel and equipment time records are accurately completed and transmitted to home agencies, according to policy.</li> <li>• Provide financial input for demobilization planning.</li> <li>• Ensure that all obligation documents initiated at the incident are properly prepared and completed.</li> <li>• Brief agency administrative personnel on all incident-related financial issues needing attention or followup.</li> </ul>

## Agency Representatives

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An Agency Representative is an individual assigned to an incident from an assisting or cooperating agency. The Agency Representative must be given authority to make decisions on matters affecting that agency's participation at the incident.

Agency Representatives report to the Liaison Officer or to the Incident Commander in the absence of a Liaison Officer.

Major responsibilities of the Agency Representative are to:

- Ensure that all of their agency resources have completed check-in at the incident.
- Obtain briefing from the Liaison Officer or Incident Commander.
- Inform their agency personnel on the incident that the Agency Representative position has been filled.
- Attend planning meetings as required.
- Provide input to the planning process on the use of agency resources unless resource technical specialists are assigned from the agency.
- Cooperate fully with the Incident Commander and the Command and General Staffs on the agency's involvement at the incident.
- Oversee the well-being and safety of agency personnel assigned to the incident.
- Advise the Liaison Officer of any special agency needs, requirements, or agency restrictions.
- Report to agency dispatch or headquarters on a prearranged schedule.
- Ensure that all agency personnel and equipment are properly accounted for and released prior to departure.
- Ensure that all required agency forms, reports, and documents are complete prior to departure.
- Have a debriefing session with the Liaison Officer or Incident Commander prior to departure.

## Technical Specialists

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Certain incidents or events may require the use of Technical Specialists who have specialized knowledge and expertise. Technical Specialists may function within the Planning Section, or be assigned wherever their services are required.

While each incident dictates the need for Technical Specialists, some examples of the more commonly used specialists are:

- Meteorologists.
- Environmental Impact Specialists.
- Flood Control Specialists.
- Water Use Specialists.
- Fuels and Flammable Specialists.
- Hazardous Substance Specialists.
- Fire Behavior Specialists.
- Structural Engineers.
- Training Specialists.

## Unified Command

The Unified Command organization consists of the Incident Commanders from the various jurisdictions or agencies operating together to form a single command structure.

### Overview

Unified Command is an important element in multijurisdictional or multiagency incident management. It provides guidelines to enable agencies with different legal, geographic, and functional responsibilities to coordinate, plan, and interact effectively.

As a team effort, Unified Command allows all agencies with jurisdictional authority or functional responsibility for the incident to jointly provide management direction through a common set of incident objectives and strategies and a single Incident Action Plan. Each participating agency maintains its authority, responsibility, and accountability.

All agencies with jurisdictional authority or functional responsibility for any or all aspects of an incident and those able to provide specific resource support participate in the Unified Command structure and contribute to the process of selecting objectives; determining overall incident strategies; ensuring that joint planning for tactical activities is accomplished in accordance with approved incident objectives; ensuring the integration of tactical operations; and approving, committing, and making optimum use of all assigned resources.

The exact composition of the Unified Command structure will depend on the location(s) of the incident (i.e., which geographical jurisdictions or organizations are involved) and the type of incident (i.e., which functional agencies of the involved jurisdiction(s) or organizations(s) are required). The designation of a single Incident Commander for some multijurisdictional incidents, if planned for in advance, may be considered in order to promote greater unity of effort and efficiency.

Source: NIMS

### Authority

Authority and responsibility for an Incident Commander to manage an incident or event comes in the form of a delegation of authority from the agency executive or administrator of the jurisdiction of occurrence or inherent in existing agency policies and procedures. When an incident/event spans multiple jurisdictions this responsibility belongs to the various jurisdictional and agency executives or administrators who set policy and are accountable to their jurisdictions or agencies. They must appropriately delegate to the Unified Commanders the authority to manage the incident. Given this authority, the Unified Commanders will then collectively develop one comprehensive set of incident objectives, and use them to develop strategies.

### Advantages of Using Unified Command

The advantages of using Unified Command include:

- A single set of objectives is developed for the entire incident.
- A collective approach is used to develop strategies to achieve incident objectives.
- Information flow and coordination is improved between all jurisdictions and agencies involved in the incident.
- All agencies with responsibility for the incident have an understanding of joint priorities and restrictions.
- No agency's legal authorities will be compromised or neglected.
- The combined efforts of all agencies are optimized as they perform their respective assignments under a single Incident Action Plan.

## Planning Process

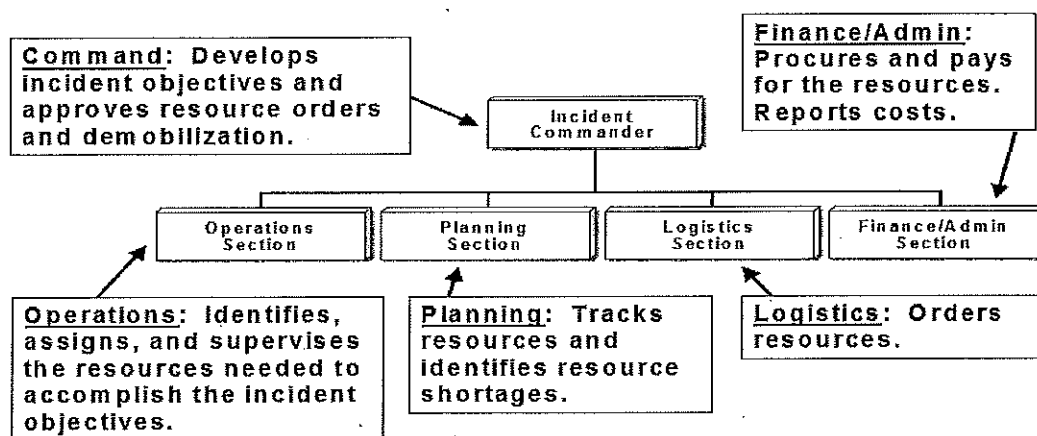
It was recognized early in the development of ICS that the critical factor of adequate planning for incident operations was often overlooked or not given enough emphasis. This resulted in poor use of resources, inappropriate strategies and tactics, safety problems, higher incident costs, and lower effectiveness.

Those involved in the original ICS development felt that there was a need to develop a simple but thorough process for planning that could be utilized for both smaller, short-term incidents and events, and for longer, more complex incident planning. The planning process may begin with the scheduling of a planned event, the identification of a credible threat, or the initial response to an actual or impending event. The process continues with the implementation of the formalized steps and staffing required to develop a written Incident Action Plan (IAP).

The primary phases of the planning process are essentially the same for the Incident Commander who develops the initial plan, for the Incident Commander and Operations Section Chief revising the initial plan for extended operations, and for the incident management team developing a formal IAP, each following a similar process. During the initial stages of incident management, planners must develop a simple plan that can be communicated through concise oral briefings. Frequently, this plan must be developed very quickly and with incomplete situation information. As the incident management effort evolves over time, additional lead time, staff, information systems, and technologies enable more detailed planning and cataloging of events and "lessons learned."

Planning involves:

- Evaluating the situation.
- Developing incident objectives.
- Selecting a strategy.
- Deciding which resources should be used to achieve the objectives in the safest, most efficient and cost-effective manner.



Caption: Organizational chart showing that Command develops the objectives and approves resource orders and demobilization. Operations identifies, assigns, and supervises the resources needed to accomplish the incident objectives. Planning tracks resources and identifies shortages. Logistics orders resources, and Finance/Administration procures and pays for the resources.

## Demobilization

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Demobilization planning helps to:

- Eliminate waste.
- Eliminate potential fiscal and legal impacts.
- Ensure a controlled, safe, efficient, and cost-effective release process.

Demobilization policies and procedures depend on the size of the incident and may involve:

- Fiscal/legal policies and procedures.
- Work rules.
- Special license requirements.
- Other requirements.

## Incident Complexity

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“Incident complexity” is the combination of involved factors that affect the probability of control of an incident. Many factors determine the complexity of an incident, including, but not limited to, area involved, threat to life and property, political sensitivity, organizational complexity, jurisdictional boundaries, values at risk, weather, strategy and tactics, and agency policy.

Incident complexity is considered when making incident management level, staffing, and safety decisions.

Various analysis tools have been developed to assist consideration of important factors involved in incident complexity. Listed below are the factors that may be considered in analyzing incident complexity:

- Impacts to life, property, and the economy
- Community and responder safety
- Potential hazardous materials
- Weather and other environmental influences
- Likelihood of cascading events
- Potential crime scene (including terrorism)
- Political sensitivity, external influences, and media relations
- Area involved, jurisdictional boundaries
- Availability of resources

**ICS Readiness Checklist**

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**NIMS and ICS Compliance**

- Adopt the ICS through executive order, proclamation, or legislation as the jurisdiction's official incident response system.
  - Determine if ICS is integrated into functional and system-wide emergency operations policies, plans, and procedures.
  - Provide ICS training so all responders, supervisors, and command-level officers receive ICS training.
  - Schedule periodic exercises that require the application of ICS management features.
- 

**Emergency Operations Plans**

- Conduct a review and update the jurisdiction Emergency Operations Plans based on a current hazard analysis and risks.
  - Clarify roles and establish delegations of authority (as appropriate).
  - Check contact information to ensure it is up to date.
  - Update plans based on lessons learned from exercises and incidents.
- 

**Legal and Financial**

- Check procedures and authorities for emergency purchasing and contracting.
  - Ensure that mutual aid agreements and assistance agreements have been negotiated.
  - Clarify coordination procedures among different levels of government (tribes, counties, State, Federal, etc.).
- 

**Resource Management Systems**

- Identify potential resources across agencies/department, other levels of government, and the private sector.
  - Check your jurisdiction's procedures and systems for:
    - Describing, inventorying, requesting, and tracking resources.
    - Activating and dispatching resources.
    - Managing volunteers.
    - Demobilization or recalling resources.
    - Financial tracking, reimbursement, and reporting.
- 

**Communications and Information Management**

- Check your jurisdiction's protocols and procedures for:
    - Formulating and disseminating indications and warnings.
    - Formulating, executing, and communicating operational decisions.
    - Preparing for potential requirements and requests supporting incident management activities.
    - Developing and maintaining situation awareness.
  - Check for interoperability. Can responders from different agencies (e.g., fire, police, public works) or mutual aid and assistance partners communicate with one another?
  - Create a plan/budget for maintaining and replacing your emergency communication systems.
- 

**Training, Credentialing, and Exercising**

- Make sure you have sufficient qualified personnel to assume ICS Command and General Staff positions.
- Predesignate qualified incident management teams based on incident complexity.
- Check when the last tabletop or functional exercise that practiced command and coordination functions was conducted. Did you participate in that exercise?



**ICS Incident Checklist**

The following checklist is designed to assist Executives and Senior Officials in supporting an emergency response. The checklist is divided into Immediate Actions, Legal, Political, Operational, and Public Information.

**Immediate Actions**

- Begin personal log. The log should include all information and orders given, will document the amount of information you had when making decisions, and will assist in protecting you if liability issues are raised concerning your role in the incident.
- Assign and brief/establish contact with the Incident Commander.
- Assign staff to assist in the incident as requested by the Incident Commander or Logistics.
- Determine when the initial planning meeting is scheduled.
- Confirm which parts of the Emergency Operations Plan are in effect.
- Contact and brief higher level authorities/stakeholders.

**Legal**

- Review and activate legal authorities:
  - Emergency declarations
  - Evacuation orders
  - Lines of succession
  - Mutual aid agreements and assistance agreements
  - Price controls
  - Procurement processes
  - Other restrictions/requirements

**Political**

- Provide leadership oversight of incident management policies and objectives.
- Assist in coordinating activities with elected officials and other levels of government.

**Operational**

- Assess the impact of the incident on the continuity of your jurisdiction's day-to-day activities.
- Reassign personnel to support incident activities and cover essential services.

**Public Information**

- Assign Public Information Officer to assist in incident information management.
- Direct requests for incident information to incident Public Information Officer using the Joint Information System.
- Coordinate messages through the Joint Information Center/Joint Information System.

## After-Action Review Tips

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### Overall Tips

- Schedule an After-Action Review (AAR) as soon after the incident as possible.
- Keep it short and focused.
- Focus on WHAT, not WHO.
- Establish clear ground rules: encourage candor and openness (this is dialog—not lecture or debate); focus on items that can be fixed; keep all discussions confidential.
- Use a skilled facilitator to conduct the AAR.

### AAR Process Steps

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Use the following questions to facilitate the AAR process:

#### 1. What did we set out to do?

- Establish the facts.
- Determine purpose of the mission and definition of success:
  - Identify key tasks involved.
  - Specify conditions under which each task may need to be performed (weather, topography, time restrictions, etc.).
  - Define acceptable standards for success (explain what “Right” looks like).

#### 2. What actually happened?

- Continue to establish the facts.
  - Participants should come to agreement on what actually happened.
  - Pool multiple perspectives to build a shared picture of what happened.

#### 3. Why did it happen?

- Analyze cause and effect.
  - Focus on WHAT, not WHO.
  - Provide progressive refinement for drawing out explanations of what occurred. This will lead into developing possible solutions.

#### 4. What are we going to do better next time?

- Solutions will arise naturally once problems are identified and understood.
  - Focus on items you can fix, rather than external forces outside of your control.
  - Identify areas where groups are performing well and that should be sustained. This will help repeat success and create a balanced approach to the AAR.

Areas To Sustain/Maintain Strengths:

Areas To Improve Weaknesses:

#### 5. Are there lessons learned that should be shared immediately?

- Identify the process for sharing lessons learned.
  - Option 1: Document the Issue, Discussion, Recommendation
  - Option 2: Document the Concept of the Operation, Results, Trends, Recommendation
- Determine and describe the most notable successes from the incident.
  - Determine and describe the most difficult challenges faced and how they were overcome.

#### 6. What followup is needed?

- Be specific about actions, timelines, and responsibilities.
  - What changes, additions, or deletions are recommended to SOPs, plans, or training?
  - What issues were not resolved to your satisfaction and need further review?

## Delegation of Authority

As of \_\_\_\_\_ hrs, \_\_\_\_\_, I have delegated the authority and responsibility for the complete management of the \_\_\_\_\_ incident to the Incident Commander,  
\_\_\_\_\_.

As Incident Commander, you are accountable to me for the overall management of this incident including control and return to local forces. I expect you to adhere to relevant and applicable laws, policies, and professional standards.

My considerations for management of the incident are:

1. Provide for responder and public safety.
2. Incident stability.
3. Preservation of property.
4. Manage the incident cost-effectively for the values at risk.
5. Provide training opportunities for less experienced responders. This will strengthen organizational capabilities of local agency personnel.
6. Provide for minimal disruption of access to critical community services and commerce. Access must be consistent with the safety of the public.
7. Coordinate with \_\_\_\_\_ and the State for use of their resources, as needed, and incorporate them into the overall incident plan.
8. The media will be escorted whenever possible. Media cards will identify members of the media.
9. Incident objectives, strategies, and tactics will be the responsibility of the Incident Management Team within a 10-mile radius of the incident.

\_\_\_\_\_  
Agency Administrator

\_\_\_\_\_  
Date



## National Response Framework (Third Edition)

Government resources alone cannot meet all the needs of those affected by terrorist attacks, natural disasters, and other catastrophic events. When disaster strikes, people throughout the community and our nation pitch in to help the response effort:

The third edition of the **National Response Framework** provides context for how the whole community works together and how response efforts relate to other parts of national preparedness. It is one of the five documents in the suite of National Planning Frameworks. Each covers one preparedness mission area: Prevention, Protection, Mitigation, Response, or Recovery.

### Focus on Immediate Needs

The National Response Framework covers the capabilities necessary to save lives, protect property and the environment, and meet basic human needs after an incident has occurred. The National Response Framework is built on scalable, flexible, and adaptable concepts identified in the National Incident Management System to align key roles and responsibilities across the Nation.

Response activities take place immediately before, during, and in the first few days after a major or catastrophic disaster. Recovery efforts help the community get back on its feet and focus on how best to restore, redevelop, and revitalize the health, social, economic, natural, and environmental fabric of the community.

Roles and activities found in other Frameworks affect response efforts in many ways. For example, when people proactively do things to lessen the impact of future disasters—as described in the National Mitigation Framework—they may

need fewer response resources when a disaster strikes.

### What's New?

The updated National Response Framework incorporates critical edits in the refreshed National Preparedness Goal, including lessons learned from real world events and continuing implementation of the National Preparedness System. These edits include:

- The addition of one new core capability—Fire Management and Suppression.
- Three revised core capability titles:
  - Logistics and Supply Chain Management;
  - On-scene Security, Protection, and Law Enforcement; and
  - Public Health, Healthcare, and Emergency Medical Services.
- Three revised core capability definitions
  - Environmental Response/ Health and Safety;
  - Fatality Management Services; and
  - Logistics and Supply Chain Management.

Other edits include:

- Additional language on science and technology investments to support the development of core capabilities to respond to evolving hazards.

### About the Frameworks

The National Planning Frameworks describe how the whole community works together to achieve the National Preparedness Goal. The Goal is: “A secure and resilient nation with the capabilities required across the whole community to prevent,

Visit us at <http://www.fema.gov/national-response-framework>

protect against, mitigate, respond to, and recover from the threats and hazards that pose the greatest risk.”

Each of the Frameworks:

- Explains the purpose of the document, including the guiding principles, scope of mission area and application of risk.
- Summarizes the roles and responsibilities of each part of the whole community.
- Defines the mission area’s core capabilities, along with examples of critical tasks for each capability.
- Lists a sampling of coordinating structures—either new or existing—that enable the effective delivery of the core capabilities.
- Describes the relationships between the Frameworks and mission areas.
- Identifies relevant planning assumptions required to inform the development of interagency operational plans and department level plans.
- Provides information that local, state, tribal and territorial governments and private sector partners can use to develop or revise their plans.
- Applies concepts from existing national doctrine, such as the National Incident Management System, whenever possible.

### **Response Core Capabilities**

Core capabilities are the distinct elements needed to achieve the National Preparedness Goal. The Response Framework describes each of its 15 core capabilities and lists critical tasks for each one. The capabilities, followed by a critical task example, are listed below.

To see all critical tasks, download the Framework at <http://www.fema.gov/national-planning-frameworks>.

- **Planning.** Develop operational plans that adequately identify critical objectives based on the planning requirements, provide a complete and integrated picture of the sequence and scope of the tasks to achieve the objectives, and are implementable within the time frame contemplated in the plan using available resources.
- **Public Information and Warning.** Deliver credible and actionable messages to inform ongoing emergency services and the public about protective measures and other life-sustaining actions and facilitate the integration of recovery activities.
- **Operational Coordination.** Enhance and maintain command, control, and coordination structures, consistent with the National Incident Management System, to meet basic human needs, stabilize the incident, and facilitate the integration of recovery activities.
- **Critical Transportation.** Monitor and report the status of and damage to the transportation system and infrastructure.
- **Environmental Response/Health and Safety.** Minimize public exposure to environmental hazards through assessment of the hazards and implementation of public protective actions.
- **Fatality Management Services.** Establish and maintain operations to recover a significant number of fatalities over a geographically dispersed area.
- **Fire Management and Suppression.** Conduct expanded or extended attack firefighting and support operations through coordinated response of fire management and specialized fire suppression resources.

**Visit us at <http://www.fema.gov/national-response-framework>**

*“FEMA’s mission is to support our citizens and first responders to ensure that as a nation we work together to build, sustain, and improve our capability to prepare for, protect against, respond to, recover from, and mitigate all hazards.”*

#### Response Core Capabilities Cont.

- **Infrastructure Systems.** Re-establish critical infrastructure within the affected areas to support ongoing emergency response operations, life sustainment, community functionality, and facilitate the integration of recovery activities.
- **Logistics and Supply Chain Management.** Enhance public and private resource and services support for an affected area.
- **Mass Care Services.** Move and deliver resources and capabilities to meet the needs of disaster survivors, including children and adults with disabilities and/or access and functional needs.
- **Mass Search and Rescue Operations.** Initiate community-based search and rescue support operations across a wide geographically dispersed area.
- **On-Scene Security, Protection, and Law Enforcement.** Provide and maintain on-scene security and meet the protection needs of the affected population over a geographically dispersed area while eliminating or mitigating the risk of further damage to persons, property, and the environment.
- **Operational Communications.** Ensure the capacity to communicate with both the emergency response community and the affected populations and establish interoperable voice and data communications between local, state, tribal, territorial, and Federal first responders.
- **Public Health, Healthcare, Emergency Medical Services.** Deliver medical countermeasures to exposed populations.
- **Situational Assessment.** Deliver enhances information to reinforce ongoing lifesaving and life-sustaining activities, and engage governmental, private, and civic sector resources within and outside of the affected area to meet basic human needs, stabilize the incident, and facilitate the integration of recovery activities.

#### Whole Community Approach

The Frameworks follow the whole community approach to preparedness, which recognizes that everyone can contribute to and benefit from national preparedness efforts. This includes individuals and families (including those with disabilities and others with access and functional needs), businesses, community and faith-based groups, nonprofit organizations and all levels of government.

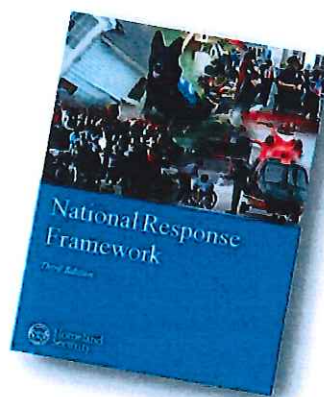


Exhibit 1: Cover of the National Response Framework

Visit us at <http://www.fema.gov/national-response-framework>

*"FEMA's mission is to support our citizens and first responders to ensure that as a nation we work together to build, sustain, and improve our capability to prepare for, protect against, respond to, recover from, and mitigate all hazards."*



# Homeland Security

## National Incident Management System (NIMS) Fact Sheet

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### What is the National Incident Management System?

- Comprehensive, nationwide systematic approach to incident management
- Core set of doctrine, concepts, principles, terminology and organizational processes for all hazards
- Essential principles for a common operating picture and interoperability of communications and information management
- Standardized resource management procedures for coordination among different jurisdictions and organizations
- Scalable and applicable for all incidents

### Key benefits of NIMS

- Enhances organizational and technological interoperability and cooperation
- Provides a scalable and flexible framework with universal applicability
- Promotes all-hazards preparedness
- Enables a wide variety of organizations to participate effectively in emergency management/incident response
- Institutionalizes professional emergency management/incident response practices

### NIMS Audience:

NIMS is applicable to all incidents and all levels of stakeholders, including levels of government, private sector organizations, critical infrastructure owners and operators, nongovernmental organizations and all other organizations who assume a role in emergency management. Elected and appointed officials and policy makers, who are responsible for jurisdictional policy decisions, must also have a clear understanding of NIMS to better serve their constituency.

### NIMS Components:

Built on existing structures, such as the Incident Command System (ICS), NIMS creates a proactive system to assist those responding to incidents or planned events. To unite the practice of emergency management and incident response throughout the country, NIMS focuses on five key areas, or components. These components link together and work in unison to form a larger and comprehensive incident management system.

### NIMS Components include:

- Preparedness
- Communications and Information Management
- Resource Management
- Command and Management
- Ongoing Management and Maintenance

-more-

## **What NIMS is NOT**

- A response plan
- Only used during large-scale incidents
- Only applicable to certain emergency management/incident response personnel
- Only the Incident Command System (ICS) or an organizational chart

For further information on the NIMS see the DHS/FEMA website at [www.fema.gov/nims](http://www.fema.gov/nims).

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# **BOS FY17 Goals & Objectives**

## **July 5, 2016**

### **Administrative**

#### **Admin #1: Town Administrator Goals & Objectives**

Agree to a mutually acceptable set of measurable goals and objectives for the Town Administrator for FY17. Define quarterly review dates for status reports by the Town Administrator to the BOS.

#### **Admin #2: BOS Policy Review**

Review the relevance of BOS Policies and make comprehensive updates to the set of policies to bring them up to date.

#### **Admin #3: Open Meeting Law/ Rules of Operation**

Develop plan to continue education and ensure that all boards and committees are running all meetings and hearings in accordance with Harwich Home Rule Charter, Mass General Laws, and local laws.

#### **Admin #4: Permitting and Sign-up**

Improvement of timing and ease of the permitting services to the residents and visitors.

#### **Admin #5: Town Hall Schedule**

Reevaluate the merits of Town Hall being open Mondays until 8:00 pm and closed at noon on Fridays as it relates to customer service and efficiency .

### **Information Technology**

**IT #1:** Develop an information system technology assessment and plan to move forward with implementation.

## **Financial**

### **Fin #1 FY18 Budget**

Develop FY18 Budget with in the limits of prop 2 1/2. Minimizing the use of capital exclusions. Include line item provisions where the town is lacking either adequate services to the public or expenses for departmental objectives. Commit a minimum of 40% of free cash to reserves.

### **Fin #2 Transparency**

Define how each department works on a financial basis to provide a clear understanding to taxpayers on how these tax dollars are being used. Implement a visual software package to better inform the public regarding budget details.

## **Wastewater**

### **WW #1: Use of Chatham Treatment Facility**

Finalize negotiations with Chatham BOS regarding the potential cost, timing and details for the treatment for up to 350,000 gallons of sewage from the East Harwich Area and bring to 2017 ATM for approval and funding.

## **Town Buildings**

### **TB #1: Re-Visit Selected Town Real Estate Utilization**

Albro House Alternative Analysis- Sale, rental as a house, or town use. Do a complete report showing cost estimates and long term need of the house, along with cost to use as a town building and rationale behind use decision. Recreation building on Sisson Rd: full building and property report, including building needs assessment, along with a current use plan and cost associated with the use.

## **Economic Development**

### **ECON #1: Increase parking in Harwich Port**

Review the recommendations for expanding parking at the Schoolhouse parking lot from the Sept 2014 HSH Associates report , select best option and implement.

## **Document Storage**

### **DS #1: Remote Location Document Storage**

Document Storage at a remote location - store documents electronically or physically at basement of CC or police station or elsewhere. Requirements Analysis - what documents/ data need to be stored? How much and what type of space is required over the next 10-15 years? Alternatives study -what options does the Town have to accommodate these requirements and at what estimated costs? What sources of funding are available for part or all of this activity (grants, CPC).

## **Housing**

### **H #1 Support Housing Committee**

Explore new plans for housing in which the Town retains property while providing livable wage housing for its residents. Explore affordable senior housing options.